COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY **CASE NO. PUR-2023-00217**

For approval of its 2023 DSM Update
pursuant to § 56-585.1 A 5 of the Code of Virginia

REPORT OF M. RENAE CARTER, HEARING EXAMINER

June 26, 2024

I find there is evidence to support approval of (1) Dominion's proposed Phase XII DSM Programs; (2) the proposal to update the eligibility requirements for the Phase VIII Small Business Improvement Enhanced Program; and (3) the addition of ice maker and dishwasher measures to the Phase VIII Non-residential Midstream EE Products Program. I also find there is evidence in the record to support a Commission directive for the Company to continue the Distributed Generation Program on a year-by-year basis, and to request funding therefor as necessary, while the Company seeks an alternative program.

I conclude that the net energy savings described by the Company and detailed in the 2023 EM&V Report factually represent the total annual energy savings achieved by Dominion's energy efficiency programs and measures and are appropriate for determining compliance with the 2022 Savings Target listed in Code § 56 596.2. Using a net savings metric, the resulting revenue requirement supported by the evidence is $85,550,138. Using a gross savings metric, depending on the treatment of the 10% performance incentive cap of Code § 56-585.1 A 5 c, the resulting revenue requirement supported by the evidence is either $92,253,989 or $92,622,744.

HISTORY OF THE CASE

On December 11, 2023, Virginia Electric and Power Company ("Dominion" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of its 2023 Demand-Side Management ("DSM") update. Dominion made this filing pursuant to § 56-585.1 A 5 ("Subsection A 5") of the Code of Virginia ("Code"), and the following Commission Rules: Rules 10 and 60 of the Rules Governing Utility Rate Case Applications and Annual Informational Filings of Investor-Owned Electric Utilities;[1] the Rules Governing Utility Promotional Allowances;[2] the Rules Governing Cost/Benefit Measures Required for Demand-Side Management Programs;[3] and the Rules Governing the Evaluation, Measurement, and Verification of the Effects of Utility-Sponsored Demand-Side Management Programs.[4] Dominion also made this filing pursuant to the directive

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[1] 20 VAC 5-204-5 *et seq.* ("Rate Case Rules").

[2] 20 VAC 5-303-10 *et seq.* ("Promotional Allowances Rules").

[3] 20 VAC 5-304-10 *et seq.* ("Cost/Benefit Rules").

[4] 20 VAC 5-318-10 *et seq.* ("EM&V Rules").

contained in Ordering Paragraph (4) of the Commission's Final Order in Case No. PUR-2022-00210.[5]

The Application sought (1) approval to implement four new DSM programs, and (2) to continue rate adjustment clauses ("RACs"), designated Riders C1A, C2A, and C4A. The four new DSM programs, which together are the Company's "Phase XII Programs," include three "energy efficiency" ("EE") programs and one demand response ("DR") program, as those terms are defined in Code § 56-576. Specifically, the Phase XII Programs are:[6]

- Residential New Construction (EE);
- Residential Smart Thermostat Purchase (EE);
- Residential Smart Thermostat (DR); and
- Non-residential New Construction (EE).

The Phase XII Programs together with programs approved in earlier phases collectively compose the Company's "DSM Portfolio."

Dominion proposed a cost cap of approximately $102.4 million for all Phase XII Programs together, with flexibility to exceed the spending cap by up to 15%.[7]

The Company also requested approval to modify two previously approved DSM programs and to close one program. First, for the Phase VIII Small Business Improvement Enhanced Program, Dominion requested approval to remove the requirement that participants be private businesses with five or fewer qualifying locations in Dominion's service area. Second, the Company requested to add measures such as ice makers and dishwashers to its Phase VIII Non-residential Midstream EE Products Program. Finally, Dominion sought approval to close the Phase II Non-residential Distribution Generation ("DG") Program.[8]

Dominion also discussed its obligation under the Grid Transformation and Security Act ("GTSA")[9] to spend $870 million on EE programs between July 1, 2018, and July 1, 2028.[10] The Company calculated that spending on EE programs approved in prior phases and the proposed Phase XII Programs (EE) is approximately $797 million, not including any amounts for projected lost revenues. The Company further calculated that approximately $109.5 million of

[5] *Application of Virginia Electric and Power Company, For approval of its 2022 DSM Update pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUR-2022-00210, Final Order (Aug. 4, 2023) (hereafter, "*2022 DSM Case Final Order*" or "2022 DSM Case," as applicable).

[6] *See, e.g.*, Ex. 2 (Application) at 2, 8. Although the Company filed both public and extraordinarily sensitive versions of its Application and related documents, only public information is summarized herein.

[7] *See, e.g.*, Ex. 2 (Application) at 10.

[8] *See, e.g.*, *id.* at 10-12.

[9] 2018 Va. Acts ch. 296.

[10] 2018 Va. Acts ch. 296, Enactment Clause 15. Note that the Company's DSM Portfolio incorporates both EE and DR programs. The $870 million spending requirement applies to EE programs only and is codified at Code § 56-596.2 C.

the approximately $797 million is for spending on EE programs targeting low-income individuals, not including any amounts for projected lost revenues.[11]

The Company addressed its progress toward the goals of Code § 56-596.2, requiring Dominion to implement EE programs and measures to save, in given calendar years, certain percentages of Dominion's average annual energy jurisdictional retail sales in 2019 ("Savings Targets"). The Company stated it is unclear whether the Commission will consider the Savings Targets on a gross or net basis.[12] Dominion claimed the Commission should consider the Savings Targets on a gross basis and filed a Legal Memorandum with the Application explaining this rationale. The Company also provided the following data reflecting its estimated progress toward meeting the Savings Targets set for 2022-2025:[13]

Year	Target Savings	Gross Savings Achieved	Net Savings Achieved
2022	1.25%	1.9%	1.23%
2023	2.50%	2.5%	1.8%
2024	3.75%	3.2%	2.3%
2025	5.00%	3.7%	2.9%

The Company requested to recover, over the period September 1, 2024, through August 31, 2025 ("Rate Year"), costs associated with the proposed Phase XII Programs and with DSM programs previously approved by the Commission in Case Nos. PUE-2011-00093 (Phase II),[14] PUE-2013-00072 (Phase III),[15] PUE-2014-00071 (Phase IV),[16] PUE-2015-00089

[11] Ex. 6 (Bates Direct) at 9-11.

[12] Ex. 3 (Walker Direct) at 11.

[13] *Id.* at 13.

[14] *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. Rep. 298, Order (Apr. 30, 2012).

[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-2013-00072, 2014 S.C.C. Ann. Rep. 289, Final Order (Apr. 29, 2014).

[16] *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. Rep. 230, Final Order (Apr. 24, 2015).

(Phase V),[17] PUE-2016-00111 (Phase VI),[18] PUR-2018-00168 (Phase VII),[19] PUR-2019-00201 (Phase VIII),[20] PUR-2020-00274 (Phase IX),[21] PUR-2021-00247 (Phase X),[22] and the 2022 DSM Case (Phase XI).[23] The Company proposed to collect these costs through Riders C1A, C2A, and C4A. The Company also explained that it proposes to end Rider C3A, which had been used to collect true-up amounts for the Phase VII and Phase VIII Programs, and to collect remaining funds related to Phase VII and Phase VIII Programs through Rider C4A.[24]

Dominion stated that the cost components of Riders C1A, C2A, and C4A include operating expenses the Company anticipates it will incur during the Rate Year, as well as a Monthly True-up Adjustment, which compares actual costs for calendar year 2022 to actual revenues collected during that period.[25] Dominion provided the following breakdown of its requested revenue requirement:[26]

Rider	Rate Year Projection	True-up Adjustment	Total Revenue Requirement
C1A	$9,870,090	$(1,994,686)	$7,875,404
C2A	$(56,946)	$(1,877,336)	$(1,934,282)
C4A	$106,743,020	$(20,061,397)	$86,681,623
Total	$116,556,164	$(23,933,420)	$92,622,744

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[17] *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. Rep. 275, Final Order (Apr. 19, 2016) ("*2015 DSM Case Final Order*").

[18] *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. Rep. 384, Final Order (June 1, 2017) (hereafter, "*2016 DSM Case Final Order*").

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

[20] *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. Rep. 368, Final Order (July 30, 2020) ("*2019 DSM Case Final Order*").

[21] *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, 2021 S.C.C. Ann. Rep. 350, Final Order (Sept. 7, 2021) (hereafter, "*2020 DSM Case Final Order*" or "2020 DSM Case," as applicable).

[22] *Petition of Virginia Electric and Power Company, For approval of its 2021 DSM Update pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUR-2021-00247, 2022 S.C.C. Ann. Rep. 384, Final Order (Aug. 10, 2022) ("*2021 DSM Case Final Order*" or "2021 DSM Case," as applicable).

[23] Ex. 7 (Wooldridge Direct) at 2.

[24] *Id.* at 3-4.

[25] *See, e.g.*, Ex. 2 (Application) at 13.

[26] Ex. 7 (Wooldridge Direct) at Attached Schedule 1, p. 1.

The Company explained that for purposes of calculating the revenue requirement, it used a rate of return on common equity ("ROE") of 9.35% for the period November 18, 2021, to February 29, 2024.[27] For the period after February 29, 2024, the Company used an ROE of 9.7%.[28] In determining the 2022 Monthly True-up Adjustment, Dominion used a 9.35% ROE to calculate the margin on Operations & Maintenance ("O&M") expenses associated with the Riders C2A and C4A EE programs for calendar year 2022. Additionally, Dominion asserted that in 2022, it achieved energy efficiency savings of 1.9%, which is 0.65% over the 1.25% EE Savings Target for 2022 set forth in Code § 56-596.2. Accordingly, the Company explained that it added a bonus margin of 1.2% (20 basis points for each 0.1% in savings beyond the 2022 Savings Target), as allowed by § 56-585.1 A 5 c ("Subsection A 5 c"), for the calendar year 2022 True-up Adjustment.[29]

If the proposed RACs for the Rate Year are approved, the impact on customer bills would vary by each customer's rate schedule and usage. According to Dominion, implementation of the proposed RACs on September 1, 2024, would decrease the monthly bill of a residential customer using 1,000 kilowatt-hours ("kWh") of electricity per month by $0.16.[30] The Company represented that it calculated the rates for the proposed RACs using the same allocation methodology as used in the 2022 DSM Case.[31]

Concurrent with the filing of the Application, Dominion filed a Motion for Entry of a Protective Ruling and Additional Protective Treatment. The Hearing Examiner's Protective Ruling and Additional Protective Treatment for Extraordinarily Sensitive DSM Contracts and Prices Information was issued on January 11, 2024.

On January 10, 2024, the Commission issued an Order for Notice and Hearing in this proceeding, which among other things: docketed the Application; required Dominion to provide public notice of the Application and serve notice of the Application on certain local officials; established a procedural schedule for the case; provided opportunities for interested persons to participate in the case; required Commission Staff ("Staff") to investigate the Application and file testimony and exhibits thereon; scheduled a public hearing for May 21, 2024; and assigned the case to a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission and file a final report. The Order for Notice and Hearing also required Staff, and allowed any respondent, to file on or before April 9, 2024, a response to the Company's Legal Memorandum.

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[27] *Id.* at 4. The 9.35% ROE was authorized in *Application of Virginia Electric and Power Company, For a 2021 triennial review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUR-2021-00058, 2021 S.C.C. Ann. Rep. 444, Final Order (Nov. 18, 2021) (hereafter, "*2021 Triennial Review Order*" or "2021 Triennial Review Case," as applicable).

[28] Ex. 7 (Wooldridge Direct) at 4. The 9.7% ROE was set in 2023 Va. Acts ch. 757. *Id.*

[29] *Id.* at 4-5.

[30] Ex. 2 (Application) at 16.

[31] *Id.* at 21; Ex. 8 (Catron Direct) at 3-4.

Notices of Participation were filed by the following: Appalachian Voices ("APV"), the Virginia Energy Efficiency Council ("VAEEC"), and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). APV, VAEEC, and Staff each pre-filed testimony. Consumer Counsel, APV, and Staff each filed responses to Dominion's Legal Memorandum.

The hearing was convened, as scheduled, on May 21, 2024. The Company appeared by its counsel Vishwa B. Link, Esquire, Jontille D. Ray, Esquire, and Briana M. Jackson, Esquire, with the law firm of McGuireWoods LLP. APV appeared by its counsel Nathaniel Benforado, Esquire, and Josephus Allmond, Esquire, with the Southern Environmental Law Center. VAEEC appeared by its counsel Cale Jaffe, Esquire, Professor of Law, General Faculty with the University of Virginia School of Law, Environmental Law and Community Engagement Clinic.[32] Consumer Counsel appeared by its counsel John E. Farmer, Jr., Esquire, and Carew S. Bartley, Esquire. Staff appeared by its counsel Mary Beth Adams, Esquire, Kiva Bland Pierce, Esquire, and Anna A. Dimitri, Esquire.

Public Comments

Five public witnesses filed comments in this docket. **Melinda Lewis** urged the Commission to incentivize Dominion to reduce the number of utility shut-offs and to make fewer shut-offs a performance target. She argued that utility shut-offs most impact low-income, Black, and Brown communities.[33]

William T. Reisinger, Esquire, filed comments on behalf of **Clean Virginia**, a nonprofit advocacy organization based in Charlottesville, Virginia. Clean Virginia expressed agreement with the positions of Staff and APV, who advocated for calculating Dominion's progress toward meeting the statutory Savings Targets on a net savings basis. Clean Virginia asserted the plain language of the applicable statutes supports use of a net savings metric. Clean Virginia claimed Dominion's position would reward the Company for savings it did not achieve.[34]

Kirsten Millar, Director of Policy and Partnerships, filed comments on behalf of her organization, **Virtual Peaker**, which provides a distributed energy resource management system. Virtual Peaker supported the Application, and commented that the Phase XII Residential Smart Thermostat (DR) and Residential Smart Thermostat Purchase (EE) Programs reduce barriers to adoption or participation, impact overall system efficiencies, increase the capacity available to be shifted to non-peak periods, and can result in savings for ratepayers.[35]

Lena Lewis, Energy and Climate Policy Manager, filed comments on behalf of her organization, **The Nature Conservancy Virginia Chapter** ("Conservancy"), which focuses on

[32] By Hearing Examiner's Ruling on February 26, 2024, Sebastian van Bastelaer was admitted under the Third Year Student Rule (Part 6, § IV, Rule 15 of the Rules of the Supreme Court of Virginia), to represent the VAEEC in this proceeding, but he withdrew as counsel prior to the hearing in this case.

[33] Comments of Melinda Lewis at 1 (filed Apr. 4, 2024).

[34] Comments of Clean Virginia at 1-2 (filed May 14, 2024).

[35] Comments of Virtual Peaker at 1 (submitted May 14, 2024; filed May 15, 2024).

reversing climate change and biodiversity loss while allowing people and nature to thrive. The Conservancy is a member of the Company's EE stakeholder group ("Stakeholder Group"). The Conservancy expressed support for the proposed Phase XII Programs, though it argued compliance with the Savings Targets should be measured on the basis of net savings, which excludes free riders.[36] The Conservancy also urged that stakeholder meetings be directed toward gathering and implementing stakeholders' ideas on how to meet the Savings Targets. The Conservancy requested the Commission require the Company and the Stakeholder Group meeting facilitator to ensure stakeholders' input is part of future meetings, that Dominion can incorporate this input, and that the Commission require Dominion to provide documentation as to which stakeholders' ideas it implemented and which it disregarded, with the reason for the latter.[37] The Conservancy asserted Dominion can achieve the 2024 and 2025 statutory targets and argued these targets should not be reduced.[38]

Cailee Mangan, Senior Policy Analyst, filed comments on behalf of her organization, **Recurve Analytics, Inc** ("Recurve"), which provides analytics to track the impact of demand-side initiatives. Recurve asked that Dominion: use Advanced Metering Infrastructure ("AMI") to integrate measurement and verification protocols into the design of EE and DR programs; implement EE and DR programs in an integrated, not separate, fashion; and adopt a competitive market pilot to accelerate investment in DSM in Virginia.[39] Recurve also requested the Commission approve a gross savings metric to measure compliance with the Savings Targets.[40] Additionally, Recurve advocated for the use of the Total System Benefits metric to measure the complete value of distributed energy resources.[41]

SUMMARY OF THE RECORD

PUBLIC WITNESS

One public witness provided testimony at the hearing. **Carmen Bingham**, Affordable Clean Energy Program Coordinator with the Virginia Poverty Law Center ("VPLC") testified that the VPLC supports the proposed Phase XII Programs. She agreed with VAEEC witness Harnish that Dominion has not done enough to achieve the Savings Targets, to the detriment of the public at large and particularly low-income families. She urged the Commission to ensure Dominion implements DSM programs in a timely way and that those most in need may access and utilize the programs. Ms. Bingham expressed frustration at the apparent disconnect between the stakeholder process and the Company's filed DSM applications. She also stated VPLC

[36] Comments of the Conservancy at 1-2 (submitted May 14, 2024; filed May 15, 2024).

[37] *Id.* at 3-4.

[38] *Id.* at 4.

[39] Comments of Recurve at unnumbered 1-2, 5-9 (submitted and filed May 15, 2024). The Commission's Order for Notice and Hearing directed that public comments be submitted on or before May 14, 2024. However, I find no party or Staff was prejudiced by the filing of Recurve's comments one day late, and therefore I accept them as if timely filed.

[40] *Id.* at unnumbered 3.

[41] *Id.* at unnumbered 4.

agrees with Clean Virginia in supporting the net savings metric as the method for measuring compliance with the 2022 Savings Target. Finally, Ms. Bingham expressed concern with the scheduling of the hearings in this docket and the Appalachian Power Company energy efficiency case docket at the same date and time.[42]

DOMINION DIRECT TESTIMONY

With its Application, Dominion offered the testimony of the following witnesses: David F. Walker, Michael T. Hubbard, Rachel L. Hagerman, Jarvis E. Bates, Justin A. Wooldridge, Emilia L. Catron, Casey R. Lawson, Dan Feng, and Terry M. Fry.

David F. Walker is the Director of Strategic Customer Programs for the Company and provided the following testimony:[43]

- An overview and updates to the Company's DSM approach;
- An overview of the Company's request for approval of the proposed Phase XII Programs;
- A discussion of the statutory Savings Targets and Dominion's efforts to enhance program performance and increase energy savings;
- An overview of Dominion's request to recover costs through three RACs;
- A discussion of Dominion's compliance with the Commission's directives in prior DSM proceedings; and
- An introduction of Dominion's witnesses providing testimony on the Application.

DSM Overview. Mr. Walker provided an overview and updates on the Company's DSM Portfolio. He explained the Company began launching DSM programs in response to the Virginia General Assembly's March 2007 enactment of a voluntary 10% energy efficiency goal. Through its DSM programs, Dominion began offering voluntary energy conservation (EE and peak-shaving) programs and useful information to assist customers with EE improvements and to reduce demand during peak periods. Mr. Walker explained that field implementation and administration services for its DSM programs are provided by third-party vendors overseen by the Company's Energy Conservation Department, and energy savings associated with the DSM programs are determined annually by a third-party Evaluation, Measurement & Verification ("EM&V") vendor, DNV.[44]

Mr. Walker reported that in 2022, approximately 389,276 residential and non-residential customers participated in the Company's DSM Programs, $41 million were disbursed in rebate payments across the active programs, and the Company's customers saved approximately 149 gigawatt-hours of energy.[45]

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[42] Transcript ("Tr.") at 12-19 (Bingham).

[43] Ex. 3 (Walker Direct) at 3.

[44] *Id.* at 3-4.

[45] *Id.* at 4-5. Mr. Walker's Schedule 1 provides an executive summary, or "dashboard," of the 2022 DSM Portfolio's performance.

Mr. Walker explained how the Virginia Clean Economy Act ("VCEA")[46] relates to Dominion's DSM programs. He discussed Subsection A 5's budget provisions and allowance for a margin for recovery on EE program operating expenses; amendments specifying which customers are required to pay the costs of, and participate in, EE programs; provisions that at least 15% of EE program costs should be designed to benefit low-income, elderly, or disabled individuals or veterans; Code § 56-596.2's annual Savings Targets; how the VCEA expanded the scope of the stakeholder process; and directives that a third-party evaluator perform EM&V on the Savings Targets and report its findings to the Commission and the utility.[47]

Regarding the Stakeholder Group, Mr. Walker testified the Company participates both in Stakeholder Group meetings led by the Commission-hired independent moderator and in a variety of subgroup meetings. He stated Dominion includes stakeholder input in its requests for proposals ("RFP") and has made adjustments to its DSM process and DSM program administration based on stakeholder feedback.[48] He then reviewed the four recommendations from the Hearing Examiner's Report in the 2022 DSM Case, and adopted by the Commission in the *2022 DSM Case Final Order*, to refer certain issues to the Stakeholder Group.[49] He stated that stakeholders provided Dominion with written feedback on the four recommendations and, using this feedback, the Stakeholder Group's Process Subgroup will develop a plan to provide a more comprehensive response to the four topics. He explained the Process Subgroup plans to meet in January 2024, and the Company will update the Commission as progress is made. Mr. Walker's Schedule 2 provides a compilation of initial stakeholder feedback on these four recommendations.[50]

Mr. Walker also reported on the Company's efforts to move to a consolidated DSM program structure, as recommended by Dominion's consultant, Cadmus, in its Long-term Plan. He stated the Company will use the consolidated program structure to streamline its DSM Portfolio and achieve its EE goals.[51]

<u>The Phase XII Programs</u>. Next, Mr. Walker discussed the proposed Phase XII Programs for which the Company seeks approval in its Application. He explained Dominion is also requesting a modification to the eligibility criteria for the Phase VIII Small Business Improvement Enhanced Program and modifications to measures of the Non-residential Midstream EE Products Program. He stated the proposed five-year cost cap for the Phase XII Programs in the aggregate is approximately $102.4 million, or $117.8 million with a 15%

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[46] 2020 Va. Acts chs. 1193, 1194.

[47] Ex. 3 (Walker Direct) at 5-6.

[48] *Id.* at 7.

[49] *Id.* at 7-8. The four recommendations are numbers 12, 24, 25, and 26. *See id.* and *2022 DSM Case Final Order* at 7-9.

[50] Ex. 3 (Walker Direct) at 7-8.

[51] *Id.* at 9.

variance allowance. He noted Dominion is not proposing pre-determined program closing dates; however, the Company submitted five-year budgets for each proposed Phase XII Program.[52]

Statutory Compliance. Mr. Walker reviewed the VCEA's EE Savings Targets. He noted the Commission has not yet determined whether the Savings Targets will be measured on a net or gross basis. According to Mr. Walker, "[g]ross savings account for all [EE] savings achieved, whereas net savings are gross savings adjusted for market effects."[53] He reiterated the Company's position that the Savings Targets should be measured on a gross basis.[54]

Mr. Walker provided the following tables depicting the Company's actual and projected levels of compliance with the Savings Targets, which he described as "a snapshot in time" that does not incorporate all the improvements to EE savings the Company expects to achieve by implementing recommendations in its Long-term Plan:[55]

Table 1: Net at Meter

Year	VCEA Target MWh	VCEA Target %	DSM1-8 MWh	DSM9 MWh	DSM10 MWh	DSM11 MWh	DSM12 MWh	Opt-Outs MWh	DSM %
2022	852,892	1.25%	776,335	4,154				58,754	1.23%
2023	1,705,783	2.50%	1,002,445	79,192	60,671			59,855	1.8%
2024	2,558,675	3.75%	1,160,067	165,870	178,878	37,210		60,955	2.3%
2025	3,411,567	5.00%	1,186,909	251,179	343,743	89,556	19,748	62,055	2.9%

Table 2: Gross at Meter

Year	VCEA Target MWh	VCEA Target %	DSM1-8 MWh	DSM9 MWh	DSM10 MWh	DSM11 MWh	DSM12 MWh	Opt-Outs MWh	DSM%
2022	852,892	1.25%	1,220,054	4,781				58,754	1.9%
2023	1,705,783	2.50%	1,485,665	91,548	66,352			59,855	2.5%
2024	2,558,675	3.75%	1,663,322	194,941	195,075	40,048		60,955	3.2%
2025	3,411,567	5.00%	1,691,387	295,668	371,684	98,056	23,943	62,055	3.7%

Mr. Walker reported the Company met, and surpassed, the VCEA's 1.25% Savings Target for 2022, by achieving 1.9% energy savings on a gross basis. He concluded that Dominion is entitled to a margin on EE program O&M expenses for 2022 and to an additional 1.2% basis point adder, representing 20 basis points for each additional incremental 0.1% in annual savings over the 1.25% Savings Target.[56]

Mr. Walker next explained that increased funding toward improving customer awareness and marketing as well as program enrollment is expected to drive improvements in these areas.

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[52] *Id.* at 9-10.

[53] *Id.* at 11. During the hearing, Company witness Fry provided a more exact definition of net savings as gross savings, minus free riders, plus spillover effects, plus market effects. Tr. at 91-94 (Fry).

[54] Ex. 3 (Walker Direct) at 11-12.

[55] *Id.* at 12-13. Mr. Walker noted these values exclude North Carolina and non-jurisdictional DSM reductions. *Id.* Note that "MWh" denotes "megawatt-hours."

[56] *Id.* at 13-14 and Attached Schedule 3.

He noted the Company has made considerable progress since the 2022 DSM Case on implementing a marketing strategy to increase awareness of the DSM programs and their benefits. He remarked that Dominion has engaged with the Stakeholder Group about customer awareness, and in October 2023 the Stakeholder Group was offered an opportunity to provide feedback on customers' marketing preferences. Mr. Walker averred the Company and its partner, West Cary Group, will use this information to inform the Company's DSM marketing campaign. He also described vendor summits the Company hosts for program implementation vendors to synchronize consistent communication and stress the need to cross-promote DSM programs to customers.[57]

Mr. Walker also described the Company's efforts to strengthen the continuous improvement framework. He reported that the Company seeks ways to optimize DSM programs over time and implement improvements where needed. He discussed how, in accordance with the Long-term Plan, the Company's consultant, Cadmus, has begun process evaluations for a few programs. He stated Dominion will continue to work with Cadmus to complete the process evaluations and incorporate the findings into the applicable programs where practicable.[58]

Mr. Walker reported that, including proposed Phase XII Program spending, 13.7% of the Company's DSM Portfolio costs are designed to benefit low-income, elderly, or disabled individuals, or veterans. He asserted this 13.7% is progress toward the VCEA's provision that at least 15% of EE program costs be designed to benefit such individuals. He also noted the GTSA requires the Company to propose at least $870 million toward EE programs between 2018-2028. Mr. Walker reported that, inclusive of the proposed Phase XII Programs, the Company has proposed approximately $797.0 million of such spending.[59]

<u>RACs</u>. Regarding Dominion's cost recovery request, Mr. Walker stated the Company's Application requests recovery through Riders C1A, C2A, and C4A of (i) Rate Year costs associated with its Phase II through Phase XII Programs; and (ii) true-up of actual costs and revenues for the period of January 1, 2022, through December 31, 2022, for eligible programs. He reported the total revenue requirement requested in this proceeding is $92,622,744.[60]

<u>Compliance with Commission Orders</u>. Next, Mr. Walker noted the *2020 DSM Case Final Order*, *2021 DSM Case Final Order*, and *2022 DSM Case Final Order* directed the Company to comply with certain requirements. He provided a table summarizing how the Application fulfilled the relevant filing requirements set forth in these Commission Orders.[61]

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[57] *Id.* at 14-15.

[58] *Id.* at 16.

[59] *Id.* at 17.

[60] *Id.* at 17-18.

[61] *Id.* at 18-20.

Further, Mr. Walker noted the Commission's Final Order in Case No. PUR-2020-00156[62] directed the Company to provide certain information with respect to its DSM updates. He provided a table summarizing how the Application fulfilled the relevant filing requirements set forth in the *EM&V Determination Case Order*.[63]

The Commission's *2016 DSM Case Final Order* directed the Company to (i) conduct biennial internal audits of the controls surrounding incentive and rebate payments with regard to each of the Company's DSM Programs, and (ii) provide Staff the audit report with supporting documentation, including a detailed description of how the audit findings have been addressed. Mr. Walker reported that the Company completed the most recent internal audit this year and, once the results are finalized, Dominion will share the audit's findings with Staff.[64]

In his testimony, **Michael T. Hubbard**, Manager, Energy Conservation for the Company, provided:

- An update on the status of the Company's approved DSM Programs, including a discussion of proposed updates to those Programs;
- An overview of the development and design of the proposed Phase XII Programs, including the RFP process;
- A discussion of the quality assurance process and an update on the Company's controls for the rebate approval process; and
- An explanation of how the Company has complied with applicable provisions of the Promotional Allowance Rules.[65]

Mr. Hubbard also sponsored Filing Schedule 46C, Statement 1, of the Application.[66] Fact sheets for each of the Company's existing and active DSM programs, with the exception of the recently approved Phase XI Programs, are provided as Mr. Hubbard's Schedule 1.[67] Mr. Hubbard's Schedule 2 contains summaries, by phase, of the DSM programs proposed by the Company in Phases I through XI.[68]

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[62] *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of baseline determination, methodologies for evaluation, measurement, and verification of existing demand-side management programs, and the consideration of a standardized presentation of summary data for Virginia Electric and Power Company*, Case No. PUR-2020-00156, 2021 S.C.C. Ann. Rep. 260, Final Order (Oct. 27, 2021) (hereafter, "*EM&V Determination Case Order*" or "EM&V Determination Case," as applicable).

[63] Ex. 3 (Walker Direct) at 21.

[64] *Id.* at 22.

[65] Ex. 4 (Hubbard Direct) at 2.

[66] *Id.* at 2-3.

[67] The fact sheets contain detailed information, including a program description, eligibility requirements, approved measures, budget, participation, and energy savings. *Id.* at 4.

[68] Summaries of the DSM programs proposed in Phases I through XI contain, among other data, information regarding each program's approval status, costs requested, costs approved, actual costs and participation through December 31, 2022, and start and end dates. *Id.*

Current Program Update. Mr. Hubbard confirmed the Company included the same health and safety measures in both the Residential and Non-residential Income and Age Qualifying Program bundles as directed by the *2022 DSM Case Final Order*. He also summarized the history of the Phase I Residential Air Conditioner Cycling Program, concluding with the Commission's approval in the 2021 DSM Case to close the program. He reported that the Company is continuing to wind down the program in a seamless manner and is offering customers alternative opportunities. Regarding the Phase II Non-residential Distributed Generation Program, Mr. Hubbard noted the program was extended for a total of seven years through the *2016 DSM Case Final Order* and the *2020 DSM Case Final Order*. He explained that though this program has been called upon during peak demand periods, the program is no longer cost-effective due to factors such as the low value of capacity. He stated Dominion will be working with its vendor to explore options for ending the Program.[69]

Proposed Phase XII Program. Mr. Hubbard testified the Company is proposing to add four Phase XII Programs to its DSM Portfolio. He reported Dominion is also requesting a modification to (i) the measure mix of the Non-residential Midstream EE Products Program and (ii) the eligibility criteria for the Small Business Improvement Enhanced Program. He explained Dominion is using a phased approach for purposes of cost caps, implementation, and marketing; however, the Company continues to transition, where practicable, to a consolidated program structure as recommended in the Long-term Plan. He also stated the Company is requesting approval to operate the Phase XII Programs without a predetermined closure date.[70]

Next, Mr. Hubbard stated each proposed Phase XII Program is an updated and re-designed version of a program from the existing DSM Portfolio. He explained the re-designs include program measures that have been suggested by various stakeholders, studies, and RFPs and incorporate the latest EE technologies. He provided a brief summary of each program:[71]

- Residential New Construction Program (EE): Would provide incentives to home builders to construct new homes that are ENERGY STAR certified. This re-design of a Phase VIII Program incorporates a flexible entry-level approach to encourage added builder participation and promote deeper energy savings per house. The program also offers a second tier to building eligibility – ENERGY STAR NextGen Tier – to the existing ENERGY STAR Version 3.1 to drive builder participation in the program.

- Residential Smart Thermostat Purchase Program (EE): Would provide an incentive to residential customers to purchase a qualifying smart thermostat through the Company's online marketplace platform and brick and mortar participating retailers.

- Residential Smart Thermostat Demand Response Program (DR): Would enable Dominion, during times of peak system demand, to adjust participating customers' thermostats to achieve a specified amount of load reduction while maintaining

[69] *Id.* at 4-6.

[70] *Id.* at 6-7.

[71] Detailed Program sheets, including descriptions, eligibility, measure lists, projected participation and energy savings, and cost caps are provided *id.* at Schedule 3, with additional design details provided *id.* at Schedule 4.

customer comfort by gradually changing the home temperature. Customers would receive a one-time enrollment incentive and an annual participation incentive, and they would be able to opt-out of specific events if they so desire.

- Non-residential New Construction Program (EE): Would provide qualifying facility owners incentives to install energy efficient measures in new construction projects. Program design assistance would be provided throughout the building design and construction process. This redesign targets three categories of buildings – commercial, industrial, and data centers – and incorporates program measures larger customers may need, such as refrigeration and process equipment.[72]

Mr. Hubbard next explained the request to add measures like dishwashers and ice makers to the existing Phase VIII Non-residential Midstream EE Products Program. He asserted these measures will diversify the program's measure portfolio and align with what the implementation vendor is observing in the field.[73]

Mr. Hubbard also discussed the proposal to update the eligibility requirements for the Phase VIII Small Business Improvement Enhanced Program by removing the restriction that participants be privately-owned businesses with five or fewer qualifying locations within Dominion's service territory. Mr. Hubbard claimed this program has attracted attention among local and small businesses, especially those that have more than five locations across the Company's service territory. Accordingly, Dominion is requesting to remove the location cap to ensure additional participation.[74]

Mr. Hubbard next described the eligibility requirements for the proposed Phase XII Programs. He stated the programs are designed for specific customer segments. He testified that customers participating in more than one DSM program may only be incentivized for a particular measure once and that controls exist to protect against multiple payments for the same measure. He confirmed that customers using over one megawatt of electricity may only participate in a DSM program if they have not opted out of paying the DSM RACs. He noted Dominion also has certain restrictions regarding simultaneous participation in DR programs. He provided the example that customers participating in the Phase VIII Residential Electric Vehicle DR Program and peak-shaving components are prohibited from taking service under the Company's dynamic pricing rate schedule.[75]

RFP Process. Mr. Hubbard described the RFP process used to develop the proposed Phase XII Programs. He confirmed the program concepts were developed through the stakeholder process as required by Code § 56-596.2. He stated the Company, to the best of its ability, incorporates stakeholders' ideas and recommendations into an RFP to solicit proposals

[72] *Id.* at 8-11.

[73] *Id.* at 11-12.

[74] *Id.* at 12.

[75] *Id.* at 13-14. *See id.* at Schedule 3 for additional details on eligibility requirements for each proposed Phase XII Program.

for program designs. He stated Dominion issued an RFP in May 2023, soliciting bids for EE and DR programs, and noted the Application's program proposals resulted from the RFP process.[76]

Program Implementation. Mr. Hubbard explained the Company will outsource implementation of the Phase XII Programs, if approved, to vendors that, in conjunction with Dominion, often utilize a contractor network to assist with program delivery to customers. Mr. Hubbard estimated that the Phase XII Programs, if approved, would be available to customers in the first quarter of 2025. He described the Company's oversight of implementation vendors through reporting requirements, EM&V, and Company program managers. He claimed the Company's monitoring and oversight help ensure programs meet desired performance levels and participation targets as well as foster successful and efficient interaction between the Company and vendors.[77]

Mr. Hubbard described efforts made to launch the Phase XI Programs since the Commission issued the *2022 DSM Case Final Order* on August 4, 2023. He reported the Company expects all approved Phase XI Programs to be available to customers in the first quarter of 2024.[78]

Customer Awareness of DSM Offerings. Regarding customer awareness, Mr. Hubbard stated Dominion contracted with West Cary Group to lead a DSM customer awareness initiative. He reported West Cary Group is engaged in a data driven campaign to raise awareness of Dominion's DSM offerings, utilizing information from the Long-term Plan and the Stakeholder Group.[79]

Quality Control and Assurance. Regarding quality control, Mr. Hubbard testified that rebates are not funded until application information and installation work is completed. He explained each measure is tracked in the Company's DSM tracking system and submitted to Dominion's EM&V vendor, DNV, to calculate energy savings and check data quality. According to Mr. Hubbard, the tracking system prevents the acceptance of measures previously installed under the same customer's account. He also described Dominion's efforts to ensure that rebates and supporting application data are accurate. Mr. Hubbard further testified that the Company's quality assurance process verifies the quality of vendors' work. He noted implementation vendors often meet with customers and participating contractors to discuss work to be performed. In summary, he stated the Company's quality control and quality assurance efforts help ensure that legitimate work is rebated and not duplicated. He also noted one of the Company's implementation vendors has launched an electronic rebate tracking system that enhances the overall program performance by enhancing the vendor's ability to analyze data and monitor trends.[80]

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[76] *Id.* at 14-15; Ex. 2 (Application) at Filing Schedule 46C, Statement 1.

[77] Ex. 4 (Hubbard Direct) at 15-16.

[78] *Id.* at 17.

[79] *Id.*

[80] *Id.* at 18-20. The Company's Rebate Review and Approval Process and Operational Procedures are provided *id.* at Schedules 5 and 6, respectively.

Compliance. Lastly, Mr. Hubbard reviewed how the Company has complied with certain directives of the *2020 DSM Case Final Order* and the *EM&V Determination Case Order*, as well as certain portions of Rule 40 of the Promotional Allowance Rules.[81]

In her testimony, **Rachel L. Hagerman,** a Senior Energy Market Analyst in Dominion's Corporate Strategic Planning and Fuel Management organization, provided the following:

- A discussion of the Company's IRP process, including DSM program screening and selection;
- A discussion of the screening criteria for purposes of evaluating DSM programs;
- The cost/benefit test results for the proposed Phase XII Programs; and
- The updated cost/benefit test results for the ongoing DSM Programs.

She also sponsored Schedule 46C, Statement 2 and Filing Schedule 46F, Statement 2 of the Application.[82]

IRP Process and DSM Program Selection. Ms. Hagerman testified that the Company's IRP process considers additional generating capacity and energy from traditional resources, renewable resources, and market purchases, as well as capacity and energy savings from DSM programs, to meet the Company's forecasted peak demand, energy sales, and required reserve margin to support reliability. She explained that DSM programs as a resource are analyzed based on the opportunity to eliminate, defer, or alter the need for future supply-side resources and market purchases. She affirmed Dominion complies with Rule 30 of the Cost/Benefit Rules, by actions including: using assumptions when modeling DSM program cost-effectiveness that are consistent with those used in the Company's PLEXOS model for its 2023 IRP;[83] assessing historic trends in developing projected data using the PJM Interconnection, L.L.C. ("PJM") load forecast and actual historical DSM program performance data; analyzing DSM programs using a data series representative of the Company's 2023 IRP load forecast; and addressing environmental impacts when modeling supply-side resources by using ICF's long-term forecast of emissions prices.[84]

Cost/Benefit Tests. Ms. Hagerman provided an overview of the cost/benefit tests and the Company's DSM program screening criteria. She testified that to analyze DSM programs, the Company used the four standard tests from the California Standards Practice Manual: (i) Participant Test; (ii) Utility Cost Test; (iii) Total Resource Cost Test; and (iv) Ratepayer

[81] *Id.* at 20-22.

[82] Ex. 5 (Hagerman Direct) at 2.

[83] *Commonwealth of Virginia, Ex rel. State Corporation Commission, In re: Virginia Electric and Power Company's Integrated Resource Plan pursuant to Va. Code § 56-597 et seq.*, Case No. PUR-2023-00066 ("2023 IRP").

[84] Ex. 5 (Hagerman Direct) at 3-6.

Impact Measure Test. Each test used the net present value of costs and benefits. She also explained the meaning of cost/benefit test scores:[85]

Test	Score Meaning
Participant Test	Over 1.0: Participants will benefit from the DSM program.
	Under 1.0: Customers would be worse off by participating and are unlikely to participate in the DSM program.
Utility Cost Test	Over 1.0: It is less expensive for the utility to choose a resource mix with this DSM program than a supply-side resource mix excluding the program.
	Under 1.0: It is less expensive for the utility to choose the resource mix that does not include the DSM program.
Total Resource Cost Test	Over 1.0: Both participants and the utility benefit from the program.
	Under 1.0: Participants and the utility are better off using the supply-side resource mix.
Ratepayer Impact Measure Test	Over 1.0: The DSM program will put downward pressure on rates, and all customers will benefit.
	Under 1.0: The DSM program puts upward pressure on rates.

Ms. Hagerman confirmed the Company looked at all cost/benefit test scores, as well as net present value results, when evaluating potential DSM programs and/or program extensions. She noted that historically, the Company has only proposed DSM programs for the Commission's consideration that pass three of the four cost/benefit tests, with the exception of pilot programs and programs that benefit low-income or elderly customers or are otherwise prescribed by legislation. She stated the Application is consistent with this practice.[86]

<u>Cost-effectiveness of the Proposed Phase XII Programs</u>. Ms. Hagerman next presented the cost/benefit results of the proposed Phase XII Programs, individually and as a portfolio, as well as using certain sensitivities.[87]

Ms. Hagerman testified the Company evaluated the proposed Phase XII Programs on both an individual basis and on a Portfolio basis, as required by the Cost/Benefit Rules. A selection of the results is provided below:[88]

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[85] *Id.* at 6-9.

[86] *Id.* at 9-11.

[87] *Id.* at 11-13. *See id.* at Schedule 2 for the assumptions used in the cost-effectiveness modeling. *See id.* at Schedule 3 for the system level inputs used.

[88] *Id.* at 12-13 and Attached Schedules 4, 5, and 6. Ms. Hagerman noted the Company did not perform additional cost/benefit testing associated with the proposal to update the eligibility requirements for the Phase VIII Non-residential Small Business Improvement Enhanced Program "because there is no proposed change to the rate and therefore no impact to the cost/benefit results". *Id.* at 16.

Program	Participant Test	Utility Cost Test	Total Resource Cost Test	Ratepayer Impact Measure Test
Phase VIII Non-residential Midstream EE Products Program Enhancements	1.53	3.74	1.63	1.06
Phase XII Non-residential New Construction	7.26	3.35	3.56	0.50
Phase XII Residential New Construction	2.98	1.69	1.39	0.50
Phase XII Residential Smart Thermostat (DR)	15.45	1.34	2.70	1.34
Phase XII Residential Smart Thermostat Purchase (EE)	3.60	2.47	2.12	0.66
DSM Portfolio	**4.77**	**1.94**	**1.88**	**0.56**

Ms. Hagerman confirmed her results comply with Rule 10 of the Promotional Allowance Rules, which require DSM programs to be cost-justified using appropriate cost/benefit methodologies.[89]

Cost-effectiveness of Existing Programs. Ms. Hagerman confirmed the Company also completed an updated cost/benefit analysis of existing and active DSM programs as directed by the Commission. A selection of these results is provided below:[90]

Program	Participant Test	Utility Cost Test	Total Resource Cost Test	Ratepayer Impact Measure Test
Non-residential Agricultural	4.71	1.77	1.38	0.53
Non-residential Building Optimization	16.35	7.95	7.15	0.78
Non-residential EE Products	1.50	4.22	1.81	1.20
Non-residential Multi-Family	4.36	2.14	1.68	0.49
Distributed Generation	++	0.87	1.69	0.82
Low Income HB2789 Solar	++	0.25	0.25	0.17
Residential Customer Engagement Behavioral	12.88	1.67	1.31	0.37
Residential Electric Vehicle EE	0.54	0.13	0.07	0.09
Residential Kits	96.25	0.57	2.56	0.19
Residential Multi-Family	1.36	0.81	0.43	0.31
Residential Manufactured Housing	1.35	0.13	0.12	0.10
Residential New Construction	3.01	2.43	1.40	0.46
Residential Smart Home	1.34	0.44	0.27	0.19
Residential Thermostat DR	9.40	0.49	0.61	0.47
Residential Thermostat Behavioral	0.15	0.32	0.07	0.23
Residential Thermostat EE	3.11	1.47	0.98	0.41

89 *Id.* at 14.

90 *Id.* at 14 and Attached Schedule 7.

Program	Participant Test	Utility Cost Test	Total Resource Cost Test	Ratepayer Impact Measure Test
Residential Virtual Audit	44.04	4.74	9.40	0.26
Residential Water Savings EE	4.57	1.50	1.27	0.31
Small Business Improvement	2.45	1.02	0.81	0.38

Social Cost of Carbon. Ms. Hagerman stated that, consistent with the 2023 IRP, the Company calculated the net present value of the total of the on-peak and off-peak social cost of carbon benefits consistent with the marginal emission rates published in April 2023 and those used in another recent Dominion filing. The results are shown in her Schedule 8.[91]

Ms. Hagerman confirmed the Company incorporated the energy and demand savings values from the most recent EM&V report into its cost/benefit modeling.[92]

In his testimony, **Jarvis E. Bates,** an Energy Conservation Strategic Advisor for the Company, provided system cost projections for the Rate Year for the following:

- The direct costs of delivering the Phase II, VII, VIII, IX, X, XI, and XII Programs; and
- The indirect costs ("common costs") including additional costs for customer awareness that support the direct costs.

In addition, Mr. Bates provided:

- System actual costs for the 2022 calendar year regarding DSM direct and common costs; and
- A schedule of cost projections associated with the proposed Phase XII Programs.[93]

Mr. Bates sponsored Filing Schedule 46A, Statements 1-3 and 8-9, and Filing Schedule 46B, Statement 1 filed with the Application.[94]

Direct and Common Costs.[95] Mr. Bates stated the estimated Phase XII direct costs are primarily based on vendor bids in response to Dominion's Phase XII RFP. He explained those costs for program implementation that are not specifically associated with any individual DSM program are called common costs, such as costs for labor, customer communications, dues and associations, external vendors, and portfolio-level marketing. He remarked these costs are

[91] *Id.* at 14-15 and Attached Schedule 8.

[92] *Id.* at 15.

[93] Ex. 6 (Bates Direct) at 1-2.

[94] *Id.* at 2.

[95] Mr. Bates referred to "Program costs" and "Common costs." He also referred to "Program costs" as "[t]he direct costs" of delivering the DSM programs. *See, e.g., id.* at Summary Page. This Report uses the term "direct costs" in place of "Program costs."

allocated proportionally across all direct cost expenses. He noted that, to the extent possible, the Company tracks design costs by program so that only design costs related to approved programs are included in the RACs.[96]

Mr. Bates next explained how the Company's Energy Conservation Department controls costs. Such efforts include: (i) plan-to-actual analysis and reporting; (ii) review of costs related to specific program groupings compared to the cost limitations set forth in the *2009 DSM Case Final Order*;[97] (iii) program penetration/sales tracking; (iv) Energy Conservation Department oversight of program and vendor activity; and (v) Energy Conservation Department oversight of programs and program managers. Mr. Bates confirmed the Company tracks design costs by program. He testified the Company also participates in an internal audit of the controls surrounding incentive and rebate payments, the most recent of which was completed for 2022 incentive rebate payments.[98]

<u>Projected Costs</u>. Mr. Bates explained Dominion is seeking recovery of the projected costs of the Phase II, VII, VIII, IX, X, XI, and XII Programs in this proceeding, which includes costs of participant/penetration growth. In his Schedule 1, he showed Phase II, VII, VIII, IX, X, XI, and XII system costs across each month of the Rate Year. Through Schedule 2, he provided the penetration/participant percentages used to allocate costs to the Virginia jurisdiction. His Schedule 3 provides the Company's actual DSM expenses for calendar year 2022.[99]

Mr. Bates reported that on an aggregate basis, Dominion proposes a five-year total spending cap for the proposed Phase XII Programs of $102.4 million, or $117.8 million with the 15% variance allowance. He testified that on an individual basis, the Company is requesting the following cost caps for the proposed Phase XII Programs:[100]

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[96] *Id.* at 4-5.

[97] *Application of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2009-00081, 2020 S.C.C. Ann. Rep. 362, Order Approving Demand-Side Management Programs (Mar. 24, 2010) ("*2009 DSM Case Final Order*").

[98] Ex. 6 (Bates Direct) at 6.

[99] *Id.* at 7.

[100] *Id.* at 8-9.

Program	Costs (including incentives, administration, and Common costs)	Cost Limit with 15% variance allowance
Residential New Construction – EE	$32,987,814	$37,935,986
Residential Smart Thermostat – EE	$3,366,425	$3,871,389
Residential Smart Thermostat – DR	$18,330,403	$21,079,963
Non-residential New Construction – EE	$47,723,740	$54,882,301

Compliance. Mr. Bates confirmed that since the adoption of the GTSA, Dominion has proposed approximately $797 million on EE programs of the required $870 million, excluding any amount of projected lost revenues. Mr. Bates also confirmed since July 1, 2018, consistent with the GTSA and VCEA and including this Application, the Company has proposed spending of approximately $110 million of $797 million on EE programs targeting low-income individuals, excluding any amount of projected lost revenues.[101]

Costs for DSM Programs in 2022. Lastly, Mr. Bates provided a summary with a breakdown of the 2022 true-up period, which includes the amount of incentive versus non-incentive spending on all active programs. This chart also reflects program-specific costs, and shows the distribution of common costs among the programs active in 2022.[102]

In his testimony, **Justin A. Wooldridge,** a Regulatory Analyst III for the Company, addressed the development of the revenue requirement for the continuation of Riders C1A, C2A, and C4A, including the recovery of projected costs over the Rate Year, and the true-up of costs for calendar year 2022. He noted the revenue requirement in this proceeding includes actual and projected costs associated with the DSM programs approved in Phases II through XI, and the proposed Phase XII Programs.[103]

Mr. Wooldridge sponsored Filing Schedules 3-5 and 8; Filing Schedule 46D, Statements 1-3; and Filing Schedule 46G, Statement 1 of the Application.[104]

End of Rider C3A. Mr. Wooldridge stated the Company's requested revenue requirement is consistent with the calculations presented in the 2022 DSM Case, with one exception. He explained that, as a result of the VCEA's changes to parameters on customer exceptions and opt-outs, the *2020 DSM Case Final Order* granted Dominion approval to include the true-up for EE programs in Phases VII and VIII in Rider C3A until August 31, 2021, and continue in Rider C4A as of September 1, 2021. Mr. Wooldridge testified that since the 2021

[101] *Id.* at 9-10.

[102] *Id.* at 11-13.

[103] Ex. 7 (Wooldridge Direct) at 1-2.

[104] *Id.* at 2-3.

true-up has passed, Dominion is proposing to recover, through Rider C4A, the Phase VII and VIII true-up calculated in this proceeding and related financing costs, ending Rider C3A.[105]

<u>ROE</u>. Mr. Wooldridge stated that, consistent with the *2021 Triennial Review Order*, the Company is using the approved ROE of 9.35% for the period November 18, 2021, to February 29, 2024. He testified the Company calculated the revenue requirement also using the capital structure the Commission approved in the *2021 Triennial Review Order*. For the period beyond February 29, 2024, Mr. Wooldridge calculated the revenue requirement using a 9.7% ROE.[106]

<u>Margin on O&M Expenses</u>. Mr. Wooldridge further stated that, for the calendar year 2022 Monthly True-up Adjustments, Dominion utilized a 9.35% ROE to calculate the margin on O&M expenses related to the Rider C2A and Rider C4A EE programs. He noted that since the Company achieved EE savings of 1.9% in 2022, which is 0.65% beyond the 2022 Savings Target of 1.25%, the Company also calculated a bonus margin on O&M expenses of 1.2%. Mr. Wooldridge confirmed the Company calculated a margin only for the True-up and did not include any margin as part of the calculation for the Projected Cost Recovery Factor.[107]

<u>Revenue Requirement</u>. Next, Mr. Wooldridge summarized the key components of the revenue requirement:

1. The Projected Revenue Requirement, which incorporates operating expenses for all programs and capital costs (including amortization expense related to the Phase X Voltage Optimization Program) projected to be incurred pursuant to Subsection A 5 during the Rate Year; and
2. The Monthly True-up Adjustment, derived by comparing actual costs for the calendar year 2022 true-up period to actual revenues collected during the same period.[108]

Mr. Wooldridge described the cost components used to calculate the Projected Revenue Requirement, including O&M expenses, financing costs, and related income taxes. He also described the calculation of the Monthly True-up Adjustment for calendar year 2022. Components of this factor also include O&M expenses, financing costs, and related income taxes, as well as a margin component.

Mr. Wooldridge's Schedule 1 depicts the Rate Year Projected Revenue Requirement and the Monthly True-up Adjustment by RAC and by DSM program.[109] As shown in this schedule, Rider C1A includes costs for DR programs. Rider C2A includes costs for the Phase III Non-residential Lighting Systems & Controls Program, the Phase IV Residential Income and Age Qualifying Home Improvement Program; the Phase V Non-residential Small Business

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[105] *Id.* at 3-4. *See also id.* at Schedule 1, pp. 14-16.

[106] *Id.* at 4. The 9.7% ROE is set forth in Enactment Clause 2 of 2023 Va. Acts ch. 757.

[107] Ex. 7 (Wooldridge Direct) at 4-5.

[108] *Id.* at 5-6.

[109] *Id.* at 6-10 and Attached Schedule 1.

Improvement Program, and the Phase VI Non-residential Prescriptive Program. Costs for all other DSM programs comprise Rider C4A.[110]

Mr. Wooldridge calculated a total revenue requirement of $92,622,744, as follows:[111]

Category	C1A	C2A	C3A	C4A	Total
Projected Revenue Requirement	$9,870,090	$(56,946)	--	$106,743,020	$116,556,164
Monthly True-up Adjustment	$(1,994,686)	$(1,877,336)	--	$(20,061,397)	$(23,933,420)
Total	$7,875,404	$(1,934,282)	--	$86,681,623	$92,622,744

Compared to the rates currently in effect, Mr. Wooldridge noted the requested revenue requirement represents an overall net decrease of approximately $14,819,759, collectively.[112]

Through Filing Schedule 46D, Statement 2, Mr. Wooldridge provided the revenue requirement for Riders C1A and C4A over their projected lifetimes, from 2025-2038.[113] When the projected revenue requirement for each of these years, for each RAC, is added together, the sum is $1.738 billion.[114]

In her testimony, **Emilia L. Catron,** a Regulatory Analyst III for the Company, explained the assignment and allocation of DSM costs to the Virginia jurisdiction and to the Company's customer classes. She also sponsored Filing Schedule 46D, Statement 4, and Filing Schedule 46E, Statement 1, filed with the Application.[115]

Cost Responsibility. Ms. Catron confirmed the Company used the same approach in this case, as was approved in the 2022 DSM Case, to determine cost responsibility for the Virginia jurisdiction. She explained the general approach for determining jurisdictional responsibility is to: (i) assign direct costs to the jurisdiction based upon DSM program participation; and (ii) allocate common costs to the jurisdiction based on the jurisdiction's program costs compared to total system program costs. She noted that consistent with the approach approved in the 2022 DSM Case, Dominion allocated common costs to all DSM Programs.[116] Ms. Catron testified

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[110] *Id.* at Attached Schedule 1, p. 2.

[111] *Id.* at 10-11 and Attached Schedule 1, p. 1.

[112] *Id.* at 11.

[113] There is no projected revenue requirement for Rider C3A because the Company proposes withdrawing it as part of this Application. Ex. 2 (Application) at 13. There is also no projected revenue requirement for Rider C2A. The Company has indicated it will evaluate options for consolidating Riders C2A and C4A. Ex. 29 (Responses to Hearing Examiner's Questions) at 4. Additionally, when asked whether Rider C2A was going away, Company witness Wooldridge responded, "I think that is the direction that it's heading." Tr. at 244-45 (Wooldridge).

[114] Ex. 2 (Application) at Filing Schedule 46D, Statement 2, p. 2. The sum is derived by adding all the numbers in column 2, Total Revenue Requirement.

[115] Ex. 8 (Catron Direct) at 1-2.

[116] *Id.* at 3. *See also generally id.* at 4-8.

that the Company used the same approach to determine the Virginia jurisdictional program costs to include in the Monthly True-up Adjustment.[117] She noted that since rate base financing costs cannot be determined on a program-specific basis, she allocated them using the sum of allocated system common costs and the common costs for Phases I-XI, for each RAC. She then allocated this sum to the DSM programs within each RAC for the True-up Adjustments used by Company witness Wooldridge.[118]

Cost Allocation. Ms. Catron explained that, to allocate the Virginia jurisdictional revenue requirement among customer classes, she used the same methodology as used in the 2022 DSM Case. Specifically, she allocated Rider C1A costs on the basis of Factor 1 (Average & Excess production demand factor). She allocated Riders C2A and C4A costs on the basis of Factor 1, adjusted to exclude the large general service customers that opt-out of DSM programs pursuant to the opt-out provisions of Subsection A 5 c.[119]

Ms. Catron explained her Schedule 3 shows, for Riders C1A, C2A, C3A, and C4A, the revenue requirements appropriate for recovery from each customer class. These values were provided to Company witness Lawson for use in calculating the proposed revised RACs.[120]

In her testimony, **Casey R. Lawson,** a Regulatory Analyst II for Dominion, presented the calculation of the proposed revised RACs. In addition, she sponsored Filing Schedule 46E, Statement 2, of the Application, which supports the Company's proposed rate design for the Rate Year.[121]

Ms. Lawson confirmed the Company calculated rates for the proposed RACs pursuant to the same methodology used to calculate the rates approved in the 2022 DSM Case. Her Schedule 1 details the methodology and calculations.[122]

Ms. Lawson's Schedule 2 presents the tariff sheets showing the proposed Riders C1A, C2A, and C4A, which, if approved as proposed, would be applicable for usage on or after the latter of September 1, 2024, or the first day of the month which is at least 15 days following the date of any Commission order approving the Riders.[123]

Lastly, Ms. Lawson showed the impact that Proposed Riders C1A, C2A, C4A, and the withdrawal of Rider C3A will have on customer bills at representative levels of consumption. She testified that if Riders C1A, C2A, and C4A were approved as proposed, a typical residential

[117] *Id.* at 6.

[118] *Id.* at 8.

[119] *Id.* at 3-4, 8-11 and Attached Schedule 2 (ES). During the hearing, the Company clarified the cost allocation for Riders C2A and C4A are the same, and the Company will evaluate options to consolidate these riders in a future case. Ex. 29 (Responses to Hearing Examiner's Questions) at 4.

[120] Ex. 8 (Catron Direct) at 11-12.

[121] Ex. 9 (Lawson Direct) at 1-2.

[122] *Id.* at 2 and Attached Schedule 1. *See also id.* at 3-5.

[123] *Id.* at 5 and Attached Schedule 2. Schedule 2 also reflects the withdrawal of Rider C3A. *Id.*

customer using 1,000 kWh per month would experience a bill decrease of $0.16 per month. The bill impacts are illustrated in Ms. Lawson's Schedule 3.[124]

Dan Feng is a Principal Consultant for DNV, who performs EM&V-related work for Dominion's DSM programs.[125] She confirmed the Company intends to comply with the various state codes, legislation, and Commission orders governing EM&V activities, including:

- The EM&V Rules
- The mandates in Code § 56-596.2; and
- The EM&V directives from the *EM&V Determination Case Order*, the *2020 DSM Case Final Order*, and the *2021 DSM Case Final Order*.

She also provided the EM&V plans for each proposed Phase XII Program (Appendix B to her testimony) and the EM&V Report of the Company's DSM Programs through 2022 (Appendix C to her testimony.)[126]

Ms. Feng confirmed the EM&V Plans were presented to stakeholders prior to initiating this proceeding and that, in accordance with the *EM&V Determination Case Order*, the Company facilitated coordination between DNV and program design vendors while developing the Application. She stated the overarching goal of this coordination was to identify and mitigate risks in vendors' proposed savings estimates for Dominion's consideration in preparing the Application.[127]

Ms. Feng explained that her testimony also complies with the *2021 DSM Case Final Order* by providing an updated cost/benefit analysis of the DSM programs and a comparison of the updated analysis to previous cost/benefit analyses.[128]

In his testimony, **Terry M. Fry,** Executive Vice President of Global Energy Strategy at Cadmus, explained Dominion hired Cadmus, a third-party vendor, to provide support for its participation in the Virginia stakeholder process, develop and support a long-term plan for Dominion's DSM Portfolio, develop recommendations for optimizing the customer experience with respect to DSM program participation, provide supplemental support for cost/benefit

[124] *Id.* at 6 and Attached Schedule 3.

[125] Ex. 10 (Feng Direct) at 1.

[126] *Id.* at 2-3. Note that the updated EM&V Plan for the Non-residential Midstream EE Products Program and the EM&V Plans for the three EE proposed Phase XII Programs each contain a net-to-gross ("NTG") assessment. *See id.* at Appendix B, pp. 8, 13, 17, and 20. Ms. Feng explained there is no similar assessment for the proposed Phase XII Residential Smart Thermostat (DR) Program because factors like free ridership do not apply to DR programs. She stated the EM&V calculations for DR programs determine the load reduction relative to what each program participant's load would have been if the DR event had not been called. She concluded this savings estimate could be considered either gross or net savings, since it does not require adjustment. Ex. 29 (Responses to Hearing Examiner's Questions) at 5.

[127] Ex. 10 (Feng Direct) at 3-4.

[128] *Id.* at 5. For these analyses, Ms. Feng referred to the EM&V Report (*id.* at Attached Appendix C) at Table 4 and Appendices O and P. *Id.*

analysis, provide supplemental staff as needed to review DSM program tracking data, and benchmark Dominion's DSM Portfolio relative to other DSM portfolios across the U.S. Mr. Fry specifically supported the Company's Long-term Plan Project Management Report, included as his Schedule 1, and discussed the issue of using gross or net savings to measure compliance with the Savings Targets.[129]

Project Management Report. Mr. Fry explained the Long-term Plan Project Management Report provides updates on each recommendation in the Long-term Plan. He asserted Dominion has made significant progress in implementing the Long-term Plan's recommendations and has demonstrated its commitment to improving and addressing remaining issues. Mr. Fry confirmed that in the past twelve months, Dominion has completed numerous short-term recommendations such as developing and launching a DSM Portfolio marketing strategy and initiating process evaluations for priority programs. He stated the Company intends to work, over the next twelve months, on additional short-term goals including consolidating customer-facing program elements and associated vendor contracts, where appropriate. He reported Dominion has also completed some tasks related to the medium-term recommendations and plans to continue those efforts, including implementing marketing campaigns and consolidating programs. Mr. Fry stated the long-term recommendations are more directional in nature and not easily measured as being implemented (or not).[130]

Gross v. Net Savings. According to Mr. Fry, "The correct energy savings metric to measure the Company's compliance is gross savings."[131] He noted Dominion's 2020-2029 Potential Study reflects "there is *not sufficient economic potential* for programmatic energy efficiency in" the Company's Virginia service territory to achieve the statutory Savings Targets.[132] He asserted the General Assembly "intended to set challenging, yet attainable, goals that are consistent with its guidance on how to consider cost-effectiveness in the public interest."[133]

Mr. Fry provided the following table, in which the Company has shown the relative costs and savings of each "track" on a comparable basis as set forth in Dominion's Long-term Plan:[134]

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[129] Ex. 11 (Fry Direct) at 2-3.

[130] *Id.* at 3-5.

[131] *Id.* at 5.

[132] *Id.* (Emphasis in original.).

[133] *Id.* at 6.

[134] *Id.* at 6-7.

Comparison of Track B vs. Track A Gross Savings

Track	2022-2025 Energy Savings (Gross MWh)*	2022-2025 Cost ($)	2022-2025 Acquisition Cost ($/kWh)
Net Track B	**2,053,725**	**$507,601,824**	**$0.247**
Gross Track A	**1,690,363**	**$375,642,553**	**$0.222**
Incremental Track B relative to Track A	**363,363**	**$131,959,271**	**$0.363**

***Sum of incremental 2022-2025 energy savings from the Dominion Energy Virginia Long Term Plan.**

Track B achieves 21% more incremental energy savings for a 63% increase in incremental acquisition cost.

Based on this data, Mr. Fry concluded: (i) there are more gross energy savings achieved under a net track; (ii) the total cost is more under a net track; and (iii) the incremental savings between the two scenarios are significantly more expensive than earlier savings.[135] Mr. Fry also contended that programs relying on volunteers always have free riders, which can be minimized by increasing marketing/education costs and/or by paying higher incentives, which in turn would drive up the Company's costs.[136]

Lastly, Mr. Fry stressed the importance of accuracy when measuring compliance. He testified net savings are much more challenging to measure than gross savings, which increases EM&V costs. He stated this is attributable to the estimation of the NTG ratio, which is the most imprecise variable to measure in determining the magnitude of savings. According to Mr. Fry, efforts to estimate NTG more accurately will drive up costs, yet accuracy will remain elusive.[137]

During the hearing, Mr. Fry testified that net savings may be calculated as "gross savings minus free riders, plus spillover, both participant and nonparticipant spillover, plus market effects not otherwise captured in spillover."[138] He explained participant spillover as actions a participant in a DSM program takes that are additional to program-related actions, resulting in further energy savings. He explained nonparticipant spillover as actions a nonparticipant (such as a neighbor) takes upon learning about a DSM program, without enrolling in the DSM program. He testified that market effects occur when outside forces change the behavior of nonparticipants in a DSM program, such as when a distributor or wholesaler decides to stock more energy-efficient products, altering the types of goods available for purchase.[139]

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135 *Id.* During the hearing, Mr. Fry explained the third point in terms of economics, testifying that "increased demand can be met with supply and increasing cost" and that "if a higher amount was sought, it would come at a higher acquisition cost." Tr. at 88 (Fry).

136 Ex. 11 (Fry Direct) at 7-8.

137 *Id.* at 8.

138 Tr. at 91 (Fry).

139 *Id.* at 91-93 (Fry).

Mr. Fry also testified that net savings estimates may be relevant for purposes other than compliance with the Savings Targets, such as to use in cost-effectiveness tests, forecasting, or ratemaking.[140]

RESPONDENT TESTIMONY – APPALACHIAN VOICES

APV offered the testimony of **Jim Grevatt**, a Managing Consultant at Energy Futures Group. He confirmed his support for the proposed Phase XII Projects and the proposed modifications to the Phase VIII Projects, though he asserted "they are far short of what the Company could and should be proposing were it seriously attempting to comply with the VCEA savings requirements."[141]

Mr. Grevatt urged the Commission to consider the Company's compliance with the VCEA's Savings Targets using net, not gross savings. He objected to Dominion's claim that it met the 2022 Savings Target because Dominion did not exclude free riders. He claimed Dominion's calculation appears to be out of compliance with the Commission's directive "that savings reasonably identified as free riders 'do not fall within the plain language of this statute.'"[142] He dismissed Dominion's argument that there are insufficient net savings available to reach the Savings Targets, claiming the Company overlooked some savings opportunities.[143]

First, Mr. Grevatt recommended the Commission order that savings net of free riders will be the measurement used to determine whether Dominion has met the Savings Targets. He asked the Commission to direct Dominion to report this information in future DSM proceedings.[144] Second, he recommended the Commission find Dominion has not demonstrated compliance with the 2022 Savings Target. He suggested the Commission also could require the Company to remove free rider savings from gross savings in this case, and refile.[145] Third, Mr. Grevatt recommended the Commission deny Dominion its requested bonus for meeting the 2022 Savings Target.[146] Fourth, he recommended the Commission require "Dominion to aggressively pursue increased customer participation and savings in its EE programs as required by law, ..."[147]

<u>Meeting the Statutory Targets</u>. Mr. Grevatt rehearsed the history of recent Dominion DSM cases and the Company's failure to include a strategic plan.[148] He stated that the Commission's *2020 DSM Case Final Order* required Dominion to include a long-term plan in

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[140] *Id.* at 85-86 (Fry).

[141] Ex. 12 (Grevatt Direct) at 4.

[142] *Id.* at 4-6.

[143] *Id.* at 6.

[144] *Id.* at 7.

[145] *Id.*

[146] *Id.*

[147] *Id.* at 7-8.

[148] *Id.* at 8-12.

future DSM filings, noting Dominion complied with this requirement in the 2021 DSM Case. He argued, however, that in the 2022 DSM Case, Dominion did not show that it was taking the actions set out in its Long-term Plan. Nor, he claimed, has Dominion provided new information in its Application showing its commitment to meeting the Savings Targets.[149]

Mr. Grevatt claimed he cannot see how Dominion will meet the Savings Targets for 2022-2025 when free riders are excluded. He asserted the Company's pace of total savings is increasing annually, but not by enough to meet the statutory requirements. He further contended that EE program savings that provide direct customer benefits will decrease from 2024 to 2028 since voltage optimization will supply much of the EE savings during that period.[150]

Mr. Grevatt also argued the faultiness of Dominion's assertion, in its 2020-2029 Potential Study, that there is inadequate potential for program-related EE savings in Dominion's service territory to meet the Savings Targets. Mr. Grevatt asserted Dominion is achieving EE savings from programs that the study didn't consider, such as voltage optimization and programs impacting agricultural and industrial customers. He dismissed the study's calculation of achievable potential as unduly low and claimed Dominion is not meeting even this low figure.[151]

During the hearing, Mr. Grevatt also argued against the idea that the voluntary nature of the Company's programs is stymieing success. He claimed that most utility EE programs are voluntary, yet other utilities achieve more energy savings than Dominion. He attributed the other utilities' success to the way they implement EE programs.[152]

Gross v. Net Savings. Mr. Grevatt asserted Dominion appears indifferent toward complying with the Savings Targets. He criticized the Company for not removing free riders from its gross savings numbers, which he argued is required by the *2021 DSM Case Final Order*. He concluded that the Company's failure to separately calculate the amount of savings attributable to free riders included in its gross savings means the Company "is simply continuing its long tradition of obscuring its poor performance in program implementation."[153]

During the hearing, Mr. Grevatt further argued the Commission should use a net savings metric to determine compliance with the Savings Targets despite the additional cost incurred to calculate net savings. He posited there is another, overlooked cost, "the added cost that goes on ratepayers' backs for providing incentives, rebates, that aren't achieving anything."[154]

Mr. Grevatt agreed with Company witness Fry's definition of net savings as gross savings, minus free riders, plus savings from spillover and market effects. He noted that often

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[149] *Id.* at 12-14.

[150] *Id.* at 28-30.

[151] *Id.* at 30-33. *See also id.* at Attachment JG-10 (Company Response to APV Question No. 2-5).

[152] Tr. at 98 (Grevatt).

[153] Ex. 12 (Grevatt Direct) at 14-19.

[154] Tr. at 108 (Grevatt).

savings from spillover and market effects are so small to measure, they are not included.[155] He stated his understanding of Dominion's EM&V process is that Dominion only accounts for free riders, not spillover or market effects, with the exception of one program, the Non-residential Audit Program. For that program, the Company's EM&V accounted for both free ridership and savings from spillover.[156] Mr. Grevatt further opined that his non-rigorous review of the Company's EM&V reports indicates the Company currently complies with the EM&V Framework the Commission adopted for the Company. He stated this "seemed like a very appropriate framework that met industry standards to me."[157]

Bonus Adder. Mr. Grevatt argued the Company should not be entitled to a 1.2% adder for exceeding the 2022 Savings Target because its premise is based on savings that include free ridership, in violation of the Commission's Order.[158] He noted the Company failed to meet the 2022 Savings Target on a net savings basis, achieving only 1.23% savings instead of 1.25%.[159]

Programs for Specific Categories of Customers. Mr. Grevatt alleged Dominion also has failed to comply with the statutory requirement that at least 15% of its EE investment should be for programs benefiting low-income, elderly, or disabled customers, or veterans. He noted the Company only invested 13.7% of its EE spending on these categories of customers.[160]

Implementation of the Long-term Plan. Mr. Grevatt asserted the Company provides little evidence to support its claim of progress toward the consolidated program structure that its consultant Cadmus recommended in the Long-term Plan. He noted Dominion still has 29 separate programs, far more than the seven overarching programs Cadmus proposed. He stressed that Dominion's pledge to file, in 2027, a DSM portfolio along the lines outlined in the Long-term Plan is too little, too late. He indicated Cadmus was hired in 2020 and, if the Commission approves the proposal Dominion makes in 2027, implementation of the streamlined approach would not occur until 2029.[161]

Mr. Grevatt emphasized the need for Dominion to streamline DSM programs so customers are aware of all DSM options available to them. He suggested the multiplicity of vendors and contracts has the potential for vendors to compete with each other for customers' DSM-related business instead of "programs working together and providing consistent messaging to the customer."[162]

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[155] *Id.* at 119-20 (Grevatt).

[156] *Id.* at 131, 134 (Grevatt).

[157] *Id.* at 131-32 (Grevatt).

[158] Ex. 12 (Grevatt Direct) at 20-21.

[159] *Id.* at 22.

[160] *Id.* at 23-24.

[161] *Id.* at 24-27. *See also id.* at Attachment JG-8 (Company Response to APV Question No. 3-1).

[162] Tr. at 144-45 (Grevatt).

RESPONDENT TESTIMONY – VIRGINIA ENERGY EFFICIENCY COUNCIL

VAEEC offered the testimony of **Chelsea Harnish**, VAEEC's Executive Director. Ms. Harnish testified that VAEEC fully supports the proposed Phase XII Programs and the proposed changes to the Phase VIII Programs, though she noted these proposals are insufficient to meet Dominion's statutory Savings Targets.[163]

<u>Program Concerns</u>. Ms. Harnish expressed a concern with the proposed Phase XII Residential New Construction Program's incentive to build homes to the ENERGY STAR version 3.1 standard when version 3.2 was released in the Spring of 2022. She indicated homebuilders seeking certain federal tax credits must build homes to the updated standard as of January 1, 2025. She urged the Company to either adhere to version 3.2, or ensure construction companies that build to the higher standard still may participate in Dominion's Phase XII Program.[164]

<u>Meeting Statutory Targets</u>. Ms. Harnish also expressed general concern that Dominion will fall short of meeting the Savings Targets, at least in 2024 and 2025. Among other things, she urged the Company to launch all previously Commission-approved programs immediately to start building EE savings to reach the Savings Targets.[165] She also asserted Dominion should continue engaging with the Stakeholder Group "to build out implementation plans for the four key recommendations from the Hearing Examiner's Report" in the 2022 DSM Case.[166] Ms. Harnish further urged the Company to consider additional avenues for meeting the Savings Targets, such as through AMI, supporting dual-fuel customers, and accounting for the social cost of carbon and other non-energy benefits.[167]

Ms. Harnish also referred to the possibility of the Company utilizing financial incentives from the federal Inflation Reduction Act, which she testified provides $9 billion to states for EE and electrification projects. She posited that this and other federal funding could supplement the Company's EE programs and lower EE costs for Dominion's ratepayers. She noted that the Hearing Examiner in the 2022 DSM Case recommended the Commission require the Company to provide a report on these issues in the next DSM case, and the Commission approved this recommendation. She stated it would be helpful to have this report filed in the current case docket.[168]

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[163] Ex. 16 (Harnish Direct) at 3-4.

[164] *Id.* at 6-7.

[165] *Id.* at 7-8.

[166] *Id.* at 8. Counsel for VAEEC clarified during the hearing that these are the same four recommendations Company witness Walker mentioned in his direct testimony. Counsel for VAEEC specifically described these as: (1) accounting for additional factors that could impact program cost/benefit scores (such as federal funding and the social cost of carbon); (2) ensuring EE programs are available to dual-fuel customers; (3) receiving input from the Stakeholder Group on the Long-term Plan and DSM program consolidation; and (4) leveraging AMI to make DSM programs more effective. Tr. at 49-51 (Jaffe).

[167] Ex. 16 (Harnish Direct) at 9-10.

[168] *Id.* at 16-17.

Long-term Plan Project Management Report. Ms. Harnish asserted that the Long-term Plan Project Management Report includes inadequate details to allow an understanding of how much progress the Company is making toward implementing the Long-term Plan. She pointed to the Company's use of vague language and to its discussion of whether various tasks have been completed, but Ms. Harnish claimed the tasks are not the goal, only a means to an end. She stated Dominion provided a few data points in response to discovery and urged that progress reports be communicated in more detail to both the Commission and stakeholders. She suggested the Commission require Dominion "to provide quantifiable data sets in future [Long-term Plan] Project Management Plan Reports."[169]

Cost-Effectiveness Tests. Ms. Harnish took issue with the statutory requirement that proposed DSM programs must pass three of four cost/benefit tests, which she averred are old and fail to consider non-energy benefits and utility system benefits. She testified that VAEEC supported House Bill 746 and Senate Bill 565, introduced during the 2024 Virginia General Assembly, under which the Commission would consider just one cost/benefit test when considering EE programs. She specifically advocated for use of a cost/benefit test that incorporates the principles of the *National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resource*, a document of the National Energy Screening Project.[170]

Net v. Gross Savings Metrics. Ms. Harnish clarified that VAEEC has no position of whether compliance with the Savings Targets should be calculated on a net or gross basis. She observed that the Commission must determine VCEA compliance by considering "total annual energy savings," which she averred refers to savings from EE measures in all years where each program or measure is delivering savings.[171]

Ms. Harnish asserted that the gross savings metric concerns "energy savings attributable to a particular *measure*—for instance, by comparing the energy usage of an ordinary dishwasher with the energy usage of the high-efficiency dishwasher that replaced it."[172] She defined the net savings metric as the difference left after subtracting, from gross savings, those savings from free riders and after accounting for energy savings from spillover and market effects. She claimed that it may be more difficult to calculate net savings than gross savings because of these additional factors.[173] She disagreed with Dominion's definitions of net and gross savings, claiming they are not industry-recognized definitions. She urged the Commission to consider net and gross savings in light of definitions used in industry standard reference manuals.[174]

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[169] *Id.* at 10-13. *See also id.* at Attachment CH-2 (Company Response to APV Question No. 2-15), Attachment CH-3 (Company Response to Staff Question No. 5-31) and Attachment CH-4 (Company Response to APV Question No. 2-19).

[170] *Id.* at 13-16. Both bills were signed into law by Governor Youngkin. *See* 2024 Va Acts chs. 818 and 794.

[171] *Id.* at 17.

[172] Ex. 16 (Harnish Direct) at 18 (emphasis in original).

[173] *Id.*

[174] *Id.* at 19-20.

STAFF TESTIMONY

Staff offered the testimony of Andrew T. Boehnlein, Steven E. Smith, Madhu S. Mangalam, Phillip M. Gereaux, and Tanner S. Katsarelis.

Andrew T. Boehnlein is a Manager in the Commission's Division of Public Utility Regulation.[175] He testified concerning the measurement of Dominion's EE savings on a gross or net basis; discussed Dominion's update to its Long-term Plan; and evaluated Dominion's report on stakeholder discussions required by the *2022 DSM Case Final Order*.[176]

<u>Net versus Gross Savings</u>. Mr. Boehnlein first provided an overview of how Dominion designs DSM programs, using stakeholder and other input, and how the Company consults with its EM&V vendor, DNV, to develop a methodology to determine energy savings for each program. Mr. Boehnlein noted that DNV may measure energy savings using a variety of methods, including deemed values and program design assumptions, and by conducting evaluations. He stated Dominion submits an EM&V Report annually, showing the savings resulting from the Company's DSM Portfolio.[177]

Mr. Boehnlein next discussed the Company's and Staff's preferred definitions of "net" and "gross" savings. According to him, the Company's characterization that "gross savings are the savings from the energy efficiency measure . . . while net savings are the savings from the energy efficiency program . . .," refers to definitions from a Uniform Methods Project document that are but a subset of a larger section defining net and gross savings.[178] He testified that Staff's recommendation is that the Commission consider how DNV defines "net" and "gross" in the 2023 EM&V Report:

> The [Technical Resource Manual] protocols are designed to estimate gross savings program impacts, or more specifically, the total amount of annual energy savings and demand reductions related to program activity. However, the amount of energy savings and demand reductions that can be attributed to the program is not the same as the estimated gross savings. This is because any given program's design can have intended and unintended outcomes. The amount of energy savings and demand reductions that can be attributed to the program is referred to as net savings, which is the magnitude of the impact of the program's intended outcomes.[179]

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[175] Ex. 25 (Boehnlein Direct) at 1.

[176] *Id.* at 2.

[177] *Id.* at 2-3.

[178] *Id.* at 3-4 (quoting Dominion's Legal Memorandum at 5). Mr. Boehnlein, *id.* at 3 n.4, asserts the definitions in the Legal Memorandum are from Chapter 21 of *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures*, a portion of which may be found *id.* at Attached Appendix 1.

[179] *Id.* at 5 (*quoting* from Appendix D, p. 16, of the 2023 EM&V Report, which is Appendix C to Ex. 10 (Feng Direct)) (emphasis in Mr. Boehnlein's testimony removed).

Mr. Boehnlein opined that net savings, as provided in the Company's EM&V Reports, reflect the intended outcome of DSM Programs by subtracting free ridership (participation in a program by those who would have implemented the program's measures even without the impetus of the program) from the gross savings calculation. He asserted this view comports with the Commission's *2021 DSM Case Final Order*, in which the Commission stated that savings from reasonably identifiable free ridership falls outside the plain language of Code § 56-596.2 B.[180]

During the hearing, Mr. Boehnlein agreed with the general definition of net savings as gross savings, minus savings from free ridership, plus savings from spillover and market effects.[181] He testified this definition "is what is contemplated in the [Uniform Methods Project]."[182] He commented that to his knowledge, the Company's current EM&V process does not account for savings from spillover or market effects.[183]

Mr. Boehnlein next reviewed some of the background and filings in the EM&V Determination Case. The purpose of that case, he claimed, was for the Commission "to determine whether the Company's EM&V practices would provide evidence of a verifiable reduction in energy usage for the purpose of reporting VCEA compliance."[184] Mr. Boehnlein asserted that in the EM&V Determination Case, Dominion "stated that the exercise of measuring net-savings represents the same thing as 'the proximate cause of a verifiable reduction in energy usage.'"[185] He noted the *EM&V Determination Case Order* required Dominion to provide net savings as part of its EM&V Reports, and that DNV "stated that net savings are the savings for which Dominion's programs are the cause."[186] He described the EM&V Determination Case Order as providing two guardrails for EM&V: (1) the EM&V Framework for Dominion's DSM Programs ("EM&V Framework"); and (2) the parameter that EM&V costs should run no more than 5% to 7% of the DSM Portfolio's cost.[187]

Mr. Boehnlein also quoted DNV as stating it "believes that the Commission expects the Company's EM&V practices should use the most locally sourced data possible *to produce program attributable savings that the Commission may rely upon to measure the Company's DSM program activities against legislative and other goals* . . . ."[188] He asserted that DNV's

[180] *Id.* at 6-7.

[181] Tr. at 199 (Boehnlein).

[182] *Id.* at 206 (Boehnlein).

[183] *Id.* at 207 (Boehnlein).

[184] Ex. 25 (Boehnlein Direct) at 12.

[185] *Id.* (quoting the EM&V Background & Information Report at 4).

[186] *Id.* (citing the EM&V Background & Information Report at 3).

[187] Tr. at 205-06 (Boehnlein). The EM&V Framework is Attachment A to the *EM&V Determination Case Order*. The budget parameters are in ¶ 1 of the EM&V Framework. Note that Attachment A to the *EM&V Determination Case Order* is not in the Annual Report but is available at: https://webprodint.scc.state.va.us/idocket/Adobe/c5v%4001!.PDF.

[188] Ex. 25 (Boehnlein Direct) at 10 (quoting the EM&V Background & Information Report at 53).

methodologies as used in the EM&V Reports appear to comply with both the Commission's EM&V Rules and the *EM&V Determination Case Order*. He also claimed these net energy savings results are calculated using approved methodologies.[189]

Mr. Boehnlein summarized Staff's recommendation that the Commission determine that "the net energy savings . . . measured by the Company's EM&V contractor, DNV, in the 2023 EM&V Report factually represents specific savings that can be reasonably identified, are a verified reduction in energy usage, and are appropriate for determining compliance with the [Savings Targets.]"[190]

Savings Achieved. Next, Mr. Boehnlein discussed the difference between an EE measure, a piece of equipment that reduces energy, and a program, the combined efforts to put an EE measure into a customer's hands. He clarified every EE program has one or more measures.[191] He cited a statement in the *2021 DSM Case Final Order* that Dominion carries the burden to establish the total savings achieved by its DSM programs. Mr. Boehnlein opined that Dominion has done this, with support for its savings in the 2023 EM&V Report. He noted that Dominion claims its programs achieved approximately 780,489 MWh of net savings in 2022, with net savings being "savings attributable to a program."[192]

In Mr. Boehnlein's opinion, Dominion has not established savings achieved by its measures because it had no measures in 2022. That is, all measures included in the 2023 EM&V Report were measures for customers. He explained that in the 2024 EM&V Report, Dominion will be able to report on savings from at least one EE measure, the equipment used for the Company's Voltage Variance Optimization Pilot Program. Then, he asserted, the Commission will be able to consider savings associated with both Company DSM programs and measures.[193]

Mr. Boehnlein stated Dominion, through its contractor, Cadmus, analyzed the cost differential between achieving the Savings Targets for 2022-2025 on a gross and net savings basis. He stated, "The Company frames this additional cost as a rationale for avoiding the net number" and disagreed, asserting that the main barrier to achieving the Savings Targets is not financial.[194]

Stakeholder Report. Mr. Boehnlein next discussed Dominion's duty to discuss four particular issues with the Stakeholder Group, as directed in the *2022 DSM Case Final Order*. He confirmed Company witness Walker provided an update on these issues, which indicated that work on these issues is ongoing among the stakeholders and that a summary report would be included with Dominion's next DSM filing.[195]

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[189] *Id.* at 12.

[190] *Id.* at 12-13.

[191] *Id.* at 13.

[192] *Id.* at 14.

[193] *Id.*

[194] *Id.* at 15-16.

[195] *Id.* at 16-18.

Long-term Plan. Mr. Boehnlein reviewed the directive from the *2022 DSM Case Final Order*, in which the Commission required Dominion to provide information on implementation of its Long-term Plan.[196] Mr. Boehnlein stated Company witness Fry provided status updates on short-term, medium-term, and long-term recommendations in the Company's Long-term Plan, as well as activities from the previous twelve months and those Dominion intends to make in the next twelve months. Mr. Boehnlein agreed with Mr. Fry that "'full implementation'" of the Long-term Plan is not neatly packageable into a checklist of duties but "is achieved when the processes of improving ongoing planning, outreach, and implementation activities are fully institutionalized."[197] Accordingly, Mr. Boehnlein testified that Staff recommends the Commission require Dominion to continue providing a similar update on implementation of the Long-term Plan in future DSM filings.[198]

Steven E. Smith is an Analyst in the Commission's Division of Public Utility Regulation.[199] Through his testimony, he:

- Provided a legislative history of DSM in Virginia;
- Reviewed Dominion's progress in meeting the Savings Targets;
- Analyzed the cost/benefit test results for Dominion's existing DSM programs;
- Reviewed and analyzed the DSM program additions and changes proposed in the Application;
- Reviewed Dominion's EM&V Report;
- Discussed environmental justice matters in relation to the DSM Programs; and
- Provided recommendations for the Commission's consideration.[200]

Progress in meeting goals. Mr. Smith discussed the Company's progress toward meeting the Savings Targets of Code § 56-596.2 B. He provided the following chart reflecting the Company's progress on a gross basis, and on a net basis, compared to the statutory goals:[201]

Year	Statutory Goal	Dominion's Gross Savings	Gross v. Goal	Dominion's Net Savings	Net v. Goal
2022	1.25%	1.90%	0.65%	1.23%	-0.02%
2023	2.50%	2.50%	0.00%	1.80%	-0.70%
2024	3.75%	3.20%	-0.55%	2.30%	-1.45%
2025	5.00%	3.70%	-1.30%	2.90%	-2.10%

196 Ex. 25 (Boehnlein Direct) at 18.

197 *Id.* at 18-19.

198 *Id.*

199 Ex. 21 (Smith Direct) at 1.

200 *Id.* at 3.

201 *Id.* at 10-11.

Mr. Smith summarized that Dominion anticipates it will meet EE goals beyond 2022 only for 2023 and only on a gross savings basis. He noted Dominion's net energy savings for 2022 was 22% lower than reported 2021 savings, while the cost per kWh increased 48.4% in 2022 compared to 2021.[202] He predicted that given this lower performance in 2022, "continued participation issues will likely plague the Company's ability to reach any future VCEA goals."[203]

Mr. Smith also addressed Dominion's progress toward meeting the $870 million target for spending on EE programs by July 1, 2028, pursuant to Code § 56-596.2 C. He reported that with the $84.1 million proposed spending for the Phase XII Programs, along with prior spending, the Company need only spend another $73 million by July 1, 2028, to meet the requirement.[204]

Updated Cost/Benefit Tests for Current Programs. Mr. Smith discussed going-forward cost/benefit scores for ongoing DSM Programs. These test results are as follows:[205]

Passes All 4 Tests	Passes 3 Tests	Passes 2 Tests
1. Non-residential EE Products	1. Non-residential Agricultural Program 2. Non-residential Building Optimization Program 3. Non-residential Multi-family Program 4. Residential Customer Engagement Behavioral Program 5. Residential New Construction Program 6. Residential Virtual Audit Program 7. Residential Water Savings (EE) Program	1. Distributed Generation Program 2. Residential Kits Program 3. Residential Thermostat (EE) Program 4. Small Business Improvement Program
Passes 1 Test	**Passes 0 Tests**	
1. Residential Multi-family Program 2. Residential Manufactured Housing Program 3. Residential Smart Home Program 4. Residential Thermostat (DR) Program	1. Low Income HB2789 Solar Program 2. Residential Electric Vehicle EE Program 3. Residential Thermostat Behavioral Program	

[202] *Id.* at 11-12.

[203] *Id.* at 13.

[204] *Id.* at 12.

[205] *Id.* at 13-17. Mr. Smith referenced Code § 56-576 in stating that programs for low income populations and pilot programs may be deemed in the public interest without passing a particular number of tests. *Id.* at 14 and 14 n.27.

Mr. Smith stated the Company will likely continue most DSM Programs until their budgets are gone, despite participation levels, effectiveness in reducing customers' energy usage, or the programs' contributions to reaching the Savings Targets. He noted Dominion's claims that programs with poor cost/benefit test scores still are important to the DSM Portfolio and resulted from stakeholder input.[206]

Distributed Generation Program. Mr. Smith described the DG Program as a vehicle through which customers are incentivized to curtail load by using backup generation when requested. He noted Dominion has an enrolled capacity of 5,880 kilowatts ("kW") in this program.[207] He stated the Company seeks to terminate this program because it is no longer cost-effective based on factors such as a low value of capacity. He remarked the Company's decision was not tied to any particular finding in the EM&V evaluation.[208]

Mr. Smith testified that this program has passed all four cost/benefit tests in the past and has fallen to passing just two tests for only one year. He explained that "the majority of the Company's currently approved [p]rograms pass two or fewer of the cost/benefit tests, and several have done so for consecutive years."[209] Mr. Smith stated that Staff is not aware of a time the Commission has required a program's closure because of the program's ongoing failure to pass three of the cost/benefit tests though "the tests do provide important information about the continued health and cost effectiveness of the Programs."[210]

Mr. Smith argued for continuation of the DG Program considering the following: reliability risks in the PJM DOM Zone, the program's value in being called upon 32 times in 2022 and in providing peak-shaving results at lower-than-originally-projected cost, and the lack of a replacement program.[211] He urged the Commission to require Dominion to continue requesting funding for the DG Program to maintain it on an annual basis while searching for a replacement. He asserted any decision on permanent closure could be made considering whether Dominion has proposed a replacement program and based on results of continued evaluation of the DG Program's performance using updated modeling assumptions.[212]

Proposed Programs and Enhancements Generally. Mr. Smith gave an overview of the four proposed Phase XII Programs, noting the Company intends to implement these using third-party vendors and expects these programs will be available to customers in the first quarter of 2025.[213] He added that, consistent with other previous Commission approvals, Dominion

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[206] *Id.* at 18.

[207] *Id.* at 18-19.

[208] *Id.* at 20.

[209] *Id.* at 20-21.

[210] *Id.* at 21-22.

[211] *Id.* at 22-26.

[212] *Id.* at 26. *See also id.* at 57.

[213] *Id.* at 26-30.

plans to use a deemed savings approach for the three EE programs and the evaluated savings approach for the DR program, and has requested to operate these programs with no set closure date.[214] He reported Staff does not oppose Commission approval of the proposed Phase XII Programs with no predetermined closure date.[215]

Mr. Smith also described Dominion's request to expand the eligibility limit for the Phase VIII Small Business Improvement Enhanced Program and to expand the product list used in the Phase VIII Non-residential Midstream EE Products Program.[216]

Mr. Smith described Dominion's cost/benefit analysis of the proposed Phase XII Programs and Phase VIII Program modifications, noting the Company did not provide updated cost/benefit information for the Small Business Improvement Enhanced Program because the change in expanding the applicant pool does not impact cost/benefit calculations. Mr. Smith reported Dominion evaluated the Phase XII Programs on both an individual and a portfolio basis. He confirmed each program alone and the Phase XII Program portfolio pass at least three of four cost/benefit tests.[217] He also reported that under all sensitivities Dominion ran, the programs' cost/benefit results did not change on a pass-fail basis, nor did the benefit-to-cost ratios differ dramatically from base case values.[218]

Phase XII Residential New Construction Program. Mr. Smith described this program as being a newer version of the Phase VIII Residential New Construction Program. He indicated the Phase VIII Program had 60% free ridership, but Dominion assumed only 10% free ridership for the Phase XII Program. He stated Staff believes the free ridership level for the Phase XII Program is likely to be greater than 10%. He further explained that a study of the Phase VIII Program indicated it may be subsidizing larger and more expensive homes in affluent areas, which may have the effect of offsetting some EE gains.[219] Mr. Smith provided the following comparison of the Phase VIII Program and the proposed Phase XII Program.[220]

Item	Phase VIII Program	Phase XII Program
Five-year Budget	$26.7M	$32.9M
Participation	24,067	20,620
MWh	86,542	101,156
$/MWh	$309	$325

Mr. Smith stated Staff does not oppose this program, though Staff is concerned about the level of free ridership. He urged the Commission to direct Dominion to describe its efforts to

[214] *Id.* at 30.

[215] *Id.* at 57.

[216] *Id.* at 31-32.

[217] *Id.* at 32-35.

[218] *Id.* at 36.

[219] *Id.* at 37-39.

[220] *Id.* at 39.

market the Phase VIII Program to builders that don't construct ENERGY STAR certified homes, to provide evidence of the impact of such efforts, and to show how such efforts apply to the new Phase XII Program.[221] During the hearing, Mr. Smith withdrew this request, noting Dominion had provided information through discovery that addressed Staff's concerns. Mr. Smith summarized that this information "indicates that [the actual level of free ridership] is both lower than what the EM&V report information had implied, and that it is declining as the program progresses."[222]

<u>Phase XII Residential Smart Thermostat Purchase (EE) Program</u>. Mr. Smith compared Dominion's expectations for this program to those of an existing program also offering thermostat rebates. He found the Phase XII Program's expectations generally in line with the current program's experience, though he noted the Phase XII Program's projected participation exceeds the number of thermostats purchased in the current program. He provided the following comparison of the current and proposed programs:[223]

Item	Phase VIII Program	Phase XII Program
Five-year Budget	$7M	$3.36M
Participation	67,328	42,990
MWh	80,499	22,699
$/MWh	$87	$148

Mr. Smith stated Staff does not oppose this program.[224]

<u>Phase XII Residential Smart Thermostat (DR) Program</u>. Mr. Smith compared this program to a current program that has been ongoing since 2021. He indicated the proposed program's expectations are in line with current program experience. He provided the following comparison of the current and proposed programs:[225]

Item	Phase VIII Program	Phase XII Program
Five-year Budget	$10.5M	$18.3M
Participation	45,856	93,360
kW	82,530	65,769
$/kW	$127	$278

Mr. Smith stated Staff does not oppose this program.[226]

[221] *Id.* at 53-54.

[222] Tr. at 181-84 (Smith). *See also* Ex. 23 (Company Responses to Staff Question Nos. 12-51 and 12-52).

[223] Ex. 21 (Smith Direct) at 39-40.

[224] *Id.* at 53.

[225] *Id.* at 41-42. Mr. Smith's prefiled testimony indicates that according to Company information, the proposed Phase XII Program is designed for three years. *Id.* at 42 n.126. Subsequent to the filing of Staff's testimony, Dominion witness Hubbard filed a correction to his direct testimony indicating this Phase XII Program is designed to run five years. *See* Ex. 4 (Hubbard Direct), which contains a corrected Schedule 3, p. 6.

[226] Ex. 21 (Smith Direct) at 53.

Phase XII Non-residential New Construction Program. Mr. Smith testified this program is the basis for approximately 70% of all the Phase XII Programs' energy savings. He noted though it is a redesign of a current program, the current program has not produced results. He explained that based on information from the Company, it appears the current program has completed under 2% of total anticipated projects. Of the original estimate of 470 projects, Mr. Smith averred the program's vendor has identified only 53-57 projects in a three-year period, with only 43 entering the program. He further noted that given the approximately two-year delay between the current program's launch and the first completed projects, it seems that savings from the Phase XII Program would not contribute to the Savings Targets until 2027.[227]

Mr. Smith explained Staff's reservations about the Phase XII Program given the energy savings burden it carries, the unpredictability of energy savings (because those are based on project size and the particular EE measures the participant may select), and the least equivalent program history. He noted the Phase XII Program is proposed to have three times the budget of the current program and achieve ten times the energy savings. He asserted that reality may be vastly different than projections. He provided the following comparison of the current and proposed programs:[228]

Item	Phase VIII Program	Phase XII Program
Five-year Budget	$15.1M	$47.7M
Participation	470	405
MWh	43,086	429,640
$/MWh	$350	$111

Mr. Smith stated Staff does not oppose this program but is concerned about how much the success of this one program impacts the success of the Phase XII Programs as a whole and Dominion's ability to achieve the Savings Targets in the long-term. In particular, he highlighted the dependence of the Phase XII Program on projected data center participation, noting Dominion's projection that five data centers will participate and provide 37% of the estimated energy savings. Further, Mr. Smith emphasized the 18-19 month lag between when a project under this program is identified and when it is reported, which impacts Staff's ability to perform program evaluation. In consideration of these issues, he urged the Commission to require Dominion to provide additional information, specifically: number of projects, type of project (commercial, industrial, or data center), those projects' estimated energy savings, and the stage of each project, in addition to the information that is typically provided in EM&V reports.[229] During the hearing, Mr. Smith clarified that Staff would be amenable to the Company providing this information with its next DSM application if the Company does not want to include such information in the EM&V report.[230]

[227] *Id.* at 42-43.

[228] *Id.* at 43-44.

[229] *Id.* at 54-56.

[230] Tr. at 186-89 (Smith). *See also* Ex. 24 (Company Response to Staff Question No. 12-50).

Additional Comments on Modifications to Current Programs. Mr. Smith stated the measures proposed for addition to the Non-residential Midstream EE Products Program are in line with the sort of products the program already offers. He added the proposed measures are not likely to significantly expand program participation.[231]

Mr. Smith also commented on the Small Business Improvement Enhanced Program, for which Dominion proposed to remove the limit on the number of locations. Mr. Smith explained the benefits of the program have been reduced after an impact evaluation on lighting measures. He testified that 90% of the energy savings for this program are due to lighting measures, and the available lighting measures are similar to those available in the Non-residential Lighting Systems & Controls Program. He indicated the weighted average net-to-gross ratio for the Small Business Improvement Enhanced Program has been lowered to 74%, from 93%.[232]

Mr. Smith stated Staff is unopposed to these requested modifications.[233]

EM&V. Mr. Smith next discussed EM&V. He stated Staff analyzed actual program participation, net energy savings, costs, and dollars compared to projections, for the programs in the 2023 EM&V Report.[234] He summarized that the 2023 EM&V Report revealed 22% lower MWh in energy efficiency savings than were reported in the 2022 EM&V Report (from 192,000 MWh to 149,000 MWh). He noted 10 of 14 residential EE Programs reached less than 28% of anticipated energy savings, while 5 of 15 non-residential EE Programs reached 5% or less of anticipated energy savings. Of those five, three saved no energy at all. Two non-residential EE Programs reached or exceeded their anticipated savings goals. Mr. Smith also reported the mixed performance of peak-shaving programs, noting among other things that the DG Program reached 85% or more of its anticipated summer demand reduction.[235] He observed that the range of cost per kWh swings between $0.13 and $2,248.68, for residential EE Programs, and between $0.10 and $1.90, for non-residential EE Programs.[236]

Mr. Smith stated that in addition to general participation levels, Staff has concerns with the high level of participation in lighting measures, since changes in lighting are beyond Dominion's control, and concerns with the number of participants that select predominantly the same program measure (*e.g.*, smart power strips, HVAC tune-up, or attic insulation, depending on the program).[237]

Mr. Smith reported Dominion customers experienced bill savings of approximately $34.5 million, but DSM Portfolio costs were approximately $68.1 million. He asserted that to save 1 kWh cost ratepayers $0.31 in 2021 and $0.46 in 2022, a 47.4% increase in one year. He

[231] Ex. 21 (Smith Direct) at 44.

[232] *Id.* at 44-45.

[233] *Id.* at 53.

[234] *Id.* at 45-48.

[235] *Id.* at 48-49.

[236] *Id.* at 50-51.

[237] *Id.* at 50, including n.138 and n.139.

also testified that of the 35 DSM Programs being offered in 2022, the cost per kWh or per kW for 26 of those exceeded projected costs, by a gamut of 5% to 359,900%. Additionally, 20 of the 26 programs exceeded projected cost by over 100%.[238]

Mr. Smith made a recommendation for an additional reporting metric to clarify all the DSM Programs' overall health. He presented Staff's request that the Commission require Dominion, as part of its DSM Dashboard in future EM&V Reports, include "for each year: 1) the year's projected cost per kWh, in terms of total projected costs, divided by total projected net energy savings; and 2) the actual total costs, divided by the actual total net energy savings."[239] He asserted this information would alleviate complexity surrounding weighted average effects of some programs, and the information would provide context showing how all programs together are performing compared to their estimated values.[240]

Environmental Justice. Mr. Smith reported Dominion's claim that the Phase XII Programs are designed to reduce energy and demand on Dominion's system, thereby providing all customers with positive environmental impacts.[241]

Madhu S. Mangalam is a Principal Utility Supervisor – Audit in the Division of Utility Accounting and Finance.[242] She testified concerning the impact of the VCEA on Dominion's O&M expense-related margin, and the requested additional basis point adder; Staff's proposed revenue requirement; cost caps for existing and proposed DSM Programs; Staff's audit of DSM Program costs and rebates; and Dominion's progress toward the $870 million spending requirement.[243]

As a preliminary matter, Ms. Mangalam provided an overview of how costs for the Company's DSM Programs are spread among Riders C1A, C2A, and C4A. She noted the Company proposes to recover costs for three of the four Phase XII Programs through Rider C4A, while it proposes to recover costs for the Residential Smart Thermostat (DR) Program through Rider C1A. She also provided a table showing costs for active DSM Programs largely are recovered through either Rider C1A or C4A, though costs for one active program, the Phase VI Non-residential Prescriptive Program, are recovered through Rider C2A.[244]

Revenue Requirement. Ms. Mangalam recommended the Commission approve, for the Rate Year, a revenue requirement of $85.55 million, which includes the following: for Rider C1A, $7.88 million; for Rider C2A, a credit of $2.00 million; and for Rider C4A, $79.66 million. She stated the major difference between Staff's $85.55 million revenue requirement and

[238] *Id.* at 50-51.

[239] *Id.* at 57-58. An example of what the EM&V dashboard would look like with these additions was admitted as Ex. 22 (Mr. Smith's Dashboard). Tr. at 176-80 (Smith).

[240] Ex. 21 (Smith Direct) at 58.

[241] *Id.* at 51-52.

[242] Ex. 17 (Mangalam Direct) at 1.

[243] *Id.* at 1-2.

[244] *Id.* at 2-4.

Dominion's $92.62 million revenue requirements is that Staff has excluded any performance incentive for calendar year 2022 (as discussed further below).[245] Ms. Mangalam advised her revenue requirement includes all the Phase XII Programs and, should the Commission not approve one or more programs, the approved revenue requirement would need to be reduced (including the total amount of common costs).[246]

Performance Incentive. According to Ms. Mangalam, Subsection A 5 c provides for two possible forms of performance incentive: a margin on O&M expenses, and an additional basis point adder on EE program operating expenses if a utility exceeds the EE Savings Targets of Code § 56-596.2.[247] She also referenced wording of Subsection A 5 c capping "the total performance incentive awarded in any year [to] not exceed 10 percent of that utility's total energy efficiency program spending in that same year."[248] She asserted that the "total performance incentive," to Staff, comprises both the margin and additional basis point adder. She explained Dominion interprets "total performance incentive" to exclude the margin component and applies the 10% cap solely to the additional basis point adder.[249]

Ms. Mangalam testified that using gross savings, Staff calculated the potential performance incentive would be $6.67 million ($5.91 million for the margin, plus $0.76 million for the additional basis point adder), but should be limited to $6.32 million based on Staff's application of the 10% total performance incentive cap. She also explained Staff did not include any performance incentive in its revenue requirement, based on Staff witness Boehnlein's recommendation that a net savings metric be used, and the fact that Dominion has not met the 2022 Savings Target on that basis.[250]

Cost Caps. Ms. Mangalam explained Dominion has proposed cost caps for each Phase XII Program, with a 15% cost variance allowance over the caps. She stated there are no differences between Staff's and the Company's cost caps; but she recognized that, if the Commission were not to approve one or more programs, the total cost caps should be reduced to incorporate only those programs the Commission approves. She also recommended Dominion continue excluding performance incentives from cost caps in future DSM filings.[251]
Ms. Mangalam further compared actual DSM Program costs through December 31, 2022, to Commission-approved cost caps for active programs.[252]

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[245] *Id.* at 5, 11 and Attached Statement A 1. Should the Commission allow Dominion to measure compliance with the Savings Targets on a gross basis, Ms. Mangalam calculated the following revenue requirement for informational purposes: for Rider C1A, $7.88 million; for Rider C2A, a credit of $1.94 million; and for Rider C4A, $86.32 million, for a total revenue requirement of $92.25 million. This sum is approximately $0.37 million less than the Company's calculated total revenue requirement of $92.62 million. *See id.* at 11 n.13 and Attached Statement B 1.

[246] *Id.* at 12 and Attached Statement A 1.

[247] *Id.* at 7-8.

[248] *Id.* at 8.

[249] *Id.* at 10.

[250] *Id.* at 5, 9-10.

[251] *Id.* at 5, 12-13.

[252] Ex. 17 and 17ES (Mangalam Direct) at 14-15.

DSM Audit. Ms. Mangalam explained Staff reviewed documentation supporting DSM direct and common costs included for the true-up period, and also reviewed rebates supporting some of those costs. She testified Staff did not find any material discrepancies in documentation from the Company as to either costs or incentives. She recommended Dominion continue to monitor cost per participant for active DSM Programs, and update this figure in annual filings.[253]

Spending Progress. Ms. Mangalam reported that including the Phase XII Programs, Dominion has proposed spending of approximately $796.94 million of its statutory $870 million spending requirement. She recommended Dominion continue providing, in future DSM filings, a chart reflecting the Company's progress toward the $870 million spending target.[254]

Phillip M. Gereaux is a Principal Utility Supervisor in the Division of Utility Accounting and Finance.[255] He testified that Staff verified the capital structures and costs of capital Dominion used in developing the Riders C1A, C2A, and C4A revenue requirements. He stated Staff supports the use of a 6.775% overall weighted average cost of capital for the True-up Adjustment portion of the revenue requirement. For the Projected Revenue Requirement, he confirmed Staff accepts Dominion's use of a hypothetical capital structure including an ROE of 9.70%, resulting in a 7.052% weighted average cost of capital. He explained this hypothetical capital structure will be trued-up based on the Company's actual December 31, 2023 capital structure. Staff's proposal is summarized in the following chart:[256]

Factor	Capital Structure	WACC	ROE	Effective Date
True-Up	12/31/2022	6.775%	9.35%	Jan. 1 – Dec. 31, 2022
Projected	Hypothetical	7.052%	9.70%	Sept. 1, 2024 – Aug. 31, 2025

Tanner S. Katsarelis is an Analyst in the Commission's Division of Public Utility Regulation. He testified concerning Dominion's proposed cost assignment and cost allocation matters, rate design, and the bill impacts of the DSM RACs' revenue requirement.[257]

RAC Changes. Mr. Katsarelis noted the Application proposed a total Rate Year revenue requirement of $92,622,744, spread across Riders C1A, C2A, and C4A. He explained that the Phase VII and Phase VIII DSM Program true-up balances previously were recovered through Rider C3A, and now Dominion proposes to recover those costs through Rider C4A. He stated the Commission approved, in the *2020 DSM Case Final Order*, Rider C3A's termination and the

[253] Ex. 17 and 17ES (Mangalam Direct) at 5, 16-20.

[254] Ex. 17 (Mangalam Direct) at 5, 20-21.

[255] Ex. 18 (Gereaux Direct) at 1. During the hearing, two versions of Mr. Gereaux's testimony were marked, Ex. 18, a public version, and Ex. 18ES, as a version containing extraordinarily sensitive information. Tr. at 166. After the hearing, it was confirmed that Mr. Gereaux's testimony contains no extraordinarily sensitive information. Hence, there is no separate "Ex. 18ES."

[256] Ex. 18 (Gereaux Direct) at 2-3 and Attached Statements 1 and 2.

[257] Ex. 19 (Katsarelis Direct) at 1.

use of Rider C4A to collect such costs as of September 1, 2021. He testified that based on these circumstances, Staff does not oppose the withdrawal of the use of Rider C3A in this case.[258]

Cost Assignment and Cost Allocation. Mr. Katsarelis testified that the Company's cost assignment and cost allocation methodologies are the same as approved in the *2022 DSM Case Final Order*. These steps include directly assigning program costs to the jurisdiction according to program participation and allocating common costs to the jurisdiction by considering jurisdictional program costs compared to system-level total program costs. He reviewed Dominion's proposed jurisdictional revenue requirements and allocation methodology for each DSM rider.[259]

Rate Design. Mr. Katsarelis discussed bill impacts from Riders C1A, C2A, and C4A. He reported that if the DSM RACs are approved as Dominion has proposed, a residential customer using 1,000 kWh per month would experience a bill decrease of $0.16, and would pay a total of $1.68 per month for all three RACs. He affirmed Staff does not oppose the methodologies used to develop the charges on customers' bills. He stated that if the Commission were to approve a revenue requirement differing from that requested by Dominion, the corresponding DSM RAC(s) should be adjusted proportionately to maintain the Company's proposed revenue apportionment and rate design methodology.[260]

Bill Impact. Staff calculated the impact to a residential customer using 1,000 kWh per month if the Commission were to adopt Ms. Mangalam's proposed revenue requirement of $85.55 million (based on a net savings approach for measuring compliance with the 2022 Savings Target, and consequently $0 for a performance incentive under Subsection A 5 c). In that instance, such a residential customer would experience a bill decrease of $0.29, and would pay a total of $1.55 for all three RACs.[261]

Staff also calculated the impact to such a residential customer if the Commission were to adopt a gross savings approach to measuring compliance with the 2022 Savings Target, and were to apply the 10% statutory cap under Subsection A 5 c to both the margin on O&M expenses and the additional basis point adder, as Staff recommends. In that case, Staff calculated a decrease of $0.17 per month to the bill of a residential customer using 1,000 kWh per month. Such a customer would pay a total of $1.67 for all three RACs.[262]

DOMINION REBUTTAL TESTIMONY

Dominion offered rebuttal testimony of the following witnesses: David F. Walker, Michael T. Hubbard, Justin A. Wooldridge, Terry M. Fry, and Dan Feng.

[258] *Id.* at 2-4.

[259] *Id.* at 4-6.

[260] *Id.* at 6-8.

[261] Ex. 20 (Monthly Bill Calculation with Staff's Revenue Requirement) at 1-4.

[262] *Id.* at 5-8.

David F. Walker credited the DSM stakeholder process for the amount of consensus in this case among the Company, Staff, VAEEC, and APV. He listed the following areas of agreement:[263]

- Approval of all four proposed Phase XII programs;
- Approval of enhancements to the Phase VIII Non-residential Business Improvement Enhanced and Non-residential Midstream EE Products Programs;
- Approval to operate the Phase XII programs with no closure date;
- Approval of the Company's cost caps for the proposed Phase XII programs;
- Continued monitoring of cost-per-participant for active DSM programs with updates in the Company's annual EE filings;
- Dominion's compliance with Commission internal audit directives;
- Continued charting of Dominion's progress toward compliance with the GTSA;
- The proposed revenue requirement;
- The proposed cost allocation and cost assignment;
- The proposed capital structure and cost of capital;
- The calculation of Riders C1A, C2A, and C4A, and withdrawal of Rider C3A; and
- EM&V plans for the proposed Phase XII Programs.

<u>VAEEC's Additional Recommendations</u>. Mr. Walker committed the Company to carrying out several of VAEEC's recommendations:[264]

- To keep using Commission-approved, portfolio-level marketing funds for customer awareness;
- To keep engaging stakeholders in the Company's DSM planning process;
- To keep using stakeholders to develop implementation plans for four recommendations from the Hearing Examiner's Report in the 2022 DSM Case; and
- To account for the social cost of carbon.

Mr. Walker stated that timing would be a barrier to the Company reporting on the four issues approved in the 2022 DSM Case (for filing in this docket), but he committed to keeping the Commission informed as the Company makes progress.[265]

Mr. Walker also responded to VAEEC witness Harnish's recommendation that the Commission require Dominion to provide quantifiable data sets in future Long-term Plan reports. Mr. Walker asserted this recommendation is unnecessary because not all the recommendations in the Long-term Plan are quantifiable, and if the information is quantifiable, the Company is providing it to stakeholders through the stakeholder process.[266]

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[263] Ex. 27 (Walker Rebuttal) at 2-4.

[264] *Id.* at 4-5.

[265] *Id.* at 5.

[266] *Id.* at 12-13.

EE Savings Targets and Statutory Spending Levels. Mr. Walker disagreed with APV witness Grevatt's claim that the Commission already has decided against using gross savings to measure VCEA compliance. He asserted the *2021 DSM Case Final Order* and the *2022 DSM Case Final Order* indicate otherwise. He asked the Commission to reject Mr. Grevatt's recommendations either to find Dominion is out of compliance with the 2022 Savings Target or to require Dominion to remove free rider savings from the Company's gross savings metric and refile its case.[267]

Company witness Walker contended the plain language of Code § 56-596.2 B requires EE savings to be measured on a gross basis. He also proffered additional reasons to use the gross metric. First, he claimed customers would pay more for DSM programs in the future if savings were measured on a net basis. Second, he averred if savings were measured on a net basis, the focus of DSM proceedings would be on calculating the net savings, not on program performance, driving up EM&V and litigation costs.[268]

During the hearing, Mr. Walker affirmed the Company's position that gross savings is the correct measure. When asked whether a DSM program that had 100% free ridership would count toward the Company's statutory Savings Targets, Mr. Walker affirmed those savings would count using gross savings. He opined that "when a customer takes action through a program that is put forth by our company, the Company has influenced that customer behavior."[269] He deferred to the Company's counsel for the definition of free ridership and how it is quantified.[270]

In response to APV witness Grevatt's claim that the Phase XII Programs are less than what the Company should be proposing, Mr. Walker stated the Company is making serious efforts to achieve the Savings Targets. He explained the projected shortfall is due, in part, to the voluntary nature of the programs and the fact that less savings is available to be achieved as EE standards change. He affirmed the Company's commitment "to doing everything practicable, in consultation with a full range of stakeholders, to identify additional programs and process improvements and to implement strategies from the [Long-term Plan] to increase energy savings."[271]

In response to Staff's concerns that inadequate program participation means the Company is spending less money on actual program measures, Mr. Walker stated the Company is balancing cost effectiveness and the need to increase participation by changing the technologies and methods it uses to reach customers, presenting customers with more streamlined bundled options, and contracting with a marketing firm to increase customer awareness.[272]

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[267] *Id.* at 6-7.

[268] *Id.* at 8.

[269] Tr. at 223-24 (Walker).

[270] *Id.* at 224 (Walker).

[271] Ex. 27 (Walker Rebuttal) at 9-10.

[272] *Id.* at 10-11.

In response to APV witness Grevatt's claim that Dominion has provided insufficient evidence to show it is moving toward a consolidated program structure, Mr. Walker stated the Company has been streamlining its DSM Portfolio, has engaged in bundling efforts, and is repackaging how it provides information on its website.[273]

He also explained that the Company continues efforts to reach low-income, elderly, or disabled customers or veterans. He asserted the 13.7% of DSM Portfolio costs attributable to this group is a point-in-time measurement and does not necessarily indicate the Company has failed to meet the 15% statutory requirement for these customer groups.[274]

Mr. Walker asserted the Company is over 90% of the way to meeting the statutory requirement to propose $870 million in spending on DSM programs, and has until 2028 to meet this requirement.[275]

Michael T. Hubbard responded to certain recommendations of Staff witness Smith and VAEEC witness Harnish, and he provided a status update on the approved Phase XI Programs.[276]

<u>Residential New Construction Program</u>. In response to Mr. Smith's recommendations about the Phase VIII Residential New Construction Program and the Phase XII replacement, Mr. Hubbard reported that during Phase VIII, Dominion increased the number of builders constructing ENERGY STAR homes from 2 to 22. He stated that the Phase XII Program EE requirements exceed those of the Phase VIII Program. He indicated the Company will use the relationships established during the Phase VIII Program to recruit builders for the Phase XII Program and will also offer higher incentives, potentially attracting builders who decried the Phase VIII incentive as too low.[277]

In response to VAEEC witness Harnish's concern about builders who meet the ENERGY STAR Version 3.2 certification, Mr. Hubbard indicated those builders would be able to receive Dominion's ENERGY STAR Version 3.1 rebate while also pursuing the federal tax credit associated with ENERGY STAR Version 3.2 homes.[278]

<u>Non-residential New Construction Program</u>. Mr. Hubbard also responded to Mr. Smith's recommendation that the Company begin including additional information about the Phase XII Non-residential New Construction Program in EM&V Reports. Mr. Hubbard stated Dominion does not object to providing this information but believes it is better provided through case

[273] *Id.* at 13.

[274] *Id.* at 11.

[275] *Id.* at 11-12.

[276] Ex. 28 (Hubbard Rebuttal) at 1.

[277] *Id.* at 2.

[278] *Id.* at 6.

discovery due to the projected nature of the savings information for this program, and the fact that anticipated savings can change at least three times during the construction process.[279]

Mr. Hubbard addressed Staff witness Smith's concerns about how the Phase VIII Non-residential New Construction Program has performed and how much of the proposed Phase XII Program's success is tied to the current program. Mr. Hubbard explained that given the experience of the Phase VIII Program and the lifting of the 500 kW eligibility cap, the proposed Phase XII Program will have fewer participants, but more energy savings per project. He also stated the Phase XII Program will use the program funnel established during Phase VIII and will continue key design elements of the Phase VIII Program, meaning customers identified during the latter portion of the Phase VIII Program can be carried into the Phase XII Program.[280]

Distributed Generation Program. Mr. Hubbard affirmed Dominion is not opposed to Staff witness Smith's recommendation to keep the Phase II DG Program operational. If the Commission adopts Staff's proposal, Mr. Hubbard stated the Company requests an additional $800,000 be added to the program cost cap to keep the program going through 2025. He indicated the Company would recover these additional costs in the next annual true-up. He stated the Company also will evaluate the feasibility of continuing this program annually while exploring alternatives.[281]

Status of Phase XI Programs. Mr. Hubbard stated Dominion has launched all but two Phase XI Programs. He explained those two are demand response programs undergoing IT data integration; these programs should be available during the second quarter of 2024.[282]

Program Bundling. During the hearing, in response to a Hearing Examiner's question, Mr. Hubbard explained how the Company considers whether it can repackage expiring programs with favorable energy savings into a bundle. He detailed how the Company repackaged the expiring Non-residential Heating and Cooling Program, the Non-residential Small Manufacturing Program, and the Non-residential Window Film Program into the Phase XI Non-residential Prescriptive Program, after reviewing the expiring programs' cost and energy savings.[283] He further testified that the Company is striving to simplify the presentation of EE options for customers.[284]

Large General Service Customer Opt-Outs. Mr. Hubbard addressed reporting and handling of savings from Large General Service customers that opt-out of paying for the Company's EE programs because they have installed their own EE measures. According to Mr. Hubbard, the Company adds the full amount of savings reported by Large General Service customers to what the Company has achieved through its own DSM programs to calculate the

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[279] *Id.* at 3-4.

[280] *Id.* at 4-5.

[281] *Id.* at 5.

[282] *Id.* at 6-7.

[283] Tr. at 231-32 (Hubbard).

[284] *Id.* at 234 (Hubbard).

total amount of EE-related energy savings that applies toward the statutory Savings Targets. The Company does not categorize the Large General Service customers' savings as net or gross savings; the total savings from these customers is added to the Company's gross savings and net savings, respectively, to arrive at the Company's gross and net savings totals.[285]

Justin A. Wooldridge responded to Staff witness Mangalam's testimony.[286] He stated the Company disagrees with Staff's interpretation of how to calculate the performance incentive that cannot "exceed 10 percent of [Dominion's] total energy efficiency program spending" in a given year, under Subsection A 5 c. According to Mr. Wooldridge, the performance incentive is a separate consideration from the "margin" discussed elsewhere in Subsection A 5 c. He agreed with Ms. Mangalam that the 10% statutory cap on the performance incentive is $6.32 million in this case.[287] Depending on what is included in the performance incentive, and whether energy savings are measured on a net or gross basis, Mr. Wooldridge offered three possible revenue requirement calculations, as follows:[288]

Option	Interpretation of Performance Incentive	How to Measure Savings	Incentive Award?	Total Revenue Requirement
1	Staff's view	Gross	Yes, but limited to $6.32M	$92.25M
2	Company's view	Gross	Yes, limit doesn't apply. Incentive of $758,461 allowed	$92.62M
3	Staff's view	Net	No	$85.55M

The revenue requirements for the individual riders fluctuate as follows, depending upon which interpretation of performance incentive the Commission were to adopt:[289]

Option	Total Revenue Requirement	Rider C1A	Rider C2A	Rider C4A
1	$92.25M	$7.88M	$(1.94M)	$86.32M
2	$92.62M	$7.88M	$(1.93M)	$86.68M
3	$85.55M	$7.88M	$(2.00M)	$79.66M

Terry M. Fry responded to testimony offered by Staff witnesses Boehnlein and Smith, VAEEC witness Harnish, and APV witness Grevatt.[290]

[285] *Id.* at 228-31, 239-40 (Hubbard).

[286] Ex. 31 (Wooldridge Rebuttal) at 1.

[287] *Id.* at 2.

[288] *Id.* at 3. *See id.* at Attached Rebuttal Schedule 1 for supporting calculations.

[289] *Id.* at 3 n.2, n.3, and n.4.

[290] Ex. 32 (Fry Rebuttal) at 1.

<u>Meeting Goals on a Net Basis</u>. Mr. Fry disagreed with Staff witness Boehnlein's assertion that since Dominion is out of time to propose additional programs, the extra costs associated with meeting EE goals on a net basis is a moot point. Mr. Fry argued the issue of whether energy savings are met on a net or gross basis has cost implications for the future. He contended that for 2022 through 2025, the Savings Targets are known but the metric (net or gross) is not known and thus the energy savings volume target is unclear. He explained that once the Commission determines targets for the future, the volume target and the metric will be known, and Dominion will be able to consider the best path to achieve that volume.[291]

Mr. Fry opined that adoption of a net savings metric creates additional hard and soft costs for future years. In particular, he argued the choice of a net savings metric invites increased scrutiny about whether the Savings Targets have been met and the corresponding performance incentives have been earned. He contended that gross savings metrics are not in themselves controversial and are easier to track and manage.[292]

During the hearing, Mr. Fry reiterated that the Company could use gross savings for purposes of measuring whether the Company has met the Savings Targets and use net savings in cost-effectiveness analysis. He emphasized several states, such as Pennsylvania, Georgia, and some states in the Midwest, use gross savings to measure compliance with statutory targets.[293] He maintained that using a net savings metric would raise EM&V costs since the value of net savings information would be increased. He also averred that the Commission's selection of a net savings metric would generate more scrutiny and discussion into how the Company calculates net savings. He admitted that any incentive to which the Company is entitled for meeting or exceeding Savings Targets is paid for by ratepayers.[294] He clarified that net savings "may be slightly more accurate, but the measurement itself would not produce more savings. In that regard, it's a needless cost investment that produces no more savings."[295]

<u>Large General Service Customer Savings</u>. Mr. Fry expressed concern with Staff witness Smith's calculation of Dominion's energy savings in which he excluded energy savings of Large General Service customers that opted out of the DSM riders. Mr. Fry argued Subsection A 5 c requires these customers' savings to be included when calculating total annual energy savings because this statute reads, "Savings from large general service customers shall be accounted for in utility reporting in the standards in § 56-596.2."[296] Mr. Fry contended this language provides additional support for the Company's position that EE Savings Targets should be measured on a gross, not a net basis. He explained that Large General Service customers' savings function as

[291] *Id.* at 2-4.

[292] *Id.* at 4-6. As support for his assertions, Mr. Fry cited Chapter 21 of *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures. Id.*

[293] Tr. at 247-49 (Fry).

[294] *Id.* at 257-60 (Fry).

[295] *Id.* at 263 (Fry).

[296] Ex. 32 (Fry Rebuttal) at 6-7.

free-rider savings, whereby such savings is generally included only in a portfolio's gross savings.[297]

Providing Quantifiable Data Sets in Long-term Plan Reports. Mr. Fry addressed VAEEC witness Harnish's request that the Commission require Dominion to provide quantifiable data sets in Long-term Plan Project Management Reports. Mr. Fry explained this report provides status updates on the Company's short-term, medium-term, and long-term objectives and the metrics to achieve those objectives, indicating the metrics' status generally with terms such as "completed," "ongoing," and "[p]artial completion."[298] He asserted the Long-term Plan's recommendations and objectives are directional in nature, and Commission Staff appeared to find the Long-term Plan Project Management Report sufficient.[299] During the hearing, Mr. Fry admitted it is theoretically possible to provide the kind of information Ms. Harnish has requested in the Long-term Plan Project Management Reports.[300]

APV Witness Grevatt's Concerns. Mr. Fry disagreed with several positions taken by APV witness Grevatt. First, Mr. Fry stated that "'savings net of free riders' is not the same as net savings," and that the latter includes savings related to spillover and market effects.[301]

Mr. Fry also claimed Mr. Grevatt's definition of "total annual energy savings" is too narrow in that it excludes savings from some customers, which is contrary to the industry standard of the Participant Cost Test and his own statements that otherwise are consistent with that standard. For Mr. Fry, a better definition of "total annual energy savings" incorporates benefits experienced by all participating customers, *i.e.*, a gross savings metric.[302]

In response to Mr. Grevatt's complaints about the pace of EE savings, Mr. Fry argued that the rate of savings is finite and declines over time as baseline energy end uses become more efficient. As an example, Mr. Fry noted that California's 2019 Potential and Goals Study showed a 1/3 decrease in EE potential compared to that same study in 2017.[303]

As to Mr. Grevatt's criticism of Dominion's program offerings in light of diminished savings, Mr. Fry testified that Dominion's DSM Portfolio and its DSM program measures have no significant gaps. He averred that the DSM Portfolio's results are not limited by program offerings but instead by customers' voluntary participation. He noted the Company has recently engaged in a marketing campaign to raise awareness of DSM offerings, and early results are positive.[304]

[297] *Id.* at 7-8.

[298] *Id.* at 8-10.

[299] *Id.* at 8.

[300] Tr. at 253 (Fry).

[301] Ex. 32 (Fry Rebuttal) at 10.

[302] *Id.* at 10-11.

[303] *Id.* at 11-12.

[304] *Id.* at 12-13.

Company witness **Dan Feng** responded to the testimony of Staff witness Smith and APV witness Grevatt.[305]

Additional Reporting. Ms. Feng addressed Staff witness Smith's recommendation that the Commission require additional reporting each year, specifically: "'1) the year's projected cost per kWh, in terms of total projected costs, divided by total projected net energy savings; and 2) the actual total costs, divided by the actual total net energy savings.'"[306] Ms. Feng indicated DNV will comply with this recommendation if required to do so, but noted the DSM Dashboard was developed from feedback received in a prior Commission case in which a one-page format was agreed upon.[307] She also noted the information to calculate cost/kWh is provided in tables in the EM&V Report's Executive Summary, the Report is already over 2,000 pages, and such information may be provided through case discovery in the future.[308]

DSM Savings Potential on a Net Basis. Ms. Feng addressed APV witness Grevatt's recommendation for the Commission to reject Dominion's claim there is not enough savings potential to meet the statutory Savings Targets on a net savings basis. She noted this recommendation relies on certain arguments Mr. Grevatt made about the 2021 Potential Study. As background, Ms. Feng noted the 2021 Potential Study was based on early 2020 as a framing point, but disruptions and increased costs caused by the COVID-19 pandemic inhibited DSM programs from meeting filed projections.[309]

Ms. Feng disagreed with the assertion that the omission of certain measures, such as voltage optimization, led to an inherently low estimate of DSM potential. She remarked that even additional measures and improvements from Dominion's Long-term Plan are inadequate to fill the gaps left by other program drop-offs.[310]

Ms. Feng explained that Dominion's low avoided costs create a challenging environment for DSM programs to prove cost-effective. Thus, the Company has a lower range of DSM potential than other studies DNV has performed. Ms. Feng further noted that rising energy efficiency baselines reduce opportunities for DSM savings. She argued a low cost-effective EE potential does not indicate Dominion's programs are under-performing. She asserted there are multiple barriers to DSM adoption, including that EE improvements compete against other priorities for customers' time and money, and that some EE upgrades are only installed at particular times, such as in the midst of building or equipment changes.[311]

[305] Ex. 33 (Feng Rebuttal) at 1.

[306] *Id.* at 2 (quoting Ex. 21 (Smith Direct at 57)).

[307] *Id.* at 2 (citing EM&V Determination Case).

[308] *Id.* at 2-3.

[309] *Id.* at 3.

[310] *Id.* at 4.

[311] *Id.* at 4-5.

Net Savings Calculation. Ms. Feng testified that if the Commission were to adopt a net savings metric for measuring compliance with the Savings Targets, the value of the net savings information would increase, and DNV would likely recommend studying spillover and market effects in future programs. She indicated the Company currently uses around 6% of its annual program spend on EM&V, out of the allotted 5% to 7%.[312]

Ms. Feng further testified that in addition to the Non-residential Audit Program, DNV has calculated spillover effects for the Phase VI Non-residential Prescriptive Program, since 2020, and "the nonresidential lighting measures across a number of nonresidential programs" starting with EM&V for the calendar year 2022, results for which are in the 2023 EM&V Report.[313] She also explained that savings from spillover effects are not deemed values, though she could not quantify the cost of calculating spillover savings.[314] She confirmed DNV continues to "use the terms 'net savings' or 'savings attributable to the DSM programs and measures'" in lieu of "the proximate cause of a verified reduction in energy usage."[315]

Ms. Feng indicated that, if the Commission were to opt to measure statutory compliance on a net savings basis, she does not believe the DSM programs' individual EM&V plans would need to change because they provide sufficient flexibility to accommodate such a change.[316]

SUMMARY OF LEGAL MEMORANDA

With its Application, Dominion filed a Legal Memorandum concerning whether the Commission should use gross savings or net savings to measure the Company's compliance with the Savings Targets set forth in Code § 56-596.2. The implications of this decision for the current proceeding are, among other things, that if compliance is measured on a gross savings basis, Dominion may be entitled to both a margin on O&M expenses for its EE programs, and a bonus for each 0.1% of savings achieved over the 2022 Savings Target. If compliance is measured on a net savings basis, then by its own admission Dominion has not achieved the 2022 Savings Target and is not eligible for a margin on O&M expenses or any bonus. Staff, Consumer Counsel, and APV each filed a Response to Dominion's Legal Memorandum. This section provides a summary of all these Legal Memoranda.

Dominion's Legal Memorandum

Dominion argued that compliance with the Savings Targets should be measured on a gross basis, claiming this position better aligns with the definition of "[t]otal annual energy savings" in Code § 56-576 because "[g]ross savings account for all energy efficiency savings achieved by all programs and measures, regardless of the consumers' motives in taking such

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[312] Tr. at 267-69 (Feng).

[313] *Id.* at 266-67, 269-70 (Feng). *See also id.* at 134 (Grevatt) for reference to the Non-residential Audit Program.

[314] *Id.* at 272 (Feng).

[315] *Id.* at 273-74 (Feng).

[316] *Id.* at 274-75 (Feng).

actions or making such investments."[317] Relying on definitions from *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures*, the Company asserted that "gross savings are the savings from the energy efficiency *measure* (*e.g.*, savings from a high efficiency light bulb or air conditioner upgrade) while net savings are the savings from the energy efficiency *program* (*e.g.*, the Residential Home Energy Assessment Program or Non-residential Heating and Cooling Efficiency Program)."[318]

Since Code § 56-596.2 does not speak to how energy savings should be measured, Dominion argued the Commission must determine legislative intent based on the relevant statutes' plain language. Dominion looked to the wording of the definition of "[t]otal annual energy savings," in Code § 56-576, specifically the words "total combined kilowatt-hour savings achieved by electric utility energy efficiency and demand response programs and measures installed in that program year . . ." and relied on the words "total," "combined," and "programs and measures" when arguing the statutory plain language requires a gross savings measurement to be used.[319] Noting the tenet "'that every act of the legislature should be read so as to give reasonable effect to every word . . .,'" Dominion claimed a net savings approach would cause the word "measures" in Code § 56-576 to be superfluous.[320]

Dominion provided additional arguments in favor of using a gross savings measurement, including: (1) customers would pay more for DSM programs and measures under a net savings approach; (2) voluntary programs will always have free riders, and Dominion already is attempting to minimize free ridership through additional customer awareness and education; and (3) if a net savings approach is embraced, future DSM proceedings will focus on how net savings were determined instead of focusing on actual program performance because estimations of net savings involve subjective processes whereas gross savings estimates are more accurate.[321]

Appalachian Voices' Legal Memorandum

APV requested the Commission "require that savings be measured in terms of net savings or savings net of free riders."[322] Relying on APV witness Jim Grevatt's definition of gross savings as "'savings that actually occur for program participants, including savings that would have occurred without the Company's energy efficiency efforts,'" APV claimed the statutory definition of "[t]otal annual energy savings" requires a net savings approach because gross savings incorporates savings that were not "achieved by" Dominion's programs.[323] APV also pointed out that Subsection A 5 c also refers to savings "achieved by" an electric utility's

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[317] Dominion's Legal Memorandum at 4.

[318] *Id.* at 5 (emphasis in original).

[319] *Id.* at 4-6.

[320] *Id.* at 7-8 (quoting *Lynchburg Div. of Soc. Servs. v. Cook*, 276 Va. 465, 483, 666 S.E.2d 361, 370 (2008)(internal citations omitted)).

[321] *Id.* at 8-12.

[322] APV's Legal Memorandum at 1.

[323] *Id.* at 2.

programs, making no mention of measures.[324] APV further noted the Commission focused on the definition of "achieved" in its *2021 DSM Case Final Order*, wherein it stated Dominion "'must factually establish the amount of savings that occurred *as the result of* its programs and measures.'"[325]

APV claimed that savings from free riders are not savings that Dominion's EE programs achieved and thus are ineligible to be counted toward compliance with the Savings Targets. APV asserted its position is consistent with the Commission's explanation in the *2021 DSM Case Final Order*, in a footnote, wherein it stated, "'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.'"[326] To buttress its position, APV also referenced the Commission's statement that "'the true test of any DSM program is whether, *in actual practice*, it is the proximate cause of a verifiable reduction in energy usage.'"[327]

APV also relied on the rule of statutory construction against superfluity, arguing Dominion's position would render superfluous the terms "achieved" and "programs" since "the gross measure-level savings would completely subsume the savings actually achieved by the Company's programs."[328] APV asserted a better course is to read "programs and measures" as a collective term, which "makes sense as programs are made up of individual measures."[329] Such a reading, according to APV, (1) gives meaning to the term "achieved," (2) is consistent with Commission orders; and (3) avoids inconsistency between Code provisions that refer to "programs and measures" and those that refer only to "programs."[330]

APV dismissed Dominion's policy arguments for the use of a gross savings measurement, claiming: (1) Dominion focused on the additional cost associated with net savings, while overlooking the value of increased benefits; (2) Dominion's claims of the challenge of measuring net benefits discounts years of industry and Company experience in measuring net savings; and (3) accepting Dominion's position would provide Dominion with a reward for savings its programs did not achieve.[331]

Consumer Counsel's Legal Memorandum

In its Legal Memorandum, Consumer Counsel relied on the same Commission wording from the *2021 DSM Case Final Order* as APV, and contended, "Dominion's request that the

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[324] *Id.* at 3.

[325] *Id.* (quoting *2021 DSM Case Final Order*, 2022 S.C.C. Ann. Rep. at 387 (emphasis in original)).

[326] *Id.* at 4-5 (quoting *2021 DSM Case Final Order*, 2022 S.C.C. Ann. Rep. at 387, n.33 (emphasis in original)).

[327] *Id.* at 5 (quoting *2018 DSM Case Final Order*, 2019 S.C.C. Ann. Rep. at 288 (emphasis in original)).

[328] *Id.* at 6.

[329] *Id.* at 6-7.

[330] *Id.* at 7.

[331] *Id.* at 7-9.

gross savings metric be used for determining its compliance with its § 56-596.2 energy savings targets cannot be granted as a strictly legal matter, because it hinges on Dominion's evidentiary burden to show, as a factual matter, that its programs and measures 'achieved' the energy savings targets outlined in § 56-596.2 for compliance year 2022."[332] Consumer Counsel observed that, as a practical matter, it will be difficult for the Company to prove its EE programs and measures achieved all the savings that meet the definition of "gross savings," because "gross savings" are not adjusted for market effects.[333]

Like APV, Consumer Counsel asserted that in focusing on "programs and measures," the Company overlooks any meaning of the terms "achieved" and "achieve" in Code §§ 56-576 and 56-596.2, respectively. Consumer Counsel pointed out that, in these statutes, the one who is to "achieve" is the electric utility, through its EE programs and measures, but Dominion's legal position "would have the Commission count energy savings achieved by the Company's *customers* as savings achieved by Dominion's approved programs and measures."[334]

Consumer Counsel noted it is not clear that the General Assembly used the word "measures" in Code §§ 56-576 and 56-596.2 as Dominion defined that term in its Legal Memorandum, claiming the Company itself "is plainly 'look[ing] beyond "the words of the statute to determine its meaning."'"[335] Consumer Counsel, like APV, argued that a "common-sense reading of 'measures' in these statutes is that the General Assembly intended 'programs and measures' to be taken as a collective term."[336] Consumer Counsel found Dominion's claim that the General Assembly meant to refer to "gross savings" when it used the word "measures" after "programs" to be "comparatively far-fetched."[337]

If the Commission were to agree with Dominion's interpretation of the relevant statutory language, Consumer Counsel claimed that, for purposes of awarding financial incentives for achieved EE savings, a net metric would appear to be most appropriate. Consumer Counsel explained Subsection A 5 c, the statute providing for such financial incentives, uses the term "programs" without any mention of "measures."[338]

Finally, Consumer Counsel averred Dominion's concern that customers would pay more if savings were measured on a net basis than on a gross basis is selective in that the Company ignored that customers are the ones who fund the financial incentives to which the Company claims entitlement by calculating energy savings on a gross basis.[339]

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[332] Consumer Counsel's Legal Memorandum at 5-6 (emphasis omitted).

[333] *Id.* at 7.

[334] *Id.* at 9 (emphasis added).

[335] *Id.* at 10 (quoting Dominion's Legal Memorandum at 5-6 (citing *Bailey v. Spangler*, 289 Va. 353, 358, 771 S.E.2d 684, 686 (2015); *Jackson v. Jackson*, 298 Va. 132, 139, 835 S.E.2d 68, 71 (2019)). Note that the phrase "the words of the statute to determine its meaning" appears in *Jackson v. Jackson*, 298 Va. at 139, 835 S.E.2d at 71.

[336] *Id.* at 10.

[337] *Id.*

[338] *Id.* at 11-12.

[339] *Id.* at 13.

Staff's Legal Memorandum

Staff first provided an extensive discussion of the applicable statutes and recent case history of the "net versus gross" issue.[340] Staff posited that net savings is the proper measurement metric for EE savings, on the bases of both statutory language and practicality.[341]

From the standpoint of the statutory language, Staff focused on the use of the terms "achieved by" and "to achieve" in Code §§ 56-576 and 56-596.2, respectively. Staff asserted that to determine what savings have been "achieved by" the utility's EE and DR programs and measures, one must look to "industry accepted definitions" for gross and net savings.[342] Staff claimed the terms are generally agreed to mean the following:[343]

> Simply put, "net savings" counts such savings that were induced, or "achieved by," an energy efficiency program, and are induced by the program itself and/or its incentives. In contrast, "gross savings" additionally includes savings attributable to free riders – participants who would have installed energy-efficiency equipment or undertaken energy savings behaviors regardless of any program offering.

Staff concluded that to measure the savings "achieved by" EE programs and measures, those savings that would have occurred anyway should be excluded because they are not "achieved by" the programs nor did those savings occur because of Dominion's DSM spending.[344] Staff argued the Commission already determined, in the *2021 DSM Case Final Order*, that savings from free riders should be excluded as falling outside Code § 56-596.2.[345]

Staff took issue with Dominion's assertion that savings from measures is somehow more than savings from programs since the Company's programs are composed of measures. Staff also observed that the General Assembly appears to use the terms "programs" and "measures" interchangeably throughout the relevant statutes.[346]

On policy grounds, Staff argued against the idea the General Assembly meant to reward Dominion for savings its programs have not achieved. Moreover, Staff noted that by its own

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[340] Staff's Legal Memorandum at 2-11.

[341] *Id.* at 11.

[342] *Id.* at 12.

[343] *Id.* at 13.

[344] *Id.* at 14.

[345] *Id.* at 15.

[346] *Id.* at 16. To the extent "programs" and "measures" have distinct specific meanings, Staff proffered an interpretation whereby "programs" could refer to EE activities whereas "measures" could refer to DR activities. *Id.* at 16 n.53.

argument Dominion should not be awarded an incentive for meeting and exceeding the Savings Targets because Subsection A 5 c, the incentive statute, refers only to programs, not measures.[347]

Staff pushed back against the Company's additional reasons for use of the gross savings metric to measure EE savings. Staff averred increasing costs is not the only option to increase energy savings and claimed the Company's failure to meet the EE Savings Targets is "due in large part to the cumulative impacts of continued participation failures" in the EE programs, a concern Staff stated it has been raising for years.[348] As for Dominion's claim that net savings are more subjective and difficult to measure, Staff asserted Dominion already provides net savings calculations in its annual EM&V Reports, which calculations Staff has verified as being in accordance with the framework the Commission established in the *EM&V Determination Case Order* and with the EM&V Rules.[349] Staff maintained the energy savings numbers reported in the EM&V Reports are "specific savings that can be reasonably identified, are a verified reduction in energy usage, and thus are appropriate for determining the Company's compliance, or lack thereof, with the energy savings targets in Code § 56-596.2."[350]

<u>CODE</u>

In accordance with Subsection A 5, an electric utility such as Dominion may petition the Commission, not more than once in any 12-month period, for recovery of:

> b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs or pilot programs. The Commission shall approve such a petition if it finds that the program is in the public interest, provided that the Commission shall allow the recovery of such costs as it finds are reasonable;
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> c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs or pilot programs. Any such petition shall include a proposed budget for the design, implementation, and operation of the energy efficiency program, including anticipated savings from and spending on each program, and the Commission shall grant a final order on such petitions within eight months of initial filing. The Commission shall only approve such a petition if it finds that the program is in the public interest. If the Commission determines that an energy efficiency program or portfolio of programs is not in the public interest, its final order shall include all work product and analysis conducted by the Commission's staff in relation to that program that has bearing upon the Commission's determination. Such order shall

[347] *Id.* at 17-19.

[348] *Id.* at 19-22.

[349] *Id.* at 22-23.

[350] *Id.* at 23-24.

> adhere to existing protocols for extraordinarily sensitive information.

Subsection A 5 c provides financial incentives for meeting the annual Savings Targets of Code § 56-596.2. In this regard, Code § 56-585.1 A 5 c reads:

> Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses for energy efficiency programs and pilot programs, which margin shall be equal to the general rate of return on common equity determined as described in subdivision 2. Beginning January 1, 2022, and thereafter, if the Commission determines that the utility meets in any year the annual energy efficiency standards set forth in § 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program operating expenses in that year, to be recovered through a rate adjustment clause, which margin shall be equal to the general rate of return on common equity determined as described in subdivision 2. If the Commission does not approve energy efficiency programs that, in the aggregate, can achieve the annual energy efficiency standards, the Commission shall award a margin on energy efficiency operating expenses in that year for any programs the Commission has approved, to be recovered through a rate adjustment clause under this subdivision, which margin shall equal the general rate of return on common equity determined as described in subdivision 2. Any margin awarded pursuant to this subdivision shall be applied as part of the utility's next rate adjustment clause true-up proceeding. The Commission shall also award 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, beyond the annual requirements set forth in § 56-596.2, provided that the total performance incentive awarded in any year shall not exceed 10 percent of that utility's total energy efficiency program spending in that same year.

Code § 56-576 provides several key definitions related to Subsection A 5, including:

> "Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.
>
> . . . .
>
> "Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or

activity implemented after the expiration of capped rates. Energy efficiency programs include equipment, physical, or program change designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs that result in improvements in lighting design, heating, ventilation, and air conditioning systems, appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems; and (iii) customer engagement programs that result in measurable and verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs include demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity. Utilities shall be authorized to install and operate such advanced metering technology and equipment on a customer's premises; however, nothing in this chapter establishes a requirement that an energy efficiency program be implemented on a customer's premises and be connected to a customer's wiring on the customer's side of the inter-connection without the customer's expressed consent.

. . . .

"In the public interest," for purposes of assessing energy efficiency programs, describes an energy efficiency program if the Commission determines that the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the following four tests: (i) the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall be approved if the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the four tests. If the Commission determines that an energy efficiency program or portfolio of programs is not in the public interest, its final order shall include all work product and analysis conducted by the Commission's staff in relation to that program, including testimony relied upon by the Commission's staff, that has bearing upon the Commission's decision. If the

Commission reduces the proposed budget for a program or portfolio of programs, its final order shall include an analysis of the impact such budget reduction has upon the cost-effectiveness of such program or portfolio of programs. An order by the Commission (a) finding that a program or portfolio of programs is not in the public interest or (b) reducing the proposed budget for any program or portfolio of programs shall adhere to existing protocols for extraordinarily sensitive information. In addition, an energy efficiency program may be deemed to be "in the public interest" if the program (1) provides measurable and verifiable energy savings to low-income customers or elderly customers or (2) is a pilot program of limited scope, cost, and duration, that is intended to determine whether a new or substantially revised program or technology would be cost-effective.

. . . .

"Measured and verified" means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

. . . .

"Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

. . . .

"Total annual energy savings" means (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.

Code § 56-596.2 provides the following:

> A. Notwithstanding subsection G of § 56-580, or any other provision of law, each incumbent investor-owned electric utility shall develop proposed energy efficiency programs. Any program shall provide for the submission of a petition or petitions for approval to design, implement, and operate energy efficiency programs pursuant to subdivision A 5 c of § 56-585.1. At least 15 percent of such proposed costs of energy efficiency programs shall be allocated to programs designed to benefit low-income, elderly, or disabled individuals or veterans.

Code § 56-596.2 B 2 sets forth the following energy efficiency targets for Dominion:

> a. In calendar year 2022, at least 1.25 percent of the average annual energy jurisdictional retail sales by that utility in 2019;
> b. In calendar year 2023, at least 2.5 percent of the average annual energy jurisdictional retail sales by that utility in 2019;
> c. In calendar year 2024, at least 3.75 percent of the average annual energy jurisdictional retail sales by that utility in 2019; and
> d. In calendar year 2025, at least 5.0 percent of the average annual energy jurisdictional retail sales by that utility in 2019; . . ..

For 2026 and forward, the Commission must establish the energy efficiency savings targets. This is the subject of Case No. PUR-2023-00227.[351]

Code § 56-596.2 C sets a floor of $870 million for Dominion's "projected costs . . . to design, implement, and operate such energy efficiency programs and portfolios of programs" for the period July 1, 2018, through July 1, 2028, including existing approved EE programs.

Code § 56-596.2:1 sets forth additional requirements for energy conservation programs benefiting low-income, elderly, and disabled individuals, as follows:

> A. [Dominion] . . . shall submit a petition for approval to design, implement, and operate a three-year program of energy conservation measures providing incentives to low-income,

[351] *See generally, Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of establishing energy efficiency savings targets pursuant to Code §§ 56-596.2 B 3 and 56-596.2:2,* Case No. PUR-2023-00227. Through this proceeding, the Commission also has indicated it plans to set energy efficiency savings targets, as required by new Code § 56-596.2:2, for Dominion to meet, starting in 2025, for customers who are low-income, elderly, disable, or veterans of military service. 2023 Va. Acts ch. 728.

> elderly, and disabled individuals in an amount not to exceed $25 million in the aggregate for the installation of measures that reduce residential heating or cooling costs and enhance the health and safety of residents, including repairs and improvements to home heating or cooling systems and installation of energy-saving measures in the house, such as insulation and air sealing. In developing such incentive program, [Dominion] shall utilize the stakeholder process set forth in § 56-596.2. [Dominion] may provide such incentives directly to customers or to organizations that assist low-income, elderly, and disabled individuals. Such incentive program shall be deemed to be . . . a part of the $870 million in energy efficiency programs that [Dominion] is required to develop pursuant to § 56-596.2; provided that no portion of such incentive programs shall be deemed to be a part of the required five percent of such energy conservation measures set aside for low-income, elderly, and disabled individuals.
>
> C. In developing such incentive programs, [Dominion] shall give consideration to low-income, elderly, and disabled persons residing in housing that a redevelopment and housing authority owns or controls.

ANALYSIS

My analysis of the Application and related matters will occur in the following order:

1. New DSM Programs and Modifications to Programs
2. Proposed Closure of the DG Program
3. Compliance with the Statutory Savings Targets
4. Subsection A 5 c Performance Incentive
5. Rate-related Matters
6. EM&V Plans
7. Other Statutory Considerations
8. Concerns Related to the Long-Term Plan and Meeting the Savings Targets
9. Other Matters

PART 1: NEW DSM PROGRAMS AND MODIFICATIONS TO PROGRAMS

The Programs Themselves. The Company proposed four new programs as Phase XII: Residential New Construction (EE), Non-residential New Construction (EE), Residential Smart Thermostat Purchase (EE), and Residential Smart Thermostat (DR).[352] The Company requested the Commission approve these programs with no predetermined closure dates.[353] The Company

[352] *See, e.g.*, Ex. 2 (Application) at 8.

[353] *See, e.g.*, *id.* at 9-10.

proposed a five-year cost cap for the Phase XII Programs in the aggregate of approximately $102.4 million, which equates to $117.8 million with the requested 15% variance allowance.[354]

Dominion also requested Commission approval to: (1) broaden the base of potential customers for the Phase VIII Small Business Improvement Enhanced Program by removing the restriction that participants have five or fewer qualifying locations in Dominion's service territory; and (2) add energy efficient ice makers and dishwashers to the Phase VIII Non-residential Midstream EE Products Program.[355]

The Company provided evidence these proposals passed at least three of the four cost/benefit tests individually, on a portfolio basis, and individually when subjected to six sensitivities,[356] in accordance with Code § 56-576's definition of "[i]n the public interest." Staff reviewed the cost/benefit analysis.[357] Staff stated the Company's evaluation was consistent with the Cost/Benefit Rules and noted the programs' cost/benefit pass rates remained the same under all sensitivities.[358]

Staff did not oppose the proposed Phase XII Programs or the modifications to the Phase VIII Programs.[359] Consumer Counsel took no position on any of the Application's program proposals or requested modifications.[360] VAEEC supported the proposed Phase XII Programs and the proposed changes to the Phase VIII Programs, but VAEEC recognized these proposals together are insufficient to enable Dominion to meet the 2022-2025 Savings Targets.[361] APV also supported the Phase XII programs, though APV witness Grevatt maintained "they are far

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[354] Ex. 6 (Bates Direct) at 8.

[355] *See, e.g.*, Ex. 2 (Application) at 10-12. The Application requested "to add additional program measures *such as* ice makers and dishwashers in order to diversify its program measure portfolio and align with what the implementation vendor is currently observing operationally in the field." *Id.* at 11 (emphasis added). However, a comparison of the current and proposed descriptions of the Phase VIII Non-residential Midstream EE Products Program indicates that ice makers and commercial dishwashers are the only two additional measures for which the Company requests approval. *Compare* Ex. 4 (Hubbard Direct) at Attached Schedule 1, p. 26 (unnumbered) *with* Ex. 4 (Hubbard Direct) at Attached Schedule 3, p. 2. The Company did not request additional funds for the Non-residential Midstream EE Products program despite the addition of the two measures. Ex. 29 (Responses to Hearing Examiner's Questions) at 1. *See also* Ex. 6 (Bates Direct) at 3 n.1 (noting that the requested modifications to the two Phase VIII Programs "do not affect previously-approved costs associated with these programs.").

[356] Ex. 5 (Hagerman Direct) at 12-14 and Attached Schedules 4, 5, and 6. Ms. Hagerman noted the Company did not perform additional cost/benefit testing associated with the proposal to update the eligibility requirements for the Phase VIII Non-residential Small Business Improvement Enhanced Program "because there is no proposed change to the rate and therefore no impact to the cost/benefit results." *Id.* at 16.

[357] Ex. 21 (Smith Direct) at 32-36.

[358] *Id.* at 33, 36.

[359] *Id.* at 58-59.

[360] Tr. at 56 (Farmer, for Consumer Counsel).

[361] *See, e.g.*, Ex. 16 (Harnish Direct) at 3, 7-9.

short of what the Company could and should be proposing . . . to comply with the VCEA [Savings Targets]."[362]

VAEEC witness Harnish and Staff witness Smith both expressed concerns about the Phase XII Residential New Construction Program.[363] Company witness Hubbard's rebuttal testimony and additional discovery responses from the Company satisfactorily addressed these concerns.[364]

Based on the foregoing, I conclude there is evidence to support approval of the proposed Phase XII Programs, the proposal to update the eligibility requirements for the Phase VIII Small Business Improvement Enhanced Program, and the addition of ice maker and dishwasher measures to the Phase VIII Non-residential Midstream EE Products Program.

Cost Caps. The Company proposed a five-year cost cap for the Phase XII Programs in the aggregate of approximately $102.4 million, or $117.8 million with the Company's requested 15% variance allowance. Consistent with the *2022 DSM Case Final Order*, the Company requested approval of spending flexibility up to 15% beyond the proposed caps. Company witness Walker averred such approval would allow Dominion to pursue successful programs and achieve greater savings.[365] The Company included five-year budgets for each proposed Phase XII Program in its Application. These budgets exclude any margin or additional basis point adder under Subsection A 5 c.[366]

Staff reviewed the Company's proposed cost caps and confirmed there are no differences between Staff's and the Company's cost caps.[367] Staff witness Mangalam indicated that if the Commission does not approve a proposed Phase XII Program, the aggregate cost cap would decrease to reflect only the Commission-approved programs. Staff recommended Dominion continue excluding the Subsection A 5 c margin and additional basis point adder from cost cap calculations in future DSM cases.[368] Staff recommended the Commission establish cost caps based on the program costs for each program the Commission approves.[369] APV, VAEEC, and Consumer Counsel did not take a position on this issue.

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[362] Ex. 12 (Grevatt) at 4. I find it unclear whether Mr. Grevatt's statement that "I support approval of these proposals" incorporates both the Phase XII "program proposals" and the Phase VIII Program modifications, and counsel for APV did not specify APV's position on the Phase VIII Program modifications during the hearing. *Id.*; Tr. at 42 (Allmond, for APV), 287 (Benforado, for APV). Nor can I find any evidence that APV opposes the Phase VIII Program modifications.

[363] Ex. 16 (Harnish Direct) at 6-7; Ex. 21 (Smith Direct) at 37-39, 53-54.

[364] Ex. 28 (Hubbard Rebuttal) at 2, 6; Tr. at 45-46 (Jaffe, for VAEEC) and 180-83 (Smith).

[365] Ex. 3 (Walker Direct) at 10. *See also* Ex. 6 (Bates Direct) at 8-9.

[366] Ex. 2 (Application) Filing Schedule 46A, Statement 7. *See also* Ex. 17 (Mangalam Direct) at 12 n.16.

[367] Ex. 17 (Mangalam Direct) at 13.

[368] *Id.*

[369] *Id.* at 21.

I find the Company's proposed cost caps, including an aggregate cap of $102.4 million, or $117.8 million inclusive of a 15% variance allowance are supported by the evidence.

Absence of Closure Dates. Though Dominion submitted five-year budgets for the proposed Phase XII Programs, the Company stated that consistent with the *2021 DSM Case Final Order* and the *2022 DSM Case Final Order*, it was not proposing predetermined closure dates for the programs.[370] Staff did not oppose the Company's request to implement the proposed Phase XII Programs without predetermined closure dates.[371] APV noted the Company's request to operate the programs without set closure dates and did not oppose it.[372] Consumer Counsel and VAEEC did not address this request.[373]

I find the Company's request to operate the proposed Phase XII Programs without predetermined closure dates is supported by the evidence and consistent with Commission precedent.

PART 2: PROPOSED CLOSURE OF THE DG PROGRAM

Through the Distributed Generation Program, customers are incentivized to curtail load by using backup generation when requested.[374] Dominion witness Hubbard explained that the DG Program is no longer cost-effective and stated the Company would explore options for winding down this program.[375]

Staff witness Smith argued for continuation of this program on multiple bases, claiming among other things that the program remains a valuable peak-shaving resource in the PJM DOM Zone, an area experiencing peak demand growth, that the program has provided peak-shaving results at lower than the anticipated cost per kWh, and that there is no replacement program. He urged the Commission to require Dominion to continue this program, at an appropriate level of funding, until there is a suitable replacement program.[376]

In rebuttal, the Company stated it does not oppose the recommendation to continue the DG Program but noted there are no remaining allotted funds to operate the program beyond 2024. Should the Commission approve continuation of the DG Program, the Company stated it would evaluate the viability of keeping the program running year-by-year while searching for a replacement, exploring alternatives, and soliciting new non-residential customer ideas through

[370] Ex. 3 (Walker Direct) at 10.

[371] Ex. 21 (Smith Direct) at 30, 57.

[372] Ex. 12 (Grevatt) at 4. I find it unclear whether Mr. Grevatt's statement that "I support approval of these proposals," in the paragraph following the description of the Company's requests, incorporates this request for program approval without closure dates, or whether Mr. Grevatt's statement applies only to the Phase XII Program proposals themselves. *Id.*

[373] Tr. at 56 (Farmer, for Consumer Counsel).

[374] Ex. 4 (Hubbard Direct) at Attached Schedule 1, p. 1.

[375] *Id.* at 6.

[376] Ex. 21 (Smith Direct) at 19-26.

the RFP process. Dominion requested $800,000 be added to this program's cost cap to allow the Company to continue it through 2025. The Company stated these funds, if approved, would be collected as part of the True-up Adjustment in the next DSM case.[377]

In response, Staff stated it did not oppose the cost cap increase for continuing the DG Program. Staff noted that such approval does not impact the currently proposed revenue requirement or estimated customer bill impacts.[378]

APV supported Staff's recommendation to keep the DG Program operational and did not oppose the request for an additional $800,000 in furtherance thereof.[379] VAEEC also indicated it had no opposition to continuing the DG Program.[380] Consumer Counsel took no position on this issue.[381]

Given the reasons provided by Staff for the program's continuation and the lack of opposition thereto, I find there is evidence in the record to support continuation of the DG Program on a year-by-year basis and to allow Dominion to request funding therefor as necessary as it seeks an alternative program.

There was some discrepancy in the evidence as to how close this program is to reaching its cost cap. Schedules of DSM program spending through 2022 reflect the Company has spent only $9.6 million of the $19.0 million budget approved for this program.[382] However, there was also testimony of "the lack of remaining funds in the cost cap to continue operating this program beyond 2024."[383]

The record does not contain figures of how much the Company has spent on the DG Program in 2023 and to date in 2024. Further, no party or Staff objected to Commission approval of an $800,000 boost to the program's cost cap to allow the program to continue through 2025. I also observe that $800,000 appears to be in line with the Company's actual spending of $9.6 million over 12 years of program operations.[384] Moreover, the Company has

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[377] Ex. 28 (Hubbard Rebuttal) at 5.

[378] Tr. at 59 (Pierce, for Staff). Staff also noted it does not believe there is a notice issue if the request to increase the DG Program's cost cap is granted. *Id.* In this regard, I note the public notice in this case included information that the Company was exploring options to wind down the program. Order for Notice and Hearing at 12. Additionally, the revenue requirement figures noticed to the public would not be impacted by Commission approval of the request for additional funds for the DG Program.

[379] Tr. at 43-44 (Allmond, for APV).

[380] *Id.* at 52 (Jaffe, for VAEEC).

[381] *Id.* at 56 (Farmer, for Consumer Counsel).

[382] *See* Ex. 4 (Hubbard Direct) at Attached Schedule 1, p. 1, and Attached Schedule 2, p. 2.

[383] Ex. 28 (Hubbard Rebuttal) at 5.

[384] *See* Ex. 4 (Hubbard Direct) at Attached Schedule 1, p. 1 (showing $19.0 million in cost approvals for an initial five-year period, a five-year extension, and another two-year extension). Nineteen million dollars divided by 12 years is approximately $1.583 million per year. The amount spent, $9.6 million, divided by 12 years is $800,000 per year. *See also id.* at Attached Schedule 2, p. 2.

requested to recover these funds through a true-up mechanism.[385] The true-up is derived from comparing actual costs for a prior period to actual revenues collected during that period.[386] Thus, to the extent the Commission approves additional funds for the DG Program's cost cap, those costs will be reflected in future revenue requirements, as they are incurred. Based on all these considerations, I find there is support in the record to approve an $800,000 increase in the DG Program's cost cap.

PART 3: COMPLIANCE WITH THE STATUTORY SAVINGS TARGETS

This part and Part 4 address matters involving statutory construction. When considering how to interpret statutes, the Supreme Court of Virginia has provided the following guidance:[387]

> "When the language of a statute is unambiguous, we are bound by the plain meaning of that language." *Virginia Elec. & Power Co.*, 295 Va. at 263, 810 S.E.2d 880. "When construing a statute, our primary objective is to ascertain and give effect to legislative intent, as expressed by the language used in the statute." *Id.* at 262-63, 810 S.E.2d 880 (quoting *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626 (2012)). In doing so, we "consider the entire statute 'to place its terms in context,' " *REVI, LLC v. Chicago Title Ins. Co.*, 290 Va. 203, 208, 776 S.E.2d 808 (2015) (quoting *Eberhardt v. Fairfax Cnty. Emps. Ret. Sys. Bd. of Trustees*, 283 Va. 190, 194, 721 S.E.2d 524 (2012)), because it is "our duty to interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal," *id.* (quoting *Virginia Elec. and Power Co. v. Board of Cnty. Supervisors*, 226 Va. 382, 387-88, 309 S.E.2d 308 (1983)).

Moreover:[388]

> We " 'presume that the legislature chose, with care, the specific words of the statute' and that '[t]he act of choosing carefully some words necessarily implies others are omitted with equal care.' " *Wal-Mart Stores East, LP v. State Corp. Comm'n*, 299 Va. 57, 70, 844 S.E.2d 676 (2020) (*quoting Rickman v. Commonwealth*, 294 Va. 531, 540 n.3, 808 S.E.2d 395 (2017)).

Informed by this guidance, I now consider the question of Dominion's compliance with the Savings Targets. At the outset, I note this question is one for the Commission to decide.

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[385] Ex. 28 (Hubbard Rebuttal) at 5.

[386] Ex. 7 (Wooldridge Direct) at 6.

[387] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. 153, 161, 861 S.E.2d 47, 51 (2021).

[388] *Id.*, 300 Va. at 163, 861 S.E.2d at 52.

Code § 56-585.1 A 5 c directs that "if the Commission determines that the utility meets in any year the annual energy efficiency standards set forth in § 56-596.2, . . .," then it is to take certain actions (which are the subject of Part 4 of this Report). For now, I observe this statute shows the Commission is the decision-maker as to whether the Savings Targets have been met. Subsection A 5 c does not, however, instruct the Commission on what the basis of its findings should be. The "how" is left to the Commission's discretion.[389]

The Savings Targets do not exist in a vacuum; they were established through changes in the Commonwealth's laws pertaining to energy efficiency.[390] A brief tour of the Savings Targets and Commission cases surrounding them is therefore appropriate.

A Brief History of the Savings Targets and Commission Cases Addressing Them

The VCEA modified Virginia's laws related to Phase I and Phase II public utility energy efficiency programs. Among other things, Code § 56-596.2 B now requires "each investor-owned incumbent electric utility [to] implement energy efficiency programs and measures to achieve . . . total annual energy savings." For Dominion, a Phase II Utility, the Savings Targets are:[391]

> a. In calendar year 2022, at least 1.25 percent of the average annual energy jurisdictional retail sales by that utility in 2019;
> b. In calendar year 2023, at least 2.5 percent of the average annual energy jurisdictional retail sales by that utility in 2019;
> c. In calendar year 2024, at least 3.75 percent of the average annual energy jurisdictional retail sales by that utility in 2019; and
> d. In calendar year 2025, at least 5.0 percent of the average annual energy jurisdictional retail sales by that utility in 2019; . . ..

This law also requires the Commission to set energy efficiency savings targets for three-year periods after 2025.[392] The VCEA added to Code § 56-576 a definition of "total annual energy savings," which is, in pertinent part, "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."[393]

Since the Savings Targets became law, the Commission has considered how Dominion might demonstrate it has met them. Approximately 50 days after the VCEA became effective,

[389] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 284 Va. 726, 741, 735 S.E.2d 684, 691 (2012) ("[W]e presume that where the General Assembly has not placed an express limitation in a statutory grant of authority, it intended for the Commission, as an expert body, to exercise sound discretion.").

[390] *See* 2020 Va. Acts chs. 1193, 1194.

[391] Code § 56-596.2 B 2.

[392] Code § 56-596.2 B 3.

[393] Code § 56-576 (definition of "Total annual energy savings").

the Commission opened the EM&V Determination Case "to consider the baselines and measurement of savings for specified [Dominion DSM] programs."[394] In so doing, the Commission noted:

1) EM&V was regularly disputed in Dominion's previous DSM cases;
2) the Commission found in the *2019 DSM Case Final Order* "that the record shows more rigorous evaluation, measurement, and verification is necessary to ensure that the programs are, in *actual practice*, the proximate cause of a verifiable reduction in energy usage";[395] and
3) with changes in the law, including the GTSA's $870 million spending target for Dominion's DSM Programs and the VCEA's annual Savings Targets, along with incentive language in Subsection A 5 c, "savings attributable to energy efficiency programs and their calculation, including both baselines from which savings are measured and the methods of measurement, are gaining both relevance and prominence in the law and in cases before the Commission."[396]

The Commission stated that "in order to determine if Dominion is meeting its energy efficiency savings goals under the VCEA, the Commission must have confidence . . . in the Company's measurement of energy after a DSM program has been operating for a period of time, to be able to analyze the Company's DSM programs' actual measured results."[397]

The *EM&V Determination Case Order*, issued on October 27, 2021, reiterated this theme. The Commission, after highlighting energy-efficiency-related changes the VCEA made, concluded, "Thus, the measurement and verification of energy efficiency program savings is important to determine whether the utility has achieved the energy savings targets as well as whether it is eligible for such additional margins" under Subsection A 5 c.[398] Later in that same Order, the Commission emphasized "accurate measurement" of savings, noting "the savings Dominion claims from its DSM programs are savings that may form the basis of claims for . . . a financial award under Code § 56-585.1 A 5 c."[399] These Commission statements indicate that measuring and verifying savings to determine EE program achievements was foremost in the Commission's mind when it issued the *EM&V Determination Case Order*. This measurement and verification of savings was to be the key to determining compliance with the Savings Targets and eligibility for potential financial rewards that accompany meeting and exceeding the Savings Targets.

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[394] *EM&V Determination Case Order*, 2021 S.C.C. Ann. Rep. at 260.

[395] *2019 DSM Case Final Order*, 2020 S.C.C. Ann. Rep. at 375.

[396] *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of baseline determination, methodologies for evaluation, measurement, and verification of existing demand-side management programs, and the consideration of a standardized presentation of summary data for Virginia Electric and Power Company*, Case No. PUR-2020-00156, Order Initiating Proceeding at 2-4 (Aug. 28, 2020) ("*EM&V Determination Case Initial Order*").

[397] *EM&V Determination Case Initial Order* at 4.

[398] *EM&V Determination Case Order*, 2021 S.C.C. Ann. Rep. at 264.

[399] *Id.*, 2021 S.C.C. Ann. Rep. at 265.

The issue of how to determine compliance with the Savings Targets arose again in the 2021 DSM Case, which was filed on December 14, 2021, not long after the *EM&V Determination Case Order* was issued. Dominion requested Commission approval to use a gross savings metric to measure actual and projected compliance with the Savings Targets.[400] The Commission deferred a decision on this issue to a future case, stating:[401]

> 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 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.

These Commission Orders establish, among other things, that when the time comes for the Commission to determine compliance with the Savings Targets, Dominion must provide a factual basis that the total combined kWh savings its DSM programs and measures achieved in a given year equals the statutory percentage target for the year in question as specified in Code § 56-596.2. These Orders also establish that such factual information is likely to be EM&V information.

Dominion's EM&V process currently is guided by the EM&V Framework for Dominion's DSM Programs ("EM&V Framework") approved in the *EM&V Determination Case Order*.[402] The EM&V process also is guided by the Commission's EM&V Rules. The EM&V Rules were effective January 1, 2018,[403] before the VCEA established the Savings Targets. The EM&V Rules provide "minimum requirements for Virginia's electric and natural gas utilities related to evaluating, measuring, and verifying the effects of utility-sponsored demand-side management (DSM) programs consisting of demand response and energy efficiency measures."[404] Among other things, the EM&V Rules require that "EM&V reports shall include measure-level estimates of kilowatt, kilowatt-hour, dekatherm, and pipeline capacity savings as appropriate. An estimate that has been adjusted for free-ridership as well as an estimate that has not been adjusted for free-ridership should be included as appropriate."[405] The EM&V Rules

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[400] *2021 DSM Case Final Order*, 2022 S.C.C. Ann. Rep. at 386.

[401] *Id.*, 2022 S.C.C. Ann. Rep. at 387 (internal citations omitted).

[402] The EM&V Framework is Attachment A to the *EM&V Determination Case Order*.

[403] *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of Adopting New Rules Governing the Evaluation, Measurement, and Verification of the Effects of Utility-Sponsored Demand-Side Management Programs*, Case No. PUR-2017-00047, 2017 S.C.C. Ann. Rep. 489, 491, Order Adopting Rules and Regulations (Nov. 9, 2017).

[404] 20 VAC 5-318-10.

[405] 20 VAC 5-318-40 C.

define "[f]ree-ridership" as "a program participant that would have implemented the program measure or practice in the absence of the program."[406]

The EM&V Rules do not refer to "gross savings" or "net savings." The Commission-established EM&V Framework for Dominion also does not define "gross savings" or "net savings" but mentions net-to-gross studies.[407]

Factual Evidence of "Total Annual Energy Savings"

Now is the time for the Commission to determine if Dominion has met the 2022 Savings Target. In its Application, like in the 2021 DSM Case, Dominion requested the Commission measure compliance with the Savings Targets using a gross savings metric.[408] The evidence Dominion provided with its Application to establish the kWh savings achieved by its programs and measures is EM&V data provided by Company witnesses Walker and Feng.[409] Staff has found that the methodologies used by Dominion's third-party EM&V vendor, DNV (for whom Company witness Feng works),[410] "appear to comply with both the Commission EM&V Rules and the Final Order in the EM&V [Determination] Case."[411] Thus, it appears the EM&V Report is a credible data source concerning whether Dominion has met the Savings Targets.

The Difference between Gross Savings and Net Savings. The EM&V Report generally provides information such as gross and net savings for each of Dominion's active DSM programs. It does not provide information with wording exactly matching the relevant Virginia statutes. I must therefore consider how the gross and net savings information from the EM&V Report may be considered or interpreted in terms of "total annual energy savings achieved by [Dominion's] energy efficiency and demand response programs and measures."[412]

The EM&V Report distinguishes between gross and net savings calculations as follows:[413]

> The [Technical Resource Manual] protocols are designed to estimate gross savings program impacts, or more specifically, the total amount of annual energy savings and demand reductions *related to* program activity. However, the amount of energy savings and demand reductions that can be *attributed to* the

[406] 20 VAC 5-318-20 (definition of "Free-ridership").

[407] EM&V Framework, Attachment A to the *EM&V Determination Case Order*, at ¶ 6.

[408] Ex. 2 (Application) at 11.

[409] Ex. 3 (Walker Direct) at 11-14 and attached Schedules 1 and 3; Ex. 10 (Feng Direct) at Appendix C.

[410] Ex. 10 (Feng Direct) at 1.

[411] Ex. 25 (Boehnlein Direct) at 12.

[412] Code § 56-576 (definition of "Total annual energy savings").

[413] Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Appendix D, § 3.1.6, p. 16 (emphasis added).

> program is not the same as the estimated gross savings. This is because any given program's design can have intended and unintended outcomes. The amount of energy savings and demand reductions that can be *attributed to* the program is referred to as net savings, which is the magnitude of the impact of the program's intended outcomes.

The combination of adjustments to gross savings for unintended outcomes results in a net-to-gross ratio for each program provided in the EM&V Report. The EM&V Report defined the most common unintended outcomes: free-ridership, participant "like" spillover, participant "unlike" spillover, non-participant spillover, leakage, and snapback.[414]

DNV considered one unintended outcome, free-ridership, in calculating net savings for all programs. Similar to the EM&V Rules' definition, the EM&V Report's definition of free-ridership is "program participants who consume the incentive but were not influenced by the program through which the measure is delivered, thereby reducing gross savings."[415] The EM&V Report also stated DNV considered another unintended outcome, participant "like" spillover, when calculating net savings for the Non-residential Energy Audit Program. DNV defined this unintended outcome as "past program participants who subsequently install those same program-eligible EE measures, but do not consume the incentive, having been already influenced by the program through which the measure is delivered, thereby increasing gross savings."[416]

The EM&V Report's definition of net savings generally tracks the definition of "net savings" agreed upon by the parties and Staff: net savings is equal to gross savings minus free riders, plus spillover, plus market effects.[417] An attachment to Staff witness Boehnlein's testimony illustrates this equation as follows:[418]

> Net Savings = Gross Savings – FR + SO + ME not already captured by SO
>
> Where:
> FR = free-ridership savings

[414] *Id.*

[415] *Id.*

[416] *Id.* During the hearing, Company witness Feng testified spillover effects were also included in calculating net savings for the Phase VI Non-residential Prescriptive Program, starting with the EM&V Report for the year 2020, and were included in "the nonresidential lighting measures across a number of nonresidential programs" starting with the 2023 EM&V Report providing information on the 2022 program year. Tr. at 267, 269-70 (Feng). Ms. Feng did not state whether these spillover effects were participant "like" spillover, participant "unlike" spillover, or non-participant spillover, or some combination thereof.

[417] Tr. at 90-93 (Fry, for Dominion), 119-20 (Grevatt, for APV), 199 (Boehnlein, for Staff). *Accord*, Ex. 16 (Harnish Direct) at 18.

[418] Ex. 25 (Boehnlein Direct) at Attached Appendix 1, Chapter 21 of *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures*, at 6.

SO = spillover savings
ME = market effects savings not already captured by SO

Accordingly, there is factual evidence in the record to support viewing net savings as equal to gross savings, minus free-ridership savings, plus savings from spillover, plus savings from market effects.

<u>Applying Gross and Net Savings to Code § 56-596.2</u>. Code § 56-596.2 requires "each investor-owned incumbent electric utility [to] implement energy efficiency programs and measures to achieve the . . . total annual energy savings" percentages set forth therein. Code § 56-576 defines "total annual energy savings" in pertinent part as "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."

Are gross savings, or net savings, more representative of "the total combined kilowatt-hour savings achieved by" Dominion's DSM programs and measures?

An early answer to this question was provided by the Company during the EM&V Determination Case. There, the Company provided an "EM&V Background and Information Report."[419] In the current proceeding, Staff witness Boehnlein provided a quotation from this report, which was prepared by DNV. According to Mr. Boehnlein, the report stated:[420]

> "To initiate the proceeding, the Commission stated that the 'true test of any DSM program is whether it is the "proximate cause" of a verifiable reduction in energy usage.' In this report, DNV GL explores this same question with different terminology that is more standard in the EM&V industry. In place of 'the proximate cause of a verifiable reduction in energy usage,' *we use the terms net savings or savings attributable to the DSM programs and measures*. [emphasis added]

Mr. Boehnlein further quoted this report as stating:[421]

> "In summary, DNV GL believes that the Commission expects the Company's EM&V practices should use the most locally sourced data possible *to produce program attributable savings that the Commission may rely upon to measure the Company's DSM program activities against legislative and other goals* . . .

During the hearing in this case, Company witness Feng confirmed she still believes the statement that "in place of the proximate cause of a verified reduction in energy usage, we use

[419] *Id.* at 8-9.

[420] *Id.* at 9-10 (quoting EM&V Background & Information Report at 4-5).

[421] *Id.* at 10-11 (quoting EM&V Background & Information Report at 53).

the terms 'net savings' or 'savings attributable to the DSM programs and measures.'"[422] These statements reveal that the Company's EM&V vendor views net savings as "the proximate cause of a verifiable reduction in energy usage"[423] and as the measure of whether Dominion's programs satisfy statutory goals, such as the Savings Targets.

These statements alone are not the only evidence for the use of a net savings metric to determine compliance with the Savings Targets. The Commission's *2021 DSM Case Final Order* is also instructive. When explaining that "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," the Commission went on to state:[424]

> 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." 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.

The Commission then explained in a footnote, "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."[425]

The factual evidence in this case is that gross savings are energy savings and demand reductions *related to* program activity.[426] The factual evidence also reflects that net savings is the energy savings and demand reductions that can be *attributed to* a program, determined by taking gross savings, subtracting free-ridership savings, and adding savings related to spillover and market effects.[427] The EM&V Report defines free-ridership, the one unintended outcome DNV calculated when determining net savings for each of the Company's programs, as "program participants who consume the incentive *but were not influenced by* the program through which the measure is delivered, thereby reducing gross savings."[428] The EM&V Rules

[422] Tr. at 272-73 (Feng).

[423] *EM&V Determination Case Initial Order* at 2 (citing *2019 DSM Case Final Order*, 2020 S.C.C. Ann. Rep. at 375).

[424] *2021 DSM Case Final Order*, 2022 S.C.C. Ann. Rep. at 387.

[425] *Id.* at n.33.

[426] Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Appendix D, § 3.1.6, p. 16 (emphasis added).

[427] *Id.* (emphasis added). *See also*, *e.g.*, Ex. 25 (Boehnlein Direct) at Attached Appendix 1, Chapter 21 of *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures*, at 6.

[428] Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Appendix D, § 3.1.6, p. 16 (emphasis added).

define "[f]ree-ridership" as "a program participant that would have implemented the program measure or practice *in the absence of* the program."[429]

Net savings, then, subtracts from gross savings, those savings that would have occurred if the EE program in question had not existed. Such free-ridership savings cannot be attributed to the program, because the program participant would have implemented the energy-saving measure even if there was no EE program in which to participate. In other words, the EE program did not obtain, gain, attain, or accomplish (*i.e.*, did not *achieve*) the free-ridership savings.

Simply put, in terms of free-ridership, net savings subtracts from total "gross savings" those savings that *did not* occur because of an EE program, leaving the savings that *did* occur because of the program. Similarly, spillover and market effects, which are additions to net savings, are factors that refer to savings from people and markets that were influenced by or induced by an EE program.[430] Accordingly, I interpret net savings as more likely to be reflective of the actual savings *resulting from* a program or measure, or in other words, to be *achieved by* that program or measure, in keeping with the plain language of Code § 56-576's definition of "total annual energy savings."

Based on the above, I conclude that the net energy savings described by the Company and detailed in the 2023 EM&V Report factually represent the total annual energy savings achieved by Dominion's energy efficiency programs and measures and are appropriate for determining compliance with the 2022 Savings Target listed in Code § 56-596.2.

Using a net savings metric to measure compliance with the 2022 Savings Target, what does the evidence in this case reveal? The evidence shows that Dominion achieved savings of 1.23% toward the 1.25% goal.[431] Accordingly, Dominion has not met the 2022 Savings Target.

Should the Commission decide instead to use a gross savings metric to measure compliance with the 2022 Savings Target, the evidence demonstrates that Dominion achieved savings of 1.9%, surpassing the 2022 Savings Target.[432]

My Disagreement with Dominion's Definitions of Gross and Net Savings

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[429] 20 VAC 5-318-20 (definition of "Free-ridership") (emphasis added).

[430] Ex. 25 (Boehnlein Direct) at Attached Appendix 1, Chapter 21 of *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures*, at 4 (defining participant spillover as "the additional energy savings that are achieved when a program participant—*as a result of the program's influence*—installs EE measures or practices outside the efficiency program after having participated"; defining non-participant spillover as "the additional energy savings that are achieved when a nonparticipant implements EE measures or practices *as a result of the program's influence* (for example, through exposure to the program) but is not accounted for in program savings"; and defining market effects "as spillover savings that reflect significant *program-induced* changes in the structure or functioning of energy efficiency markets." (internal citation omitted and emphasis added). *See also* Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Appendix D, § 3.1.6, p. 16.

[431] *See, e.g.*, Ex. 21 (Smith Direct) at 11.

[432] *Id.*

The Virginia General Assembly has not used the terms "gross" and "net" when defining the "total annual energy savings" to be achieved in designated years. Rather, the relevant portions of Code §§ 56-576 and 56-596.2 speak to "programs and measures" that achieve savings.

In its Legal Memorandum, Dominion bridged this gap by contending, "[G]ross savings are the savings from the energy efficiency *measure* (*e.g.*, savings from a high efficiency light bulb or air conditioner upgrade) while net savings are the savings from the energy efficiency *program* (*e.g.*, the Residential Home Energy Assessment Program or Non-residential Heating and Cooling Efficiency Program).[433] The Company argued that "[t]otal annual energy savings," which is "the total combined kilowatt-hour savings achieved by electric utility energy efficiency and demand response *programs and measures* . . ."[434] requires use of a gross savings metric. Dominion contended, "Gross savings account for all energy efficiency savings achieved by all *programs and measures*, regardless of the consumers' motives in taking such actions or making such investments. Therefore, gross savings align with the statutory definition of 'total annual energy savings.'"[435]

The Supreme Court of Virginia has instructed that "When construing a statute, our primary objective is to ascertain and give effect to legislative intent, as expressed by the language used in the statute."[436] Further, "When the language of a statute is unambiguous, we are bound by the plain meaning of that language."[437]

There is nothing inherently ambiguous about the terms "programs" and "measures" as used in Code §§ 56-585.1 A 5 c and 56-596.2. The standard dictionary definitions for "programs" and "measures" do not involve gross or net savings. Rather, in its ordinary meaning, a "program" could refer to a public notice, an outline of what will happen during a public performance, a curriculum or syllabus, or a sequence of coded instructions. Its definitions also include " : a plan or system under which action may be taken toward a goal."[438] In its ordinary meaning, a "measure" can be used in numerous ways to discuss dimension, degree, comparison, and music, but one definition is "a step planned or taken as a means to an end."[439]

By their ordinary meanings, measures (steps planned as a means to an end) can make up programs (plans or systems of actions to take to reach a goal). This in fact is how Dominion's DSM Portfolio is structured: one or more measures comprise programs to reach a DSM goal.

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433 Dominion's Legal Memorandum at 5. The portion of the document from which Dominion took these definitions is found in Ex. 25 (Boehnlein Direct) at Attached Appendix 1, Chapter 21 of *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures*, at 3.

434 Code § 56-576 (definition of "Total annual energy savings").

435 Dominion's Legal Memorandum at 4 (emphasis added).

436 *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. at 161, 861 S.E.2d at 51 (internal citations omitted).

437 *Id.*

438 "program." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed June 2, 2024).

439 "measure." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed June 2, 2024).

This structure was acknowledged in the EM&V Rules.[440] Even when asked, no party or Staff provided an example of a measure operating outside a program.[441] (The closest thing anyone could name was that it is possible to have a program composed of just one measure.[442]) Since the terms "programs" and "measures," in their ordinary meanings, are unambiguous, I am "bound by the plain meaning of that language."[443] [444]

The tenets of statutory construction also require that I "interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal."[445] Moreover, "A corollary of the rule that courts interpret a statute as a consistent and harmonious whole is that when a term is used in different sections of a statute, we give it the same meaning in each instance unless there is a clear indication the General Assembly intended a different meaning."[446]

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[440] 20 VAC 5-318-10 A ("This chapter sets forth minimum requirements for Virginia's electric and natural gas utilities related to evaluating, measuring, and verifying the effects of utility-sponsored demand-side management (DSM) *programs consisting of demand response and energy efficiency measures*.") (Emphasis added.)

[441] *See* Tr. at 288 (Benforado, for APV), 289 (Jaffe, for VAEEC); Staff's Legal Memorandum at 14-16. *See also* Ex. 25 (Boehnlein Direct) at 13 and Attachment ATB-1 (Company's Response to Staff Question No. 3-20) (In response to the question, "Do all of the Company's currently approved programs include at least one measure?" Dominion responded, "Yes, all the Company's current programs and pilot include at least one measure."). Consumer Counsel did not comment on this issue.

[442] Tr. at 289 (Jaffe, for VAEEC, stating, "[P]rograms, of course, are made up of individual measures. There are programs, there can be a program that is just one measure, so then a measure can be a program in that sense, if there's only one measure in the program."); *accord*, Ex. 25 (Boehnlein Direct) at 13 ("As explained by the Company, 'all the Company's current programs and pilot include at least one measure.'" (internal citation omitted).

[443] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. at 161, 861 S.E.2d at 51 (internal citations omitted).

[444] Before leaving this topic, I address the Company's assertion that the Commission cannot approve "measures" but only can approve "programs" under the wording of Subsection A 5 c. Tr. at 327-28 (Ray, for Dominion). Dominion interprets Subsection A 5 c as allowing only the approval of programs because this statute reads, "The Commission shall only approve such a petition if it finds that the *program* is in the public interest." *Id.* (quoting Subsection A 5 c, emphasis added). Though the Commission has not in the past approved individual measures, its practice has been to approve programs with an eye to the measures represented as forming the contents of those programs. In the *2016 DSM Case Final Order*, the Commission discussed a situation where Staff found the Company was offering refrigeration measures as part of its Small Business Improvement Program, when that measure was not a proposed component of that program when it was approved in the *2015 DSM Case Final Order*. The Commission stated, "After review of the record we clarify that refrigeration measures will not be part of the SBI Program going forward." *2016 DSM Case Final Order*, 2017 S.C.C. Ann. Rep. at 389. In making this determination, the Commission referenced the 2012 DSM Case, wherein Dominion had "requested approval of an administrative process whereby the Staff could approve limited modifications to the design of previously approved DSM programs outside of a formal proceeding, including the modification, removal or addition of measures. The Commission rejected the Company's proposal . . .." *2016 DSM Case Final Order*, 2017 S.C.C. Ann. Rep. at 389 n.48 (referencing *Petition of Virginia Electric and Power Company, For approval to extend two 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-2012-00100, 2013 S.C.C. Ann. Rep. 285, 288, Order (Apr. 19, 2013)). This question arose again in the 2021 DSM Case. The Commission, in the *2021 DSM Case Final Order*, adopted the Chief Hearing Examiner's finding and recommendation that "[t]he Commission should deny the Company's request for an administrative process to approve modifications to previously approved DSM programs." *2021 DSM Case Final Order*, 2022 S.C.C. Ann. Rep. at 386-87.

[445] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. at 161, 861 S.E.2d at 51 (internal citations omitted).

[446] *Eberhardt v. Fairfax Cnty. Emps. Ret. Sys. Bd. of Trustees*, 283 Va. 190, 195, 721 S.E.2d 524, 526-27 (2012).

The VCEA amended and reenacted several Code provisions, resulting in the use of the word "measures" 16 times, in reference to a variety of topics. In addition to its use in the definition of "[t]otal annual energy savings" in Code § 56-576 and in Code § 56-596.2, it is used to refer to:

- demand response measures;[447]
- physical security measures;
- cyber security measures;[448]
- "measures, such as but not limited to the installation of advanced meters";[449]
- "engineering-based estimates of energy and demand savings associated with specific energy efficiency measures";[450]
- peak-shaving measures;[451]
- "the duration of the service life of [a large general service] customer's energy efficiency measures";[452]
- "measures to facilitate the integration of distributed energy resources";[453]
- "measures to enhance physical electric distribution grid reliability and security";[454]
- "[r]evenue reductions related to energy efficiency measures";[455] and
- "energy efficiency measures for public facilities."[456]

In each of these instances, the term "measures" makes sense when given its plain meaning, steps taken as a means to an end. In at least several of these instances, to view the "measure" as an activity that achieves "gross savings," or any savings at all, does not make sense. For example, how are physical or cyber security measures activities that achieve any type of energy savings? These "measures" are best viewed as steps taken toward the goals of physical and cyber security. Similarly, how is the measure of installing advanced meters an activity that achieves energy savings? The activity of installation does not itself save energy. The only way to interpret the VCEA as a "consistent and harmonious whole,"[457] and to give the term "measures" the same meaning in each instance it is used in the VCEA,[458] is to interpret this term

[447] Code § 56-576 (definition of "Demand response").

[448] *Id.* (definition of "Electric distribution grid transformation project") referring to both physical and cyber security measures).

[449] *Id.* (definition of "Energy efficiency program").

[450] *Id.* (definition of "Measured and verified").

[451] *Id.* (definition of "Peak-shaving").

[452] Code § 56-585.1 A 5 c.

[453] Code § 56-585.1 A 6.

[454] *Id.*

[455] Code § 56-585.1 A 8 a (used twice).

[456] Code § 56-585.5 D 5.

[457] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. at 161, 861 S.E.2d at 51.

[458] *See Eberhardt v. Fairfax Cnty. Emps. Ret. Sys. Bd. of Trustees*, 283 Va. at 195, 721 S.E.2d at 524, 526 (2012).

in its ordinary meaning, steps taken as a means to an end. As Consumer Counsel has argued, "It is comparatively far-fetched to claim . . . that the General Assembly intended to invoke the 'gross savings' term of art when it added 'and measures' after 'programs' in §§ 56-576 and 56-596.2."[459]

Guidance for Future Cases

Assuming the Commission were to decide, on the record of this case, that net savings is an appropriate estimate of "total annual energy savings" for measuring compliance with the 2022 Savings Target, what are the categories of "net savings" that Dominion has provided? Are these the sort of savings Dominion should continue to provide to determine compliance with the Savings Targets in future years?

The EM&V Rules require that "EM&V reports shall include measure-level estimates of kilowatt, kilowatt-hour, dekatherm, and pipeline capacity savings as appropriate. An estimate that has been adjusted for free-ridership as well as an estimate that has not been adjusted for free-ridership should be included as appropriate."[460] Thus, at a minimum, savings net of free-ridership should be calculated for determining compliance with the Savings Targets. According to the EM&V Report, DNV's net-to-gross studies for Dominion's DSM programs have included free-ridership "in all previous impact evaluations,"[461] so Dominion appears to have met this requirement in the EM&V Report provided as part of its evidence in this case.

Additionally, the EM&V Report provided by Company witness Feng stated DNV's net-to-gross studies have also included participant "like" spillover "only in the previous Non-residential Energy Audit [P]rogram impact evaluation."[462] Company witness Feng also stated during the hearing that spillover effects were included for the Phase VI Non-residential Prescriptive Program starting with the EM&V Report for the year 2020. In addition, spillover effects were included in "the nonresidential lighting measures across a number of nonresidential programs" starting with the 2023 EM&V Report providing information on the 2022 program year.[463]

In the future, should the Commission continue to accept the calculation of net savings as Dominion has provided in this case, or should the Commission require the Company to account for spillover and market effects to a greater extent?

During the hearing, there was considerable discussion about the value and cost of net savings calculations that account for spillover and market effects. APV witness Grevatt testified that though it is appropriate to calculate spillover when determining net savings, "it's far, far less

[459] Consumer Counsel's Legal Memorandum at 10.

[460] 20 VAC 5-318-40 C.

[461] Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Appendix D, § 3.1.6, p. 16.

[462] *Id.*

[463] Tr. at 267, 269-70 (Feng). Ms. Feng did not state during the hearing whether the spillover effects included were participant "like" spillover, participant "unlike" spillover, non-participant spillover, or some combination thereof.

commonly used . . . than the free ridership."[464] He also testified that market effects can be difficult to determine, and he has "not looked at a lot of evaluations where any appreciable amount of market effects were included."[465] Staff witness Boehnlein advocated for Commission approval of "the net numbers the Company has already calculated in the 2023 EM&V [R]eport, which were developed within the [EM&V Framework]";[466] which are bounded by a 5% to 7% cap on EM&V costs; and which, to his knowledge, do not account for spillover and market effects.[467] Company witness Fry testified that if the Commission is going to determine the Company's eligibility for financial rewards under Subsection A 5 c using net savings, then the value of net savings information would increase, which "would warrant an increased expenditure."[468] He argued that with additional spending, the net savings calculation "may be slightly more accurate, but the measurement itself would not produce more savings. In that regard, it's a needless cost investment that produces no more savings."[469]

The EM&V Framework established for Dominion did not mention specific categories of net savings such as free ridership, spillover, and market effects. Rather, the EM&V Framework is broad, allowing for evaluation budgets "in the range of 5 to 7 percent of program spending."[470] By the Commission's own design, the EM&V Framework allows Dominion to exercise "discretion to determine the appropriate EM&V for given DSM programs and measures."[471] The Commission stated this discretion was limited in that "the EM&V protocol that Dominion plans to implement for any particular DSM program or measure must be vetted through the stakeholder process, proposed in a DSM Update case, and approved by the Commission."[472] Bounded discretion, not rigidity, thus characterizes the EM&V Framework.

Item #2 of the EM&V Framework is a "Value of Information framework" that "assesses the extent to which various evaluation activities cost-effectively reduce uncertainty and mitigate risk."[473] How much and what type of evaluation activities to conduct are based on considerations such as how much uncertainty a program contributes to Dominion's DSM Portfolio, whether empirical studies can reduce that uncertainty, and budget constraints.[474] Company witness Feng agreed with Mr. Fry that if the Commission opts to measure compliance with the Savings Targets on a net basis, "the value of that information would increase, and so, therefore, it's very likely we would recommend studying those other effects in future programs

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[464] Tr. at 125-26 (Grevatt).

[465] *Id.* at 126 (Grevatt).

[466] *Id.* at 197 (Boehnlein).

[467] *Id.* at 206-07 (Boehnlein). Note that Staff witness Boehnlein testified before Company witness Feng.

[468] *Id.* at 257-60 (Fry).

[469] *Id.* at 263 (Fry).

[470] *EM&V Determination Case Order*, 2022 S.C.C. Ann. Rep. at 265.

[471] *Id.*

[472] *Id.*

[473] *Id.* at Attachment A, ¶ 2.

[474] *Id.*

that would get evaluated."[475] She indicated that currently, Dominion is spending around 6% of annual program spending on EM&V activities, so there is some headroom to increase EM&V-related costs under the EM&V Framework.[476]

To the extent the Commission agrees with my analysis that net savings is the appropriate measure for compliance with the Savings Targets and to the extent the Commission desires to give guidance on how it will measure compliance with the Savings Targets in the future, the above-discussed considerations suggest the following parameters:

1. At a minimum, the Company's net savings calculations should account for free-ridership. This comports with DNV's current practice of accounting for free-ridership for all EE programs[477] and with the EM&V Rules, which require EM&V reports to include "measure-level estimates of kilowatt, kilowatt-hour, dekatherm, and pipeline capacity savings as appropriate," including estimates that have been adjusted for free-ridership.[478] Adjusting gross savings for free-ridership also appears to be the most common adjustment made by other jurisdictions.[479]
2. Future measures of net savings for DSM programs may account for other adjustments such as spillover and market effects, to the extent (1) the Value of Information framework increases the value of measuring for such adjustments; (2) there is room in the 5% to 7% range for EM&V spending to accomplish such measurements; and (3) the currently approved EM&V plans allow for such measurement.[480]
3. To the extent the Company believes the value of measuring for such adjustments is necessary despite exceeding the 7% cap and/or needing to revise the EM&V plans for one or more programs, the Company is free to request such additional spending, or changes to the EM&V plans, after vetting through the stakeholder process.[481]

In my view, these parameters will provide meaningful guidance for future cases while also preserving judicial resources by relying on the already-existing EM&V Framework, the

[475] Tr. at 267-68 (Feng).

[476] *Id.* at 268-69 (Feng).

[477] Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Appendix D, § 3.1.6, p. 16.

[478] 20 VAC 5-318-40 C.

[479] Ex. 25 (Boehnlein Direct) at Attached Appendix 1, Chapter 21 of *The Uniform Methods Project: Methods for Determining Energy Efficiency Savings for Specific Measures*, at 6 ("For example, evaluators almost always include free-ridership, but, because of policy choices made in a jurisdiction, most do not always fully consider spillover and market effects . . .. Increasingly, the trend is to include estimates of spillover in net savings evaluations. The inclusion of market effects is also increasing, but to a lesser degree than spillover.").

[480] *See, e.g.*, Tr. at 267-69, 274-76 (Feng) (explaining, among other things, that she does not believe the EM&V plans for individual programs will have to change if the Commission decides to measure compliance with the Savings Targets by a net savings metric, and explaining that use of a net savings metric would increase the value of "measuring that spillover while balancing that with the cost of measuring it").

[481] *EM&V Determination Case Order*, 2022 S.C.C. Ann. Rep. at 265.

result of extensive work in the EM&V Determination Case.[482] I also note the Commission has established Case No. PUR-2023-00227 to consider, among other things, the setting of energy efficiency savings targets for three-year-periods beginning in 2026.[483] Code § 56-596.2 B 3 requires, "As part of such proceeding, the Commission shall consider the feasibility of achieving energy efficiency goals and future energy efficiency savings through cost-effective programs and measures." The above outlined parameters could therefore be considered temporary guidelines subject to change, particularly with the establishment of new EE goals in the future.

An Observation on Customer Cost

I am mindful that my recommendation to use a net savings metric is not without drawbacks. Primary among these is cost to customers. There is testimony that achieving the Savings Targets on a net savings basis is more expensive than achieving them on a gross savings basis.[484] However, there is also testimony that customers pay for the margin and additional basis point adder, if the Company is due them for meeting or exceeding the Savings Targets,[485] which is arguably an easier feat when a gross savings metric is the measure of statutory compliance.

When looking at compliance with the Savings Targets on a gross savings metric, customers would pay for all the costs of the EE programs, plus the costs of the margin on O&M expenses and the costs of the 1.2% additional basis point adder if approved by the Commission. On a net savings basis, customers would pay for all the costs of the EE programs, plus, in the future, the costs of additional programs to achieve even more EE savings, because the Company needs to achieve more savings under a net track than under a gross track.[486] In the latter instance, any additional spending at least would create additional MWh savings, in further support of the VCEA's overall goal "to decarbonize the electricity sector by 2045 for Dominion['s] service territory."[487]

PART 4: SUBSECTION A 5 C PERFORMANCE INCENTIVE

Under Subsection A 5 c, Dominion is potentially eligible for two monetary bonuses:

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[482] *See, e.g.*, Tr at 318 (Dimitri, for Staff, explaining that the Value of Information framework, which is one component of the EM&V Framework, "balances rigor and accuracy with overall EM&V budgets and the value of information gained from various EM&V procedures."). *Accord, EM&V Determination Case Order*, 2022 S.C.C. Ann. Rep. at 265.

[483] *Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of establishing energy efficiency savings targets pursuant to Code §§ 56-596.2 B 3 and 56-596.2:2*, Case No. PUR-2023-00227, Order Establishing Proceeding (Jan. 5, 2024).

[484] Ex. 11 (Fry Direct) at 7.

[485] Tr. at 260 (Fry).

[486] Ex. 11 (Fry Direct) at 7 (estimating that using a gross savings metric to meet the 2022-2025 Savings Targets, the Company would need to save 1,690,363 MWh of energy collectively, but using a net savings metric to meet the 2022-2025 Savings Targets, the Company would need to save 2,053,725 MWh).

[487] Tr. at 297 (Jaffe, for VAEEC).

> Beginning January 1, 2022, and thereafter, if the Commission determines that the utility meets in any year the annual energy efficiency standards set forth in § 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program operating expenses in that year, to be recovered through a rate adjustment clause, which margin shall be equal to the general rate of return on common equity . . .. The Commission shall also award 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, beyond the annual requirements set forth in § 56-596.2, provided that the total performance incentive awarded in any year shall not exceed 10 percent of that utility's total energy efficiency program spending in that same year.

Both the Company and Staff agree that the 10% performance incentive award cap in this case is $6.32 million (that is, 10% of the total EE program spending in 2022, which was $63.21 million).[488] Dominion has applied the 10% cap only to the additional basis point adder for exceeding the 2022 Savings Target, whereas Staff has applied the 10% cap to the combination of both the additional basis point adder and the margin on O&M costs.[489] Consumer Counsel and APV agree with Staff's calculation.[490]

As discussed above, to the extent the Commission uses a net savings metric to judge whether the Company has met the 2022 Savings Target of 1.25% of 2019 jurisdictional retail sales, the record evidence indicates Dominion fell short during 2022, achieving only 1.23% of such sales.[491] Dominion is therefore entitled to neither a margin on O&M expenses for meeting the 2022 Savings Target, nor any additional basis point adder for exceeding the 2022 Savings Target.

To the extent the Commission uses a gross savings metric to judge whether the Company has met the 2022 Savings Target, Dominion's and Staff's calculations differ:[492]

[488] *See, e.g*, Ex. 17 (Mangalam Direct) at 9; Ex. 31 (Wooldridge Rebuttal) at 2.

[489] *See, e.g.*, Ex. 3 (Walker Direct) at 13-14; Ex. 7 and 7ES (Wooldridge Direct) at 4-5 and Attached Schedule 1, p. 28; Ex. 17 (Mangalam direct) at 7-10.

[490] Tr. at 286-87 (Benforado, for APV), 308-10 (Farmer, for Consumer Counsel).

[491] *See, e.g.*, Ex. 3 (Walker Direct) at 13.

[492] Ex. 31 (Wooldridge Rebuttal) at 2-3 and Attached Rebuttal Schedule 1; Ex. 17 (Mangalam Direct) at 9.

Item	Company	Staff
Margin on O&M Expenses		
Margin on O&M Expenses ($63.21M x 9.35% ROE)	$5.91M	$5.91M
Counts toward 10% cap?	No	Yes
Additional Basis Point Adder		
Gross Savings above Savings Target (1.9% - 1.25%)	0.65%	0.65%
20 basis points for each 0.1%	1.20%	1.20%
Dollar Equivalent (63.21M x 1.20%)	$0.76M	$0.76M
Counts toward 10% cap?	Yes	Yes
Application of 10% Cap		
Dollar Equivalent of Cap ($63.21M x 10%)	$6.32M	$6.32M
Spend Toward Cap	$0.76M	$5.91M +$0.76M = $6.67M
Was Cap Exceeded?	No	Yes
End Result	**Company receives $6.67M ($5.91M + $0.76M)**	**Company receives $6.32M ($5.91M + a portion of $0.76M, up to $6.32M cap)**

Since there is no definition of "total performance incentive" in Title 56 generally, in Chapter 23 of Title 56, or in Code § 56-585.1, I interpret what constitutes the "total performance incentive," by looking to the plain meaning of the relevant words and by interpreting "the several parts of a statute as a consistent and harmonious whole."[493]

The ordinary definition of the word "total," as an adjective, is "comprising or constituting a whole : ENTIRE."[494] An "incentive" is "something that incites or has a tendency to incite to determination or action."[495] "Incite," in turn, means "to move to action : stir up : spur on : urge on."[496] To "award" means "to confer or bestow as being deserved or merited or needed" or "to give by judicial decree or after careful consideration."[497]

Interpreting these words in their statutory context, I note that Subsection A 5 c is one part of Code § 56-585.1. This is a lengthy statute, running 22 single-spaced pages if printed on 8.5 x 11 paper. In the entirety of this statute, the term "performance incentive" is found only once, in Subsection A 5 c.

The single term "incentive" is used three additional times throughout Code § 56-585.1, as follows. Twice, it is used in Code § 56-585.1 A 5 g in reference to utility-operated programs for

[493] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. at 161, 861 S.E.2d at 51 (internal citations omitted).

[494] "total." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed May 30, 2024).

[495] "incentive." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed May 30, 2024).

[496] "incite." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed May 30, 2024).

[497] "award." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed May 30, 2024).

low-income, elderly, and disabled individuals and/or organizations that provide services to such individuals. The utility creates programs that incite particular groups of customers to action, *i.e.*, to participate in the programs. The third use of "incentive" alone is in Code § 56-585.1 A 6. This subsection once provided Phase I and Phase II utilities an "incentive," in the form of an enhanced rate of return on common equity, to undertake certain generation-related projects described therein. This subsection incited a utility with additional money – more than that to which the utility would ordinarily be entitled – to pursue certain action regarding generating facilities.

The term "total" is used 12 times throughout Code § 56-585.1, including its use in "total performance incentive," in Subsection A 5 c. Each time, the term "total" refers to the adding up of categories of things to arrive at a sum – the adding up of spending on EE programs during a particular year,[498] the adding up of savings achieved by EE programs and measures,[499] the adding up of customer bill savings from DSM programs,[500] the adding up of occurrences of unplanned outages,[501] twice in reference to the adding up of costs to underground distribution tap lines,[502] twice in reference to the adding up of megawatts from generating sources,[503] and three times in reference to the adding up of multiple rates to determine aggregate rates.[504] In the context of

[498] In the phrase, "provided that the total performance incentive awarded in any year shall not exceed 10 percent of that utility's *total* energy efficiency program spending in that same year." Code § 56-585.1 A 5 c (emphasis added).

[499] In the context of the Commission monitoring and reporting to the General Assembly on "each utility's compliance with the *total* annual savings required by § 56-596.2." Code § 56-585.1 A 5 c (emphasis added). Code § 56-576 (an earlier portion of Title 56, Chapter 23) defines "total annual energy savings" as "the total combined [kWh] 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."

[500] Code § 56-585.1 A 5 c requires the Commission to "monitor and report to the General Assembly . . . *total* customer bill savings that the programs produce." (Emphasis added.)

[501] In the phrase, "an average of nine or more *total* unplanned outage events-per-mile over a preceding 10-year period." Code § 56-585.1 A 6 (emphasis added).

[502] In the phrase, "provided that the *total* costs associated with the replacement of any subset of existing overhead distribution tap lines proposed by the utility with new underground facilities, exclusive of financing costs, shall not exceed an average cost per customer of $20,000 . . . and, further, such *total* costs shall not exceed an average cost per mile of tap lines converted, exclusive of financing costs, of $750,000." Code § 56-585.1 A 6 (emphasis added).

[503] In the phrase, "if the Commission finds during the triennial review conducted for a Phase II Utility in 2021 that such utility has not filed applications for all necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled generation facilities that would add a *total* capacity of at least 1500 megawatts to the amount of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been received, that the utility has not made reasonable and good faith efforts to construct one or more such facilities that will provide such additional *total* capacity within a reasonable time after obtaining such approvals . . .." Code § 56-585.1 A 6 (emphasis added).

[504] In Code § 56-585.1 A 10, "total" appears in the phrase "the *total* aggregate regulated rates of such utility at the end of the most recently ended 12-month test period" and in the phrase "when compared to the *total* aggregate regulated rates of such utility as determined pursuant to the review conducted for the base period." The third use defines "*Total* aggregate regulated rates" as including "(i) fuel tariffs approved pursuant to § 56 249.6, except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56 249.6; (ii) rate adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July 1, 2009." (Emphasis added.)

Code § 56-585.1, therefore, it would be unusual for the term "total" to refer to just one item and not the adding up of more than one item to reach a sum, an entire amount that comprises a whole. The tenets of statutory construction caution against embracing an unusual interpretation for just one use of a word used multiple times in a statute.[505]

So, what is being added up, or totaled? The terms "award" and "awarded" provide the answer.[506] Under Subsection A 5 c, a utility is incentivized, or spurred to action with the promise of a financial reward, to do two things. First, there is an award for the utility to "meet[] in any year the annual energy efficiency standards set forth in § 56-596.2."[507] In return for accomplishing the first objective, "the Commission shall *award* a margin on energy efficiency program operating expenses in that year . . . which margin shall be equal to the general rate of return on common equity."[508] Subsection A 5 c then states this award "shall be applied as part of the utility's next [RAC] true-up proceeding."

Should the utility accomplish the first objective of meeting an annual Savings Target, Subsection A 5 c provides a second incentive: for the utility to achieve, through its EE programs, annual savings "beyond the annual requirements set forth in § 56-596.2."[509] In return for accomplishing the second objective, "the Commission shall *also award* an *additional* 20 basis points for each *additional* incremental 0.1 percent in annual savings in any year . . . beyond the annual requirements set forth in § 56-596.2."[510] This phrasing (by the use of *also* and *additional*) clearly indicates there is a second award, and this second award is in addition to the first. By the plain language of Subsection A 5 c, addition is indicated. The second incentive is added to the first.

The conclusion of the paragraph setting forth these two opportunities for award ties them together. It reads, "*provided that the total performance incentive awarded* in any year shall not exceed 10 percent of that utility's total energy efficiency program spending in the same year."[511]

[505] *See Eberhardt v. Fairfax Cnty. Emps. Ret. Sys. Bd. of Trustees*, 283 Va. at 195, 721 S.E.2d at 524, 526 (2012) ("[W]hen a term is used in different sections of a statute, we give it the same meaning in each instance unless there is a clear indication the General Assembly intended a different meaning.")

[506] In all of Code § 56-585.1, the terms "award" and "awarded" are used seven times. Six of those occurrences are in the same paragraph of Subsection A 5 c, pertaining to the performance incentive. For completeness, the remaining instance is the use of the term "awarded" in Code § 56-585.1 A 2 d in the phrase, "without regard to any enhanced rate of return on common equity awarded pursuant to the provisions of subdivision 6." The discussion of "award" in this part of the Report also does not focus on two uses of that term in Subsection A 5 c, once in reference to an award available prior to January 1, 2022, and a second use in reference to an award available in a situation where "the Commission does not approve energy efficiency programs that, in the aggregate, can achieve the annual energy efficiency standards." All case participants agreed the latter instance does not apply to this case. Ex. 29 (Responses to the Hearing Examiner's Questions) at 7; Tr. at 54-56 (Farmer, for Consumer Counsel), 61 (Pierce, for Staff), 285-86 (Benforado, for APV), and 291-93 (Jaffe, for VAEEC).

[507] Code § 56-585.1 A 5 c.

[508] *Id.* (emphasis added).

[509] *Id.*

[510] *Id.* (emphasis added).

[511] *Id.* (emphasis added).

For the first, and only, time in Subsection A 5 c, a new term is used: "performance incentive." Why? Because it is describing something new, the "total" of the two incentives.[512] This total performance incentive is not limitless. It is bounded, as shown by the words "provided that." The term "provided" means "on condition that : with the understanding : IF."[513] Thus, the two opportunities for award are added together to determine the "total performance incentive," which is "awarded" on the condition that it does not exceed the 10% cap.

In light of the plain meaning of the terms "total," "incentive," "award," and their use in Subsection A 5 c and in Code § 56-585.1, I conclude the term "total performance incentive awarded" is best understood to refer to both of a utility's opportunities for additional financial gain (the margin on operating expenses and the additional basis point adder) provided for in Subsection A 5 c. Under that same statute, there is a limit on the sum of these financial gains. The margin on operating expenses, combined with the additional basis point adder, cannot exceed 10% of the utility's total EE program spending in the year whose savings are under review.

Dominion has argued that the "total performance incentive," and therefore the 10% award cap, is only applicable to the additional basis point adder.[514] I do not find the Company's stance persuasive in light of the above analysis. According to the Supreme Court of Virginia, there is a presumption "'that the legislature chose, with care, the specific words of the statute.'"[515] In my view, the legislature chose to create a new term, "total performance incentive" to identify something not previously identified – the combination of the two previously described awards.

Based on all the above, I find the better interpretation of Subsection A 5 c is to read the 10% performance incentive cap as applying to the sum of the margin on operating expenses plus the additional basis point adder. To the extent the Commission uses a gross savings metric to judge whether the Company has met the 2022 Savings Target of 1.25% of 2019 jurisdictional retail sales, I conclude Dominion is entitled to a total performance incentive associated with its 2022 Savings Target. I further conclude Staff's calculation, which applies the 10% cap to both the margin on operating expenses and the additional basis point adder, should be used to determine the total performance incentive. This interpretation would limit the total performance incentive to $6.32 million (resulting in a total revenue requirement of $92.25 million). If the Commission decides the 10% performance incentive cap applies only to the additional basis

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[512] As discussed by counsel for APV during the hearing, had the legislature intended the 10% award cap to apply only to the additional basis point adder, it could have written as such. Tr. at 286-87 (Benforado, for APV). Similarly, as contended by Consumer Counsel, "it's clear from the language in this section that it also applies to the marginal operating expenses for the very reason that 'total performance incentive' is a new term in this section." Tr. at 309 (Farmer, for Consumer Counsel).

[513] "provided." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed May 31, 2024).

[514] *See, e.g.*, Ex. 31 (Wooldridge Rebuttal) at Attached Rebuttal Schedule 1, p. 2 ("The Company interprets the term 'total performance incentive awarded' as used in this statute to be distinct from 'margin' and equal to the award of 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.").

[515] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. 153, 161, 861 S.E.2d 47, 52 (2021) (internal citations omitted).

point adder, Dominion did not reach the 10% performance incentive cap, and is entitled to a total performance incentive of $6.67 million.[516]

PART 5: RATE-RELATED MATTERS

Rate Year. Dominion requested to recover projected costs for its DSM programs associated with its Phase II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII Programs, via Riders C1A, C2A, and C4A, over the proposed Rate Year of September 1, 2024, through August 31, 2025.[517] Staff did not oppose this request.[518] No respondent took a position on the Rate Year. I find there is evidence in the record to support a Rate Year of September 1, 2024, through August 31, 2025.

Withdrawal of Rider C3A. The VCEA eliminated a provision that automatically exempted large commercial and industrial customers from paying for EE programs. Certain large energy use customers may now go through a process to opt-out of paying for the EE programs.[519] Due to this change, the Company asserted it "proposed and was subsequently approved in the Company's [2020 DSM Case] that the true-up for energy efficiency (EE) programs in Phases VII and VIII would fall under Rider C3A until August 31, 2021 and begin in Rider C4A as of September 1, 2021."[520] Since the 2021 true-up has passed, in this Application Dominion proposed to recover the true-up of costs related to the Phases VII and VIII Programs in this case and related financing costs, and ongoing financing costs associated with prior over/under deferral balances pertaining to these programs, in Rider C4A. If approved, this proposal would end Rider C3A.[521]

Staff reviewed this proposal and stated, "Given that the Commission has previously approved the recovery of the Phase VII and Phase VIII true-ups through Rider C4A, Staff does not oppose the Company's proposal to withdraw Rider C3A in this proceeding."[522] No respondent addressed this issue.

Given that the withdrawal of Rider C3A is an accounting modification driven by changes in law, and that Rider C3A's closure was raised in the 2020 DSM Case, and given the lack of opposition to this request, I recommend the Commission approve the withdrawal of Rider C3A. I also recommend the Commission approve the Company's recovery of the Phases VII and VIII true-up calculated in this proceeding and related financing costs, as well as any ongoing

[516] Ex. 17 (Mangalam Direct) at 9; Ex. 31 (Wooldridge Rebuttal) at 2-3 and Attached Rebuttal Schedule 1.

[517] Ex. 7 (Wooldridge Direct) at 1-2, 4.

[518] *See* Ex. 17 (Mangalam Direct) at 2, 21.

[519] *See generally*, Ex. 2 (Application) at 7; Code § 56-585.1 A 5 c.

[520] Ex. 7 (Wooldridge Direct) at 3 (citing Schedule 2 of the Direct Testimony of Elizabeth B. Lecky in the 2020 DSM Case). I can find no discussion of this change in either the Hearing Examiner's Report in the 2020 DSM Case or the *2020 DSM Case Final Order*. However, no party or Staff disputed this representation by the Company.

[521] Ex. 7 (Wooldridge Direct) at 3-4.

[522] Ex. 19 (Katsarelis Direct) at 4. Staff noted that if the Commission approves the withdrawal of Rider C3A, Staff will then accept the withdrawn tariff sheet in the Company's compliance filing. *Id.* at 4 n.13.

financing costs related to previous over/under deferral balances pertaining to these programs, in Rider C4A.

Capital Structure. The Company and Staff agreed upon the use of the Company's proposed capital structure, weighted average cost of capital, and ROE for both the Projected Cost Recovery Factor and the Actual Cost True-up Adjustment.[523] No respondent addressed this issue. I find there is evidence in the record for the Commission to approve the agreed-upon capital structures and cost of capital, as follows:

Factor	Capital Structure	WACC	ROE	Effective Date
True-Up	12/31/2022	6.775%	9.35%	Jan. 1 – Dec. 31, 2022
Projected	Hypothetical	7.052%	9.70%	Sept. 1, 2024 – Aug. 31, 2025

Cost Allocation and Rate Design. Dominion proposed to allocate its revenue requirement using the same approach as was approved in the 2022 DSM Case, though Company witness Catron noted that there is no allocated revenue requirement for Rider C3A. Generally, the Company assigned direct program costs to the jurisdiction based on program participation, and allocated common costs to the jurisdiction based on the jurisdiction's program costs compared to total system program costs. The Company also allocated the Virginia jurisdictional revenue requirement among customer classes using the same methodology as the Company used in the 2022 DSM Case.[524]

Staff did not oppose the Company's proposed cost allocation and rate design methodologies. Staff recommended that if the Commission approves a different revenue requirement than that proposed by the Company, the corresponding RAC charges should be adjusted proportionately to maintain the revenue apportionment and rate design methodology the Company proposed.[525] No respondent addressed cost allocation or rate design methodologies.

I find there is evidence in the record for the Commission to approve Dominion's proposed cost allocation and rate design methodologies used to develop the RACs in this case.

Revenue Requirement. The total revenue requirement is composed of three RACs, C1A, C2A, and C4A. The determination of the total revenue requirement, and the revenue requirement of each RAC, is dependent on the Commission's decision as to whether to determine compliance with the Savings Targets on a gross or net savings basis. If a gross savings metric is used, the revenue requirements also depend on the Commission's decision on whether to apply the 10% performance incentive cap only to any financial award due to Dominion in the form of an additional basis point adder, or whether to cap the combined financial award of the margin on operating expenses plus the additional basis point adder.

[523] *Compare* Ex. 7 (Wooldridge Direct) at 4-5 and Attached Schedule 1, pp. 45-46, *with* Ex. 18 (Gereaux Direct) at 2-3.

[524] Ex. 8 (Catron Direct) at 3-4, 8.

[525] Ex. 19 (Katsarelis Direct) at 7-8.

The Company has requested a total Rate Year revenue requirement of $92.62 million based on use of a gross savings metric to evaluate compliance with the Savings Targets of Code § 56-596.2, and based on a Commission determination that Subsection A 5 c's 10% performance incentive applies to the additional basis point adder but not to the margin on O&M expenses provided for in Subsection A 5 c.[526] The Company and Staff agreed on the calculation of this revenue requirement, and two alternative revenue requirements, depending on the outcomes of the above-noted issues, as follows:[527]

Option	Savings Measure	Incentive?	Total RR	Rider C1A	Rider C2A	Rider C4A
1	Net Basis	Not achieved	$85.55M	$7.88M	$(2.00M)	$79.66M
2	Gross Basis	10% cap only applies to additional basis point adder; incentive of $758,461 does not reach cap	$92.62M	$7.88M	$(1.93M)	$86.68M
3	Gross Basis	10% cap applies to margin and additional basis points; cap of $6.32M applies	$92.25M	$7.88M	$(1.94M)	$86.32M

Option 2 reflects the Company's proposed revenue requirements.[528] Option 1 reflects Staff's proposed revenue requirements.[529]

Consumer Counsel argued for use of a net, not gross, savings metric for measuring compliance with the Savings Targets. Accordingly, Consumer Counsel stated it agrees with Staff's adjustments removing the entire performance incentive from the Company's proposed revenue requirements. Consumer Counsel stated it would not oppose approval of Staff's revenue requirements but would oppose those requested by the Company.[530] Neither APV nor VAEEC addressed the calculation of the total revenue requirement or its breakdown among the applicable RACs.

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[526] Ex. 3 (Walker Direct) at 13-14 and 23-24; Ex. 7 (Wooldridge Direct) at 5, 11.

[527] Ex. 31 (Wooldridge Rebuttal) at 3; Tr. at 157, 159 (Mangalam).

[528] Ex. 7 (Wooldridge Direct) at Attached Schedule 1, p. 1.

[529] Ex. 17 (Mangalam Direct) at Attached Statement A, Statement 1.

[530] Tr. at 52-53 (Farmer, for Consumer Counsel).

Since there is no dispute among the Company and Staff as to the revenue requirement calculations,[531] I find there is evidence in the record for the Commission to approve any of these three revenue requirement options, depending on its determinations of other issues in this case. These revenue requirements would change, however, if the Commission does not approve one or more of the proposed Phase XII programs.[532]

Based on my above recommendations to measure the Savings Targets on a net savings basis, I recommend the Commission adopt Option 1 in the chart above. At a more granular level, these revenue requirements are:[533]

Factor	Rider C1A	Rider C2A	Rider C4A	Total
Projected Revenue Requirement	$9,870,345	$(58,752)	$106,533,763	$116,345,356
True-up Adjustment	$(1,986,344)	$(1,936,657)	$(26,872,217)	$(30,795,218)
Total	$7,884,001	$(1,995,409)	$79,661,545	$85,550,138

If the Commission adopts these revenue requirements, the impact on the monthly bill of a residential customer using 1,000 kWh/month would be a decrease of $0.29, reflecting a drop in the current charge of $1.84 to $1.55.[534]

Should the Commission approve the Company's proposed option (option 2 in the chart above), the revenue requirements at a more granular level are:[535]

Factor	Rider C1A	Rider C2A	Rider C4A	Total
Projected Revenue Requirement	$9,870,090	$(56,946)	$106,743,020	$116,556,164
True-up Adjustment	$(1,994,686)	$(1,877,336)	$(20,061,397)	$(23,933,420)
Total	$7,875,404	$(1,934,282)	$86,681,623	$92,622,744

If the Commission adopts these revenue requirements, the impact on the monthly bill of a residential customer using 1,000 kWh/month would be a decrease of $0.16, reflecting a drop in the current charge of $1.84 to $1.68.[536]

Should the Commission approve measurement for compliance with the Savings Targets on a gross savings basis, and apply the 10% performance incentive cap to both the margin on

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531 *See generally,* Ex. 7 (Wooldridge Direct) at Attached Schedule 1; Ex. 17 (Mangalam Direct) at Attached Statement A and Attached Statement B.

532 *See, e.g.*, Ex. 17 (Mangalam Direct) at 13.

533 *Id.* at Attached Statement A, Statement 1.

534 Ex. 20 (Monthly Bill Calculation with Staff's Revenue Requirements) at 1.

535 *Ex.* 7 (Wooldridge Direct) at Attached Schedule 1, p. 1.

536 Ex. 9 (Lawson Direct) at 6 and Schedule 2; Ex. 19 (Katsarelis Direct) at 7.

O&M expenses and the additional basis point adder (option 3 in the chart above), the revenue requirements at a more granular level are:[537]

Factor	Rider C1A	Rider C2A	Rider C4A	Total
Projected Revenue Requirement	$9,870,102	$(57,040)	$106,732,110	$116,545,172
True-up Adjustment	$(1,994,289)	$(1,880,429)	$(20,416,465)	$(24,291,183)
Total	$7,875,812	$(1,937,469)	$86,315,645	$92,253,989

If the Commission adopts these revenue requirements, the impact on the monthly bill of a residential customer using 1,000 kWh/month would be a decrease of $0.17, reflecting a drop in the current charge of $1.84 to $1.67.[538]

Rate Effective Date. The Company requested to use, for billing purposes, a rate effective date for usage on or after the latter of September 1, 2024, or the first day of the month that is at least 15 days after the date of any Commission Order approving Riders C1A, C2A, and C4A.[539] Staff noted this requested rate effective date but did not discuss or take issue with it.[540] No respondent addressed the requested rate effective date.

I recommend the Commission approve, for billing purposes, a rate effective date for usage on or after the latter of September 1, 2024, or the first day of the month that is at least 15 days after the date of a Commission Order approving Riders C1A, C2A, and C4A.

PART 6: EM&V PLANS

Dominion provided EM&V plans for each of the proposed Phase XII Programs and an updated EM&V plan for the Non-residential Midstream EE Products Program reflecting the addition of the ice maker and commercial dishwasher measures.[541] Company witness Feng attested Dominion intends to comply with the state code provisions, legislation, and Commission Orders governing EM&V activities, including the EM&V Rules, the requirements in Code § 56-596.2, and requirements in the *EM&V Determination Case Order*, the *2020 DSM Case Final Order*, and the *2021 DSM Case Final Order*.[542] During the hearing, Ms. Feng also indicated that if the Commission were to decide to measure compliance with the Savings Targets on a net savings basis, the Company would not need to modify the EM&V plans. She explained they were developed to allow room for DNV to assess what specific work plan is needed for each program.[543]

[537] Ex. 17 (Mangalam Direct) at Attached Statement B, Statement 1.

[538] Ex. 20 (Monthly Bill Calculation with Staff's Revenue Requirements) at 5.

[539] *See, e.g.*, Ex. 9 (Lawson Direct) at 1.

[540] Ex. 19 (Katsarelis Direct) at 6.

[541] Ex. 10 (Feng Direct) at Appendix B.

[542] *Id.* at 2.

[543] Tr. at 274-75 (Feng).

Staff witness Smith explained the EM&V plans are generally consistent with EM&V plans the Company has submitted for previously approved programs;[544] he did not raise any objection to the EM&V plans. No respondent addressed the EM&V plans.

I find there is evidence in the record for the Commission to approve the Company's EM&V plans for the proposed Phase XII Programs and the updated EM&V plan for the Non-residential Midstream EE Products Program.

PART 7: OTHER STATUTORY CONSIDERATIONS

Progress Toward the $870 Million Spending Requirement. The GTSA included a requirement, codified in Code § 56-596.2, that beginning July 1, 2018, and ending July 1, 2028, Dominion must petition the Commission for approval to design, implement, and operate EE programs in an aggregate amount of $870 million.[545] The Company calculated that the proposals in its Application, combined with prior requests for EE program spending since passage of the GTSA, add up to approximately $797 million, excluding projected lost revenues.[546]

Staff corroborated this information, noting the Company has proposed approximately $796.4 million in spending on EE programs pursuant to the GTSA, meaning the Company is approximately 93.8% of the way toward meeting the $870 million requirement. Staff recommended Dominion continue providing a chart in future filings identifying its progress toward the $870 million spending requirement.[547] The Company committed to doing so.[548] No respondent took a position on the Company's progress toward the $870 spending requirement.[549]

I conclude there is evidence in the record to support a finding that the Company has spent approximately $797 million toward its $870 million EE program spending requirement. I recommend the Commission adopt the Company's commitment to continue providing, in future DSM updates, a chart identifying its progress toward fulfilling this requirement.

Compliance with Spending on Programs for Specific Customer Groups. Code § 56-596.2 A requires, "At least 15 percent of such proposed costs of energy efficiency programs shall be allocated to programs designed to benefit low-income, elderly, or disabled individuals or veterans." The Company calculated it is making progress toward this goal, with costs for programs supporting these customer groups comprising 13.7% of the Company's total DSM

[544] Ex. 21 (Smith Direct) at 30.

[545] 2018 Va. Acts ch. 296, Enactment Clause 15; Code § 56-596.2 A, C.

[546] Ex. 6 (Bates Direct) at 9-10.

[547] Ex. 17 and 17ES (Mangalam Direct) at 20-21 and Attached Appendix B, pp. 1-3 (Company Response to Staff Question No. 2-11). *See also* Ex. 21 (Smith Direct) at 12.

[548] Ex. 27 (Walker Rebuttal) at 3.

[549] Ex. 12 (Grevatt Direct) at 8-9 mentioned the $870 million requirement, but Mr. Grevatt did not discuss the Company's progress toward proposing $870 million in spending on DSM programs.

Portfolio costs.[550] More specifically, Company witness Bates testified that of the $797 million in EE program spending since passage of the GTSA and VCEA, approximately $110 million are costs for programs supporting these customer groups.[551]

Staff reviewed the Company's progress toward meeting the goals and requirements of the GTSA and VCEA but did not specifically comment on, or make recommendations concerning, the Company's progress toward the 15% spending requirement.[552]

APV witness Grevatt asserted Dominion has failed to comply with the 15% spending requirement by only proposing program costs for these customer groups equal to 13.7% of spending, not 15%. He further asserted Dominion is disadvantaging these customer groups because it is not spending enough to reach the Savings Targets.[553]

Company witness Walker responded, stating that the current 13.7% calculation is a point-in-time measurement of a statistic that fluctuates. He noted the Company's 2022 DSM Case reflected that 15.4% of DSM Portfolio costs were for programs for these customer groups. He confirmed, "The Company is extremely focused on these populations of customers and will continue to bring forward program enhancements that benefit these categories of customers."[554]

Code § 56-596.2 A requires (with emphasis added), "At least 15 percent *of such proposed costs* of energy efficiency programs shall be allocated to programs designed to benefit low-income, elderly, or disabled individuals or veterans." This is the first reference to "costs" in this Code provision. The next reference to "costs" is in Code § 56-596.2 C, which discusses the $140 million and $870 million floors ("no less than") applicable to "[t]he projected costs for the [Phase I or Phase II] utility to design, implement, and operate such energy efficiency programs and portfolios of programs."

In the context of Code § 56-596.2, I find the 15% requirement for spending on programs benefitting low-income, elderly, or disabled individuals or veterans in Code § 56-596.2 A is best viewed as a reference to the "projected costs for the utility to design, implement, and operate such energy efficiency programs and portfolios of programs" referenced in Code § 56-596.2 C. This cost "shall be no less than an aggregate amount of $140 million for a Phase I Utility and $870 million for a Phase II Utility for the period beginning July 1, 2018, and ending July 1, 2028, ..."[555] Such a reading (1) provides meaning to the word "such" in the phrase "such proposed costs of energy efficiency programs" in Code § 56-596.2 A; (2) places the statute's

[550] Ex. 3 (Walker Direct) at 17.

[551] Ex. 6 (Bates Direct) at 10-11.

[552] Ex. 21 (Smith Direct) at 9-13.

[553] Ex. 12 (Grevatt Direct) at 23-24.

[554] Ex. 27 (Walker Rebuttal) at 11.

[555] Code § 56-596.2 C.

terms in context; and (3) interprets the parts of Code § 56-596.2 "as a consistent and harmonious whole."[556]

Under this interpretation, the Company need not show, in each DSM update filing between 2018 and 2028, that 15% of its DSM program costs benefit these customer groups. However, by July 1, 2028, the Company must have proposed 15% of its DSM program costs (which are to be a minimum of $870 million) as spending on programs designed to benefit these customer groups. To the extent proposed spending for such programs is below 15% now, the Company would need to propose additional spending for such customer groups in DSM updates over the upcoming years to reach the 15% target. Because whether the Company has met the 15% target for spending on programs benefitting low-income, elderly, or disabled individuals or veterans is not knowable until July 1, 2028, I recommend for this Application, the Commission defer making any finding on whether the Company has met this target.

Economic Development, Energy Efficiency, and Environmental Protection. Code § 56-585.1 A 5 c requires, "In all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth." The extent to which the Application appropriately considers the Commonwealth's energy efficiency goals is discussed above.

As for economic development, the Company represented that because of its DSM Portfolio, the Company has employed approximately ten implementation vendors and associated staff, along with many specialized contractors and trade allies to deliver and install EE measures in the field. The Company also asserted its programs are designed to reach all customer classes, including small businesses and those who are income- and age-qualified. The Company stated that all EE costs are covered for income-qualifying residential customers.[557]

As for environmental protection, the EM&V Report asserted that because of the Company's DSM programs, 461,000 metric tons of carbon dioxide have been avoided per year, 45 million gallons of water have been saved per year, and 10,404 gigawatt-hours of energy have been saved.[558] Additionally, Company witness Hagerman testified that "DSM programs can reduce output from fossil fuel-fired facilities and thus reduce overall carbon emissions."[559] She calculated a positive net present value of on-peak and off-peak social cost of carbon benefits for the proposed Phase XII Programs.[560]

No respondent or Staff addressed or questioned whether the Application appropriately considers the Commonwealth's economic development and environmental protection goals,

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[556] *Virginia Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. at 163, 861 S.E.2d at 52 (internal citations omitted). Note that "such" means " : of a kind or character to be indicated or suggested : having a quality to a degree to be indicated : of so extreme a degree or quality : of the same class, type, or sort : not specified." "such." Merriam-Webster.com. 2024. https://www.merriam-webster.com. (accessed June 13, 2024).

[557] Ex. 29 (Responses to Hearing Examiner's Questions) at 2.

[558] *Id.*; Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Executive Summary p. 3.

[559] Ex. 5 (Hagerman Direct) at 15.

[560] *Id.* at 14-15 and Attached Schedule 8.

while VAEEC witness Harnish averred that "[c]ontinuing to build on the statutory targets will provide a variety of benefits to Virginians by keeping our economy strong, combatting climate change, and providing a safe and healthy environment in which Virginians can work and live."[561]

Based on the above, I find there is evidence in the record permitting the Commission to take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth.

<u>Environmental Justice and Related Considerations</u>. Code § 2.2-235 states, "It is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities." The Company listed several ways its Application considers environmental justice. Dominion claimed all the DSM programs proposed in the Application are aimed at reducing energy and demand on Dominion's system, thereby positively impacting the environment for all customers. The Company also stated the DSM programs do not involve constructing facilities.[562]

Staff concluded the Company considered environmental justice communities in its EE process.[563] No respondent addressed the environmental justice aspects of the Application.

Additionally, Enactment Clause 7 of the VCEA reads:

> That it shall be the policy of the Commonwealth that the State Corporation Commission . . . in the development of energy programs, . . . shall consider whether and how those . . . programs benefit local workers, historically economically disadvantaged communities, as defined in § 56-576 of the Code of Virginia, as amended by this act, veterans, and individuals in the Virginia coalfield region that are located near previously and presently permitted fossil fuel facilities or coal mines.

Dominion's May 2023 RFP, which sought vendors for the proposed Phase XII Programs, stated that the Company encourages opportunities for local businesses and for businesses that are minority-owned, disadvantaged- or disabled-owned, women-owned, and veteran-owned or service-disabled-veteran-owned. The RFP asked how those responding would engage such businesses in the delivery of DSM Programs and further indicated that contracts with the Company may require DSM contractors to use such businesses and account for dollars spent

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[561] Ex. 16 (Harnish Direct) at 9.

[562] Ex. 21 (Smith Direct) at Attached SES-2 (Company Response to Staff Question No. 5-30).

[563] *Id.* at 51-52.

procuring services from these businesses.[564] These requirements in the RFP reflect the Application's accord with the VCEA's Enactment Clause 7.[565]

Part 8: Concerns Related to the Long-Term Plan and Meeting the Savings Targets

Meeting the Savings Targets. By the Company's own account, it will not meet the Savings Targets, even on a gross basis, starting in 2024.[566] The case record is littered with concern by APV, VAEEC, and Staff that can generally be expressed as "Dominion is not doing enough" to meet the Savings Targets.[567] For example, witnesses have stated:

- "[T]he current and future shortfalls in meeting the VCEA goals are in large part due [to] the cumulative impacts of the Company's [p]rograms failing to reach their participation goals in prior years."[568]
- "Company witness Hubbard provided a table highlighting that over half of last year's programs still had not launched as of February 13, 2024. This delay is despite the Company pledging that it anticipated launching 'all approved Phase XI [P]rograms . . . in the first quarter of 2024.'"[569]
- "[T]he Company continues to slow-walk implementation of the [Long-term Plan] . . .. The Company appears to be acting with indifference to whether or not it actually complies with its legal obligations under the VCEA."[570]
- "Cadmus was hired in 2020 and developed the [Long-term Plan] that was filed with the Commission in late 2021. Now two years later, the Company reports that it is looking for ways to streamline programs and that, if possible, it will file a revised portfolio in 2027—seven years after Cadmus was hired. A decision on that revised portfolio proposal, if it is even filed as Dominion suggests, would not be reached by the Commission until mid-2028, ..."[571]

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[564] Ex. 2 and 2ES (Application) at Filing Schedule 46C, Statement 1, Final Draft Energy Conservation DSM RFP, p. 29.

[565] Enactment Clause 7 does not define the "Virginia coalfield region," though elsewhere in the VCEA, specifically in Code § 56-585.1 A 6, there are references to "the coalfield region of the Commonwealth as described in § 15.2-6002." Code § 15.2-6002 refers to "the seven county and one city coalfield region of Virginia (Lee, Wise, Scott, Buchanan, Russell, Tazewell and Dickenson Counties and the City of Norton)." These counties and city are not in Dominion's Virginia service territory. *See* https://scc.virginia.gov/getattachment/46ad3b08-b38f-4d1d-be3b-a224e246ec7c/el_map.pdf (accessed June 10, 2024).

[566] Ex. 3 (Walker Direct) at 13.

[567] *See, e.g.*, Ex. 12 (Grevatt Direct) at 24-29; Ex. 16 (Harnish Direct) at 7-9; Tr. at 102-04 (Grevatt); Tr. at 317 (Dimitri, for Staff). Public witness Carmen Bingham for the Virginia Poverty Law Center also raised this concern. Tr. at 14-15.

[568] Ex. 21 (Smith Direct) at 13.

[569] Ex. 16 (Harnish Direct) at 8.

[570] Ex. 12 (Grevatt Direct) at 14.

[571] *Id.* at 26.

- "And they [the American Counsel for an Energy-Efficient Economy] found that of the 53 [utilities], the average for 2021 was that utilities achieved 0.91 percent energy-efficiency savings . . . as a percentage of their sales. 0.91, that's the average of the 53. Dominion in 2021 achieved 0.20, so, you know, the average is four and a half times greater than what Dominion achieved in 2021."[572]
- "Dominion has not fulfilled the necessary obligations and steps it's needed to take to achieve the energy-efficiency savings it intended to achieve by delaying the implementation of some of its energy-efficiency programs."[573]

APV has gone so far as to request the Commission to "[d]irect Dominion [to] aggressively pursue increased customer participation and savings in its EE programs as required by law, consistent with the recommendations [Mr. Grevatt] made in prior proceedings, including the Phase X and Phase XI proceedings. . . . Dominion should not be permitted to simply give up on or lessen its obligation to [its] customers. Dominion needs to do more, not less."[574]

The Company defended its DSM activities, asserting numerous factors have contributed to the projected shortfall in energy savings from its DSM programs, including the voluntary nature of the DSM programs and advances in energy efficiency standards that equate to less savings available for EE programs to achieve. Company witness Walker testified the information in the Application is a snapshot in time, and does not yet include savings that will come with implementation of the Long-term Plan. He averred the Company remains engaged in finding additional DSM programs and pilot program opportunities. Mr. Walker also addressed steps the Company has taken to increase DSM program participation, including obtaining approvals for programs targeting the Company's largest customers, beginning to present customers with more streamlined sets of bundled program options, and hiring a marketing firm to expand awareness. He testified the Company has not given short shrift to DSM efforts and "has been working diligently on increasing its savings from cost-effective DSM [p]rograms for fifteen years."[575]

Company witness Fry took issue with what he described as Mr. Grevatt's "implicit suggestion that the amount of 'new' annual energy efficiency savings should somehow remain

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[572] Tr. at 100 (Grevatt)(in reference to Ex. 13 (2023 ACEEE Scorecard excerpt) at 51). Note that Ex. 13 was treated as a demonstrative exhibit, while Ex. 15, the entire 2023 ACEEE Scorecard document, was admitted into evidence. Tr. at 148-50. The record contains a fair bit of discussion about the American Council for an Energy-Efficient Economy's ("ACEEE") 2023 Utility Energy Efficiency Scorecard and how to interpret Dominion's EE performance in light of the information in that document. *See generally*, Tr. at 99-101, 114-17, 126-30, 137-42, 146-49 (Grevatt); Ex. 14 (Center Square Article on ACEEE Report); Ex. 15 (2023 ACEEE Scorecard). Some of the figures in the 2023 ACEEE Scorecard show Dominion's EE efforts in a positive light (*e.g.*, Dominion's move from 50th to 27th place, making it "the most improved utility," on p. 8) and others in a negative light (*e.g.*, a rank of 5 out of 54 points for Dominion's EE program performance, on pp. 10-11).

[573] Tr. at 14 (Bingham, for Virginia Poverty Law Center).

[574] Ex. 12 (Grevatt Direct) at 35.

[575] Ex. 27 (Walker Rebuttal) at 9-11. As to voluntariness of programs, Company witness Hubbard agreed the Phase X Voltage Optimization Program, that had not begun as of the time of the hearing in this case, does not require customers to volunteer. He also testified there are behavioral programs such as the Residential Customer Engagement Program, that function on a customer opt-out basis. Tr. at 68-70 (Hubbard).

unchanged let alone increase inexorably in future years."[576] He asserted that future energy savings are not lost but become embedded in codes and standards and decrease with changes in technology, market adoption, and for other reasons.[577] Company witness Fry emphasized Dominion's energy savings are limited by the voluntary nature of DSM programs and not by a lack of programs, and that the Company's new marketing campaign to increase customer awareness has just begun.[578]

In my view, the record of this case, which focuses on the 2023 DSM Update, does not bear out that the Company has purposely undertaken inaction or dilatoriness in regard to its EE efforts. The 2023 ACEEE Scorecard indicates that other large utilities also struggle with some of the same issues as Dominion, such as rising baseline EE standards and customer awareness issues.[579]

In addition to the reasons the Company provided in its own defense, I add the following for context. First, the VCEA passed the Virginia House of Delegates and the Virginia Senate on March 18, 2020, and were signed by the Governor on April 11, 2020, when the impact of the COVID-19 pandemic on the economy was just beginning to be felt.[580] There is evidence in the record that lingering effects of the pandemic continued to negatively impact at least a few programs into 2022.[581] Second, as Consumer Counsel noted, the fact that the VCEA requires the Commission to report to the General Assembly annually on the feasibility of the Savings Targets also indicates that "it's not to be assumed from the language of this statute [Code § 56-596.2] that those targets, which are set, are feasible."[582] What is achievable savings for Dominion is a matter of dispute in the record,[583] so the fact that Dominion has not met the Savings Targets does not *ipso facto* indicate the Company's actions or attitude toward DSM are lackadaisical.

Accordingly, I do not find it necessary for the Commission to "[d]irect Dominion [to] aggressively pursue increased customer participation and savings in its EE programs as required by law," as APV requested.[584]

[576] Ex. 32 (Fry Rebuttal) at 11.

[577] *Id.*

[578] *Id.* at 12.

[579] Ex. 15 (2023 ACEEE Scorecard) at 39-40.

[580] The legislative history of the VCEA may be found at: https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch1193 (for 2020 Va. Acts ch. 1193) and https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch1194 (for 2020 Va. Acts ch. 1194).

[581] *See* Ex. 10 (Feng Direct) at Appendix C (EM&V Report), Appendix B, §§ 3.1.1 and 4.1.1, pp. 78, 141 (discussing how economic conditions and a vendor change caused problems for the Residential Appliance Recycling Program from March 16, 2020, until November 2021, and discussing how pandemic-related supply chain and vendor contact issues were problematic for the Phase VIII Residential New Construction Program into early 2022).

[582] Tr. at 305-06 (Farmer, for Consumer Counsel).

[583] *See, e.g.*, Ex. 12 (Grevatt Direct) at 30-32; Ex. 33 (Feng Rebuttal) at 3-5.

[584] Ex. 12 (Grevatt Direct) at 35.

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Long-term Plan and Updates with Qualified Data Sets. The Company provided a Long-term Plan Project Management Update with its Application.[585] This document, and other evidence in the record, shows that initial steps the Company is taking to implement the Long-term Plan are encouraging. Specifically, the Company has hired a marketing consultant, West Cary Group, which among other things has engaged in customer awareness campaigns, is working to harmonize Dominion DSM branding across the vendor network, and is simplifying and streamlining website content so customers can more easily find programs that meet their needs.[586]

The Company provided evidence that its energy savings-related website traffic increased by 25% in 2023 compared to 2022, and that its search engine marketing has been successful, achieving a click-through rate of 13.42%, more than five times better than the industry average. The Company also related that an October 2023 energy awareness campaign emphasizing the virtual energy audit garnered 3,758 participants in a three-week period, a large increase over prior periods.[587]

This early, albeit limited, evidence shows that at least one aspect of the Long-term Plan – a proposed framework to consolidate, streamline, and market the public-facing aspects of the DSM programs to facilitate participation[588] – is beginning to have a positive effect, though actually consolidating the DSM programs under fewer vendors is a longer process.[589]

Staff reviewed the Long-term Plan Project Management Report and recommended the Commission require Dominion to continue providing a similar report in future DSM filings.[590]

VAEEC witness Harnish seconded the request for Dominion to continue providing reports on the progress of the Long-term Plan. She urged the Commission to require Dominion "to provide quantifiable data sets" in such reports.[591] She referred to monthly reports the Company's marketing firm, West Cary Group, provides the Company. She suggested this data is readily available for inclusion in future Long-term Plan Project Management Reports and asserted such data would be helpful because "stakeholders need more details to understand the Company's claim on making 'considerable progress'" in implementing the Long-term Plan.[592] She averred that the information the Company initially provided with its Application in this regard was vague and left uncertainty as to whether the tasks the Company indicated it had

[585] Ex. 11 (Fry Direct) at Attached Schedule 1.

[586] *Id.* at Attached Schedule 1, pp. 4-6.

[587] Ex. 27 (Walker Rebuttal) at 12; *See also* Ex. 16 (Harnish Direct) at Attachment CH-4 (Company Response to APV Question No. 2-19).

[588] *2020 DSM Case Final Order*, 2021 S.C.C. Ann. Rep. at 354.

[589] Ex. 2 (Application) Filing Schedule 46C, Statement 1, Appendix J (*Demand-Side Management Long-Term Plan*), p. 10 (explaining the Company has separate vendor contracts for 37 DSM programs, with varying expiration dates between 2022 and 2027). *See also* Tr. at 233-34 (Hubbard).

[590] Ex. 25 (Boehnlein Direct) at 19-20.

[591] Ex. 16 (Harnish Direct) at 12.

[592] *Id.* at 12-13.

completed actually were helping the Company achieve the statutory Savings Targets.[593] VAEEC pointed to two attachments to Ms. Harnish's testimony as examples of the form the quantifiable data sets could take.[594]

The Company responded that the Commission need not require Dominion to provide quantifiable data sets because the Company already provides this information through the stakeholder process. Company witness Walker noted the Company also provided specific data points in response to discovery in this docket.[595] The Company maintained that the Long-term Plan's progress metrics are directional in nature and generally measured by level of completeness (full, partial, or incomplete).[596]

In the *2020 DSM Case Final Order*, the Commission set forth a requirement that:[597]

> Dominion's future DSM filings, including its next annual DSM filing, shall include:
>
> 1. A long-term plan that includes (i) proposed Program savings and budgets for the five-year period beginning January 1, 2022, sufficient to comply with the total energy savings targets in the VCEA and the investment levels in the GTSA; (ii) a proposed plan and framework for consolidating, streamlining, and marketing the public-facing aspects of the Company's approved and proposed DSM Programs to facilitate participation at the levels required to achieve the VCEA targets; and (iii) a detailed project management plan and risk management strategy demonstrating that the Company has identified and planned for deployment of the resources required to implement its revised Programs. This strategic plan shall reflect short-term, medium-term, and long-term recommendations for improvement of the Company's DSM Portfolio.

I find that by the wording of the *2020 DSM Case Final Order*, the Company is under an ongoing obligation to include a Long-term Plan in its future filings. Thus, the Company should continue to provide a Long-term Plan Project Management Report to comply with this directive until the Commission determines otherwise. Second, the items in the Long-term Plan, based on the Commission's description, may not all lend themselves to being broken down into quantifiable data sets. Accordingly, I conclude that future Long-term Plan Project Management

[593] *Id.* at 10-11.

[594] Tr. at 294-95 (Jaffe, for VAEEC). *See* Ex. 16 (Harnish Direct) at Attachment CH-4 (Dominion's Response to APV Question No. 2-19) and Attachment CH-5 (Materials from Dominion Stakeholder Meeting on March 22, 2024).

[595] Ex. 27 (Walker Rebuttal) at 12-13.

[596] Ex. 32 (Fry Rebuttal) at 8-10.

[597] *2020 DSM Case Final Order* at 354.

Reports should incorporate quantifiable data sets where feasible. I also encourage the Company to continue providing regular progress updates to the Stakeholder Group. In such a forum, report items that are not readily quantifiable may be discussed and better understood.

PART 9: OTHER MATTERS

<u>The Four Stakeholder Group Issues</u>. The *2022 DSM Case Final Order* referred four issues to the Stakeholder Group ("Four Stakeholder Group Issues") and required the Company to report on these issues in the next DSM case, which is the current docket. The Four Stakeholder Group Issues are numbers 12, 24, 25, and 26 of the Senior Hearing Examiner's findings and recommendations listed in the *2022 DSM Case Final Order*.[598] For convenience, these are:[599]

- How the cost-effectiveness of DSM programs is measured, including how the Inflation Reduction Act reduces some DSM programs' cost, how incorporating non-energy benefits like the social cost of carbon can better quantify program benefits, and how building codes impact cost-effectiveness measurements;
- Eligibility of dual-fuel customers to participate in the DSM programs;
- The Long-term Plan and DSM program consolidation; and
- How to leverage AMI functionalities, including geo-targeting.

Company witness Walker provided an initial report of feedback on these issues compiled by the Stakeholder Group's independent monitor.[600] Mr. Walker stated that as a next step, the Stakeholder Group's Process Subgroup "will develop a plan to provide a more comprehensive response to the [Four Stakeholder Group Issues], including the process the [S]takeholder [G]roup will use to conduct more in-depth research and discussion, and a schedule for the process with anticipated meeting dates . . . to provide input for the more comprehensive report on each of the recommendations."[601] He stated the Process Subgroup planned to meet in January 2024, and the Company would update the Commission as progress is made.[602]

VAEEC witness Harnish urged Dominion to develop an action plan in the next few months to implement improvements, stating, "More is needed in order to increase energy savings for the next two years."[603] The Company responded by reiterating its commitment to use the Stakeholder Group to develop implementation plans for the Four Stakeholder Group Issues and to keep the Commission apprised of its progress.[604]

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[598] *2022 DSM Case Final Order*, at 7-9.

[599] *Id.*; Tr. at 50-51 (Jaffe, for VAEEC) (explaining with regard to AMI functionality that "if AMI data shows that a particular region of the Company's service territory is well-suited for a particular kind of efficiency program, to leverage that data, to sort of really ramp up marketing for the program where it's likely to be most effective."). *See also* Tr. at 289-91 (Jaffe, for VAEEC).

[600] Ex. 3 (Walker Direct) at Attached Schedule 2, with Appendices A and B.

[601] *Id.* at 7-8.

[602] *Id.* at 8.

[603] Ex. 16 (Harnish Direct) at 8.

[604] Ex. 27 (Walker Rebuttal) at 4-5.

Given that there appears much more work to accomplish concerning the Four Stakeholder Group Issues, I conclude it is appropriate for the Commission to require the Company to continue its commitment to using the Stakeholder Group to develop the implementation plans for the Four Stakeholder Group Issues. An obvious time for a progress report on such plans would be the Company's next DSM update filing. However, given the dispatch with which the Company must act to achieve more program participation and energy savings to meet the Savings Targets, I recommend the Commission require additional reporting at least one time prior to the next DSM update filing. Specifically, I recommend the Commission require the Company to report, by no later than September 1, 2024, to Staff in the Commission's Division of Public Utility Regulation on the progress in developing implementation plans for the Four Stakeholder Group Issues.[605]

Additional Reporting on the Non-residential New Construction Program. Staff made a reporting recommendation for the Phase XII Non-residential New Construction Program, specifically that either in the Company's EM&V Reports or in future DSM applications, the Company provide the number of projects in this program; the type of project (industrial, commercial, or data center); the projected energy savings of the projects; and each project's stage. Staff made this recommendation due to concerns about the amount of savings (37%) attributable to projected participation by just five data centers, the below-projected level of participation in the earlier Phase VIII version of this program, and the lengthy time interval between a project's identification and ultimate construction and rebating. Staff also noted that this program shoulders the burden for providing 70% of the energy savings projected to come from all the Phase XII Programs combined.[606]

During the hearing, Staff witness Smith maintained these arguments, adding that "the Company has projected extremely high load growth due to data center demand and [there is] uncertainty surrounding data centers."[607] He contended adopting his requests for this information means the data would be available two to three years earlier than it would otherwise be put in the record of DSM cases.[608]

The Company indicated a willingness to provide this information but averred the discovery process is the best vehicle for the Company to provide it. The Company asserted that the unverified information would be a mismatch for inclusion in the EM&V Report, which focuses on evaluated and measured savings for a prior year. The Company also contended that

[605] This timing may align with the time period in which the Company may be providing EE-related data to Staff for its reports to the General Assembly, or committees thereof, on the performance of DSM programs (as required by Code § 56-585.1 A 5 c) and on the feasibility of the Savings Targets (as required by Code § 56-596.2 B 3). The most recent report was provided September 29, 2023. *See* R. DOC. NO. 457. *Combined Reports: Annual Report on Energy Efficiency Programs Pursuant to Chapter 1193 of the 2020 Virginia Acts of Assembly, and Annual Report on the Feasibility of Achieving Energy Efficiency Goals Pursuant to Chapter 1193 of the 2020 Virginia Acts of Assembly* (Sept. 29, 2023), available at https://rga.lis.virginia.gov/Published/2023/RD457.

[606] Ex. 21 (Smith Direct) at 54-56; Tr. at 185-89 (Smith).

[607] Tr. at 188 (Smith).

[608] *Id.*

expected measures and savings from any project are subject to change at key stages throughout the process.[609]

I agree with Staff that additional reporting for the Non-residential New Construction Program is warranted since this program is projected to provide 70% of all Phase XII Program energy savings and because 37% of this program's savings are projected to arise from participation by just five data centers. I note that the Company's Integrated Resource Plan reported that "[t]he Company serves the largest data center market in the world," that in recent years the Company's data center load has been growing by 0.5 gigawatt per year, and that the Company expects data center load to grow and materialize further over the next three to five years.[610] This document also explained there are major differences in energy use among commercial customers and that data centers are particularly energy intensive businesses because of the cooling needed for their computer equipment.[611] Thus, timely data about this program is important not only to report on its progress but also to consider whether and how the program may be expanded if more than five data centers express interest in participation.

For all these reasons, I find the Company should provide the number of projects in the Non-residential New Construction Program; the type of project (industrial, commercial, or data center); the projected energy savings of the projects; and each project's stage. I agree with Dominion that the best place for providing such information is not the EM&V Report, the focus of which is on data that has been measured and verified. Instead, I recommend the Commission require the Company to provide this information as part of annual DSM updates. These filings already contain updates on currently active programs,[612] so the burden to the Company of providing this information at such time should be minimal. Additionally, the Company would be free to include any qualifiers or cautions it feels are warranted as to how the data being reported should be interpreted.

<u>Additions to the EM&V Dashboard</u>. Staff witness Smith also requested two additions to the EM&V Dashboard, specifically: "1) the year's projected cost per kWh, in terms of total projected costs, divided by total projected net energy savings; and 2) the actual total costs, divided by the actual total net energy savings."[613] He contended adding this information to the EM&V Dashboard would eliminate complications with the weighted average effects of programs and would add context about how efficiently the programs are performing.[614] Staff provided a sample of how the EM&V Dashboard might look with this additional information.[615]

Company witness Feng indicated the Company would comply if required to do so. She noted the information to make the calculations Mr. Smith requests is already in the EM&V

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[609] Ex. 28 (Hubbard Rebuttal) at 3-4. *See also* Ex. 24 (Company Response to Staff Question No. 12-50).

[610] Ex. 2 (Application) Filing Schedule 46C, Statement 1, Appendix M (Virginia Integrated Resource Plan) at 55.

[611] *Id.* at 105.

[612] *See, e.g.*, Ex. 4 (Hubbard Direct) at 4-6 and Attached Schedules 1 and 2.

[613] Ex. 21 (Smith Direct) at 58.

[614] *Id.* at 57-58.

[615] Ex. 22 (Mr. Smith's Dashboard).

Report and is provided in Excel format for stakeholders to perform their own analysis. She also stated the EM&V Dashboard was developed from feedback received during the EM&V Determination Case, and adding more information may negatively impact the EM&V Dashboard's readability and effectiveness.[616]

No respondent commented on this Staff request.

I find that adding Staff's two requested measures does not negatively impact the EM&V Dashboard's readability. Accordingly, I recommend the Commission require the Company to add the requested information. However, I do so hesitantly as the EM&V Dashboard, in its current iteration, was the result of collaboration during the EM&V Determination Case. Approving Staff's additional metrics may open this one-page summary to more and more requests to add information, leading to an increasingly cluttered and less meaningful one-page presentation. That said, it is possible the EM&V Dashboard will be due for redesign or reconsideration in the near future to better align the statistics listed with the Commission's decision on the basis for measuring compliance with the Savings Targets.[617]

Audits and Request for Monitoring Cost Per Participant. Staff performed an audit of the Company's active DSM programs. Staff obtained documentation in support of both program specific and common costs, and incentive payments, included in the True-up Adjustment. Staff did not discover any material discrepancies in this documentation.[618] Staff recommended Dominion continue monitoring cost per participant for active DSM programs included in future true-ups and provide updates to the analysis in the Company's annual DSM updates. Staff averred this information will aid future Staff audits and help the Commission ensure the programs are being operated with sufficient price protections.[619]

The Company agreed to continue such monitoring and to provide the requested updates to this analysis in future annual filings.[620] No respondent addressed Staff's audit and ongoing monitoring of cost per participant.

I recommend the Commission adopt the Company's commitment to continue monitoring its cost per participant for active DSM programs included in future true-ups and provide updates to this analysis in its annual DSM filings.

Additionally, in the *2017 DSM Case Final Order*, the Commission "adopt[ed] Staff's recommendation that the Company conduct biennial internal audits of the controls surrounding

[616] Ex. 33 (Feng Rebuttal) at 2.

[617] *See, e.g.*, Ex. 22 (Mr. Smith's Dashboard). Several of the statistics on the EM&V Dashboard are listed with both net and gross calculations. It is unclear whether it will be helpful to continue to have both net and gross statistics after the Commission selects a net or gross savings metric for measuring statutory compliance (if it does so in this case). Further, the EM&V Dashboard statistics may require modification based on the future EE savings goals that will be set per Code § 56-596.2 B 3, which will be in three-year increments.

[618] Ex. 17 and 17 ES (Mangalam Direct) at 18-19.

[619] *Id.* at 20.

[620] Ex. 27 (Walker Rebuttal) at 3.

incentive and rebate payments with regard to each of the Company's DSM programs" and directed Dominion to "provide to Staff the audit report with supporting documentation, including a detailed description of how the audit findings have been addressed."[621] The Company reported it completed its most recent internal audit, of 2022 incentives and rebate payments, that results were being finalized, and that the results would be provided to Staff when available.[622]

Neither Staff nor any respondent addressed the internal audit.

I find the Company has complied with the Commission's internal audit directive.

FINDINGS AND RECOMMENDATIONS

Based on the evidence in the record, and for the reasons set forth above, I FIND that:

1. There is evidence to support approval of the proposed Phase XII Programs, the proposal to update the eligibility requirements for the Phase VIII Small Business Improvement Enhanced Program, and the addition of ice maker and dishwasher measures to the Phase VIII Non-residential Midstream EE Products Program.

2. The Company's proposed cost caps, including an aggregate cap of $102.4 million, or $117.8 million inclusive of a 15% variance allowance, are supported by the evidence.

3. The Company's request to operate the proposed Phase XII Programs without predetermined closure dates is supported by the evidence and consistent with Commission precedent.

4. There is evidence in the record to support continuation of the DG Program on a year-by-year basis and to allow Dominion to request funding therefor as necessary as it seeks an alternative program.

5. There is support in the record to approve an $800,000 increase in the Distributed Generation Program's cost cap.

6. The net energy savings described by the Company and detailed in the 2023 EM&V Report factually represent the total annual energy savings achieved by Dominion's energy efficiency programs and measures and are appropriate for determining compliance with the 2022 Savings Target listed in Code § 56-596.2.

7. To the extent the Commission agrees net savings is the appropriate measure for compliance with the Savings Targets and to the extent the Commission desires to give guidance

[621] *Petition of Virginia Electric and Power Company, For approval to extend an existing demand-side management program and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUR-2017-00129, 2018 S.C.C. Ann. Rep. 282, 284, Final Order (May 10, 2018). ("*2017 DSM Case Final Order*").

[622] Ex. 3 (Walker Direct) at 22; Ex. 6 (Bates Direct) at 6-7.

on how it will measure compliance with the Savings Targets in the future, the Commission could consider adopting the three parameters set forth in Part 3 of this Report.

8. To the extent the Commission uses a net savings metric to determine whether the Company has met the 2022 Savings Target of 1.25% of 2019 jurisdictional retail sales, the record evidence indicates:

- Dominion fell short of the 2022 Savings Target, achieving 1.23% savings;
- Dominion is not entitled to a total performance incentive associated with its 2022 Savings Target;
- The resulting revenue requirement supported by the evidence in this case is $85,550,138, inclusive of a Projected Revenue Requirement of $116,345,356 and a True-up Adjustment of $(30,795,218);
- The corresponding rate adjustment clauses are: a charge of $7,884,001 for Rider C1A, a credit of $1,995,409 for Rider C2A, and a charge of $79,661,545 for Rider C4A.

9. The better statutory interpretation of Code § 56-585.1 A 5 c is that the 10% performance incentive cap applies to the sum of the margin on operating expenses plus the additional basis point adder.

10. To the extent the Commission uses a gross savings metric to determine whether the Company has met the 2022 Savings Target of 1.25% of 2019 jurisdictional retail sales, the record evidence indicates:

- Dominion met and exceeded the 2022 Savings Target, achieving 1.9% savings;
- Dominion is entitled to a total performance incentive associated with its 2022 Savings Target;
- If the Commission decides the 10% total performance incentive cap applies to both the margin on operating expenses and the additional basis point adder, Dominion's total performance incentive is limited to $6.32 million. The resulting revenue requirement is $92,253,989, inclusive of a Projected Revenue Requirement of $116,545,172 and a True-up Adjustment of $(24,291,183). The corresponding rate adjustment clauses are: a charge of $7,875,812 for Rider C1A, a credit of $1,937,469 for Rider C2A, and a charge of $86,315,645 for Rider C4A.
- If the Commission decides the 10% total performance incentive cap applies only to the additional basis point adder, Dominion did not reach the 10% performance incentive cap, and is entitled to a total performance incentive of $6.67 million. The resulting revenue requirement is $92,622,744, inclusive of a Projected Revenue Requirement of $116,556,164 and a True-up Adjustment of $(23,933,420). The corresponding rate adjustment clauses are: a charge of $7,875,404 for Rider C1A, a credit of $1,934,282 for Rider C2A, and a charge of $86,681,623 for Rider C4A.

11. There is evidence in the record to support a Rate Year of September 1, 2024, through August 31, 2025.

12. The Commission should approve the withdrawal of Rider C3A.

13. The Commission should approve the Company's recovery of the Phase VII and Phase VIII Program-related true-up calculated in this proceeding and related financing costs, as well as any ongoing financing costs related to previous over/under deferral balances pertaining to these programs, in Rider C4A.

14. There is evidence in the record for the Commission to approve the capital structures and cost of capital agreed upon by the Company and Staff.

15. There is evidence in the record for the Commission to approve Dominion's proposed cost allocation and rate design methodologies used to develop Riders C1A, C2A, and C4A.

16. The Commission should approve, for billing purposes, a rate effective date for usage on or after the latter of September 1, 2024, or the first day of the month that is at least 15 days after the date of a Commission Order approving Riders C1A, C2A, and C4A.

17. There is evidence in the record for the Commission to approve the Company's EM&V plans for the proposed Phase XII Programs and the updated EM&V plan for the Non-residential Midstream EE Products Program.

18. There is evidence in the record to support a finding that the Company has spent approximately $797 million toward its $870 million energy efficiency program spending requirement. The Commission should adopt the Company's commitment to continue providing, in future DSM updates, a chart identifying its progress toward fulfilling the $870 million spending requirement.

19. The Commission should defer making any finding on whether the Company has met the 15% target for spending on programs benefitting low-income, elderly, or disabled individuals or veterans.

20. There is evidence in the record permitting the Commission to take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth.

21. The Company should continue to provide a Long-term Plan Project Management Report in future DSM filings until the Commission determines otherwise. Such report should incorporate quantifiable data sets where feasible.

22. The Commission should require the Company to continue its commitment to using the Stakeholder Group to develop the implementation plans for the Four Stakeholder Group Issues. The Company should report on the progress in developing such plans both (i) by no later than September 1, 2024, to Staff in the Commission's Division of Public Utility Regulation; and (ii) as part of the Company's next DSM update filing.

23. If the Commission approves the Phase XII Non-residential New Construction Program, the Company should report, as part of its annual DSM update filings, on the number of projects in the program; the type of project (industrial, commercial, or data center); the projected energy savings of the projects; and each project's stage.

24. The Commission should approve the following two additions to the EM&V Dashboard: (i) the year's projected cost per kWh, in terms of total projected costs, divided by total projected net energy savings; and (ii) the actual total costs, divided by the actual total net energy savings.

25. The Commission should adopt the Company's commitment to continue monitoring its cost per participant for active DSM programs included in future true-ups and provide updates to this analysis in its annual DSM filings.

26. The Company has complied with the Commission's internal audit directive.

Accordingly, I RECOMMEND the Commission enter an Order that:

1. ***ADOPTS*** the findings and recommendations of this Report;

2. ***APPROVES*** a total revenue requirement of $85,550,138, inclusive of a Projected Revenue Requirement of $116,345,356 and a True-up Adjustment of $(30,795,218), and which incorporates no performance incentive pursuant to Code § 56-585.1 A 5 c;

3. ***APPROVES*** a charge of $7,884,001 for Rider C1A, a credit of $1,995,409 for Rider C2A, and a charge of $79,661,545 for Rider C4A; and

4. ***DISMISSES*** 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 ("Rules of Practice")[623] and Code § 12.1-31, any comments to this Report must be filed on or before July 12, 2024. To promote administrative efficiency, the parties are encouraged to file electronically in accordance with 5 VAC 5-20-140 of the Rules of Practice. If not filed electronically, an original and fifteen (15) copies of the comments 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 served by electronic mail to all counsel of record and any such party not represented by counsel.

[623] 5 VAC 5-20-10 *et seq.*

Respectfully submitted,

Mary Renae Carter

M. Renae Carter
Hearing Examiner