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May 8, 2017

VIA ELECTRONIC FILING

Mr. Joel H. Peck, Clerk
c/o Document Control Center
State Corporation Commission
Tyler Building — First Floor
1300 East Main Street
Richmond, Virginia 23219

RE: Case No. _____-2017-_____

*Sierra Club v. Virginia Electric and Power Co., et al.,
For a declaratory judgment and an order requiring a filing
pursuant to Sections 56-77 and 56-84 of the Code of Virginia*

Dear Mr. Peck,

Please find enclosed for filing the following:

- a Petition for Declaratory Judgment, together with one exhibit, and
- a Motion for Admission *Pro Hac Vice* of Andres Restrepo for purposes of the Petition.

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

Thank you,

Evan D. Johns
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Enclosure

Copied: Virginia Electric and Power Company
Virginia Power Services Energy Corp.
Atlantic Coast Pipeline
Dominion Resources
Office of the Attorney General, Consumer Counsel
State Corporation Commission, Office of General Counsel

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

SIERRA CLUB,

Petitioner,

v.

Case No. _____-2017-_____

**VIRGINIA ELECTRIC AND POWER
COMPANY,**

**VIRGINIA POWER SERVICES ENERGY
CORPORATION,**

and

ATLANTIC COAST PIPELINE, LLC,

Respondents.

**For a declaratory judgment and an order
requiring a filing pursuant to Sections 56-77
and 56-84 of the Code of Virginia**

PETITION FOR DECLARATORY JUDGMENT

Under Rules 100 B and C of the Commission's Rules of Practice and Procedure, Sierra Club petitions the Commission for a declaration that a certain arrangement between the Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP), and two affiliated interests—Virginia Power Services Energy Corporation (VPSE) and Atlantic Coast Pipeline, LLC (ACP)—is subject to Commission review and approval under the Affiliates Act, Virginia Code §§ 56-76—56-87 (the Act). Consistent with such a declaration, the Petitioners also ask the Commission order DVP, VPSE, and ACP to file a verified application or petition

under Virginia Code § 56-84 for the Commission's review and approval of the arrangement between them as described below.

PARTIES

Sierra Club

1. Sierra Club is a nonprofit conservation organization incorporated in California. It currently represents approximately 775,000 dues-paying members nationwide and approximately 19,000 dues-paying members in Virginia, many of whom are retail customers of DVP. The Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out those objectives. Through its Clean Power Solutions campaign, the Club's Virginia Chapter encourages investments in the Commonwealth's substantial renewable energy potential.
2. The mailing address for the principal office of Sierra Club's national headquarters is:

Sierra Club
2101 Webster Street, Suite 1300
Oakland, California 94612

3. The mailing address for the principal office of the Club's Virginia Chapter is:

Virginia Chapter of the Sierra Club
442 East Franklin Street, Suite 302
Richmond, Virginia 23219

Virginia Electric and Power Company

4. The Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP), is a Virginia public service corporation engaged in the provision of wholesale and retail electric service in Virginia. DVP is a wholly owned subsidiary of Dominion Resources, Inc. (DRI).

5. DVP is engaged in business as a public utility in Virginia, and the Commission regulates its rates and service under Chapter 10 of Title 56 of the Virginia Code. As such, DVP is a “public service company” for purposes of the Affiliates Act. Virginia Code § 56-76 (definition of “public service company”).

Virginia Power Services Energy Corporation

6. Virginia Power Services Energy Corporation (VPSE) is a wholly owned indirect subsidiary of DVP, formed to manage DVP’s fuel-related activities, including the purchase, sale, storage, and transportation of natural gas for DVP’s electric-generating units. VPSE and DVP share the same Treasurer, Secretary, Vice-President, and corporate address.
7. There exists a chain of successive ownership of ten percent or more of voting securities between VPSE and DRI, the holder of ten percent or more of the voting securities of DVP. As such, VPSE is an “affiliated interest” of DVP under the Affiliates Act. Virginia Code § 56-76 2.

Atlantic Coast Pipeline, LLC

8. Atlantic Coast Pipeline, LLC, is a Delaware limited liability company organized to develop, own, and operate an interstate natural gas pipeline and associated facilities in West Virginia, Virginia, and North Carolina.
9. ACP is a joint venture between DRI, Duke Energy, and the Southern Company. DRI owns a 48 percent interest in ACP and is the leading shareholder.
10. Because more than ten percent of ACP’s voting securities are owned by DRI, and because DRI holds more than ten percent of the voting securities of DVP, ACP is an “affiliated interest” of DVP under the Affiliates Act. Virginia Code § 56-76 3.

11. Furthermore, ACP has contracted with Dominion Transmission, Inc. (DTI)—another wholly owned subsidiary of DRI—to oversee the construction of ACP’s pipeline project and to operate and maintain the pipeline’s facilities. *See Atlantic Coast Pipeline, LLC, Abbreviated Application for a Certificate of Public Convenience and Necessity and Blanket Certificates*, Vol. I – Public, Exhibit I at 2–3 (Sept. 18, 2015), FERC Docket No. CP15-554 (Accession No. 20150918-5212), *available at* <http://bit.ly/2oXMsWX>.¹

JURISDICTION

12. The Commission has both the power and duty to supervise, regulate, control, and “correct[] abuses” by public utilities. *See Virginia Code § 56-35; Virginia Constitution, art. IX, § 2.* In doing so, it serves under a constitutional charge to “administer[] the laws made . . . for the regulation and control of corporations doing business in th[e] Commonwealth.” *Virginia Constitution, art. IX, § 2.*
13. The Commission’s powers include the authority to investigate any practices, acts, and services of public utilities subject to its jurisdiction and the duty to correct those practices, acts, and services when “unjust, unreasonable, insufficient, preferential, [or] unjustly discriminatory.” *Virginia Code § 56-247.* This, in turn, includes the duty to review a utility’s purchasing practices, *Virginia Code § 56-233.1*, and to “monitor all fuel purchases, transportation costs, and contracts for such purchases of a utility to ascertain that all feasible economies are being utilized,” *Virginia Code § 56-248.1.* It also includes the power to

¹ The rates charged by ACP to its current customers for shipping capacity include capacity costs on another proposed, DVP-affiliated pipeline: DTI’s Supply Header Project. ACP describes the DTI Supply Header Project as an “integrated part of [ACP’s] firm transportation service.” *Atlantic Coast Pipeline, LLC, Abbreviated Application for a Certificate of Public Convenience and Necessity and Blanket Certificates*, Vol. I – Public at 19, 32 (Sept. 18, 2015), FERC Docket No. CP15-554 (Accession No. 20150918-5212), *available at* <http://bit.ly/2oXMsWX>.

disallow recovery of fuel costs the utility incurs before exhausting “every reasonable effort to minimize fuel costs” or to otherwise correct “any decision of the utility resulting in unreasonable fuel costs.” Virginia Code § 56-249.6 D 2. In exercising these and other powers, the Commission is “not require[d] . . . to wait until the ratepayers have incurred unreasonable expenses before it may act.” *Commonwealth of Virginia ex rel. United Mine Workers of America v. Virginia Elec. and Power Co.*, Case No. PUE950121, 1996 S.C.C. Ann. Rept. 287, Order Granting Motion to Dismiss and Denying Request for Oral Argument (Feb. 6, 1996).

14. The Commission is also charged with ensuring that all transactions between utilities and their corporate affiliates are in the public interest. *See generally* Virginia Code § 56-76—56-87. *See also Roanoke Gas Co. v. State Corp. Comm’n*, 217 Va. 850, 854 (1977) (describing transactions between regulated utility and its corporate affiliate as “matters . . . of the very type for which [sections] 56-77 and 56-82 of the Affiliates Act require Commission approval” and as matters “with respect to which public interest is the keystone of Commission action”). Accordingly, the Commission has subject matter jurisdiction over inter-affiliate transactions and personal jurisdiction over affiliates who are parties thereto. Virginia Code § 56-84.

15. The Commission has jurisdiction and authority to review transactions involving a public utility even where certain elements of those transactions are subject to review by the Federal Energy Regulatory Commission (FERC). Although FERC has exclusive jurisdiction to set wholesale gas and electric rates charged to utilities in interstate commerce, state utility commissions retain the authority to determine whether it is reasonable, prudent, or in the public interest for a regulated utility to incur costs, obligations, or liabilities under FERC-

approved contracts. *See Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 837 F.2d 600, 607 (3d Cir. 1988); *Pub. Serv. Co. of New Hampshire v. Patch*, 167 F.3d 29, 35 (1st Cir. 1998); *Central Vermont Pub. Serv. Corp.*, 84 FERC ¶ 61,194 (1998).

16. As the Commission Staff has recognized, the Commission's jurisdiction in this regard includes its authority under the Affiliates Act to review transactions between utilities and their corporate affiliates. *See Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 140950066, Staff Action Brief, Attachment A at 4, 6–7 (Sept. 11, 2014). Indeed, the Commission routinely reviews inter-affiliate transactions or arrangements under the Affiliates Act that are also subject to FERC regulation. *See, e.g., Application of Washington Gas Light Co. for authority to engage in affiliate transactions pursuant to § 56-76 et seq. of the Code of Virginia*, Case No. PUE-2010-00138, Doc Ctrl. Ctr. No. 110310158, Order Denying Approval (March 3, 2011) (denying approval of affiliate transactions partially subject to concurrent FERC review); *Application of Appalachian Power Co. for approval of transactions to acquire interests in the Amos and Mitchell generation plants and to merge with Wheeling Power Co.*, Case No. PUE-2012-00141, Doc. Ctrl. Ctr. No. 130730256, Order (July 31, 2013) (partially approving and partially denying utility's request to acquire interest in power plants from an affiliate utility where FERC had previously approved the transaction in whole); *Application of Columbia Gas of Virginia Inc. for approval of various agreements, arrangements and policies between Columbia Gas of Virginia Inc. and Columbia Gas Transmission, LLC*, Case No. PUE-2008-00115, Order Granting Approval (Feb. 27, 2009) (approving several federally-regulated agreements between Columbia Gas of Virginia, Inc., and Columbia Gas Transmission, LLC).

17. Virginia Code § 56-6 provides that “[a]ny person . . . aggrieved by anything done or omitted in violation of any of the provisions of [Title 56 of the Code] by any public service corporation . . . shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation” before the Commission, which shall then “have jurisdiction, by mandamus, to compel [the utility] to observe and perform any public duty imposed . . . by the laws of th[e] Commonwealth.”
18. Similarly, Rule 100 C of the Commission’s Rules of Practice and Procedure provides that “[p]ersons having no other adequate remedy may petition the commission for a declaratory judgment.” 5 VAC 5-20-100 C.

LEGAL FRAMEWORK

19. The Affiliates Act reflects the “fundamental public policy” that increased scrutiny of transactions between utilities and their affiliates “is mandated because the contracting parties have a unity of interests and do not deal at arm’s length.” *Commonwealth Gas Servs. v. Reynolds Metals Co.*, 236 Va. 362, 367 (1988). As such, there is an inherent danger that affiliate transactions will saddle captive ratepayers with excessive costs or will distort the market by unjustly favoring affiliated interests over non-affiliated competitors. *See Ariz. Corp. Comm’n v. State ex rel. Woods*, 830 P.2d 807, 817 (Ariz. 1992) (en banc) (recognizing the “strong potential that transactions between affiliates” of public utilities will adversely affect rates). *See also, generally*, Judy Sheldrew, *Shutting the Barn Door Before the Horse is Stolen: How and Why State Public Utility Commissions Should Regulate Transactions Between a Public Utility and its Affiliates*, 4 Nev. L.J. 164 (2003).
20. The Affiliates Act requires Commission review and approval of any “contract or arrangement providing for the furnishing of management, supervisory, construction, engineering,

accounting, legal, financial, or similar services” or any “contract or arrangement for the purchase, sale, lease or exchange of any property, right or thing” *before* such a contract or arrangement is “made or entered into between a public service company and any affiliated interest.” Virginia Code § 56-77 A. Furthermore, no such arrangement or contract “shall be valid or effective unless and until it shall have been filed with and approved by the Commission.” *Id.*

21. The Act defines an “affiliated interest” as including, among other entities:

- a. “[e]very corporation . . . in any chain of successive ownership of ten percent or more of voting securities, the chain beginning with the holder or holders of the voting securities of such public service company;” and
- b. “[e]very corporation . . . ten percent or more of whose voting securities are owned by any person [or] corporation . . . owning ten percent or more of the voting securities of such public service company or by any person [or] corporation . . . in any such chain of successive ownership of ten percent or more of voting securities.”

Virginia Code § 56-76 1–2.

22. Under the Affiliates Act, any public service company that is party to a contract or arrangement with one or more affiliated interests must present to and file with the Commission “an application or petition” for approval of the transaction, “duly executed and verified by [the] company and by [all] affiliated interest[s] who are parties to” the transaction. Virginia Code § 56-84. Upon receiving the application or petition, the Commission must convene a hearing and pass upon the propriety of the contract or arrangement and upon any jurisdictional questions or any questions as to a party’s status as an “affiliated interest” under the Act. *Id.*

23. When reviewing an inter-affiliate transaction, or when presiding over any other proceeding “involving the rates or practices of [the] public service company,” the Commission may order that payments made by the company to its affiliated interests be “exclude[d] in whole or in part from [its] accounts” to the extent such payments are “not consistent with the public interest.” Virginia Code § 56-78. The company bears the burden of proving that the transaction is in the public interest, *Commonwealth Gas*, 236 Va. at 369, as well as the burden of submitting “satisfactory proof . . . of the cost[s]” incurred by affiliated interests under the transaction, Virginia Code § 56-78.
24. In addition to prior review and approval of inter-affiliate transactions, the Commission has the authority to disallow recovery of costs incurred under the transaction “if upon actual experience under such contract or arrangement, it appears that the [costs] were, or are, unreasonable.” Virginia Code § 56-80.
25. If a public service company fails to file a petition under Section 56-84 of the Act for Commission review and approval of an inter-affiliate transaction, “the Commission may . . . issue a summary order prohibiting the public service company from treating any payment made under the terms of such contract or arrangement . . . as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such payments shall have received the approval of the Commission.” Virginia Code § 56-81. The Act also grants the Commission authority to assess penalties against utilities that do not file their inter-affiliate transactions for Commission review and approval. Virginia Code § 56-85.

FACTUAL BACKGROUND

The Tripartite Fuel Procurement Arrangement Between DVP, VPSE, and ACP

26. VPSE currently manages DVP's fuel-related activities according to a Fuel Management Agreement. The Fuel Management Agreement provides that VPSE will purchase, sell, transport, and store natural gas and other fuels for the benefit of DVP and will deliver fuel to DVP upon request. *See Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 140640283, Application for Approval of New and Revised Fuel Agreements Pursuant to Chapter 4 of Title 56 of the Code of Virginia, Attachment D1 at ¶¶ 2, 3 (June 30, 2014), available at <http://bit.ly/2pk3IbP>. In exchange for those services, Paragraph 5 of the Fuel Management Agreement requires DVP pay VPSE an amount equal to all actual costs VPSE incurs under the Agreement—including storage and transportation costs, commodity costs, service charges, and other costs. *Id.* at ¶ 5.

27. In furtherance of the DVP–VPSE Fuel Management Agreement, VPSE has entered into a Precedent Agreement for Firm Transportation Services with ACP,² reserving 300,000 dekatherms per day of natural gas capacity on ACP's pipeline at a negotiated rate for a twenty-year term. Atlantic Coast Pipeline, LLC, *Abbreviated Application for a Certificate of Public Convenience and Necessity and Blanket Certificates*, Vol. I – Public, Exhibit I at 2–3 (Sept. 18, 2015), FERC Docket No. CP15-554 (Accession No. 20150918-5212), available at

2 In Case No. PUE-2014-00062, the Commission's Staff identified DTI—not ACP—as VPSE's counterparty to the Precedent Agreement. *See Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 150330011, Staff Report, 11–12 (March 27, 2015), available at <http://bit.ly/2qhXiei>; *id.*, Appendix D at 33. DVP's subsequent informational filings in that case make clear that ACP, rather than DTI, is VPSE's counterparty to that agreement. However, as discussed in paragraph 41 below, DVP has also identified itself—not VPSE—as the contracting party to the Precedent Agreement in more recent filings.

<http://bit.ly/2oXMsWX>. The VPSE–ACP Precedent Agreement is for the sole benefit of DVP and will only serve DVP’s native load. *See Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 150330011, Staff Report at 11–12 (March 27, 2015), *available at* <http://bit.ly/2qhXiei>. *See also id.*, Appendix D at 33.

28. Under Paragraph 5 of the DVP–VPSE Fuel Management Agreement, any costs VPSE incurs under the VPSE–DTI Precedent Agreement may be billed to DVP, who may then seek recovery of those costs through its fuel factor. *Cf. id.*, Appendix D at 22.
29. Although VPSE’s negotiated rate with ACP has not been publicly disclosed, ACP’s proposed recourse rate is \$1.7290/dekatherm/day at full load factor,³ increasing to \$1.8826 when the \$0.1536 recourse rate of the proposed ACP-DTI Supply Header agreement⁴ is taken into account.⁵ By contrast, DVP (via VPSE) already has firm transportation agreements for 500,000 dekatherms/day⁶ with Transcontinental Gas Pipeline (Transco) for shipping capacity

3 Atlantic Coast Pipeline, LLC, *Amendment to Application for a Certificate of Public Convenience and Necessity and Blanket Certificates*, Vol. I – Public, Revised Exhibit P at 2 (March 11, 2016), FERC Docket No. CP15-554 (Accession No. 20160314-5035), *available at* <http://bit.ly/21TiRdh>.

4 *See supra* n.1.

5 Dominion Transmission, Inc., *Abbreviated Application for a Certificate of Public Convenience and Necessity and for an Order Authorizing Abandonment of Facilities*, Vol. I - Public, Exhibit P at 2 (Sept. 18, 2015), FERC Docket Nos. CP15-554 & CP15-555 (Accession No. 20150918-5215), *available at* <http://bit.ly/2pR0soy>.

6 *See Transcontinental Gas Pipe Line Co.*, 145 FERC ¶ 61,152, 2013 WL 6137661, *4 (Nov. 21, 2013) (describing firm transportation agreements for 270,000 dekatherms/day on VSEP I); *Transcontinental Gas Pipe Line Co.*, 156 FERC ¶ 61,022, 2016 WL 3693928, *4 (July 7, 2016) (describing firm transportation agreement for 250,000 dekatherms/day on VSEP II). Of the subscribed 270,000 dekatherms/day on VSEP I, VPSE has reserved 250,000 dekatherms/day to supply DVP’s Brunswick County Power Station; the remaining 20,000 dekatherms/day are subscribed to Piedmont Natural Gas Company. *See Williams Partners L.P., Transco Winter Operations Meeting*, 87 (Oct. 2014), *available at*

on the FERC-approved Virginia Southside Expansion Projects (VSEP) I and II. The average recourse rate for these expansions is \$0.52785/dekatherm/day.⁷ The DVP–VPSE–Transco firm transportation agreements for VSEP I and II are intended to service DVP’s Greenville and Brunswick County power stations, the same facilities that DVP states will be serviced by the DVP–VPSE–ACP arrangement.

Procedural History

30. On June 30, 2014, DVP and VPSE filed an application for approval under the Affiliates Act of several inter-affiliate agreements, including the DVP–VPSE Fuel Management Agreement. *See Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 140640282, Application for Approval of New and Revised Fuel Agreements (June 30, 2014), available at <http://bit.ly/2qiqRfK>. The application did not, however, seek Commission approval of any contracts between VPSE and DTI or other non-utility subsidiaries of DRI, which DVP argued are not subject to Commission approval under the Act. *Id.* at ¶¶ 50–55.
31. The Commission’s Staff filed an Action Brief responding to DVP and VPSE’s application on September 11, 2014. *Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No.

<http://bit.ly/2pkFsTB>. All of the subscribed capacity on VSEP II will supply DVP’s Greenville County Power Station. *Transcontinental Gas Pipe Line Co.*, 156 FERC ¶ 61,022, 2016 WL 3693928, *1.

- 7 *Transcontinental Gas Pipe Line Company, Application for Certificate of Public Convenience and Necessity (Virginia Southside Expansion Project II)*, Exhibit P at 4 (Mar. 23, 2015), FERC Docket No. CP15-118 (Accession No. 20150323-5108), available at <http://bit.ly/2qGzUax>. This average reflects the full capacity recourse rates of VSEP I (\$0.60174) and VSEP II (\$0.44806). *Id.* DVP’s negotiated rate for VSEP I is \$0.047001/dekatherm/day. Williams Partners, L.P., *Williams Gas Pipeline – Transco: Transactional Contracts – Firm* (Jan. 16, 2016), available at <http://bit.ly/2qhZzGX>. DVP’s negotiated rate for VSEP II has not yet been publicly disclosed.

140950066, Action Brief (Sept. 11, 2014), *available at* <http://bit.ly/2q1CXSF>. The Action Brief argued that “the affiliate structure among DVP, VPSE, DTI, and Cove Point constitutes an arrangement that is subject to the Affiliates Act” and recommending “the Commission direct [DVP] to submit all agreements or arrangements among DVP, VPSE, DTI, and Cove Point for Commission approval under the Affiliates Act to ensure that such arrangements or agreements are in the public interest.” *Id.* at 11–12. *See also, generally, id.*, Attachment A.

32. On September 29, 2014, the Commission entered an Order Granting Approval of the DVP–VPSE Fuel Management Agreement, finding that the individual agreements among DVP, VPSE, DTI, and Cove Point may be relevant to whether the continuation of the DVP–VPSE Fuel Management Agreement remains in the public interest and directing DVP to file those individual agreements—along with “any other arrangements among [DVP] affiliates for the benefit of DVP”—for review and audit by the Commission’s Staff. *Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 140950065, Order Granting Approval at 5–6, 9 (Sept. 29, 2014), *available at* <http://bit.ly/2pxrmlt>. In anticipation of further review and audit of the individual agreements and given its limited statutory deadline, the Commission declined at that time to address whether the individual agreements or the broader arrangement required express approval under the Affiliates Act. *Id.* at 6 n.13.
33. As required by the Commission’s September 29, 2014 Order, DVP filed, under seal and on an informational basis only,⁸ copies of several agreements among DVP affiliates for the

⁸ In response to a Sierra Club interrogatory in Case No. PUE-2016-00049, DVP asserted that it filed the VPSE-ACP Precedent Agreement and two subsequent amendments “on an informational basis.” *Commonwealth 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. PUE-2016-00049, Virginia Electric and Power Company’s Objection

benefit of DVP—including the VPSE–ACP Precedent Agreement—on October 6, 2014. Nowhere in this filing did DVP indicate it was seeking Commission review and approval of these inter-affiliate agreements.

34. On March 27, 2015, Commission Staff filed a report on its review and audit of the individual inter-affiliate agreements, including the VPSE–ACP Precedent Agreement. *Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 150330011, Staff Report (March 27, 2015). Commission Staff reported that, after reviewing the agreements, it continued to believe the fuel procurement arrangement between DVP, VPSE, ACP, and other DVP affiliates “constitutes an arrangement that is subject to the Affiliates Act.” *Id.* at 17. Staff took no position on the reasonableness of the VPSE–ACP Precedent Agreement. *Id.* at 16.
35. DVP filed with the Commission, under seal and on an informational basis only,⁹ copies of two subsequent amendments to the VPSE–ACP Precedent Agreement on June 22, 2015, and May 25, 2016, respectively. In neither of these subsequent filings did DVP indicate it was seeking Commission review and approval of the VPSE–ACP Precedent Agreement.
36. Neither DVP nor VPSE nor ACP has filed a verified petition or application under Virginia Code § 56-84 for approval of the VPSE–ACP Precedent Agreement or any arrangement that includes the VPSE–ACP Precedent Agreement.

CLAIM FOR DECLARATORY RELIEF

37. As detailed in paragraphs 7 and 10 above, both VPSE and ACP are “affiliated interests” of DVP under Section 56-76 of the Affiliates Act.

and Response to Sierra Club’s Discovery Request Question No. 45 (Sept. 1, 2016) (attached as Exhibit A).

⁹ See *supra* n.8.

38. The DVP–VPSE Fuel Management Agreement and the VPSE–ACP Precedent Agreement (as implemented by a forthcoming Firm Transportation Agreement) will together operate to provide DVP with natural gas transportation services from an affiliated interest and to transfer title to fuel from an affiliated interest to DVP. Furthermore, both Agreements are for the sole benefit of DVP. Therefore, the Fuel Management Agreement between DVP and VPSE and the Precedent Agreement between VPSE and ACP together constitute an “arrangement . . . made or entered into between a public service company and any affiliated interest,” which “provid[es] for the furnishing of . . . services” and/or “for the purchase, sale, lease or exchange of any property, right or thing” and is subject to Commission approval under the Affiliates Act accordingly. Virginia Code § 56-77 A. Although DVP and VPSE have received Commission approval of their Fuel Management Agreement, neither DVP nor any of its affiliates have requested or received approval for the VPSE-ACP Precedent Agreement or the broader DVP–VPSE–ACP arrangement.

39. For purposes of the Affiliates Act, it is of no consequence that DVP is not a named party to the VPSE–ACP component of the larger arrangement. The plain language of the Affiliates Act requires approval not only of all inter-affiliate contracts, but of all inter-affiliate “*arrangements*”—a broader term encompassing multiple individual contracts or agreements between a utility and its affiliates, all of which are intended to accomplish a particular purpose or activity. As the Commission’s Staff has observed, requiring that a utility be a named party to every contract subject to approval under the Affiliates Act would render the statutory term “arrangement” superfluous. *Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 140950066, Staff Action Brief, Attachment A at 2–4 (Sept. 11, 2014),

available at <http://bit.ly/2qlCXSE>. See also *Owens v. DRS Automotive Fantomworks, Inc.*, 288 Va. 489, 497 (2014) (statute should not be read so as to “render any part of it useless [or] redundant”).

40. Furthermore, allowing DVP’s fuel procurement arrangement to escape scrutiny under the Act simply because a wholly owned DVP subsidiary, rather than DVP itself, manages the utility’s fuel procurement operations would create a loophole that would eviscerate the purpose and proper functioning of the Act. Such an interpretation would allow utilities to evade scrutiny of major aspects of inter-affiliate transactions by strategically structuring those transactions. This interpretation is inconsistent with the “long-recognized” and “fundamental public policy” underlying the Act: that increased scrutiny of inter-affiliate transactions is mandated because *all* affiliated parties share “a unity of interests and do not deal at arm’s length.” *Commonwealth Gas Servs.*, 236 Va. at 367. See also *Simpson v. Roberts*, 287 Va. 34, 44 (2014) (“Every statute is to be read so as to promote the ability of the enactment to remedy the mischief at which it is directed.”) (quoting *Bulala v. Boyd*, 239 Va. 218, 227 (1990) (internal alterations omitted)).
41. The unity of interest between DVP and VPSE—and, in turn, the need for Commission review of the *entire* DVP–VPSE–ACP arrangement—is illustrated in DVP’s 2017 Integrated Resource Plan filing. That filing states that DVP *itself* “executed a precedent agreement to secure firm transportation services on the ACP . . . for [DVP’s] existing power generation.” See *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-2017-00051, Doc. Ctrl. Ctr. No. 170510018, Integrated Resource Plan for 2017 – Public Version, 72 (May 1, 2017), available at <http://bit.ly/2pUssrU>. In

addition, although negotiated rates between VPSE and ACP have not been made public, the significant difference between the recourse rates of ACP and VSEP I and II, detailed above in paragraph 29, demonstrates the need for review of the DVP–VPSE–ACP arrangement.

STATEMENT OF CONTROVERSY

42. Sierra Club and many of its members are retail customers of DVP. Therefore, in both its individual and representative capacities, Sierra Club has a substantial, concrete, and pecuniary interest in decisions that directly or indirectly affect the rates DVP is authorized to collect from its ratepayers.
43. Sierra Club’s members also live within the airsheds, watersheds, viewsheds, and other areas potentially impacted by the natural gas-fired facilities DVP discussed in its IRPs, including the plan recently filed on May 1, 2017. Furthermore, Sierra Club and its members advocate for and seek to enjoy the specific environmental, public health, and economic benefits that result from investing in the Commonwealth’s renewable energy and demand-side management resources. Therefore, in both its individual and representative capacities, Sierra Club has a substantial, concrete, and pecuniary interest in the Commission’s review of affiliate agreements that could directly or indirectly influence DVP’s future resource decisions.
44. In this respect, and independent of its potential impact on electricity rates, the DVP–VPSE–ACP arrangement represents a long-term commitment to significant quantities of natural gas—a commitment that would likely reduce DVP’s incentive to invest in renewable energy and efficiency savings over a twenty-year timeframe. Moreover, it is far from clear that DVP would commit itself to such an arrangement if it were conducting an arms-length negotiation with a truly independent third party, especially in light of the changing economics of the

energy sector, mounting climate and environmental concerns, the potential for future regulations of greenhouse gases and other emissions, and the availability of much cheaper natural gas capacity on existing or formally approved infrastructure such as the VSEP I and II expansions.

45. DVP's failure to file a verified petition or application for approval of the DVP-VPSE-ACP arrangement has denied Sierra Club its right to Commission review of the agreement, as well as any opportunity to participate as a respondent or public witness in a proceeding under Virginia Code § 56-84. The DVP-VPSE-ACP arrangement is likely to have a significant and long-term impact not only on DVP's retail rates, but also on its resource planning calculus and incentives for investing in renewable energy and efficiency resources over a twenty-year timeframe. Accordingly, the absence of a proper Affiliates Act review proceeding before the Commission and an opportunity for Sierra Club's public participation constitute a procedural injury tied to Sierra Club's concrete and pecuniary interests discussed above in paragraphs 42 and 43. *Cf. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 (1992) (actual controversy exists where parties seek "to enforce a procedural requirement the disregard of which could impair a separate concrete interest of theirs").

46. Because the Affiliates Act requires *prior* approval of all inter-affiliate transactions, the injuries detailed above in paragraph 45 create an actual controversy between Petitioners and DVP and/or its affiliated interests, regardless of whether any regulated entity has yet incurred any costs or liabilities. Furthermore, an actual controversy exists because the parties to the DVP-VPSE-APC arrangement have already expressed their intention to proceed under the terms of the arrangement. *See, e.g., 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-2017-00051, Doc. Ctrl. Ctr. No. 170510018, Integrated Resource Plan for 2017 – Public Version, 72 (May 1, 2017), available at <http://bit.ly/2pUssrU>; Atlantic Coast Pipeline, LLC, *Abbreviated Application for a Certificate of Public Convenience and Necessity and Blanket Certificates*, Vol. I Exhibit I at 2–3 (Sept. 18, 2015), FERC Docket No. CP15-554 (Accession No. 20150918-5212), available at <http://bit.ly/2oXMsWX>. Moreover, an actual controversy exists because DVP has, on multiple occasions and in multiple proceedings, confirmed that it will not file a verified petition or application for approval under the Act of the DVP–VPSE–ACP arrangement as a whole or of the VPSE–ACP Precedent Agreement component of the arrangement. See, e.g., *Application of Virginia Electric and Power Co., et al., for approval of new and revised affiliate fuel agreements pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2014-00062, Doc. Ctrl. Ctr. No. 140950066, Staff Action Brief, Attachment D – Applicants’ Comments to Recommendations in the Action Brief Filed by the Commission Staff, 8–13 (Sept. 16, 2014), available at <http://bit.ly/2qlCXSF> (asserting that agreements between VPSE and non-utility affiliates of DVP are “not subject to the filing and prior approval requirements of the Affiliates Act”); *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. PUE-2016-00049, Virginia Electric and Power Company’s Objection and Response to Sierra Club’s Discovery Request Question No. 45 (Sept. 1, 2016) (attached as Exhibit A).

47. Petitioners have no other adequate remedy for resolving this controversy. The Affiliates Act specifically requires Commission review of inter-affiliate transactions *before* they are entered into, separate and apart from the review of costs *actually* incurred under those transactions in

a future rate recovery or fuel factor proceeding. *See* Virginia Code §§ 56-77—56-80. In this respect, the Act reflects the General Assembly’s reasoned judgment that after-the-fact review of inter-affiliate transactions is inadequate to protect ratepayers and unaffiliated competitors. *See Pac. Nw. Bell Tel. Co. v. Sabin*, 534 P.2d 984, 998 (Or. Ct. App. 1975) (statute requiring utility regulator’s prior approval of inter-affiliate transactions reflected legislative determination that subsequent rate determinations alone were inadequate to “protect the consumer and the investor from the potential abuses arising from” such transactions); *Ariz. Corp. Comm’n*, 830 P.2d at 817 (holding that authority to regulate rates necessarily includes “authority to approve or disapprove [inter-affiliate] transactions *in advance*” (emphasis added)). *Cf. Hanson Trust PLC v. ML SCM Acquisition, Inc.*, 781 F.2d 264, 277 (2d Cir. 1986) (when corporate managers have a self-interest in consummating certain financial transactions subject to board oversight, “standard *post hoc* review procedures may be insufficient”). Therefore, the opportunity for Sierra Club to participate in future rate recovery or fuel factor proceedings is not an adequate substitute for a proper Affiliates Act review, which must occur *before* the DVP–VPSE–ACP arrangement can take legal effect.

48. Furthermore, participation in future rate or fuel factor proceedings would not address the potential for the DVP–VPSE–ACP arrangement to influence DVP’s resource planning process—including, for example, its potential to foster unnecessary or uneconomical reliance on natural gas resources at the expense of renewable and efficiency investments. As discussed above, each of these proceedings would only occur *after* DVP had entered into a legally binding commitment for twenty years’ worth of significant capacity on the Atlantic Coast Pipeline. Nor is the annual IRP review an appropriate proceeding to review the propriety of inter-affiliate transactions, as DVP itself has acknowledged. *See 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. PUE-2016-00049, Virginia Electric and Power Company's Objection and Response to Sierra Club's Discovery Request Question No. 45 (Sept. 1, 2016) (attached as Exhibit A) (objecting to written interrogatory concerning DVP–VPSE–ACP arrangement as “not relevant to the subject matter involved” in the IRP review proceeding).

49. On the other hand, an order requiring DVP, VPSE, and ACP to file a verified petition or application for Affiliates Act approval of their fuel procurement arrangement would effectively redress the injuries detailed above in paragraphs 45 by ensuring Sierra Club and its members the preapproval protections that the General Assembly expressly included in Virginia Code § 56-77. It would also offer Sierra Club and its members an opportunity to participate as respondents or public witnesses in the Commission's review of the DVP–VPSE–ACP arrangement under Virginia Code § 56-84. As public participants, Sierra Club and its members could address how the DVP–VPSE–ACP arrangement might affect their interests and those of the public at large over its entire two-decade timeframe. No adequate review would be available in future rate recovery dockets, fuel factor proceedings, or IRP processes, which would all occur in piecemeal fashion and only after a major commitment of resources had already been made.

PRAYER FOR RELIEF

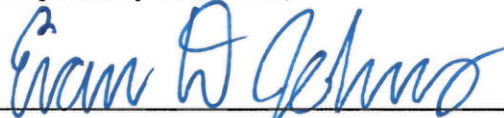
Based on the facts and law discussed above, Sierra Club respectfully asks the Commission to:

- (a) declare that the fuel procurement arrangement between the Virginia Electric and Power Company, the Virginia Power Services Energy Corporation, and Atlantic Coast Pipeline, LLC, is an “arrangement . . . made or entered into between a public service company and

any affiliated interest” that “provid[es] for the furnishing of . . . services” and/or “for the purchase, sale, lease or exchange of any property, right or thing” and is therefore subject to Commission approval under Virginia Code § 56-77;

- (b) order Virginia Electric and Power Company, Virginia Power Services Energy Corporation, and Atlantic Coast Pipeline, LLC, to file a verified application or petition under Virginia Code § 56-84 for the approval of the fuel procurement arrangement between those three entities;
- (c) issue a summary order under Virginia Code § 56-81 prohibiting DVP from treating any payments made under the terms of the DVP–VPSE–ACP arrangement as operating expenses or capital expenditures for rate or valuation purposes unless and until such payments shall have received the approval of the Commission; and
- (d) grant any additional relief that the Commission deems appropriate.

Respectfully submitted,



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Counsel for the Sierra Club

CERTIFICATE OF SERVICE

I certify that on May 8, 2017, I sent by United States mail, postage prepaid, a true and correct copy of the attached Petition for Declaratory Judgment, together with one exhibit, to:

Virginia Electric and Power Company
c/o CT Corporation System, Agent
4701 Cox Road, Suite 285
Glen Allen, Virginia 23060

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Richmond, Virginia 23219

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EXHIBIT A

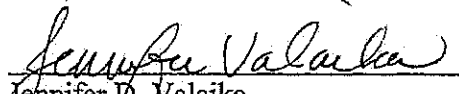
**COMMONWEALTH EX REL. STATE CORPORATION COMMISSION
IN RE: VIRGINIA ELECTRIC AND POWER COMPANY'S INTEGRATED
RESOURCE PLAN FILING PURSUANT TO VIRGINIA CODE § 56-597 ET SEQ.
CASE NO. PUE-2016-00049**

**VIRGINIA ELECTRIC AND POWER COMPANY'S OBJECTION AND
RESPONSE TO SIERRA CLUB'S DISCOVERY REQUEST QUESTION NO. 45**

SEPTEMBER 1, 2016

Virginia Electric and Power Company
Case No. PUE-2016-00049
Sierra Club
Fourth Set

The following objections and response to Question No. 45 of the Fourth Set of Interrogatories and Requests for Production of Documents propounded by the Sierra Club received on August 25, 2016 has been prepared under my supervision as it relates to legal matters.


Jennifer D. Valaika
McGuire Woods LLP

Question No. 45

Regarding the discussion of the Atlantic Coast Pipeline (ACP) on Page 87 of the Plan:

- (a) Does the Company consider
- (i) Atlantic Coast Pipeline, LLC, and
 - (ii) Dominion Transmission, Inc.,
- to be “affiliated interests” under the Affiliates Act, Virginia Code § 56-76, *et seq.*?
Please explain why or why not.
- (b) Has the Company filed any application or petition under Section 56-84 of the Affiliates Act seeking approval of any contract, arrangement, transaction, or other act related to the ACP? If so, please identify the associated case number or provide a copy of that filing and any final order on that filing.
- (c) Does the Company plan to file any application or petition under Section 56-84 in the future?
- (d) If the Company does plan to file such an application or petition, when does it plan to do so?

Response:

The Company objects to this request to the extent that it calls for a legal conclusion and further

to the extent that it seeks information that is not relevant to the subject matter involved and not reasonably calculated to lead to the discovery of admissible evidence in this case. Subject to and notwithstanding these objections, the Company provides the following response:

By its May 19, 2014 Order in Case No. PUE-2012-00103, the Commission directed the Company in its next filing for Affiliates Act approval of fuel procurement arrangements to address whether the affiliate structure between Virginia Power Services Energy Corp., Inc. ("VPSE") and other Dominion Resources, Inc. ("DRI") affiliates is subject to the Affiliates Act.

The Company filed for Affiliates Act approval of revised fuel procurement agreements on June 30, 2014 in Case No. PUE-2014-00062. As directed by the Commission, the Company's Application explained that the affiliate structure between VPSE and other DRI affiliates is not subject to the Affiliates Act because none of the parties to these agreements are Virginia public service corporations.

In its September 29, 2014 Order Granting Approval in that proceeding, the Commission expressly declined to address whether agreements between the Company's affiliates are subject to Affiliates Act approval, and directed the Company "to identify any other arrangements and agreements among its affiliates for the benefit of DVP and file any such additional arrangements and agreements with the Commission."

In accordance with this directive, the Company filed on an informational basis (among other agreements) the Precedent Agreement for Firm Transportation Services between Atlantic Coast Pipeline, LLC and VPSE ("Precedent Agreement") and two subsequent Amendments to the Precedent Agreement on October 6, 2014, June 22, 2015, and May 25, 2016, respectively, in Case No. PUE-2014-00062. The Precedent Agreement and the Amendments were each filed with the Commission and submitted to Commission Staff on a confidential basis, subject to the protections set forth in 5 VAC 5-20-170 and/or the Protective Order issued on October 17, 2014 in that docket.

All Commission orders referenced herein are available on the Commission's website.