COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION CASE NO. PUR-2020-00117

Ex Parte: Establishing the rates, terms and conditions of a universal fee to be paid by the retail customers of Appalachian Power Company.

ORDER ESTABLISHING PROCEEDING

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" or "Act"), will become effective on July 1, 2020. The VCEA, *inter alia,* establishes the Percentage of Income Payment Program ("Program" or "PIPP"), which is designed to limit the electric utility payments of persons or households participating in certain, specified public assistance programs, based upon a percentage of their income, for customers of Appalachian Power Company ("APCo") and Virginia Electric and Power Company ("Dominion").

The Act directs the State Corporation Commission ("Commission"), after notice and opportunity for hearing, to initiate a proceeding to establish the rates, terms and conditions of a "non-bypassable universal service fee" to fund the Program. This service fee will be paid by the customers of APCo and Dominion.

The VCEA directs that the fee

> shall be allocated to retail electric customers of a Phase I and Phase II Utility on the basis of the amount of kilowatt-hours used and be established at such level to adequately address the PIPP's objectives to (i) reduce the energy burden of eligible participants by limiting electric bill payments directly to no more than six percent of the eligible participant's annual household income if the household's heating source is anything other than electricity, and to no more than 10 percent of an eligible participant's annual

household income on electricity costs if the household's heating source is electricity, and (ii) reduce the amount of electricity used by the eligible participant's household through participation in weatherization or energy efficiency programs and energy conservation education programs.[1]

The Act also requires the Commission to determine reasonable administrative costs investor-owned utilities may recover associated with the PIPP, and the mechanism by which utilities may recover those costs. The Act requires the Commission to issue a Final Order concerning this proceeding by December 31, 2020.[2]

The Act also directs two executive branch agencies--the Department of Housing and Community Development and the Department of Social Services ("Agencies")--to convene a stakeholder working group and develop recommendations regarding the implementation of the PIPP.[3] The Agencies' recommendations are required to be submitted to certain legislative committees by December 1, 2020. The Commission encourages these Agencies to also participate in the Commission proceeding established herein.

NOW THE COMMISSION, upon consideration of the foregoing and pursuant to the Act's requirements, hereby initiates this docket to establish the rates, terms and conditions of a non-bypassable universal service fee to fund the PIPP, to be paid by the retail customers of

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[1] § 56-585.6 [effective July 1, 2020]. Universal service fee; Percentage of Income Payment Program. APCo is a Phase I Utility, and Dominion is a Phase II Utility. *See* Code § 56-585.1 A 1.

[2] Act's 12th Enactment: "12. That the State Corporation Commission shall issue its final order in the Percentage of Income Payment Program (PIPP) proceeding established pursuant to § 56-585.6 of the Code of Virginia, as created by this act, by December 31, 2020, provided that the non-bypassable universal service fee shall not be collected from customers of a Phase I or a Phase II Utility, as those terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, as amended by this act, until such time as the PIPP is established. The Department of Housing and Community Development and the Department of Social Services shall convene a stakeholder working group and develop recommendations regarding the implementation of PIPP. Such recommendations shall allow for a utility to reimburse the administrative costs of the PIPP, not to exceed $3 million, and shall be submitted to the Chairs of the House Committee on Labor and Commerce and the Senate Committee on Commerce and Labor by December 1, 2020."

[3] *Id.*

APCo. APCo is directed herein to propose such rates, terms and conditions, and in so doing shall, at a minimum, address the following issues:

- The number of eligible customers assumed and the basis for that assumption, including data sources used to develop customer eligibility levels;
- How heating sources were determined for eligible customers;
- A calculation of the dollars assumed not to be recovered as a result of the program being implemented for eligible customers heating with electricity;
- A calculation of the dollars assumed not to be recovered as a result of the program being implemented for customers heating with other sources;
- Costs proposed to be recovered related to arrearages and administrative costs incurred by APCo and by state agencies involved in the program;
- How the objective of reducing usage through participation in weatherization, energy efficiency, and conservation will be accomplished; identify any costs associated with these programs that are proposed to be collected by the fee;
- Total costs proposed to be recovered by the universal service fee detailing the components previously identified and other costs proposed to be recovered;
- The billing determinants used and a calculation of the proposed fee;
- How customer eligibility will be monitored and the frequency of monitoring;
- Whether program participants are statutorily exempted from being assessed the fee and, if they are, how such will be accomplished; and
- The amount of uncollectible expense in base rates associated with eligible customers. Include a credit in the calculation of the proposed fee to avoid double-recovery of this expense.

All information necessary to support the proposed fee should be provided.

The Commission will, by separate Order, establish a docket in which Dominion will propose its own rates, terms and conditions of its universal service fee to fund the PIPP.

The Commission further takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued

at both the state and federal levels.[4] The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.[5] Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless it contains confidential information, and require electronic service of pleadings on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) The Commission initiates this Case No. PUR-2020-00117 for purposes of establishing the rates, terms and conditions of a non-bypassable universal service fee to be paid by APCo's retail customers to fund the PIPP.

(2) All pleadings in this matter should be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice

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[4] *See, e.g.*, Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. *See also*, Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay At Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: https://www.governor.virginia.gov/executive-actions/.

[5] *See, e.g.*, *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders,* Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

and Procedure ("Rules of Practice").[6] Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with Rule 5 VAC 5-20-170, *Confidential information*. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.[7]

(3) Pursuant to 5 VAC 5-20-140, *Filing and Service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Commission Staff ("Staff") in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120, *Procedure before Hearing Examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to rule on any discovery matters that may arise during the course of this proceeding, including any motion for protective order.

(5) On or before July 21, 2020, APCo shall file an original and fifteen (15) copies of its PIPP filing together with any testimony and exhibits in support thereof; each witness's testimony shall include a summary not to exceed one page and shall specify those portions of the PIPP

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[6] 5 VAC 5-20-10 *et seq.*

[7] As noted in the Commission's Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

filing that the witness will sponsor at the hearing. Alternatively, in lieu of prefiled testimony and exhibits, APCo may file, on or before July 21, 2020, a document in which APCo: (a) identifies witnesses who will appear and offer testimony in support of APCo's PIPP filing at the hearing; (b) specifies those portions of the filing that such witnesses will adopt and support as their testimony at the hearing; and (c) includes a summary not to exceed one page of each such witness's testimony. APCo shall serve copies thereof on counsel for all respondents and the Staff.

(6) An electronic copy of the public version of APCo's PIPP filing, once filed, may be obtained by downloading unofficial copies of the public version of the PIPP filing and other documents filed in this case from the Commission's website: https://scc.virginia.gov/pages/Case-Information.

(7) A public hearing shall be convened at 9:30 a.m. on October 15, 2020, in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive opening statements, testimony, and evidence offered by APCo, respondents, and the Staff on APCo's PIPP filing.

(8) A hearing for the receipt of testimony from public witnesses on APCo's PIPP filing shall be convened telephonically at 9:30 a.m. on October 13, 2020, with no witness present in the Commission's courtroom.[8] The hearing will be conducted according to the following procedures:

a) To promote fairness for all public witnesses, each witness will be allotted five minutes to provide testimony.

[8] The Commission will convene counsel of record in this proceeding to attend the public witness hearing via Skype for Business.

b) On or before October 8, 2020, any person desiring to offer testimony as a public witness shall provide to the Commission (a) your name, and (b) the telephone number that you wish the Commission to call during the hearing to receive your testimony. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at https://scc.virginia.gov/pages/Webcasting; (ii) by completing and emailing the PDF version of this form to SCCInfo@scc.virginia.gov; or (iii) by calling 804-371-9141.

c) Beginning at 9:30 a.m. on October 13, 2020, the Commission will telephone sequentially each person who has signed up to testify as provided above. This hearing will not be convened, and the parties will be notified of such, if no person signs up to testify as a public witness.

d) This public witness hearing will be webcast at: https://scc.virginia.gov/pages/Webcasting.

(9) On or before October 7, 2020, any interested person may file comments on the PIPP filing by following the instructions found on the Commission's website: https://scc.virginia.gov/pages/Case-Information. All comments shall refer to Case No. PUR-2020-00117.

(10) On or before August 18, 2020, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation. Such notice of participation shall include the email addresses of such parties or their counsel. The respondent simultaneously shall serve a copy of the notice of participation on counsel to APCo. Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice,

any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00117.

(11) Within five (5) business days of receipt of a notice of participation as a respondent, APCo shall serve a copy of the public version of PIPP filing on the respondent.

(12) On or before September 3, 2020, each respondent may file with the Clerk of the Commission and serve on the Staff, APCo, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case, and each witness's testimony shall include a summary not to exceed one page. In all filings, respondents shall comply with the Commission's Rules of Practice, including, but not limited to: 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2020-00117.

(13) On or before September 17, 2020, the Staff shall investigate the PIPP filing and shall file with the Clerk of the Commission an original and fifteen (15) copies of its testimony and exhibits concerning the PIPP filing, and each Staff witness's testimony shall include a summary not to exceed one page. The Staff shall serve a copy thereof on counsel to APCo and all respondents.

(14) On or before October 1, 2020, APCo shall file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer, and each rebuttal witness's testimony shall include a summary not to exceed one page. APCo shall serve a copy of its rebuttal testimony and exhibits on the Staff and all respondents.

(15) Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(16) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.[9] Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq*.

(17) This matter is continued.

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.

[9] The assigned Staff attorney is identified on the Commission's website, https://scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2020-00117, in the appropriate box.