SOUTHERN ENVIRONMENTAL LAW CENTER

120 Garrett Street, Suite 400
Charlottesville, VA 22902

Telephone 434-977-4090
Facsimile 434-993-5549

Glenn Davis, Director
Virginia Energy
8th Floor, 1100 Bank Street
Richmond, Virginia 23219

Re: Case No. PUR 2024-00152 and the associated stakeholder process

Dear Director Davis,

Thank you for welcoming brief comments on the performance-based ratemaking ("PBR") stakeholder process (the "Stakeholder Process") and PBR more generally. The Southern Environmental Law Center ("SELC") and Appalachian Voices present the comments below, which are informed by our individual organizational experiences as participants in the Stakeholder Process, as well as by our years of engagement before the State Corporation Commission (the "Commission") on matters including proceedings dealing with rate adjustment clauses, rate cases, PBR, and integrated resource plans, among others. Thus far, the bulk of the Stakeholder Process has been focused primarily on understanding whether alternative regulatory tools could help to better align actions of electric investor-owned utilities ("IOUs") with Virginia's current policies. Given this, our comments mainly focus on matters associated with PBR tools as applied to IOUs—particularly on next steps in the developing process to investigate PBR and alternative tools to realign IOU action to better meet and exceed Virginia's existing laws and policies.

In Case No. PUR-2023-00210 (the "PBR Proceeding"), the Commission was tasked with developing standards to inform its administration of potential rate adjustments in response to an IOU's performance in the following areas: 1) reliability, 2) generating plant performance, 3) customer service, and 4) operating efficiency.[1] This framework is essentially a performance incentive mechanism ("PIM"),[2] which is considered a PBR tool.

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[1] Order Establishing Proceeding, *Ex Parte. In the matter concerning implementing performance-based adjustments to combined rates of return under §§ 56-585.1 A 2 c and 56-585.8 E of the Code of Virginia,* Case No. PUR-2023-00210 (Dec. 12, 2023).

[2] *See* Va. Code § 56-585.1 A 2 c ("The Commission may increase or decrease the utility's combined rate of return for generation and distribution services by up to 50 basis points based on factors that may include reliability, generating plant performance, customer service, and operating efficiency of a utility. Any such adjustment to the combined rate of return for generation and distribution services shall include consideration of nationally recognized standards determined by the Commission to be appropriate for such purposes."). Moreover, as a threshold matter, we believe utilities must meet all applicable legal requirements, including those found in the Virginia Clean Economy Act and Virginia Environmental Justice Act, and any other laws and regulations established to guide IOUs in their provision of electric service, *before* any performance-based adjustments to the utility ROE are contemplated. While ROE-tied performance incentive mechanisms are but one PBR tool, these incentives should be deployed to reward utilities only for going above and beyond. To the extent utilities are not meeting current laws and policies, consideration of other PBR tools, which may include penalties, would be more appropriate to incentivize timely adherence.

This is but one example of a PBR tool currently in place in Virginia. While other PBR tools in place in Virginia were discussed in the Stakeholder Process, it was recognized that the PBR Proceeding is limited in scope—only addressing the select few performance areas noted above and involving only a single PBR tool. In most jurisdictions discussed during the Stakeholder Process, care was taken to understand the interaction of PBR tools and other regulatory mechanisms, rather than viewing them in isolation. The current Stakeholder Process, per House Joint Resolution No. 30 and Senate Joint Resolution No. 47 (collectively, the "Joint Resolution"), has a very broad purview of consideration, which we believe should lead to a more comprehensive and thorough evaluation of the full scope of PBR tools than in the PBR Proceeding. In the PBR Proceeding, SELC recommended that the Commission "establish a clear process for implementing PBR standards, including providing opportunities for careful consideration about whether to revise the standards in future years" and "investigating if and how these PBR efforts inform other proceedings."[3] Given the Joint Resolution's directive to evaluate a more robust suite of PBR and alternative tools, this recommendation (adjusted slightly to apply to the consideration of new PBR and alternative tools, not just standards for existing PBR tools) is just as applicable here. An essential part of that effort is identifying overlaps and interactions between existing PBR tools in Virginia's current regulatory framework and determining if and how changes to those tools and/or broader changes in the regulatory landscape might impact the effectiveness of future tools considered.

The Stakeholder Process has helped highlight the importance of considering multiple PBR tools in combination to achieve an identified goal—and of the need to establish goals and outcomes early in the process to evaluate PBR tools. Deploying multiple PBR tools in concert can be a more beneficial and productive way to achieve a particular goal than utilizing a single tool to address a particular problem. Clearly articulated goals and outcomes should be established as early as possible to assess the value of particular PBR tools towards achieving those goals—and those goals and outcomes should be informed by a shared understanding of what is and is not working. An example of this is the Commission's proceedings relating to setting energy efficiency ("EE") standards. At present, Virginia has a PIM in place to incentivize the IOUs to exceed the established EE standards. However, Dominion has yet to meet these standards to date.[4] Given this example, one could say that the current EE PIM is not working, if the goal of that PIM is to incentivize utilities to exceed the EE standard. While this is but one example, it highlights an opportunity for the Commission and stakeholders to investigate how best to better align mechanisms in concert with one another to achieve identified goals, an investigation that could be undertaken in a series of technical conferences that address

[3] SELC Reply Comments, *Ex Parte. In the matter concerning implementing performance-based adjustments to combined rates of return under §§ 56-585.1 A 2 c and 56-585.8 E of the Code of Virginia*, Case No. PUR-2023-00210 (Nov. 15, 2024) at 3.

[4] REVISED Final Order, For approval of its 2023 DSM Update pursuant to § 56-585.1 A 5 of the Code of Virginia, Case No. PUR-2023-00217 (June 26, 2024) at 16, (where the Commission found that: "[u]sing the net impacts figures from the 2022 EM&V Report, the Commission finds that Dominion fell short of the 2022 Savings Target, achieving 1.23 percent savings, which is below the 1.25 percent savings requirement.").

this and other areas of improvement. Moreover, given the regulatory changes during the past few years, this seems like a good time for the Commission to identify comprehensive goals and outcomes.

Throughout the Stakeholder Process, parties have emphasized the need to establish a clear process that is *guided by* established goals and outcomes. While four "performance buckets" were identified by the Great Plains Institute ("GPI"), [5] it was unclear whether these were goals to which the outcomes should be connected, or instead simply subject matter groupings. For instance, the performance bucket of "Customer and Community Considerations" contained customer service, as well as environmental justice ("EJ") and equity. It is unclear however what the goal(s) for customer service should be, and therefore also unclear what outcome(s) would indicate movement toward the goal(s), making it difficult to know what metrics could be developed to measure achievement and thereafter inform systems of reward or penalty in response to utility performance in that area. While subject matter grouping can indeed be informative and can help direct detailed evaluation in a focused manner, there is still a need to delve deeper to identify goals and outcomes.

As noted earlier, Virginia's regulatory landscape is not static, and has undergone substantial changes, especially in the last five years. Any evaluation of the current PBR tools should be informed by the laws and policies of the Commonwealth—including the Virginia Clean Economy Act ("VCEA") and Virginia Environmental Justice Act ("VEJA")—that guide utilities in pivoting to clean energy while simultaneously providing affordable high-quality service to their customers in a manner that does not disproportionately harm already overburdened communities. As noted in the Joint Resolution, the Commonwealth's energy and decarbonization goals should be considered when crafting PBR tools. We believe addressing this directive must incorporate both the VCEA and VEJA. With that context in mind, we briefly summarize some matters related to the VCEA and VEJA that are relevant for consideration in this process.

The VCEA requires decarbonization through retirement of carbon-emitting generation sources and the development of more clean energy and storage resources. The VCEA also focuses on certain procurement approaches (*i.e.* percentage of 3rd party projects, project location, impacts to historically economically disadvantaged communities, etc.) in pursuit of its decarbonization mandates. Despite this, at present, the status quo does not sufficiently incentivize decarbonization, as made evident by the fact that one IOU's recent integrated resource plan filing incorporated nearly 6 gigawatts of new gas power plants over the next 15 years, despite the VCEA's mandate to retire carbon-emitting resources in 2045. In this regard, a PBR suite of tools could include a metrics-based mechanism (*i.e.*, one that measures actual CO_2 emissions over time and establishes benchmarks for steadily decreasing emissions) coupled with a penalty or reward, as well as potentially some standard to help evaluate whether the associated reward/penalty actually results in

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[5] Great Plains Institute, Presentation at the PBR Stakeholder Meeting No. 4 (February 28, 2025) at 7.

progress toward decarbonization mandates. Other examples of outcomes that might signal progress toward decarbonization are:

- Optimizing distributed energy resources ("DER") deployments (*i.e.*, minimizing interconnection time, appropriately valuing the grid services provided by DERs, offering sufficient incentives for solar plus storage systems, etc.);
- Increasing grid enhancing technology utilization (*i.e.*, utilizing technologies that minimize transmission investment costs);
- Enhancing DSM program development (*i.e.*, setting the right price signals and correct time frames for programs or connecting devices to maximize resources already in place—aka virtual power plants); and
- Prioritizing strategic electric vehicle ("EV") charging support (*i.e.*, emphasizing make-ready investments, managed charging, or charging development in EJ or historically economically disadvantaged communities).

In all of these cases, the PBR tools that measure and incentivize progress toward a goal, like decarbonization, may lead to a suite of outcomes, each of which may not individually benefit from the same incentive—all of which should work in concert. This highlights the need to identify early on the goals and outcomes that will inform PBR tool evaluation.

The VEJA, along with the Commonwealth Clean Energy Policy, requires utilities to identify, evaluate, and plan with, and in consideration of, communities affected by utility decisions. Take for instance the PBR Proceeding, in which customer service is a category of consideration. In the current regulatory landscape, customer service is not broadly evaluated[6] and the PBR Proceeding does not include a specific focus on the affected communities contemplated in the VEJA. Thus the status quo leaves unaddressed the need for EJ and fenceline community involvement and addressing ills, such as energy burden and the human health impacts associated with the pollution generated by fossil-fuel based generation.

PBR informed regulatory changes could better effectuate the aims of the VEJA by, for instance, adopting a tracking mechanism that tracked service disconnections by locale, with a goal of minimizing service disconnections, especially in EJ and fenceline communities, and historically economically disadvantaged communities ("HEDCs"). This effort could be connected to a different, yet complementary PBR tool that would incentivize the development of programs that reduce energy burden and increase and enhance EE and clean energy options for EJ and fenceline communities and for HEDCs. A PBR metric tool might track and measure the effectiveness of those programs, while a separate, but related tool might incentivize the development of those programs, all in

[6] Virginia State Corporation Commission Staff, Presentation at Stakeholder Process December 9, 2024 Meeting (Dec. 9, 2024) at 6.

service of progress towards the stated goal. This example underscores the need to consider the interaction between PBR tools to understand whether the chosen tools complement, detract, or have no bearing on one another and on the goal. If done well, a PBR framework should include regulatory tools that, at the very least, do not detract from one another, and, at their best, would complement one another. This is also an example of how goals and objectives can help stakeholders understand which mechanism(s) is/are needed to achieve the identified end state. Below is a table with some sample goals and outcomes in light of Virginia's projected load growth and of the VCEA and VEJA.

Goals	Outcomes
Minimize load growth through maximizing demand response and other load shaving or shifting mechanisms (time of use rates, managed EV charging, etc.)	• Establishment of tariffs that effectively incentivize customer participation across customer classes • Establishment of contract for service terms that ensure cost recovery fairness
Maximize benefit of energy efficiency	• Early achievement of energy efficiency standards and continued advancement in achieving more energy efficiency than the standards require
Expand development of solar, wind, and batteries	• Expanded and optimized deployment of DERs • Minimized net energy metering customer interconnection times • Prioritized deployment of grid enhancing technologies to mitigate unnecessary transmission expansion and other grid upgrades
Retire carbon emitting generation resources by 2045, if not sooner	• Early retirement of carbon emitting generation resources • Focus on protecting overburdened communities from prolonged and/or increased air pollution from the power sector--resulting in retiring the most polluting sources first • No new carbon emitting generation resources built • Focus on rapid deployment of batteries in a manner that maximizes locational benefits
Prioritize benefits for EJ justice and fenceline communities	• Establishment of benchmarks and ambitious targets that are specific, localized, and informed by prioritized communities • All customers can afford to remain connected to electric service • No customers experience shutoff for non-payment of bills
Optimize deployment of EV charging infrastructure	• Managed charging that effectively provides grid benefits while meeting customer charging need

	• Deployment of charging infrastructure that prioritizes accessibility for HEDCs and multi-unit dwellings

Conclusion

While the Joint Resolution provided a wealth of areas to consider, that some might even identify as goals, we believe that the Commission's study should nonetheless include a process for stakeholder-informed goal setting and outcome identification as early as possible. Because the implementation of PBR appears to be a multi-stage, multi-year process, it is vital to have in place a clearly identified process for how the investigation will progress. While no two states have identical utility regulatory landscapes, Virginia's electric and economic goals are not so unlike other states that Virginia could not learn from PBR investigations undertaken elsewhere. During the Stakeholder Process, participants either heard directly from those exploring or implementing PBR in other states or were provided resources developed by entities in other states where PBR is being evaluated/implemented. This input helped distill the need to better understand Virginia's current regulatory landscape and how certain PBR tools might impact areas of import here in the Commonwealth. Going forward, it will be critical to identify what practices and processes will help efficiently and effectively develop and achieve recognized goals and outcomes. We believe the Commission's study should include a clear process for implementing PBR tools and that the process should include stakeholder-informed goal setting and outcome identification as early as possible.

Thank you for welcoming our inputs, we look forward to continued engagement on these timely issues.

Respectfully,

Rachel James
Staff Attorney
Southern Environmental Law Center
120 Garrett Street, Suite 400
Charlottesville, VA 22902

Peter Anderson
Director of State Energy Policy
Appalachian Voices
244 E. High Street
Charlottesville, VA 22902