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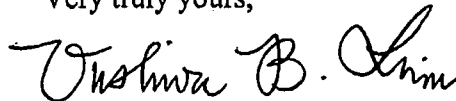
*Commonwealth of Virginia ex rel. State Corporation Commission,  
In re: Virginia Electric and Power Company's Integrated Resource Plan  
filing pursuant to Va. Code § 56-597 et seq.  
Case No. PUR-2018-00065*

Dear Mr. Peck:

Please find enclosed for electronic filing in the above-referenced matter the *Legal Memorandum of Virginia Electric and Power Company*. It is being filed coincident with the *2018 Compliance Filing* of Virginia Electric and Power Company.

Please do not hesitate to contact me if you have any questions in regard to this filing.

Very truly yours,



Vishwa B. Link

Enclosure

cc: Lisa S. Booth, Esq.  
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Service List

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, *ex rel.* )  
 )  
STATE CORPORATION COMMISSION )  
 ) Case No. PUR-2018-00065  
In re: Virginia Electric and Power Company's )  
Integrated Resource Plan filing pursuant to )  
Va. Code § 56-597 *et seq.* )

**LEGAL MEMORANDUM OF VIRGINIA ELECTRIC AND POWER COMPANY**

By Order dated December 7, 2018 (the "Order"), the State Corporation Commission of Virginia (the "Commission") directed Virginia Electric and Power Company ("Dominion Energy Virginia" or the "Company") to "correct and refile" its 2018 Integrated Resource Plan (the "2018 IRP"). Concurrent with this legal memorandum (the "Memorandum"), the Company is submitting its compliance filing (the "2018 Compliance Filing") as required by the Order and subject to the provisions of the Order. As explained in the 2018 Compliance Filing, the Company has complied with the Order to the best of its ability and in good faith. Where the Company has made assumptions and used its judgment to interpret the Order's requirements, the assumptions are explained in detail.

In conjunction with the 2018 Compliance Filing, the Company, by counsel, hereby files this Memorandum to address the use of the term "mandates" in the Order. Many of the provisions in the Grid Transformation and Security Act of 2018 (the "GTSA") that the Order refers to as "mandates" are not mandatory for the Company to propose in any particular manner. Nor is the Commission mandated to approve any particular proposal made by the Company for almost all of the "mandates" identified in the Order. Some of the "mandates" have some form of mandatory element (*e.g.*, the GTSA mandates that the Company file a plan for electric

distribution grid transformation projects), but within the statutory language lies an element of discretion on the Company's part for what it intends to propose, the scale and scope of its proposals, and the timing of its proposals. Likewise, for the Commission, a great deal of discretion exists to approve or deny almost any particular proposal, as was recently demonstrated in its decision on the Company's Grid Transformation Plan.<sup>1</sup>

Requiring the Company to model the "mandates" listed in the Order involves assumptions of future activities that likely will differ from actual proposals. Also, the Company's assumptions on what it may propose in the future likely will differ from what actually gets approved by the Commission. Therefore, the results of any particular alternative plan in the 2018 Compliance Filing—and the associated costs—if taken without these caveats may present a distorted view of the future. For these reasons, while compliant with the Order, the Compliance Filing does not reflect endorsement of any particular alternative plan as a path forward for the Company's system.

The Company respectfully disagrees with the Commission's use of the term "mandate" as a broad brush term throughout the Order, including its reference to "legally-mandated costs."<sup>2</sup> The Company provides this Memorandum in support of its legal position.

## I. BACKGROUND

On March 9, 2018, the Governor signed into law the GTSA. In its Order dated March 12, 2018 in Case No. PUR-2017-00051, the Commission directed that the Company's future

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<sup>1</sup> *Petition of Virginia Electric and Power Company, For approval of a plan for electric distribution grid transformation projects pursuant to § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2018-00100, Final Order (Jan. 17, 2019).

<sup>2</sup> Order at 6.

integrated response plans “include detailed plans to implement the mandates contained in [the GTSA].”<sup>3</sup>

On May 1, 2018, the Company filed its 2018 IRP with the Commission. The 2018 IRP included Section 7.6, titled “GTSA Compliance.”<sup>4</sup> In Figure 7.6.1, the Company provided a list of what it considered to be the “mandates” contained in the GTSA applicable to the Company, along with the accompanying citation.<sup>5</sup> The Company noted “that several provisions of the GTSA encourage specific public policies, such as greater deployment of renewable energy, without taking the form of a mandate.”<sup>6</sup> In the pages that followed, the Company outlined its view of the mandates and in words, without modeling the listed mandates, detailed the Company’s plans related to each one over the five-year short-term action plan period.

Following an evidentiary hearing, the Commission issued the Order, which found that “the Company has failed to establish that its 2018 IRP, as filed, is reasonable and in the public interest.”<sup>7</sup> The Order also found that “the Company’s 2018 IRP did not fully comply with the Commission’s prior directive to include detailed plans to implement the mandates contained in [the GTSA].”<sup>8</sup> The Order included the following explanation for this finding:

With respect to the requirement to address the mandates contained in [the GTSA], the record reflects that the Company included some, but not all, of those mandates in its 2018 IRP. For example, the Company’s plans include [the Costal Virginia Offshore Wind demonstration project (“CVOW”)] as well as solar photovoltaic (“PV”) resources ranging in amounts up to 6,640 megawatts

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<sup>3</sup> *In re: Virginia Electric and Power Company’s Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq.*, Case No. PUR-2017-00051, Order (Mar. 12, 2018).

<sup>4</sup> 2018 IRP at 133.

<sup>5</sup> 2018 IRP at 133-34. This Memorandum is intended to provide further clarification on how the Company views that list of “mandates.”

<sup>6</sup> 2018 IRP at 133.

<sup>7</sup> Order at 2-3.

<sup>8</sup> Order at 5. The Order “did not find bad faith on the part of the Company” for the failure to comply with this directive. Order at 5 n.13.

("MW"). The Company did not, however, model \$870 million in energy efficiency programs, nor did it model a battery storage pilot required by Senate Bill 966. The 2018 IRP also did not include costs associated with the Company's Strategic Undergrounding Program ("SUP"), Grid Transformation Plan, or Transmission Line Undergrounding Pilot, each of which was contained in, or modified by, [the GTSA]. Again, by omitting certain mandates the IRP as filed does not provide the analysis and back-up data needed to assess the cost of these mandates, for Commission review, and for statutorily required reporting to the General Assembly.<sup>9</sup>

The Commission directed the Company to "correct and refile its 2018 IRP subject to the provisions of this Order."<sup>10</sup> One of the provisions of the Order was related to the prior requirement regarding the "mandates" contained in the GTSA:

[T]he Company shall also calculate the incremental cost impacts of the mandates contained in [the GTSA], including a comparison to the identified least-cost plan. This includes CVOW; 5,000 MW of nameplate wind and solar, including at least 25 percent of such resources from non-utility generators; \$870 million in spending on energy efficiency programs; the 30 MW battery storage pilot; the SUP; the Grid Transformation Plan; and the Transmission Line Undergrounding Pilot.<sup>11</sup>

Concurrent with this Memorandum, the Company is submitting the 2018 Compliance Filing consistent with the directives provided by the Order.

<sup>9</sup> Order at 4 (footnotes omitted). Although the Commission mentions "statutorily required reporting to the General Assembly" twice on page 4 of the Order, the Order does not cite to specific reports, or what information may be missing to satisfy any reporting requirements. The Company submits that the reporting requirements included in Enactment Clause Nos. 19 and 23 of the GTSA require reporting on certain levels of "investment." The Company does not interpret these reporting requirements as mandating that the Company provide the level of potential spending on categories of projects that *may* be pursued under the GTSA in future proceedings and that *may or may not* be approved by the Commission.

<sup>10</sup> Order at 3.

<sup>11</sup> Order at 5 (footnotes omitted).

## II. DISCUSSION

The Company has developed its 2018 Compliance Filing consistent with the directives of the Order. Nevertheless, the Company disagrees with the characterization in the Order that the listed provisions of the GTSA are all “mandates.” The Company submits this Memorandum in support of its interpretation of the opportunities provided in the GTSA to further develop renewable energy, energy efficiency, and alternative energy sources, and to increase reliability and integration of distributed energy resources through distribution infrastructure investments.

As used in the Order, the term “mandate” does not accurately reflect the language of the GTSA. As a verb, the term “mandate” means “to authorize or decree (a particular action), as by enactment of law,” or “to order or require.”<sup>12</sup> As a noun, “mandate” means “an authoritative order or command.”<sup>13</sup>

The Company agrees that the GTSA does contain mandates applicable to the Company. For example, Enactment Clause Nos. 4 and 5 mandated that the Company provide two separate one-time voluntary bill credits.<sup>14</sup> Enactment Clause Nos. 6 and 7 of the GTSA mandated that the Commission adjust the Company’s rates for generation and distribution services to reflect implementation of the federal Tax Cuts and Jobs Act of 2017.<sup>15</sup> As another example, Enactment

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<sup>12</sup> Mandate, DICTIONARY.COM, <https://www.dictionary.com/browse/mandate> (last visited Mar. 7, 2019).

<sup>13</sup> *Id.*; see also Mandate, *Black’s Law Dictionary* (including as definitions “[a]n order from an appellate court directing a lower court to take a specified action” and “[a] written command given by a principal to an agent”).

<sup>14</sup> The Commission established Case No. PUR-2018-00053 for the purpose of receiving compliance filings related to these mandates.

<sup>15</sup> The Commission established Case No. PUR-2018-00055 to implement this mandate.

Clause No. 13 of the GTSA mandated that the Company file a report on the feasibility of providing broadband using utility infrastructure by December 1, 2018.<sup>16</sup>

The Company disagrees, however, with the characterization from the Order that many of the GTSA provisions are “mandates” with “legally-mandated costs.” While the Company fully supports the underlying public policy of the GTSA, and has sought or plans to seek approval from Commission for various projects as appropriate, the Company believes it is necessary to consider these items in their appropriate legal context. The Company will discuss the “mandates” required for the 2018 Compliance Filing in turn.<sup>17</sup>

*5,000 MW of nameplate wind and solar, including a percentage of such resources from non-utility generators.* The GTSA amended Va. Code § 56-585.1 A 6 to include language stating that “new utility-owned and utility-operated generating . . . facilities utilizing energy derived from sunlight or from wind with an aggregate capacity of 5,000 megawatts . . . are in the public interest.”<sup>18</sup> The newly-added Va. Code § 56-585.1:4 makes similar public interest declarations related to the development of solar and wind facilities in the Commonwealth.<sup>19</sup> And Va. Code § 56-585.1:4 F allows a utility to petition the Commission for a prudence determination related to solar or wind generating facilities. Further, Enactment Clause No. 14 of

<sup>16</sup> The Company submitted this report on November 30, 2018, which is available at <https://www.dominionenergy.com/library/domcom/media/about-us/electric-projects/grid-transformation/broadband-feasibility-report.pdf?la=en>.

<sup>17</sup> The Memorandum does not address CVOW or the SUP. The Commission approved CVOW in November 2018. *Petition of Virginia Electric and Power Company, For a prudency determination with respect to the Coastal Virginia Offshore Wind Project pursuant to Virginia Code § 56-585.1:4 F*, Case No. PUR-2018-00121, Final Order (Nov. 2, 2018) [hereinafter *CVOW*]. The Company agrees that the GTSA-amended language related to the SUP reflects a mandate for the Commission to approve the program so long as the Company stays under the statutory limits. See Va. Code § 56-585.1 A 6.

<sup>18</sup> Va. Code § 56.585.1 A 6.

<sup>19</sup> See Va. Code § 56-585.1:4.



the GTSA clearly states that the objective of the General Assembly is to see development of 5,000 MW of solar and wind generating resources in the Commonwealth.<sup>20</sup>

A declaration that a particular type of resource is in the public interest does not equate to a “mandate” that the utility pursue—or that the Commission approve—that resource.<sup>21</sup> Further, establishing a proceeding to determine the prudence of a particular project does not legally mandate that the utility file for such a determination, or that the Commission approve that project as prudent. Indeed, the plain language of Va. Code § 56-585.1:4 F gives the Commission authority to make the final determination on the prudence of projects voluntarily submitted by the utility. Finally, the statement of an *objective* of the General Assembly does not change this legal analysis; it only reaffirms the policy position of the legislature.

Importantly, the language in the GTSA about the development of 5,000 MW of solar and wind resources is not specific to Dominion Energy Virginia. Indeed, the GTSA focuses on a goal of 5,000 MW of renewable resources in the Commonwealth as a whole.<sup>22</sup> The Commission

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<sup>20</sup> GTSA Enactment Clause No. 14 (“That it is the objective of the General Assembly that the construction and development of new utility-owned and utility-operated generating facilities utilizing energy derived from sunlight and from wind with an aggregate capacity of 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, be placed in service on or before July 1, 2028.”).

<sup>21</sup> See *Petition of Virginia Electric and Power Company, For a prudency determination with respect to the Water Strider Solar Power Purchase Agreement pursuant to Virginia Code § 56-585.1:4 F*, Case No. PUR-2018-00135, Virginia Electric and Power Company’s Legal Issues Brief at 3-6, 7-8 (Sept. 27, 2018).

<sup>22</sup> See Va. Code § 56-585.1 A 6 (“The construction or purchase by an investor-owned incumbent utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, that use energy derived from sunlight or from wind and *are located in the Commonwealth or off the Commonwealth’s Atlantic shoreline*, regardless of whether any of such facilities are located within or without such utility’s service territory, is in the public interest.” (emphasis added)); Va. Code § 56-585.1:4 (focusing on “solar generation capacity placed in service on or after July 1, 2018, *located in the Commonwealth*” (emphasis added)).

seemed to recognize the nature of this Commonwealth-wide goal in its Order Granting Certificates in the Company's recent solar proceeding.<sup>23</sup> The Commission also seemed to recognize the statewide nature of the goal for 5,000 MW of renewable resources in its November 30, 2018 report to the General Assembly.<sup>24</sup>

The Commission's directive in the Order related to the 5,000 MW solar and wind "mandate" also stated that this should include "at least 25 percent of such resources from non-utility generators."<sup>25</sup> This language recognizes language from the GTSA in Va. Code § 56-585.1:4 D. But this statutory subsection does not use the phrase "at least." As the Company argued in a recent proceeding,<sup>26</sup> Va. Code § 56-585.1:4 D states that "[t]wenty-five percent of the solar generation capacity placed in service on or after July 1, 2018 . . . shall be from the purchase by a public utility of energy, capacity, and environmental attributes from solar facilities owned by persons other than a public utility."<sup>27</sup> Va. Code § 56-585.1:4 D continues that "[t]he remainder shall be construction or purchase by a public utility of one or more solar generation

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<sup>23</sup> *Petition of Virginia Electric and Power Company, For approval and certification of the proposed US-3 Solar Projects pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia, and for approval of a rate adjustment clause, designated Rider US-3, under § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2018-00101, Order Granting Certificates at 8 (Jan. 24, 2019) ("Code § 56.585.1:4 A refers to 5,000 megawatts of both solar and wind resources 'located in the Commonwealth or off the Commonwealth's Atlantic shoreline,' which would imply that the 5,000 MW total is a statewide aggregate (including offshore) total of both solar and wind.") [hereinafter *US-3 Solar Projects*].

<sup>24</sup> In the table reporting the amount of solar and wind needed to meet the objective of the General Assembly by 2028, the Commission includes rows to report solar and wind constructed or operated by cooperatives. Combined Report Including Annual Report on Construction of New Solar and Wind Projects at 19 (Nov. 30, 2018), available at <https://www.scc.virginia.gov/comm/reports/296comb.pdf>.

<sup>25</sup> Order at 5.

<sup>26</sup> See *US-3 Solar Projects*, Virginia Electric and Power Company's Legal Issues Brief at 3-6 (Jan. 10, 2019). The Commission ultimately determined that the legal interpretation of Va. Code § 56-585.1 A 4 and related provisions were not dispositive in the in the specific proceeding, so did not need to be decided. *US-3 Solar Projects*, Final Order at 7-9.

<sup>27</sup> Va. Code § 56-585.1:4 D.

facilities located in the Commonwealth.”<sup>28</sup> Based on the plain language of the statute, the amount of solar generation capacity to be from non-utility resources “shall be” twenty-five percent of the total solar capacity placed in service on and after July 1, 2018. This provision represents neither a “floor” nor a “ceiling” to the amount of capacity from non-utility resources. Rather, it sets a precise amount. “The remainder” of the solar generation capacity, or seventy-five percent, shall be from utility-owned resources.

The Company supports the public policy underlying the GTSA related to the development of solar and wind resources in the Commonwealth. Indeed, the Company has publicly committed to having 3,000 MW of renewable energy resources in operation or under development by early 2022.<sup>29</sup> But the GTSA does not require the Company alone to build or buy 5,000 MW by 2028, nor does the GTSA require the Commission to approve the entire 5,000 MW.

*\$870 million in spending on energy efficiency programs.* The GTSA included Enactment Clause No. 15, which focused on additional development of energy conservation programs:

That [the Company] shall develop a proposed program of energy conservation measures. 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 of the Code of Virginia. At least five percent of such energy efficiency programs shall benefit low-income, elderly, and disabled individuals. The projected costs for the utility to design, implement, and operate such energy efficiency programs, including a margin to be recovered on operating

<sup>28</sup> *Id.* (emphasis added).

<sup>29</sup> *Dominion Energy Launches Grid Transformation Program, Paving Way for Virginia’s Energy Future with 3,000 Megawatts of New Solar and Wind Planned by 2022*, DOMINION ENERGY (Jul. 24, 2018), <https://dominionenergy.mediaroom.com/2018-07-24-Dominion-Energy-Launches-Grid-Transformation-Program-Paving-Way-for-Virginias-Energy-Future-With-3-000-Megawatts-of-New-Solar-and-Wind-Planned-by-2022>.

expenses, shall be no less than an aggregate amount of . . . \$870 million for [Dominion Energy Virginia] for the period beginning July 1, 2018, and ending July 1, 2028, including any existing approved energy efficiency programs. In developing such portfolio of energy efficiency programs, each utility shall utilize a stakeholder process, to be facilitated by an independent monitor compensated under the funding provided pursuant to subdivision E of § 56-592.1 of the Code of Virginia, to provide input and feedback on the development of such energy efficiency programs. Such stakeholder process shall include representatives from each utility, the State Corporation Commission, the office of Consumer Counsel of the Attorney General, the Department of Mines, Minerals and Energy, energy efficiency program implementers, energy efficiency providers, residential and small business customers, and any other interested stakeholder who the independent monitor deems appropriate for inclusion in such process. The utility shall report on the status of the energy efficiency program, including the petitions filed and the determination thereon, to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate Commerce and Labor Committees on July 1, 2019, and annually thereafter through July 1, 2028.<sup>30</sup>

Enactment Clause No. 15 does contain some mandates. The Company must petition the Commission for approval of a *proposed* program of energy efficiency measures that amount to \$870 million for the ten-year period beginning in 2018. Five percent of the proposed program must benefit low income, elderly, and disabled individuals. The Company must utilize a stakeholder process to develop its proposed programs. And the Company must report on the status of its *proposed* program every year.

Enactment Clause No. 15 refers to Va. Code § 56-585.1 A 5 c, under which the Company can petition the Commission for a rate adjustment clause for the recovery of costs for energy efficiency programs.<sup>31</sup> Section 56-585.1 A 5 c states that the Commission shall approve such a

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<sup>30</sup> Enactment Clause No. 15.

<sup>31</sup> The GTSA also amended the language in Va. Code § 56-585.1 A 5 c regarding from which customers the Company can recover the costs of new energy efficiency programs.

petition “if it finds that the program is in the public interest.”<sup>32</sup> The GTSA amended the language in Va. Code § 56-576 defining “in the public interest” for the purpose of assessing energy efficiency programs.<sup>33</sup> Taking the amended language of Enactment Clause No. 15 and Va. Code § 56-576 together, the mandate in Enactment Clause No. 15 for the Company to *propose* \$870 million in energy efficiency programs does not equate to Commission *approval* of \$870 million in energy efficiency programs.

The Company, however, remains committed to energy efficiency, and to finding and submitting programs to meet the \$870 million projected cost goal. Indeed, in its recent filing under Va. Code § 56-585.1 A 5, the Company proposed ten new energy efficiency programs subject to Enactment Clause No. 15.<sup>34</sup>

The Company is also actively participating in the stakeholder process established by Enactment Clause No. 15 to facilitate the development of future energy efficiency programs. Given the Company’s discretion, with stakeholder input, for what energy efficiency programs will be proposed, combined with the Commission’s discretion for what programs will be approved, it oversimplifies the discussion and mischaracterizes the legislation to deem the requirement to *propose* \$870 million of energy efficiency programs over the next ten years a “mandate” with “legally-mandated costs” for planning purposes. The level of spending the

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<sup>32</sup> Va. Code § 56-585.1 A 5 c.

<sup>33</sup> Va. Code § 56-576 (“‘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 . . . .” (emphasis added)).

<sup>34</sup> *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, Petition (filed Oct. 3, 2018).

Commission actually approves can, and likely will, vary from the \$870 million of programs that the Company eventually proposes.<sup>35</sup>

*Battery storage pilot.* Enactment Clause No. 9 mandated that the Commission establish a pilot program related to “electric power storage batteries,”<sup>36</sup> and that the Company submit a

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<sup>35</sup> For example, between 2009 and 2017, the Company proposed approximately \$707.5 million of spending on energy efficiency programs, of which the Commission approved approximately \$368.2 million. See *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, 2010 S.C.C. Ann. Rept. 362, Order Approving Demand-Side Management Programs (Mar. 24, 2010); *Application of Virginia Electric and Power Company For approval to continue two rate adjustment clauses, Rider C1 and C2, as required by the Order Approving Demand-Side Management Programs of the State Corporation Commission in Case No. PUE-2009-00081*, Case No. PUE-2010-00084, 2011 S.C.C. Ann. Rept. 342, Order Approving Rate Adjustment Clauses (Mar. 22, 2011); *Application of Virginia Electric and Power Company For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2011-00093, 2012 S.C.C. Ann. Rept. 298, Final Order (Apr. 30, 2012); *Application of Virginia Electric and Power Company, For approval 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. Rept. 285, Order (Apr. 19, 2013); *Petition of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2013-00072, 2014 S.C.C. Ann. Rept. 289, Final Order (Apr. 29, 2014); *Petition of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2014-00071, 2015 S.C.C. Ann. Rept. 230, Final Order (Apr. 24, 2015); *Petition of Virginia Electric and Power Company, For approval to implement new demand-side management programs, for approval to continue a demand-side management program, and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2015-00089, 2016 S.C.C. Ann. Rept. 275, Final Order (Apr. 19, 2016); *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 § 56-585.1A 5 of the Code of Virginia*, Case No. PUE-2016-00111, 2017 S.C.C. Ann. Rept. 390, Final Order (June 1, 2017); *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, Final Order (May 10, 2018).

<sup>36</sup> Enactment Clause No. 15.

proposal to the pilot program to deploy batteries. Through the pilot program, Dominion Energy Virginia “may install batteries with up to 30 megawatts of capacity.”<sup>37</sup> Enactment Clause No. 10 mandates that the Commission adopt rules or guidelines that may be necessary for the administration of this pilot program. The Commission issued its Order Establishing Guidelines for this pilot program on November 26, 2018, in Case Nos. PUR-2018-00059 and PUR-2018-00060.

The GTSA mandates that the Company submit a proposal to deploy batteries as part of the established pilot program. The language of the statute sets a maximum capacity that the Company may propose, but not a minimum. Further, the GTSA does not mandate that the Commission accept into the pilot program the proposed battery projects submitted by the Company.

The Company is interested in the potential for batteries as a resource, and looks forward to submitting proposals to deploy batteries as part of the pilot program. Nevertheless, while the GTSA mandates that the Commission establish the pilot, and mandates that the Company submit a proposal to deploy batteries, the Company is not obligated to deploy the full 30 MW of batteries. Therefore, treating the full 30 MW battery pilot as a “mandate” is not appropriate.

**Grid Transformation Plan.** The GTSA established a proceeding through which the Company must petition the Commission for approval of a plan for electric distribution grid transformation projects,<sup>38</sup> as defined in the amended Va. Code § 56-576. Such a plan “shall include both measures to facilitate integration of distributed energy resources and measures to enhance physical electric distribution grid reliability and security.”<sup>39</sup> In ruling on such a petition,

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<sup>37</sup> *Id.* (emphasis added).  
<sup>38</sup> Va. Code § 56-585.1 A 6.  
<sup>39</sup> *Id.*

the Commission shall consider whether the Company's plan for such projects is reasonable and prudent.<sup>40</sup> The GTSA found such projects to be in the public interest.<sup>41</sup> Further, the GTSA amended Va. Code § 56-585.1 A 6 to allow for recovery of the costs for "one or more electric distribution grid transformation projects" through a rate adjustment clause.<sup>42</sup>

A declaration that a particular type of project is in the public interest does not equate to a mandate that the utility deploy—or that the Commission approve—such projects. The Company argued as much in its legal brief filed in the Grid Transformation Plan proceeding.<sup>43</sup> The Commission so found in its Final Order issued January 17, 2019: "All parties and Staff . . . agree that the statutory requirement that the costs of a grid transformation plan must be reasonable and prudent is neither nullified by, nor subordinated to, the statutory declaration elsewhere that grid transformation projects in general are in the public interest. We agree with [this] conclusion[]." <sup>44</sup> Further, establishing a proceeding to determine the reasonableness and prudence of a particular type of project does not legally mandate that the Commission approve such projects as reasonable and prudent. This is evident from the outcome of the Company's Grid Transformation Plan proceeding in Case No. PUR-2018-00100.

The Company heartily believes that a need exists to transform its electric distribution grid—as recognized by the General Assembly through its declaration that electric distribution grid transformation projects are in the public interest—and that such investments will benefit

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Petition of Virginia Electric and Power Company, For approval of a plan for electric distribution grid transformation projects pursuant to § 56-585.1 A 6 of the Code of Virginia*, Case No. PUR-2018-00100, Virginia Electric and Power Company's Legal Issues Brief at 3-6, 11 (Oct. 31, 2018) [hereinafter *GT Plan*].

<sup>44</sup> *GT Plan*, Final Order at 4 (Jan. 17, 2019).



customers both in the near and long term. And the Company intends to pursue future plans and necessary Commission approval for electric distribution grid transformation projects. But other than the requirement that the plan include measures to meet the two required objectives under the statute, the GTSA does not mandate scale, scope, or timing of a plan for electric distribution grid transformation projects. Nor does the Company believe that the Commission is mandated to approve any plan put forward by the Company.

*Transmission Line Undergrounding Pilot.* Enactment Clause No. 2 of the GTSA, codified at Va. Code § 56-585.1:5, established a pilot program “to further the understanding of underground electric transmission lines in regard to electric reliability, construction methods and related cost and timeline estimating, and the probability of meeting such projections.” This pilot is not specific to Dominion Energy Virginia. While the statutory language does require the Commission to approve a project as part of the pilot if it meets the required criteria, the statute does not require the public utility to submit a project for approval.<sup>45</sup> Indeed, the statute includes a reference to the possibility that “two applications are not submitted to the Commission that meet the requirements of this section.”<sup>46</sup>

The Company has submitted a written request to have its Haymarket Project qualify for the Transmission Line Undergrounding Pilot, and the Commission has approved that request.<sup>47</sup>

The Company may submit a second project that would qualify for the pilot, as the Company

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<sup>45</sup> See Va. Code § 56-585.1:5 B (requiring the Commission to act only after the public utility submits a written request); *id.* § 56-585.1:5 D v (setting as one criteria for a project to qualify that “the public utility requests that the project be considered as a qualifying project under this section”).

<sup>46</sup> Va. Code § 56-585.1:5 I.

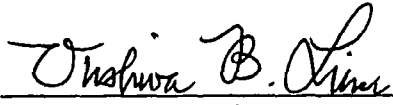
<sup>47</sup> *Application of Virginia Electric and Power Company, For approval and certification of electric transmission facilities: Haymarket 230 kV Double Circuit Transmission Line and 230-34.5 kV Haymarket Substation*, Case No. PUE-2015-00107, Order on Request to Participate in Pilot Program (Jul. 26, 2018).

believes that further understanding of underground electric transmission lines is a worthwhile objective. But the Company does not consider the GTSA as having mandated that the Company find a qualifying project to pursue.

**III. CONCLUSION**

The Company submits its 2018 Compliance Filing incorporating all provisions of the Order to the best of its ability and with the intent of explaining the good faith assumptions it made to comply. The Company submits this Memorandum to address certain important legal issues raised by the Order that affect the Company's planning process, and that could also affect other proceedings brought before the Commission that rely on the interpretation of the GTSA. The Company believes that the issues raised are important to evaluate when considering the requirements for future integrated resource plans.

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March 7, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of March, 2018, true and accurate copies of the foregoing filed in Case No. PUR-2018-00065 were hand delivered, electronically mailed, and/or mailed first class postage pre-paid to the following:

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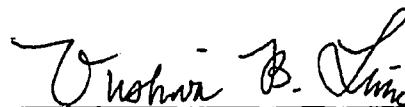
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