

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

Re: Public Comment Opportunity - Performance Based Regulation Tools

December 2, 2024

Dear Director Davis:

Thank you for the opportunity to submit a public comment in the study of performance-based regulation and alternative regulatory tools for investor-owned electric utilities (“Study”). Please accept this letter on behalf of Climate Action Alliance of the Valley, New Virginia Majority, Virginia Organizing, and Virginia Poverty Law Center. As non-profit organizations focused on reducing energy burden and disconnections for low- to moderate-income (“LMI”) households in Virginia, we are especially concerned with improving affordability for these customers, and our comments primarily will be directed to this performance area.

At the outset, we would like to stress our support for this Study, and the accompanying stakeholder engagement process. We hope that there will be ongoing opportunities to participate in it, and we anticipate that the Study will result in greater and more sustained attention to the problem of energy affordability for lower-income customers.

Our desired outcomes for performance-based regulation (“PBR”) and other alternative regulatory tools are simple: fewer LMI customers in arrears; and, a drastic reduction in utility disconnections, or their elimination. In our comments we first outline the problem of energy unaffordability in Virginia. Then we explain how LMI customers’ inability to pay creates costs for utilities that are ultimately borne by all their customers. Traditional cost-of-service regulation has been unable to manage the problem of energy unaffordability. Alternative regulation can provide more cost-effective ways not only to manage the problem of energy unaffordability but to reduce it. Lastly, we offer a few specific measures to tackle the problem of energy unaffordability through alternative regulation, including both performance incentive mechanisms (“PIMs”) tied to reducing utility shutoffs and decreasing arrearages, and also metrics or scorecards to better track and understand how to address the energy affordability crisis.

Virginia’s household energy affordability gap increases the risk of service shutoffs for nonpayment for customers who are low-income, elderly, renters, and/or people-of-color:

Our public utilities must provide service at “reasonable and just rates,” as required by law. However, many households in our communities face an energy affordability gap of thousands of dollars per year. Families with income up to fifty percent of the Federal Poverty Level, around

161,000 households, have an average individual shortfall annually of \$2,183, and an aggregate shortfall of \$351,918,565. They spend on average 32% of their income on their home energy bills. It is families like these who are often most at risk of service shutoffs for nonpayment. Even households with higher income, up to 200% of the Federal Poverty Level, have unsustainable energy burdens of 7% of income and more. From 2011 to 2022, the aggregate Home Energy Affordability Gap in Virginia grew from \$921,391,556 to \$1,050,297,220.¹ Unfortunately, this affordability gap is not met by existing energy assistance programs.

Currently, one of every four households in Virginia is energy insecure, and available energy assistance programs serve only 25% of eligible households in the state. Further, assistance covers, on average, only 29% of recipients' household heating costs. More than a third of the households eligible for energy assistance programs contain at least one individual 60 years of age or older, leaving some of our most vulnerable residents at risk of losing life-saving electric utility services due to service shutoffs for nonpayment.²

Moreover, the households most at risk of being shut off due to an inability to afford increased energy costs are paying a disproportionate amount of their income towards their energy bill due to the higher energy use intensity of their homes. Nationally, they spend \$1.24 per square foot on energy, compared to the \$0.98 spent by households who are not energy insecure. Renters' costs are even higher at \$1.26 per square foot. And the lowest-income households spend the most, spending \$1.31 per square foot. These energy disparities become even more apparent when analyzing the energy use of households across races. Black and Brown households pay close to \$.20 more per square foot to power their homes than White households.³

Disconnection data from 2023, although incomplete,⁴ reveals that at least 236,699 electric and gas shutoffs were made. Dominion Energy ("Dominion") made more than 100,000 shutoffs, and Appalachian Power ("APCo") made 67,000. In just the first nine months of 2024, there have already been 347,413 shutoffs, with Dominion alone responsible for at least 265,000. Although this data does not reflect to whom these accounts belong or where they are located in Virginia, we can assume that, like elsewhere in the country, many of the accounts belong to households

¹ Fisher, Sheehan & Colton, Public Finance and General Economics, "The Home Energy Affordability Gap 2022," 2nd series, April 2023, available at http://www.homeenergyaffordabilitygap.com/03a_affordabilityData.html.

² Historically, assistance programs have reached only 21-23% of the families in need, but a recent boost (~\$2.1B) in LIHEAP funding bumped this number up for 2023. FFY 2023 LIHEAP funding totaled \$6.1 billion, and for FFY 2024, \$3.67 billion has been requested. The President's proposed 2025 funding is \$4.1 billion. With 2024 and 2025 LIHEAP appropriations likely to decrease, relative to recent years, the percentage of eligible households receiving assistance should fall again. Virginia Department of Social Services' 2023 "Biennial Report on the Effectiveness of Low-Income Energy Assistance Programs," pages 8, 9, and 12, available at <https://rga.lis.virginia.gov/Published/2024/RD201>.

³ "U.S. Energy Insecure Households Were Billed More For Energy Than Other Households," U.S. Energy Information Administration, May 30, 2023, available at <https://www.eia.gov/todayinenergy/detail.php?id=56640>.

⁴ Data from Dominion Energy Virginia is missing for the months of April through July as is data from Roanoke Gas for the months of November and December. The utilities voluntarily share this disconnection data with the State Corporation Commission.

living in minority and low-income communities. Black and Brown and low-income households have higher average energy burdens, are more likely to face the risk of shutoffs, and spend more to power their homes than non-low-income households.⁵

Compounding these burdens, energy costs are continuing to increase, and rising electricity demand and the attendant projected increases in infrastructure investment will only drive up bills further. Service shutoffs may also increase over time as a result. LMI customers should not be disproportionately impacted by this load growth. Alternative regulation that modernizes our utility regulation can prevent this from occurring.

Alternative regulation can incentivize utilities to reduce arrearages and save attendant system-wide costs:

Traditional cost-of-service regulation has helped to create a utility system where a substantial portion of residential customers struggle to afford their utility bills. Utilities respond to this inability to pay by offering limited and largely infeasible payment plans, warning customers of impending disconnections, and ultimately, shutting off service when customers cannot pay their bills. The utility resources spent on managing the impacts of unaffordable bills could alternatively be put toward reducing the problem of unaffordability. In other words, instead of spending time and money on disconnections, reconnections, debt collection, bad debt and so forth, the utilities could alternatively 1) make the legally-required investments in LMI residential energy efficiency to reduce bills; 2) ensure that LMI customers are enrolled in and/or are connected to available bill assistance, such as the Percentage-of-Income Payment (PIPP) plan; and, 3) offer arrearage management and feasible payment plans for those just outside the PIPP income-eligibility limits. Such a change in focus would not only achieve our desired outcomes of fewer LMI customers in arrears and a drastic reduction or elimination of disconnections, but also it would likely reduce utility costs system wide, thereby improving energy affordability for all utility customers.

The General Assembly has made clear through legislation that affordable energy and improved health outcomes for low-income Virginians remain a priority as the state transitions to a cleaner energy economy. Section 56-596.2:2 of the Code of Virginia directs the State Corporation Commission (“SCC”) to establish annual energy efficiency savings targets for customers who are low-income, elderly, disabled, or veterans and to optimize energy efficiency and the health and

⁵ Cicala, S. “The Incidence of Extreme Economic Stress: Evidence from Utility Disconnections,” Working Paper 28422, National Bureau of Economic Research, January 2021, available at <http://www.nber.org/papers/w28422>; Memmott, T., Carley, S., Graff, M. *et al.* “Sociodemographic disparities in energy insecurity among low-income households before and during the COVID-19 pandemic,” *Nat Energy*6, 186–193, 2021, available at <https://doi.org/10.1038/s41560-020-00763-9>. See also, Office of Energy Justice and Equity, “Households of Color Continue to Experience Energy Insecurity at Disproportionately Higher Rates,” July 6, 2023, available at <https://www.energy.gov/justice/articles/households-color-continue-experience-energy-insecurity-disproportionately-higher>.

safety benefits of this program, further underscoring the Commonwealth’s commitment to addressing energy affordability issues and reducing residential shutoffs.

Although available income is a factor in a household’s ability to pay its utility bills, and outside the performance of a utility, it is not the only factor. As noted above, the greater energy use of LMI housing is a large factor and can be remedied through energy efficiency improvements. Cost-of-service regulation also incentivizes utilities to spend more money on infrastructure, which results in higher bills for all customers. These higher bills have a disproportionate impact on LMI households. Further, in cost-of-service regulation, utilities are not incentivized to reduce customer debt, because the costs of managing the debt as well as any uncollected debt is recovered from all customers.⁶ So, while shutoffs and their attendant costs are most harmful to the residential customers who experience them, they also impose a financial burden on the utility that is borne by all its customers.

Utilities’ unsubstantiated rationale behind LMI household disconnection appears to be that the threat of a shutoff or the shutoff itself will prompt a customer to make payment who otherwise would not do so. Whether or not this is an effective and economic strategy is unverifiable and purely circumstantial at best without reliable and more granular data about arrearages, disconnections, and offered assistance, such as payment plans. Indeed, more data would shed light on whether there are more cost effective ways for the utility to manage LMI households’ inability to pay.

As Roger Colton testified in the Dominion EERS proceeding, “substantial numbers of low-income households either skip payments or make less than their full utility bill in any given month because they lack the household resources to make such payments” and “as a result of these actions, utilities respond by engaging in collection activity that frequently leads to the threatened or actual disconnection of service. The failure to pay, and the utility collection activity which results from that failure to pay, is clearly related to low-income status.”⁷ And as stated in a report by RMI, “LMI customers are, on average, more costly for utilities to serve due to less-efficient homes, arrearages, and more frequent disconnections for nonpayment.”⁸

In 2023, on average, more than twenty percent of Dominion’s customer base was at least \$500 in arrears in any given month, and ten percent of its base was at least \$1000 in arrears in any given month. Arguably, this debt, due to energy unaffordability, and the number of attendant

⁶ Gold, Rachel and Carina Rosenbach, “Transforming the Way We Serve Vulnerable Communities: Performance Incentive Mechanisms and Beyond,” RMI, 2024, available at <https://rmi.org/transforming-the-way-we-serve-vulnerable-communities-performance-incentive-mechanisms-and-beyond/>.

⁷ Direct Testimony of Roger Colton on behalf of the Sierra Club, September 12, 2024, Case No. PUR-2023-00227, p. 47.

⁸ Billimoria, Sherri, Coreina Chan, Mike Hennen, and Lauren Shwisberg. *Finding Value in the Energy Future: How Utilities Can Collaborate with Low- and Moderate-Income Customers to Do More*. RMI, 2018, p. 6, available at https://info.rmi.org/finding_value_in_energy_future_2018

disconnections, can be costly for the utility system-wide. As Colton testified, better addressing customers' inability to pay, through for example, improved residential energy efficiency, can result in avoided costs, and as we argue, improved operating efficiency.

“These avoided costs are not simply ‘societal’ avoided costs. They are utility avoided costs in the same way that avoided energy, capacity, and distribution losses are utility avoided costs. Cost reductions commonly associated with low-income energy efficiency investments include savings such as reduced bad debt, reduced working capital, and reduced credit and collection expenses.”⁹

LMI households' high utility bills are deeply inflated by the higher energy intensity use of their homes. Meanwhile, “[l]ow-income households are consistently underrepresented amongst households that have pursued electricity savings measures.”¹⁰ In fact, fewer low-income households receive the benefits of energy efficiency than those that pay for them as a percentage of a utility's customer base.¹¹ The average bill amount owed by Dominion's customers at the time of disconnection in the first nine months of 2024 was \$463. For APCo, it was \$362. If energy efficiency measures can reduce a low-income households' energy bills by around 30%, then those are disconnections that improved energy efficiency could have potentially avoided.¹²

The 2018 Grid Transformation and Security Act requires that Dominion and APCo propose around \$1 billion in energy efficiency spending over a ten-year period. The 2020 Virginia Clean Economy Act requires these utilities to spend 15% of that money on LMI households, the elderly, the disabled, and veterans. And Senate Bill 1323, signed into law in 2023, directs the SCC to establish energy efficiency savings targets beginning in 2025 for the same populations. However, the state's largest utility, Dominion, is not meeting these requirements, and APCo could be doing more direct outreach to assist the LMI households most in need. As Appalachian Voice's expert witness Jim Grevatt in Dominion's 2024 demand side management (“DSM”)

⁹ Colton testimony, p. 51. See also, Costello, Ken, *Alternative Rate Mechanisms and Their Compatibility with State Utility Commission Objectives*, Report No. 14-03, National Regulatory Research Institute, April 2014, p. 62:

“Utilities are able to reduce their costs when they have a lower number of delinquent customers, some with severe payment problems that inevitably will lead to service disconnections.” Klass, Alexandra B. & Chan, Gabriel, “Regulating for Energy Justice.” *NYU Law Review* 97, no. 5 (2022): 1426-1506, 1485: “Reduced utility costs for low-income customers could also provide public benefits by minimizing both the uncollectible payments that a utility socializes across its entire customer base and the financing costs associated with arrearage management.”

¹⁰ Colton testimony, p. 35.

¹¹ Brown, Marilyn A., et al. 2020 Prog. Energy 2 042003, p. 8, available at <https://doi.org/10.1088/2516-1083/abb954>. See also, Gold and Rosenbach 2024: “Existing energy efficiency PIMs are typically designed to maximize net benefits, energy savings, or spending on energy efficiency in an entire service area. Such incentives result in programs designed for least-cost acquisition of energy efficiency — often from large commercial customers or through residential lighting — at the expense of programs that focus on savings that benefit low-income customers. At bare minimum, customers should reap the benefits of energy efficiency programs at least as much if not more than what they are charged in their bills to sustain such programs. Yet, many utilities have a history of underspending on these populations when they offer these programs — so the customers who need the benefits of energy efficiency the most end up subsidizing it for their neighbors.”

¹² Pitt, Damian, et al. 2023, *Investing in Virginia Through Energy Efficiency: An Analysis of the Impacts of RGGI and the HIEE Program*, VCU L. Douglas Wilder School of Government and Public Affairs, p. iv.

proceeding stated: “Dominion bears responsibility for the significant savings shortfall its customers face today due to years of the Company’s inaction and obfuscation.”¹³ He also stated that: “Cost-effective EE provides tangible benefits to participating customers in the form of bill savings, and to all customers in the form of reduced infrastructure investments, lowered generation operating costs, and cleaner air.”¹⁴ In APCo’s 2024 DSM proceeding, Appalachian Voices’ expert witness, Stacy Sherwood, testified that the utility should increase its direct marketing efforts to “customers that may reside in environmental justice communities, are hardship customers, are hard-to-reach, and/or live in specific housing types, such as multifamily and manufactured housing.”¹⁵ Alternative regulation, including PBR, should not incentivize these utilities to meet their legal obligations. However, it can disincentivize their failure to meet statutory requirements. Additionally, it can meaningfully track and make public how successfully they are making these required investments.

Alternative regulation should include PIMs tied to reducing utility shutoffs and decreasing arrearages, and metrics or scorecards that track how well utilities address the problem of unaffordability:

Performance-based regulation and other alternative regulatory tools can help change utilities’ focus from managing the problem of energy unaffordability to reducing it. This can happen by incentivizing utilities to reduce the number of customers in arrears and/or the amount of those arrearages and to reduce the number of utility disconnections. It can also occur by gaining more insight into the nature of energy unaffordability through metrics or scorecards that track and make public data on arrearages, disconnections, the success rate of payment plans, enrollment in and success of PIPP, and enrollment in and successful bill reduction through LMI energy efficiency programs.

Well-designed PIMs can direct utilities to prioritize least-cost investments to manage system costs.¹⁶ And they can incentivize utilities to align with desired policy outcomes. At least seven states, including Colorado, the District of Columbia, Hawaii, Illinois, Massachusetts, New Jersey, and New York, have developed PIMs with equity and affordability outcomes. Both New York and Illinois have developed PIMs tied to reducing utility disconnections, and Connecticut has recently proposed such a PIM. Additionally, these states have PIMs that include arrears reduction targets or include language directing utilities to adopt strategies that reduce arrears as a means of reducing disconnections.

¹³ Direct testimony of Jim Grevatt, Energy Futures Group, on behalf of Appalachian Voices, March 26, 2024, Case No. PUR-2023-00217, p. 7.

¹⁴ *Ibid.*, p. 30.

¹⁵ Direct testimony of Stacy Sherwood, Energy Futures Group, on behalf of Appalachian Voices, March 26, 2024, Case No. PUR-2023-00169, p. 5.

¹⁶ Gold and Rosenbach, 2024.

Beginning in 2024, Illinois instituted a performance measure designed to reward its two largest electric utilities, Commonwealth Edison Company and Ameren Illinois Company, for reducing residential customer shutoffs in the respective twenty zip codes with the highest rates of shutoffs based on past data.¹⁷ If the utilities meet their performance target of 10 percent reductions annually, they are rewarded with an increase in basis points. If they fail to achieve their targets, they are penalized with a decrease in basis points. Both utilities also committed, as urged by advocates and Commission staff, to achieving the targets through proactive measures, such as improved outreach to customers struggling to afford their bills, instead of merely allowing arrearages to increase.¹⁸

In the case of Commonwealth Edison Company's establishment of performance metrics, Illinois Commerce Commission staff stated that "Performance Metric 6 should achieve affordable customer delivery service costs, with particular emphasis on keeping the bills of lower-income, equity investment eligible, and environmental justice communities within a manageable portion of their income."¹⁹ The staff further noted that "the metric should require the utility to adopt credit and collection policies that reduce disconnections and ensure equitable disconnections, late fees, or arrearages."²⁰ Similar conclusions were drawn in the Ameren case.

We would also like to highlight the injustice of utility disconnections for LIHEAP-eligible customers. Households who are income-eligible for LIHEAP but unable to receive energy assistance, because there is not enough to go around, should not have to suffer the hardship of service shutoffs. Incentivizing utilities to reduce shutoffs may also lead to voluntary measures such as future shutoff protections for vulnerable and/or LIHEAP-eligible households. Additionally, as highlighted in the Virginia SCC HB 1054 2022 letter to General Assembly Commerce and Labor Committee Chairs, Commission staff agreed that "there is value in having all regulated utilities review their tariffs and re-examine aspects that may pose a barrier to the restoration of service, especially for lower-income residential customers. Measures could include reduction of disconnection and reconnection fees and late charges; elimination of payment requirements for the entire arrearage; reducing interest rates for arrears; and reducing security deposits...."²¹ Deploying these methods can contribute to meeting the proposed PIM of reducing shutoffs and improving accessibility to essential utility services for all customers.

As a step toward developing PIMs, metrics and scorecards can be established that, through data collection, track the problem of energy unaffordability and track progress toward achieving

¹⁷ [Final Order](#), Illinois Commerce Commission, Docket 22-0067, Commonwealth Edison Company, "Petition for the Establishment of Performance Metrics Under Section 16.108.18(e) of the Public Utilities Act," pp. 156-175. Final Order, Illinois Commerce Commission, Docket 22-0063, Ameren Illinois Company, "Petition for Approval of Performance and Tracking Metrics pursuant to 220 ILCS 5/16-108.18(e)," pp. 109-132.

¹⁸ Ibid.

¹⁹ [Final Order](#), Illinois Commerce Commission, Docket 22-0067, Commonwealth Edison Company, at p. 160.

²⁰ Ibid.

²¹ Virginia State Corporation Commission, Division of Public Utility Regulation. Letter study in response to HB 1054 (Delegate Shin, 2022 Virginia General Assembly). December 6, 2022, p. 14.

desired outcomes. “Reporting metrics consist solely of a metric, while scorecards include a metric tied to a performance target.”²² For example, Hawaii has created reporting metrics on LMI program participation; energy burden; payment arrangements; and, disconnections.²³ Illinois’s reporting metrics include ones on DSM Program equitable participation; financial assistance outreach and education; customers exceeding minimum service levels; and, equitable grid planning.²⁴

Alternative regulation can identify what relevant data is needed to adequately address the problem of energy affordability for LMI customers. This data could include: the length of disconnection, any associated costs of disconnection and reconnection, the number of residential customers enrolled in payment plans and the number successfully completing said plans, and the number of residential customers with accounts referred to debt collectors, reported to credit reporting agencies, or with liens against their real property.

Metrics and scorecards could then be created that, through this data collection, track how well utilities are addressing energy affordability and if they are meeting established goals. The data would also allow a better understanding of who and which communities are most impacted by energy unaffordability.

As this Study moves forward, we urge Virginia Energy and the SCC to consider these opportunities to modernize our system of utility regulation in a manner that meaningfully addresses the problem of energy affordability for LMI customers. Additionally, we ask that you consider any potential disproportionate impacts on LMI customers of policy changes suggested during this Study. Utility regulation has always involved a balancing of interests. As we have shown, what is best for LMI customers can also be best for a utility system as a whole.

Sincerely,

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²² Gold and Rosenbach, 2024.

²³ <https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics/customer-equity>

²⁴ <https://icc.illinois.gov/downloads/public/edocket/589902.PDF>

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