SCC Commonwealth of Virginia
STATE CORPORATION COMMISSION

DAVID ESSAH, Ph.D.
DIRECTOR

DIVISION OF
PUBLIC UTILITY
REGULATION
P.O. Box 1197
Richmond, Virginia
23218-1197
(P) 804-371-9611
(F) 804-371-9350

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The Honorable Glenn Youngkin
Governor
Commonwealth of Virginia
Patrick Henry Building, 3rd floor
1111 E. Broad Street
Richmond, VA 23219

Members of the Virginia General Assembly
Pocahontas Building
Richmond, Virginia 23219

Dear Governor Youngkin and Members of the Virginia General Assembly:

Enclosed please find the Report of the State Corporation Commission on the Program Developed to Encourage and Expedite Infrastructure Investments by a Phase I or Phase II Utility in Certain Industrial Sites Pursuant to Chapter 488 of the 2022 Virginia Acts of Assembly (HB 894)

Please let me know if I may be of further assistance.

Respectfully submitted,

David N. Essah

David N. Essah, Ph.D.

Enclosure

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

Report to the Governor of the Commonwealth of Virginia and
The General Assembly of Virginia

Report on the Program Developed to Encourage and Expedite Infrastructure Investments by a Phase I or Phase II Utility in Certain Industrial Sites Pursuant to Chapter 488 of the 2022 Virginia Acts of Assembly (HB 894)

December 15, 2022

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EXECUTIVE SUMMARY

This Report is filed as required by Enactment Clause 4 of Chapter 488 of the 2022 Va. Acts of Assembly ("HB 894"). In furtherance of economic development in the Commonwealth, HB 894 directed the State Corporation Commission ("Commission") to develop a program ("Program") to encourage and expedite infrastructure investments by a Phase I or Phase II Utility in certain industrial cites designated by the Virginia Economic Development Partnership ("VEDP"). As set forth in that legislation, the Staff of the Commission ("Commission Staff" or "Staff") considered best practices in key competitor states and convened several meetings with various interested stakeholders to develop the Program, the results of which are summarized below.

Effective December 1, 2022, the Program implemented by the Commission streamlines the process for applicants to seek Commission approval of transmission investments at industrial sites designated by VEDP. Specifically, pursuant to guidelines supplemental to the "Guidelines for Transmission Line Applications Filed Under Title 56 of the Code of Virginia" ("Supplemental Guidelines"), the amount of information and time necessary for an applicant to prepare and for the Staff to review such applications will be reduced. In addition, the Commission will review the HB 894 eligible project applications on an expedited basis, as practical under the circumstances.

I. INTRODUCTION

Through Enactment Clause 4 of HB 894, the General Assembly directed the Commission to:

> develop a program to encourage and expedite infrastructure investments by a Phase I Utility or Phase II Utility, as those terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, in industrial sites determined to be relevant and in high demand by the Virginia Economic Development Partnership (VEDP).

HB 894 further provides that the Commission may consider best practices in key competitor states, as identified by VEDP, in developing such program. Additionally, HB 894 directs the Commission to: (1) consider, including but not limited to, the provisions of the existing pilot program established in Code § 56-585.1:10 ("Pilot Program"); and (2) "consult with VEDP, local economic development officials, affected utilities, and other stakeholders as [the Commission] deems appropriate." HB 894 requires such program to be implemented no later than December 1, 2022, and submission of "a report by December 15, 2022, to the Governor and General Assembly of any recommendations identified for legislative changes in furtherance of encouraging and expediting investments in industrial site utility infrastructure." This Report to the Governor and the General Assembly provides the requested information, together with a description of the Program developed by the Commission.

II. BEST PRACTICES SURVEY OF KEY COMPETITOR STATES' ELECTRIC UTILITY INFRASTRUCTURE PROGRAMS

After consulting with VEDP, Commission Staff contacted states that VEDP identified as key competitor states and conducted informal interviews with those states' economic development related agencies and some investor-owned utilities ("IOUs"). The states consulted included North Carolina, Ohio, South Carolina, Tennessee, and West Virginia. Many of the representatives contacted expressed similar challenges and program commonalities related to attracting large-scale economic development projects. The charts below reflect common themes in such challenges in infrastructure investment and program option(s) used, and which states expressed the described challenge and/or have the described infrastructure investment program option(s):

Table 1 – Economic Development Best Practices Issues Survey

BEST PRACTICE ISSUES	ISSUE DESCRIPTION	NC	OH	SC	TN	WV
Competitiveness	This relates to the state's perception regarding its ability to compete with other states that may have a more attractive draw to a particular prospect.	•	•	•	•	•
Public funds limited to water, sewer, site development, roads	Listing of infrastructure improvments a state may contribute public funds towards.	•	•	•	•	•
Proximity to existing infrastructure	Proximity is intended to call attention to states where sites identified/certified for economic development prospects must be within a reasonable proximity to existing utiliy infrastructure.	•			•	
Jurisdiction specific drawbacks	These states noted examples of where potential economic development opportunities were lost in areas where a site may have been viable, but other factors required by the prospect were not optimal in the locality where the site was located.			•		•

Table 2 – Economic Development Best Practices Programs Survey

BEST PRACTICE PROGRAMS	PROGRAM DESCRIPTION	NC	OH	SC	TN	WV
Commission involvement in economic development programming	This issue takes into consideration other states where the Virginia State Corporation Commission's equivalent has a specified role in utility investments in sites identified for economic development prospects.		•			•
Speculative electric utility build out	Where a state permits a utility to construct infrastructure without having a specified end user.					•
Utility economic development funds	Instances where a utility has a specific fund established to contribute towards economic development of a site.			•	•	
Pre-engineering & ROW acquisition	Allows a utility to conduct the pre-engineering necessary for a site identified for economic development and acquire right-of-way prior to an end user being identified for a site.					
Special tariffs/riders	Under these types of programs a state allows a utility to recover infrastructure investments made for economic development sites.	•	•			•
State & Utility Partnerships	Explains whether by informal or formal agreement utilities and states work together in identifying and readying sites for economic development prospects.	•	•	•	•	•
Locality tools for electric utility infrastructure extension	Grants or tax credits allowed to assist individual localities develop sites identified for economic development opportunity.			•		
Site certification standards	Programs managed by a state agency that, pursuant to established criteria, permit qualification of sites as suitable for economic development.	•	•	•	•	•

In sum, each state consulted expressed that it had challenges with being competitive in attracting large-scale economic development opportunities. Additionally, all states expressed that they had some form of partnership/cooperation with their IOUs in assessing sites for economic development opportunities, whether informal or formal.

III. STAKEHOLDER WORK GROUP EVALUATION OF EXISTING PILOT PROGRAM AND COMMISSION AUTHORITY

A. Existing Pilot Program

The existing Pilot Program in Code § 56-585.1:10 directs VEDP to conduct a pilot program:

> within the certificated service territory of each investor-owned electric utility, other than a utility described in subsection G of § 56-580 (Pilot Utility), or within a business park located in Planning District 19 for the purpose of promoting economic development in areas of the Commonwealth.

The Pilot Program applies to a "business park," which is defined in Code § 56-576 as follows:

> a land development containing a minimum of 100 contiguous acres classified as a Tier 4 site under the Virginia Economic Development Partnership's Business Ready Sites Program that is developed and constructed by a locality, an industrial development authority, or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of the General Assembly, in order to promote business development.

A Tier 4 site under VEDP's Business Ready Sites Program ("VBRSP") is defined as follows:[1]

> Site is positioned to support development such that building construction can take place in 12-18 months or less, with all infrastructure improvements in place, or plans for necessary infrastructure improvements completed and approved and deemed deliverable within 12-18 months by a licensed

[1] VBRSP Site Development Guidelines (FY23) – 06.2022.

Professional Engineer in the Commonwealth of Virginia. All infrastructure permit issues are identified and quantified.

The Pilot Program, which, by statute, expires on December 31, 2023, is limited to:

- completion by a Pilot Utility of the *construction* phase of a *transmission line* and *associated substation* to provide electric infrastructure to a business park;
- transmission lines less than seven miles in length;
- the Pilot Utility's certificated service territory or within Planning District 19;[2]
- projects where investments in the siting, environmental review, pre-engineering design, and transmission right-of-way acquisition have been made by a locality, industrial development authority, or similar political subdivision, prior to the public announcement of a prospective occupant of the business park; and
- three qualified petitions for each Pilot Utility, as certified by VEDP.

The statute provides that the costs incurred by a Pilot Utility in constructing a qualifying project are to be recovered pursuant to a rate adjustment clause under Code § 56-585.1 A 4 and that there must be revenue sharing agreements between two or more localities.

The Pilot Program does *not* apply to

- distribution infrastructure that is not a substation associated with the provision of service to a business park;
- transmission lines longer than seven miles;
- sites smaller than 100 contiguous acres;
- sites in an electric cooperative's service territory (other than the cooperative service territories in Planning District 19);
- pre-construction investments by a Pilot Utility;
- sites for which the pre-construction assessments, evaluations, and right-of-way acquisition for infrastructure development have not been completed; or

[2] Planning District 19 comprises the following counties and cities: Prince George, Dinwiddie, Surrey, Sussex, Greenville/Emporia, Hopewell, and Petersburg.

- sites for which the necessary infrastructure improvements have not yet received the necessary approvals (ex. a Commission-approved Certificate of Public Convenience and Necessity ("CPCN")).

B. Stakeholder Workgroup Summary

Beginning in April 2022, Staff from the Commission's Division of Public Utility Regulation, Division of Utility Accounting and Finance, and Office of General Counsel met with representatives from Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion"), Appalachian Power Company ("APCo"), and VEDP on several occasions. In addition, Staff convened stakeholder meetings in June 2022 and August 2022 with the following participants: Dominion, APCo, VEDP, Virginia Economic Developers Association, the Office of the Attorney General's Division of Consumer Counsel, Virginia Association of Counties, and VML/Southern VA/GO Region 3 (collectively, "Stakeholders"). Staff asked the Stakeholders to consider and respond to the following questions:

- What barriers exist to expediting electric utility infrastructure investments?
- Are there any gaps in the authority found in Code § 56-585.1:10 that would expedite electric utility infrastructure investments?
- What best practice(s), not currently available, could be adopted under the Commission's existing authority?
- What best practice(s), not currently available, could be a recommendation for legislative changes?
- What vision(s) do you have for the implementation framework for a site development program?

C. Stakeholders' Feedback on Barriers to Expediting Electric Utility Infrastructure Investments

From an economic development perspective, Stakeholders expressed that their biggest concern is the time it takes for a site to become "shovel-ready." According to VEDP, prospective end users expect a site to be shovel-ready within 12-18 months. Stakeholders noted that provision of electric utility service is the longest lead time issue, and that for undeveloped sites, it would take much longer than 18 months to build the required electric infrastructure, including the time it takes to file for approval of a CPCN and obtain the necessary local permits.[3] As a result, sites that are not already at VEDP's Tier 4 level are frequently eliminated from consideration by potential end users.

Electric utility Stakeholders also identified the following concerns:

- Construction of electric infrastructure without a known end user and how this creates uncertainty about electric load requirements;
- A reluctance to taking on the risk of speculatively building capacity that ultimately may not be suited to an end user's actual load requirements;
- Without a known end user, it is difficult for the electric utility Stakeholders to predict what electric load is needed to construct infrastructure to serve a potential site and under such scenarios there is a risk of over- or under-building electric infrastructure to serve such a site;
- The risk of over- or under-building is compounded by the uncertainty of cost recovery when there is no known end user;[4] and
- Public perception challenges – i.e., convincing the public that new infrastructure is needed even without a prospective end user known at the time of construction.

Stakeholders discussed another challenge pertaining to coordination between localities, utilities, and VEDP, when selecting sites to develop and market. Specifically, localities do not necessarily realize how much new electric infrastructure is needed before they select and market a site as an economic development site. This issue presents a challenge according to the electric utility Stakeholders, especially for rural sites where the locality may not be aware that a transmission line (typically more infrastructure-heavy than distribution lines) is needed to develop

[3] According to Dominion, if a greenfield project is involved, it could take the utility six months just to internally prepare the CPCN application.

[4] Both APCo and Dominion indicated that cost recovery of infrastructure investment projects would be less of a concern as long as recovery through their transmission riders (pursuant to Code § 56-585.1 A 4) could be guaranteed.

a site, and that the necessary transmission line may have to be routed in part through other localities and existing developments.

D. Stakeholders' Input on Gaps in the Existing Pilot Program (Code § 56-585.1:10)

Stakeholders noted that the Pilot Program in Code § 56-585.1:10 is more suited to economic development projects in APCo's service territory. According to APCo, the three projects APCo is completing under the Pilot Program statute (Commonwealth Crossing Business Park, Henry County; Berry Hill Industrial Park, Pittsylvania County; and Wildwood Commerce Park, Carroll County) began several years ago with partnerships between APCo and the localities that were made possible by Code § 56-265.2. That Code section allows a utility to bypass the Commission's CPCN process for transmission lines at 138 kV level if the utility "obtain[s] approval pursuant to the requirements of (a) § 15.2-2232[5] and (b) any applicable local zoning ordinances by the locality or localities in which the transmission line will be located." APCo noted that if only one locality is involved in developing the 138 kV transmission line, it's more practical to bypass obtaining a CPCN from the Commission and pursue the local zoning process pursuant to Code § 56-265.2. Pursuant to that permitting alternative, APCo worked with the counties in which the Berry Hill and Commonwealth Crossing projects are located to begin the environmental assessment and right-of-way acquisition, before securing the end users for the sites.

According to Dominion, the alternative permitting option under Code § 56-265.2 is not, however, a feasible alternative for the company because Dominion does not typically build 138 kV transmission lines. Further, Dominion stated that although there were two or three potential sites in its service territory that could qualify for the Pilot Program, those sites have not received a lot

[5] This statue describes the legal status of a locality's comprehensive plan and the approximate location, character, and extent of features shown on the plan.

of interest.[6] Dominion stated that it would take a closer look at its pilot-eligible sites that receive more interest from developers, especially if providing additional electric infrastructure would benefit a larger number of customers in those areas.

Stakeholders also indicated that there are very few sites in Virginia that are 100 contiguous acres in size or larger. In addition, the Pilot Program is limited to Tier 4 sites, even though Tier 2 and 3 sites also are generating a lot of interest.

E. Best Practice(s) That Could Be Adopted Under the Commission's Existing Authority To Expedite Electric Infrastructure Investment

In evaluating options to expedite electric utility infrastructure investments, Stakeholders were asked to provide suggestions that could be accomplished under the existing authority of the Commission. Suggestions included: (1) the possibility of expediting the CPCN process (described below); (2) expediting the permitting process with localities for smaller projects; and (3) prioritizing sites where it is easier for the utility to estimate the cost of extending infrastructure for expected load needs and the return on investment. Dominion also suggested a "bridging solution" as an option in more congested areas. This would involve extending existing distribution infrastructure (which would not require a CPCN) to provide some initial power to the site, followed by installation or extension of transmission infrastructure to provide the remaining capacity.

F. Suggestions for a Site Development Program and Legislative Changes

HB 894 also directs that this Report include any recommendations identified for legislative changes in furtherance of encouraging and expediting investments in industrial site utility infrastructure. As such, Stakeholders offered suggestions that included:

[6] Many available sites are in electric cooperatives' service territories; however, under the language of Code § 56-581.1:10 prior to July 1, 2022, Dominion could not install transmission facilities pursuant to the Pilot Program within the electric cooperatives' service territories.

- Creating an expedited CPCN process (through Staff-created guidelines approved by the Commission) for sites selected for a site readiness program that is limited to:
    - sites that VEDP has identified, and
    - for which there is local support;

- Expanding the voltage criteria for the alternative permitting options in Code § 56-265.2;

- Making the Pilot Program in Code § 56-585.1:10 permanent and expanding the eligibility criteria (e.g. to sites that are smaller than 100 contiguous acres, and Tier 2 or 3 sites[7]); and

- Providing legislatively-directed funding to Dominion and APCo to extend infrastructure in advance of securing an end user.

Ultimately, the utility Stakeholders preferred to offer summarizing perspectives, rather than proposing specific legislative amendments, to frame future discussions regarding any potential legislation changes intended to expedite infrastructure investment in support of economic development efforts in the Commonwealth. As such, Dominion Energy offered that it:

- Supports all economic development efforts that drive job growth, new business investments, workforce development opportunities, and community enhancements into the Commonwealth;

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[7] VEDP's Business Ready Sites Program defines Tier 2 and Tier 3 sites as follows:

> Tier 2: Site is under (a) public ownership, (b) public/private ownership, or (c) private ownership with an option agreement or other documentation of a commitment by the private owner(s) to a competitive sales price; permit access to the site for site assessment, construction, and marketing; and market the site for industrial or commercial economic development purposes. Comprehensive Plan reflects that the site is intended for industrial or commercial development land use, but site is not zoned as such and a rezoning hearing needs to be scheduled. Preliminary evaluation is complete to confirm site has minimal or no infrastructure and/or minimal or no due diligence in place.
>
> Tier 3: Site is zoned for industrial or commercial development land use. Site could have minimal or no infrastructure in place. Due diligence is complete including, but not limited to, a waters of the US (wetlands and streams) delineation with US Army Corps of Engineers approval within the last five years (i.e. a Preliminary Jurisdictional Determination or Approved Jurisdictional Determination letter), geotechnical borings and preliminary evaluation (i.e. Preliminary Geotechnical Report), boundary survey with easements and encumbrances identified (ALTA preferred), one-foot topographic survey completed for the purposes of design or real property improvements signed and sealed by a duly licensed professional in the Commonwealth of Virginia, a current cultural resources review, a current threatened and endangered species review, a Phase I Environmental Site Assessment within the last five years and, if necessary, a floodplain study or geological / karst evaluation. Master planning and preliminary engineering work is complete with associated reports and estimated costs and timelines for infrastructure development quantified.

- Is committed to continuing to work with all parties and regulatory entities currently involved in permitting electrical infrastructure;

- Can provide customized onsite or offsite options to meet customers' renewable energy requirements;

- Believes it would be beneficial to provide more certainty around the permitting timing associated with necessary electric utility infrastructure, specifically for a limited number of projects annually determined to be high priority by VEDP that support expansion of businesses existing in the Commonwealth or that seek to expand business into the Commonwealth;

- Recognizes that utility needs for economic development projects may vary based on project location and type of end use customer (e.g. manufacturing vs. data center vs. logistics, etc.); and

- Understands that engineering, easements, etc., for business parks, as defined in in Code § 56-576, ("Business Park Electric Infrastructure") located within the Utility's Transmission Zone can begin early in the process and be included in the utility's annual application/update to the SCC.

Likewise, APCo noted:

- In light of HB 894's directive for the Commission to develop a program to encourage and expedite infrastructure investments by a Phase I or Phase II Utility, APCo will ask the General Assembly to consider continuation and support of the pilot program for transmission facilities serving business parks found in Code § 56-585.1:10, which has been successful for APCo and its service territory;

- APCo has utilized the pilot program to assist in service territory economic development activity at three business parks:
    - Commonwealth Crossing Business Park, Henry County - Announced Projects: Press Glass and Crown Holdings, $200 million Capital Investment and 350 jobs
    - Berry Hill Industrial Park, Pittsylvania County - Under Construction, to be completed Q4 2022
    - Wildwood Commerce Park, Carroll County – Application for approval with the VEDP;

- More business parks are also planned, with other localities expressing interest in developing electric infrastructure under the pilot program;

- The pilot program recognizes that electric utility infrastructure is an essential part of economic development efforts, and helps to facilitate APCo's work with all of the stakeholders and regulatory entities currently involved in permitting electrical infrastructure;

- Moreover, given the economic challenges facing its service territory, APCo believes it is critical to work with entities like VEDP to identify appropriate development sites, support new jobs, and encourage load growth in the region. The pilot program helps to accomplish this; and

- For these reasons, APCo supports the provisions of Code § 56-585.1:10 and urges continuation of the pilot program beyond its present expiration date of December 31, 2023.

Based on the utility Stakeholders' summarizing perspectives, the General Assembly may want to consider having future legislative amendment(s) to Code § 56-585.1:10, or any other legislation adopted for the purpose of encouraging and expediting infrastructure investments by a Phase I or Phase II Utility, include a limitation on the number of such projects approved for each utility in any given year.

IV. COMMISSION PROGRAM FOR EXPEDITING INFRASTRUCTUREINVESTMENTS BY A PHASE I OR PHASE II UTILITY

As previously noted, HB 894 directs the Commission to develop "a program to encourage and expedite infrastructure investments by a Phase I Utility or Phase II Utility . . . in industrial sites determined to be relevant and in high demand by the [VEDP]." It must be noted that whenever the Commission is required to approve the construction of electrical utility facilities, such review and approval is conducted pursuant to Code § 56-46.1. This statute details considerations the Commission must take into account when reviewing applications submitted thereto and provides the legal authority upon which the Commission may act. As such, any program the Commission adopts in compliance with HB 894 is constrained by the authority granted in Code § 56-46.1.

Currently, all electric utility applications filed seeking a CPCN for the construction of transmission lines provide information responsive to a set of Staff developed "Guidelines for Transmission Line Applications Filed Under Title 56 of the Code of Virginia" (referred to herein as the "Transmission Guidelines").

To meet the directives of HB 894 for the Commission to develop "a program to encourage and expedite infrastructure investments by a Phase I Utility or Phase II Utility . . . in industrial sites determined to be relevant and in high demand by the [VEDP]," the following three step program ("HB 894 Program") has been implemented:

1. HB 894 eligible project applications may be filed where VEDP has determined that the industrial site that is the subject of such application is relevant and in high demand pursuant to VEDP guidelines;

2. The Commission Staff will review the HB 894 eligible project application under guidelines supplemental to the Transmission Guidelines ("Supplemental Guidelines"), which reduce the amount of information and time necessary for an applicant to prepare and for the Staff to review such applications; and

3. The Commission will review the HB 894 eligible project application on an expedited basis, as practical under the circumstances.

This three-pronged approach should result in achieving the General Assembly's goal of encouraging and expediting infrastructure investments by a Phase I or a Phase II Utility in certain industrial sites.

First, VEDP plays a vital role in vetting sites proposed by electric utilities and localities and/or regional industrial or economic development authorities, to ensure they are sites that have the best prospects for economic development. Having the utility and relevant locality and/or regional industrial or economic development authority submit their application to VEDP for site certification under VEDP's Business Ready Sites Program will greatly assist the Commission in evaluating HB 894 Program applications and shorten the Commission's review time related to determining a site's economic development potential.

Second, pursuant to the Supplemental Guidelines, a utility will have fewer requirements to comply with in submitting an application under the Commission's HB 894 Program. This will result in less, but still pertinent, information being required to be assembled by a utility regarding its proposed infrastructure investment project, and subsequently less information to be evaluated by the Commission; both of these should lead to time savings.

Finally, with the Commission's commitment to expedite review of HB 894 Program applications as practical under the circumstances, the entire process will bring the Commonwealth closer in-line with the preferred permitting timeline expressed by Stakeholders in the HB 894 work group. With these considerations accounted for, the Commission's HB 894 Program was implemented as of December 1, 2022 as required by the legislation, and documented on the Commission's public website.[8]

CONCLUSION

The foregoing Report is filed in response to the requirements of HB 894. As detailed herein, with the assistance of various stakeholders, a program was developed to encourage and expedite infrastructure investments by investor-owned electric utilities in certain industrial sites.

[8] Details of the Commission's HB 894 Program can be found at https://www.scc.virginia.gov/pages/Infrastructure-Investment-Program.