

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 14, 2023

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PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY

2023 APR 14 A 11:15

CASE NO. PUR-2022-00124

For approval of its 2022 RPS Development Plan
under § 56-585.5 D 4 of the Code of Virginia
and related requests

FINAL ORDER

During its 2020 Session, the Virginia General Assembly enacted Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly. These duplicate Acts of Assembly, known as the Virginia Clean Economy Act ("VCEA"), became effective on July 1, 2020. The VCEA, *inter alia*, establishes a mandatory renewable energy portfolio standard ("RPS") program ("RPS Program") for Virginia Electric and Power Company ("Dominion" or "Company") in Code § 56-585.5. Code § 56-585.5 D 4 requires Dominion to submit annually to the State Corporation Commission ("Commission") plans and petitions for approval of new solar and onshore wind generation capacity ("RPS Filing").

As in prior RPS cases, the Commission must determine whether the instant RPS Filing is reasonable and prudent, giving due consideration to the following factors: (i) the RPS and carbon dioxide reduction requirements in Code § 56-585.5; (ii) the promotion of new renewable generation and energy storage resources within the Commonwealth, and associated economic development; and (iii) fuel savings projected to be achieved by the plan.¹

The Commission's final order regarding any RPS Filing is required by Code § 56-585.5 D 4 to be entered not more than six months after the date of such filing.

¹ Code § 56-585.5 D 4.

On October 14, 2022, Dominion submitted its annual RPS Filing to the Commission ("2022 RPS Filing" or "Petition"). The 2022 RPS Filing requests that the Commission:

- (i) Approve the Company's annual plan for the development of new solar, onshore wind, and energy storage resources ("RPS Development Plan") in connection with the mandatory RPS Program pursuant to Code § 56-585.5 D 4;
- (ii) Grant certificates of public convenience and necessity ("CPCNs") and approval to construct and operate eight utility-scale projects, consisting of seven utility-scale solar generating facilities ("CE-3 Solar Projects") totaling approximately 474 megawatts ("MW"), and one stand-alone energy storage resource ("Shands Storage") totaling approximately 15.7 MW (collectively, "CE-3 Projects") pursuant to Code § 56-580 D;
- (iii) Approve to recover through the Rider CE rate adjustment clause the costs of (a) the CE-3 Projects and related interconnection facilities, and (b) two distributed solar projects ("Ivy Landfill"), representing four distributed solar facilities, totaling approximately 6 MW, and related interconnection facilities ("CE-3 Distributed Solar Projects") pursuant to Code § 56-585.1 A 6;
- (iv) Approve an update to Rider CE for recovery of costs associated with solar projects and related interconnection facilities as approved by the Commission in prior RPS Filing proceedings;² and
- (v) Make a prudence determination for the Company to enter into 13 power purchase agreements ("PPAs") for solar and energy storage resources totaling approximately 270 MW of solar and 49 MW of energy storage ("CE-3 PPAs") pursuant to Code § 56-585.1:4.³

² See *Petition of Virginia Electric and Power Company, For approval of the RPS Development Plan, approval and certification of the proposed CE-2 Solar Projects pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia, revision of rate adjustment clause, designated Rider CE, under § 56-585.1 A 6 of the Code of Virginia, and a prudence determination to enter into power purchase agreements pursuant to § 56-585.1:4 of the Code of Virginia*, Case No. PUR-2021-00146, Doc. Con. Cen. No. 220320113, Final Order (Mar. 15, 2022) ("2022 RPS Order"); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Virginia Electric and Power Company*, Case No. PUR-2020-00134, 2021 S.C.C. Ann. Rept. 242, Final Order (Apr. 30, 2021).

³ Ex. 8 (Petition) at 1-2.

The Company subsequently filed supplemental testimony addressing the impacts of the federal Inflation Reduction Act of 2022 on the Petition.⁴

On October 27, 2022, the Commission issued an Order for Notice and Hearing ("Procedural Order"), which established a procedural schedule; directed Dominion to provide public notice of its 2022 RPS Filing; scheduled public witness and evidentiary hearings on the 2022 RPS Filing; provided interested persons an opportunity to file written comments on the Petition or participate as respondents in this proceeding; and directed the Commission Staff ("Staff") to investigate the Petition and file testimony and exhibits containing its findings and recommendations thereon.

Notices of participation were filed by Appalachian Voices; the Solar Energy Industries Association ("SEIA"); the Virginia Committee for Fair Utility Rates; Walmart Inc. ("Walmart"); and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel").⁵

Appalachian Voices, Walmart, and Staff filed testimony on December 21, 2022.⁶ Dominion filed rebuttal testimony on January 11, 2023. The Commission also received written public comments in this proceeding from interested persons.

In the Procedural Order, the Commission noted that Staff had requested the Department of Environmental Quality ("DEQ") to coordinate an environmental review of the proposed CE-3 Projects. The DEQ filed a report ("DEQ Report") on December 9, 2022. The DEQ Report summarized the proposed CE-3 Projects' potential environmental impacts, made

⁴ This supplemental testimony was filed on November 22, 2022.

⁵ SEIA subsequently withdrew its notice of participation and instead participated in this proceeding through the submission of public comments and public witness testimony. Tr. 6-18.

⁶ Staff subsequently filed corrections to certain testimonies on January 19, 2023.

recommendations for minimizing those impacts, and outlined the Company's responsibilities for compliance with certain legal requirements governing environmental protection.

On January 11, 2023, the Commission issued an Order Assigning Hearing Examiner, which assigned a Hearing Examiner to conduct all further proceedings in this case and to file a final report containing findings and recommendations.

A public witness hearing was convened telephonically on January 30, 2023, as scheduled, to receive the testimony of any public witnesses that desired to provide comments on the Company's Petition. Six public witnesses testified.⁷ A public evidentiary hearing was convened in the Commission's courtroom on January 31 and February 1, 2023, to receive testimony and evidence offered by Dominion, respondents, and Staff on the Petition.⁸

On March 1, 2023, Hearing Examiner D. Mathias Roussy, Jr., issued a 168-page Report that analyzed the law, the evidence, and the arguments in this case and made detailed findings and recommendations ("Report"). The Report recommends that the Commission enter an order in this case that:

- (1) ***FINDS*** that Dominion's RPS Development Plan is reasonable and prudent based on the record of this case, giving due consideration to all factors required by Code § 56-585.5 D 4.
- (2) ***DIRECTS*** Dominion to include, in its next RPS plan filing, modeling results that:
 - incorporate the effects of the Inflation Reduction Act;
 - show the Commonwealth both in [the Regional Greenhouse Gas Initiative ("RGGI")] and out of RGGI; and
 - exclude a carbon shadow price from the baseline modeling analysis.

⁷ One witness testified via Microsoft Teams rather than telephonically.

⁸ All parties and Staff participated at the hearing, except for SEIA as noted above.

- (3) **DIRECTS** Dominion to address in its next RPS plan filing:
 - the load forecast, modeling, and planning implications of projecting (and conversely not projecting) a portion of data center load increases coming from [accelerated renewable energy buyers ("ARBs")]; and
 - Dominion's modeling assumption for energy efficiency beginning in 2026.
- (4) **DIRECTS** Dominion to upload to an RPS plan eRoom, at the time of future RPS plan filings:
 - electronic workpapers underlying the Company's economic analysis; and
 - any recent [integrated resource plan ("IRP")] on which the RPS plan is based.
- (5) **APPROVES** and **GRANTS** CPCNs for the CE-3 Solar Projects, subject to the conditions that Dominion:
 - comply with the uncontested recommendations of the DEQ Report;
 - obtain all environmental permits and approvals necessary to construct and operate the CE-3 Solar Projects; and
 - obtain and file with the Commission executed Interconnection Service Agreements indicating no unaddressed adverse impacts on system reliability, as a condition of approval for Cerulean, Courthouse, Moon Corner, and Southern Virginia Solar.
- (6) **DENIES** approval and a CPCN for Shands Storage.
- (7) **DIRECTS** Dominion, in its next CPCN filing accompanying an RPS plan petition, to:
 - separate, in its economic analysis, any estimated social cost of carbon cost/benefit from the estimated ratepayer benefits and costs;
 - include further discussion on the estimated effect of carbon storage loss on the estimated level of CO₂ reductions from proposed generation facilities; and
 - incorporate a downward trend for projected [PJM Interconnection, LLC ("PJM")] marginal emission rates.
- (8) **ENCOURAGES** Dominion to allow [the Virginia Department of Conservation and Recreation ("DCR")] to review selected species lists for the CE-3 Projects so that DCR can share any relevant information.
- (9) **ENCOURAGES** Dominion to continue its ongoing environmental justice outreach.
- (10) **APPROVES** an updated Rider CE revenue requirement of approximately \$87.913 million, subject to the condition that Dominion take all reasonable steps to minimize ratepayer costs, including pursuing federal tax credits that best benefit ratepayers.

- (11) **DEFERS** any decision on proxy values to Case No. PUR-2021-00156.
- (12) **FINDS** the CE-3 PPAs are prudent.
- (13) **FINDS** Dominion over-complied with the 2021 RPS compliance obligation.
- (14) **DIRECTS** Dominion to conform its future compliance calculations to the *RPS Allocation Order* and to apply [renewable energy certificates ("RECs")] used for overcompliance in 2021 to compliance in 2022 or other future years.
- (15) **DIRECTS** or **ENCOURAGES** Dominion to allow, in future [Requests for Proposals ("RFPs")], pricing that includes fixed pricing, a range of positive escalators, but no negative escalators.
- (16) **DIRECTS** or **ENCOURAGES** Dominion and/or Staff to study the potential inclusion, in future RFPs, of a potential downward bid refresh mechanism.
- (17) **DIRECTS** or **ENCOURAGES** Dominion to continue its efforts regarding previously developed sites, including taking advantage of Virginia [Department of Energy's] relevant expertise.
- (18) **ADDRESSES** the 65%/35% legal issue, if the Commission decides the instant case is the appropriate proceeding.⁹

On March 14, 2023, Dominion, Appalachian Voices, Walmart, Consumer Counsel, and Staff filed comments on the Report.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.¹⁰

The Commission – as discussed in prior RPS orders – is guided in these matters by the statutes and the record. The Commission has continued to exercise its delegated discretion in a

⁹ Report at 166-167 (emphases in original).

¹⁰ The Commission has fully considered the evidence and arguments in the record. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

manner that faithfully implements the VCEA's carbon-reduction requirements, while best protecting consumers who expect and deserve reliable and affordable service.¹¹ The

Commission herein (among other things) approves:

- seven utility-scale solar generating facilities, totaling approximately 474 MW;
- a stand-alone energy storage resource, totaling approximately 15.7 MW;
- the costs for the above projects and related interconnection facilities;
- the costs of two distributed solar projects (including interconnection facilities), representing four distributed solar facilities totaling approximately 6 MW; and
- 13 PPAs for solar and energy storage resources, totaling approximately 270 MW of solar and 49 MW of storage.

As set forth above, the Hearing Examiner's Report concludes with 18 well-structured recommendations for purposes of the instant RPS proceeding. Accordingly, the remainder of this Final Order addresses each enumerated recommendation, *seriatim*, as listed in the Report.¹²

RPS Development Plan

Recommendation 1

The Commission finds that Dominion's RPS Development Plan is reasonable and prudent based on the record of this case, giving due consideration to all factors required by Code § 56-585.5 D 4.

¹¹ With respect to issues raised by participants not expressly addressed by the Commission herein, the Commission finds that resolution of such issues is not necessary for the decision in this proceeding, and the Commission hereby exercises its discretion not to address such for purposes of the instant order.

¹² Unless otherwise noted, where the Commission herein adopts the Hearing Examiner's recommendation, such is based on analysis and rationale therefor as set forth in the Report.

Recommendation 2

The Commission directs Dominion to include, in its next RPS plan filing, modeling results that incorporate the effects of the Inflation Reduction Act, and that show the Commonwealth both in RGGI and out of RGGI. For the shadow price of carbon, the Commission finds reasonable Dominion's proposal to exclude from its carbon dispatch adder an indirect cost associated with the social cost of carbon.

Recommendation 3

The Commission finds reasonable Dominion's proposal to address – in its next IRP proceeding – (i) the load forecast, modeling, and planning implications of projecting (and conversely not projecting) a portion of data center load increases coming from ARBs, and (ii) its modeling assumption for energy efficiency beginning in 2026.

Recommendation 4

Dominion is directed to upload to an RPS plan eRoom, at the time of future RPS plan filings, electronic workpapers underlying the Company's economic analysis. In addition, the Commission will not require Dominion to upload its IRP to the RPS plan eRoom in its next RPS proceeding; however, the Commission expressly does not rule on the relevancy of any portion of the IRP for purposes of a future RPS proceeding.

New Company-Owned Resources*Recommendation 5*

The Commission approves and grants CPCNs for the CE-3 Solar Projects, subject to the conditions that Dominion: (1) comply with the uncontested recommendations of the DEQ Report; (2) obtain all environmental permits and approvals necessary to construct and operate the CE-3 Solar Projects; and (3) obtain and file with the Commission executed Interconnection

Service Agreements indicating no unaddressed adverse impacts on system reliability, as a condition of approval for Cerulean, Courthouse, Moon Corner, and Southern Virginia Solar.

Recommendation 6

Significant energy storage targets are contained in the VCEA¹³ as well as the Commission's Regulations Governing Deployment of Energy Storage.¹⁴ As previously recognized by the Commission, "[t]he VCEA envisions significant increased deployment of energy storage resources in Virginia through 2035."¹⁵ At the same time, as argued by Consumer Counsel, the VCEA does not require the Commission to approve cost recovery for all new projects *at any cost*.¹⁶ In evaluating Shands Storage, the Commission has considered, among other things, the aforementioned provisions of the VCEA as enacted by the General Assembly, the relatively nascent stage of energy storage deployment in the Commonwealth, and the experience that Dominion will gain from operating Shands Storage. We have also carefully considered the cost to Dominion's customers and the results of the economic analysis presented by Dominion, as well as other statutory standards applicable to this type of resource.¹⁷

Based on the particular record developed herein, including the thorough and well-reasoned Report prepared by the Hearing Examiner, the Commission approves and grants a CPCN to Shands Storage, subject to compliance with the recommendations in the DEQ Report

¹³ See Code § 56-585.5 E 2.

¹⁴ 20 VAC 5-335-10 *et seq.*

¹⁵ *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 E 5 of the Code of Virginia related to the deployment of energy storage*, Case No. PUR-2020-00120, 2020 S.C.C. Ann. Rept. 562, 563, Order Adopting Regulations (Dec. 18, 2020).

¹⁶ Consumer Counsel Comments at 1.

¹⁷ See, e.g., Report at 109-140. We find that Dominion has sufficiently demonstrated the need for additional capacity that will be provided by Shands Storage. Ex. 25 (Drummond Direct) at 6-7.

(except as otherwise recommended by the Hearing Examiner), and finds that Dominion should be required to obtain all environmental permits and approvals necessary to construct and operate the project.¹⁸

Recommendation 7

In its next CPCN filing accompanying an RPS plan petition, Dominion is directed: (1) to separate, in its economic analysis, any estimated social cost of carbon cost/benefit from the estimated ratepayer benefits and costs; and (2) to include further discussion on the estimated effect of carbon storage loss on the estimated level of CO₂ reductions from proposed generation facilities. In addition, the Commission finds reasonable Dominion's proposal not to incorporate a downward trend for projected PJM marginal emission rates at this time.¹⁹

Recommendation 8

The Commission finds reasonable Dominion's proposal not to require additional selected species review for the CE-3 Projects.

Recommendation 9

The Commission encourages Dominion, consistent with the Company's ongoing and already-planned activities, to continue its environmental justice outreach.

¹⁸ Report at 140.

¹⁹ Ex. 64 (Drummond Rebuttal) at 11.

Rider CE

Recommendation 10

The Commission approves a Rate Year revenue requirement for Rider CE of \$89.154 million.²⁰ This revenue requirement includes the Rate Year cost recovery associated with the previously approved CE-1 and CE-2 Projects and the proposed CE-3 Solar Projects, as well as cost recovery for Shands Storage and the two CE-3 Distributed Solar Projects. Having approved and granted CPCNs to the CE-3 Solar Projects and Shands Storage as set forth above, the Commission likewise finds that cost recovery for those projects is approved.²¹

In approving cost recovery for the two CE-3 Distributed Solar Projects,²² the Commission considered the particular record developed herein in conjunction with the provisions of the VCEA that apply to facilities that are not utility scale in size. First, Code § 56-585.5 C provides in part that:

A Phase II Utility shall meet one percent of the RPS Program requirements in any given compliance year with solar, wind, or anaerobic digestion resources of one megawatt or less located in the Commonwealth, with not more than 3,000 kilowatts at any single location or at contiguous locations owned by the same entity or affiliated entities. . . .

²⁰ As recommended by the Hearing Examiner, the Commission also approves the Company's proposed allocation and rate design for purposes of this proceeding and subject to modification in future Rider CE proceedings. Report at 147.

²¹ The Commission further finds, as recommended by the Hearing Examiner, that the Company is not prohibited from electing to opt out of normalization requirements with respect to Shands Storage. *Id.* at 143. "This election, which only involves this Company-owned storage resource, would allow Dominion to accelerate the beneficial impact of [investment tax credits] on future Shands Storage revenue requirements." *Id.* at 143-144.

²² The CE-3 Distributed Solar Projects do not require CPCNs as a result of their size. Ex. 15 (Flowers Direct) at 8.

Ivy Landfill is comprised of three individual 1 MW facilities on contiguous locations in the Commonwealth, permitting it to contribute towards the Company's compliance with this annual requirement.²³

In addition, Code § 56-585.5 D 2 addresses facilities that do not exceed 3 MW in size, directing that:

By December 31, 2035, each Phase II Utility shall petition the Commission for necessary approvals to (i) construct, acquire, or enter into agreements to purchase the energy, capacity, and environmental attributes of 16,100 megawatts of generating capacity located in the Commonwealth using energy derived from sunlight or onshore wind, *which shall include 1,100 megawatts of solar generation of a nameplate capacity not to exceed three megawatts per individual project. . . .* (Emphasis added.)

The CE-3 Distributed Solar Projects together will contribute 6 MW towards this 1,100 MW target.²⁴

In approving these facilities, the Commission also considered that the CE-3 Distributed Solar Projects will provide needed capacity, energy, and RECs.²⁵ While the traditional economic analysis of the CE-3 Distributed Solar Projects did not show positive results under the assumptions considered,²⁶ these resources were identified through a competitive procurement process.²⁷ The Commission further considered that these smaller facilities provide unquantified

²³ *Id.* at 21.

²⁴ *Id.* at 20-21.

²⁵ Ex. 25 (Drummond Direct) at 5-10.

²⁶ Ex. 50 (Kuleshova) at 21; Report at 144-147.

²⁷ Ex. 15 (Flowers Direct) at 10, 23.

benefits, including that lower individual project development and capital costs can provide greater opportunities to use a more diverse set of project developers.²⁸

Recommendation 11

The Commission defers any decision on proxy values to Case No. PUR-2021-00156.

New Third-Party-Owned Resources

Recommendation 12

The Commission finds that the 13 CE-3 PPAs are prudent.

2021 RPS Compliance

Recommendations 13 and 14

The Commission finds that Dominion met the 2021 RPS compliance obligation, and that any over-compliance can be credited to future compliance years. The Company's future compliance calculations shall conform with Commission orders. In addition, issues related to the treatment of over-compliance, and with related RECs, may be addressed as needed through future RPS proceedings.

Requests for Proposals

Recommendations 15, 16, and 17

The Commission finds that it is reasonable not to adopt these RFP-focused recommendations at this time based on the record developed herein. The Commission continues to strongly encourage the Company to consider input from interested parties and Staff and to

²⁸ *Id.* at 23.

continue to refine and update its RFP processes to ensure the inclusion of the most economical and least environmentally invasive projects.²⁹

Legal Issue

Recommendation 18

Based on the findings herein, the Commission's specific conclusions in the instant proceeding are not dependent upon whether Code § 56-585.5 D permits *more than* 35% of capacity to come from third-party-owned resources. Both Appalachian Voices and Walmart, however, strongly implore the Commission to make a ruling *now* on this legal question.³⁰ These parties explain, among other things, how the ultimate resolution of this statutory requirement may materially impact each annual RPS plan going forward (including the next statutorily-required annual RPS application and proceeding) and the potential costs of compliance with the VCEA.

In this regard, the Commission's role in this context is to reach a legal conclusion based on Supreme Court of Virginia jurisprudence. That jurisprudence, as recently reiterated by the Court, does not permit an inquiry into "what the legislature meant" but, rather, courts (including the Commission) "can only administer the law as it is written."³¹ This particular law is written as follows: "... and 35 percent of such generating capacity procured shall be from [third-party-owned resources], with the remainder, in the aggregate, being from construction or

²⁹ For example, there appears to be agreement on certain RFP-related issues in this case, such as (i) increasing the weight of certain non-price factors in project scoring criteria and (ii) including in future RPS filings a description of the Company's progress with increasing EPC contractors' participation in the RFP process. *See, e.g.*, Staff's Comments at 2-3; Report at 67; Tr. 375.

³⁰ *See, e.g.*, Appalachian Voices Comments at 2-4; Walmart Comments at 2-4.

³¹ *Appalachian Power Co. v. State Corp. Comm'n*, ___ Va. ___, ___, 876 S.E.2d 349, 358 (2022) (citations and internal quotation marks omitted).

acquisition by [Dominion]."³² As written, the above says that "35%" – neither something more nor something less – "shall" be from third-party-owned resources.³³

Next, in considering the instant "debate over the textual and contextual meaning of [this] statutory provision[],"³⁴ the Commission has also "consider[ed] the entire statute to place its terms in context."³⁵ The statutory provision at issue here is not the only instance where the General Assembly legislated fractions of a whole number in Code § 56-585.5, and those instances include the following (emphases added):

- "*a minimum of 50 percent of the respective electric output to low-income utility customers*" (Code § 56-585.5 A);
- "*at least 75 percent of all RECs used by [Dominion] in a compliance period shall come from*" (Code § 56-585.5 C);
- "*no less than 25 percent of such one percent shall be composed of low-income qualifying projects*" (Code § 56-585.5 C);
- "that supply *no more than 10 percent of their annual net electrical generation to the electric grid or no more than 15 percent of their annual total useful energy*" (Code § 56-585.5 C);
- "that supply 10 percent *or more* of their annual net electrical generation to the electric grid or *more than 15 percent of their annual total useful energy to any entity*" (Code § 56-585.5 C);

³² Code § 56-585.5 D 2.

³³ In addition, no party has established that this requirement is internally inconsistent or incapable of operation. *See, e.g., Chaffins v. Atlantic Coast Pipeline, LLC*, 293 Va. 564, 570 (2017) ("The phrase 'absurd result' has a specific meaning in our jurisprudence. It describes situations in which the law would be internally inconsistent or otherwise incapable of operation.") (citations and internal quotation marks omitted). Similarly, no party has established that the mandatory "shall" somehow means the permissive "may" in this context. *See, e.g., Wal-Mart Stores East, LP v. State Corp. Comm'n*, 299 Va. 57, 70 n.5 (2020) (discussing traditional rules applying "shall" as mandatory and "may" as permissive).

³⁴ *Appalachian Power Co.*, ___ Va. at ___, 876 S.E.2d at 358.

³⁵ *Virginia Elec. and Power Co. v. State Corp. Comm'n*, 300 Va. 153, 161 (2021) (citations and internal quotation marks omitted).

- "added incremental generation representing *greater than* 50 percent of the original nameplate capacity" (Code § 56-585.5 C);
- "including the goal of installing *at least* 10 percent of such energy storage projects behind the meter" (Code § 56-585.5 D 4); and
- "*at least* 35 percent of the energy storage facilities placed into service shall be [from third-party-owned resources]" (Code § 56-585.5 E 5).

Accordingly, the General Assembly explicitly confirmed that it knew how to attach modifiers to legislated fractions of a whole number in Code § 56-585.5 – including "no less than" and "at least" – but did not do so for the 35% directive at issue here.³⁶ Moreover, contrary to respondents' arguments, other language in Code § 56-585.5 D (such as the reference to "necessary approvals to construct, acquire, or enter into agreements") does not change the plain meaning of the 35% directive herein. The General Assembly did not mandate by oblique allusion that which it chose to mandate directly (*i.e.*, by including explicit modifiers to percentage directives) elsewhere in the same statute. Indeed, the Commission must presume that the General Assembly both included, and *omitted*, such modifiers with "equal care."³⁷

Finally in this regard, the Commission recognizes that the parties' legal briefs include explanations of particular policy virtues promoted by their positions. Those virtues, however, cannot be part of the Commission's legal analysis herein. That is, in determining the legislative intent of the law as it is written, the Commission is not permitted to "speculat[e] about

³⁶ See, e.g., *Zinone v. Lee's Crossing Homeowners Ass'n*, 282 Va. 330, 337 (2011) ("Moreover, when the General Assembly has used specific language in one instance, but omits that language or uses different language when addressing a similar subject elsewhere in the Code, we must presume that the difference in the choice of language was intentional.") (citations omitted).

³⁷ *Virginia Elec. and Power Co.*, 300 Va. at 163 ("We presume that the legislature chose, with care, the specific words of the statute and that the act of choosing carefully some words necessarily implies others are *omitted* with equal care. ... Indeed, as we have observed, we regularly reject invitations to read into a statute language that is not there, because of the long-established rule that courts cannot add language to a statute the General Assembly has not seen fit to include.") (emphasis added) (citations and internal quotation marks and edits omitted).

extra-textual notions of public policy,"³⁸ nor to consider the "policy virtues of [the parties'] proffered interpretations."³⁹ The Commission concludes that Code § 56-585.5 D, as written, does not permit more than 35% of capacity to come from third-party-owned resources.

Accordingly, IT IS ORDERED THAT:

(1) The RPS Development Plan is approved as set forth herein.

(2) Subject to the conditions and requirements set forth in this Final Order, Dominion is granted approval and Certificates of Public Convenience and Necessity as set forth below to construct and operate the following solar and/or storage facilities. The Company forthwith shall file maps of each solar/storage facility with the Commission's Division of Public Utility Regulation.

- CE-3 Solar Facilities:
 - Bridleton: CPCN No. EG-DEV-HCO-2023-A
 - Cerulean: CPCN No. EG-DEV-RIC-2023-A
 - Courthouse: CPCN No. EG-DEV-CHA-2023-A
 - Kings Creek: CPCN No. EG-DEV-YOR-2023-A
 - Moon Corner: CPCN No. EG-DEV-RIC-2023-B
 - North Ridge: CPCN No. EG-DEV-POW-2023-A
 - Southern Virginia: CPCN No. EG-DEV-PIT-2023-A
- CE-3 Storage Facility:
 - Shands: CPCN No. ES-DEV-SUS-2023-A

(3) The CE-3 PPAs are found to be prudent as set forth herein.

(4) The Company forthwith shall file a revised Rider CE tariff and supporting workpapers with the Clerk of the Commission and with the Commission's Divisions of Public Utility Regulation and Utility Accounting and Finance, as is necessary to comply with the directives set forth in this Final Order. The Clerk of the Commission shall retain such filings for

³⁸ *Appalachian Voices v. State Corp. Comm'n*, ___ Va. ___, ___, 879 S.E.2d 35, 38 (2022)

³⁹ *Appalachian Power Co.*, ___ Va. at ___, 876 S.E.2d at 358.

public inspection in person and on the Commission's website:

scc.virginia.gov/pages/Case-Information.

(5) Rider CE, as approved herein, shall be effective for usage on and after May 1, 2023.

(6) On or after September 15, 2023, the Company shall file its next RPS Filing and its application to revise Rider CE.

(7) Subsequent RPS Filings must continue to comply with all prior Commission directives, as ordered in previous RPS proceedings, in addition to the requirements set forth herein.

(8) This case is dismissed.

Commissioner Patricia L. West participated in this matter.

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