March 27, 2025

Virginia Department of Energy
Via email: Larry.Corkey@energy.virginia.gov; Jonika.Rathi@energy.virginia.gov

Re: The Virginia Evaluation of Performance-Based Ratemaking: Stakeholder Process

Advanced Energy United ("United")[1] appreciates the opportunity to provide comments in support of the Virginia evaluation of performance-based ratemaking: stakeholder process.[2] United has actively participated in similar efforts at public utility commissions over the last several years.[3] Multi-year rate plans ("MYRPs") and performance incentive mechanisms ("PIMs") can facilitate the modernization of Virginia's grid. Specifically, as the grid continues to evolve and new technologies become available for meeting grid needs, MYRPs and PIMs provide an opportunity to make Virginia's grid more reliable, affordable, resilient, stable, and environmentally sustainable. Properly aligning utility financial incentives with desired outcomes over multiple years is paramount. United looks forward to continuing to work with the DOE, Commission, Staff, utilities, and other interested stakeholders on these important policies in Virginia.

Responses to Questions addressed by public utility commissions

Question 1: *Does your organization consider the adoption of multi-year rate plans advisable in Virginia? Please explain the reasons for your position. If your organization requires more information before forming a position, what additional information is needed?*

Generally, United supports the adoption of MYRPs. If properly structured, MYRPs provide an opportunity for utilities to develop longer-term forward-looking plans that can deliver benefits to customers and utilities without shifting risks to customers. Whether United considers adoption of MYRPs advisable in Virginia depends greatly on how any such MYRPs would be developed and implemented. The type of information that would assist United in making a

[1] Advanced Energy United is a national business association representing leading companies in the advanced energy industry. United supports a broad portfolio of technologies, products, and services that enhance U.S. competitiveness and economic growth through an efficient, high-performing energy system that is clean, secure, and affordable.
[2] The views expressed by United in these comments do not necessarily reflect the views of any individual member company of United.
[3] *See, for example,* Michigan Public Service Commission Case Nos. U- U-21400 and U-20147; New York Public Service Commission Case Nos. 17-E-0238 and Case No. 22-E-0064; and Illinois Commerce Commission Docket No. 22-0063 and 22-0067.

determination regarding the advisability of MYRPs in Virginia is listed below, following a discussion of some of the general advantages and disadvantages of MYRPs.

The overall benefits of MYRPs include spreading forecasted rate changes over multiple years, which provides more predictable rates for customers and more predictable revenue for utilities. Fewer rate cases also mean less regulatory cost for utilities, less administrative burden for commission staff, and fewer resource burdens on other stakeholders. Facilitating participation in rate cases by a range of stakeholders will serve the public interest, and MYRPs can help with that. The ability to develop and implement longer-term plans under an MYRP can also provide greater transparency into utility planning and facilitate greater accountability from a utility executing longer-term plans.

Should the Commission implement MYRPs, it must be cautious and not reduce oversight of utility spending, or simply allow rate increases to be a function of a mathematical formula. Utility expenditures should still be reviewed for prudency and reasonableness to ensure that they align with what was approved in the proceeding approving the MYRP. In other words, a utility should not treat an approved MYRP revenue requirement as a "blank check" for any expenditures that fall within the revenue requirement. Nor should any revenue adjustment mechanism within an MYRP allow a utility to make less discriminate investments under the assumption that it will be able to ultimately recover associated costs through an adjustment or rider mechanism. Any revenue adjustment mechanism that is part of an MYRP should be limited to avoid the risk of windfall profits. Savings/profit achieved through reductions in safety or reliability must be avoided as well. Transparency and utilization of an open stakeholder process when developing an MYRP can ensure that the framework is responsive to customer interests. This includes proper notice and comment periods, as well as enough time for stakeholders to review and consider proposals. The shifting of risk to customers can also be mitigated by "banding," a method by which savings the utility is allowed to retain is limited and any savings above a predetermined amount is returned to customers.

One way to ensure that an MYRP is aligned with customer interests is to pair it with PIMs. Predetermined performance metrics that are clearly measurable around public policy goals, like reliability, affordability, resilience, stability, and environmental sustainability, can be used to encourage a utility to act in a way that is consistent with customer interests over the broader period of time in an MYRP. Only by satisfying the metrics to the benefit of customers can a utility receive incremental financial rewards via PIMS. United will elaborate on PIMs in response to the next question.

As United explained above, the "devil is in the details" when establishing an MYRP framework. As such, United proposes that the following questions should be addressed, at a minimum, when designing a MYRP:

- What policy goals does the Commission seek to accomplish through MYRPs?
    - What alternative(s) to MYRPs has the Commission considered or attempted to achieve these policy goals?
- What will be the process for creating and implementing the MYRP framework as well as MYRP itself?
    - What period of time will a MYRP cover?
    - What is the role of stakeholders and the public in creating the framework and MYRPs?
- How does the Commission plan to enforce MYRPs?
    - Will any elements of the enforcement process allow for stakeholder input?
- How often and using what process will the MYRP framework be reviewed to ensure it is useful and effective?
    - Will this process allow for stakeholder input?
- How often and using what process will utility adherence to a previously approved MYRP be reviewed to ensure the utility is abiding by the MYRP?
    - Will this process allow for stakeholder input?
- Is additional legislation needed to enable this Commission to properly establish, enforce, and review MYRPs?

Question 2: *Does your organization consider the adoption of performance incentive mechanisms advisable in Virginia? Please explain the reasons for your position. If your organization needs more information before forming a position, what additional information is needed?*

United generally supports the use of well-designed PIMs, but as with MYRPs, whether Virginia should implement PIMs is contingent on the details and the additional information sought by United listed below.

PIMs represent an opportunity for state public utility commissions to better align utility financial motivations with desired outcomes. PIMs can encourage behavior that utilities might otherwise lack motivation to do under cost-of-service ratemaking and can also help curb negative trends in utility performance. Thus, PIMs can include financial rewards for achieving desired outcomes and also penalties for under-performance. For example, incurrence of a financial penalty in the form of a reduced rate of return for failure to meet minimum reliability standards or other minimum service expectations can encourage utilities to do better and aligns utility interests with customer interests. Similarly, utility interests and customer interests can be aligned by awarding financial incentives if a utility interconnects customer-owned distributed energy resources ("DERs") in less time than is allowed for under interconnection rules.

PIMs can be particularly well suited to encouraging utility actions that would result in foregone earnings opportunities under cost-of-service ratemaking. For example, with the proliferation of DERs, particularly DERs that can provide demand flexibility, such as smart thermostats, solar paired with batteries, and electric vehicles with managed charging, there are growing opportunities for utilities to manage peak demand at lower cost than adding capacity to their networks with capital investments. As costs for these DERs continue to fall, customers deploying them stand to benefit from lower costs and local resilience. Maximizing the value to these customers, and the grid as a whole depends on getting the most out of what these resources can offer (i.e., using them for grid benefits). Furthermore, as we enter a new regime of load growth, the value of these flexible distributed resources will only increase. However utility profits are driven mainly by making capital investments in their networks, setting up a direct conflict between what is in the best interests of utility customers and utility shareholders. PIMs targeting peak load reductions can offer a way to align those interests.

To be clear, PIMs are not a "silver bullet" for all regulatory problems or policy questions.[4] PIMs should be implemented when there are specific policy objectives to achieve, particularly when there has been little movement toward specific goals over a prolonged period, or as noted above, where emerging opportunities to improve service and manage costs do not align with cost-of-service ratemaking. This means PIMs must be thoughtfully designed and implemented to align with public policy goals, produce customer benefits, and provide

[4] Goldberg, C., & Rebane, K. (2024, July). *How to Restructure Utility Incentives: The Four Pillars of Comprehensive Performance-Based Regulation*. Rocky Mountain Institute. https://rmi.org/insight/how-to-restructure-utility-incentives-four-pillars-of-comprehensive-performance-based-regulation/, p. 7.

meaningful but appropriate financial incentives (and if warranted, penalties) within the broader utility business model.

There are important considerations to bear in mind when determining the objectives tied to PIMs:

- Utilities must not be rewarded for achieving service standards they are already required to meet under state law or Commission rules. To financially reward a utility for doing what is already expected of it unreasonably burdens customers by making them pay more for a level of service they should already be receiving and are already paying for in rates.
- Any reward must be based on performance (outcomes), not spending (inputs). For example, if a utility seeks to improve reliability above the minimum required standards, any financial reward should not be based on increased spending on vegetation management but rather on achieving fewer and/or shorter service interruptions. To reward a utility for simply spending more is a disservice to customers who could find themselves paying more for the same (i.e., unimproved) level of reliability. As another example, if a utility is implementing a virtual power plant program, an associated PIM should reward the actual capacity relief the program is providing, not the number of customers enrolled.
- When evaluating whether the benefit to customers from a utility achieving a certain metric exceeds the cost to customers, the cost calculation should include both the utility expenditure to deliver the benefit as well as the financial incentive the utility receives from achieving the metric. A failure to consider the latter may result in customers paying more for the benefit than the value of the benefit. Only if the benefit customers receive exceeds the total cost to customers should the PIM be adopted.
- When establishing metrics, there should be a "deadband" within which utility performance does not earn a reward or penalty. Deadbands should be centered on expected levels of utility performance and avoid situations where the utility is rewarded for doing what it is supposed to do or penalized for barely missing the required mark with a presumption of good faith.
- The opportunity to earn rewards should not be unlimited. If a utility is able to ratchet up performance incrementally without limit, there will likely be diminishing benefits and customers will suffer. Incentives values and the performance necessary to achieve (or avoid) them should be clearly and objectively defined at the outset of any PIMs program. Customers should not be

at risk of paying for an uncapped incentive during a performance measurement period.

- Performance targets should be based on actions that are reasonably within the control of the utility, and should be sufficiently ambitious to produce meaningful results if achieved, but not so ambitious that utilities will simply abandon attempts to achieve them. In the case of PIMs with both incentives and penalties, this means that the utility should not simply be trying to avoid a penalty.

- PIMs will work better if built around broad outcomes, giving utilities flexibility to design solutions that provide maximum benefits. PIMs that are programmatic in nature will unnecessarily constrain actions the utility could take.

- Incentives should be based on dollar amounts and not on basis points of return. Using basis points can have the unintended consequence of encouraging unnecessary utility spending in other areas in order to increase overall earnings without being tied to any measurable customer benefit. Basis points can be used as a means to establish incentive levels, but ultimately those should be converted to dollar amounts before implementation.

As indicated in the discussion of MYRPs above, PIMs coupled with MYRPs can help further the policy goals of MYRPs. If they are to be coupled, United recommends developing PIMs prior to developing a MYRP. It will be far easier to develop a MYRP incorporating PIMs if the PIMs are already known.

To assist United in determining whether to support the adoption of PIMs in Virginia, it will be useful to have answers to the following questions:

- What topics or policy areas does the Commission seek to address through PIMs?

- What policy goals does the Commission seek to accomplish through PIMs?

    - What alternative(s) to PIMs has the Commission considered or attempted to achieve these policy goals?

- What will be the process for creating and implementing PIMs?

    - What is the role of stakeholders and the public in creating PIMs?

- How will a utility demonstrate or report on meeting or missing performance targets?

    - Will this process allow for stakeholder review and input?

- How often and how will the Commission review PIMs to ensure that they are useful and effective?
    - Will this process allow for stakeholder input?
- Is additional legislation needed to enable this Commission to properly establish, enforce, and review PIMs?

Question 3: *Are there any specific aspects or details about multi-year rate plans or performance incentive mechanisms, beyond what is stated above, that your organization needs to provide comprehensive feedback on these mechanisms?*

In addition to the information sought by United in the questions set forth above, United recommends that the Department continue to solicit input from stakeholders, conduct stakeholder workshops, and share drafts of any studies in progress. United also suggests that the Department consider inviting impartial outside experts and others from regulatory commissions with experience implementing MYRPs and PIMs to discuss their knowledge of and lessons learned on these topics. In particular, United directs the Department's attention to Hawaiian performance-based regulation developed in Docket No. 2018-0088.[5]

Conclusion

United thanks the Department of Energy for providing this initial opportunity to offer input on the suitability of specific performance-based regulations in Virginia. If set up correctly, MYRPs and PIMs could help Virginia's grid move into the future and embrace the advanced energy technologies that will lead to a more reliable, affordable, resilient, stable, and environmentally sustainable grid for Virginians. United looks forward to continuing to work with the Department and all stakeholders.

Respectfully submitted,

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[5] See also, https://puc.hawaii.gov/energy/pbr/