

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, DECEMBER 23, 2020

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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

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"), became 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") 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 were required to be submitted to certain legislative committees in December 2020 ("Agencies' Report").

On June 12, 2020, the Commission issued an Order Establishing Proceeding ("Order") that, among other things, initiated 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

¹ Code § 56-585.6. 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. The Order directed APCo, on or before July 21, 2020, to propose such rates, terms and conditions ("PIPP filing"), and in so doing, address, at a minimum, 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.

The Order also established a procedural schedule; permitted interested persons to file written or electronic comments or to participate in this proceeding as a respondent; and scheduled hearings to receive testimony from public witnesses and testimony and evidence offered by APCo, respondents, and the Commission's Staff ("Staff") on APCo's PIPP filing.

On September 2, 2020, the Commission issued an Order Assigning Hearing Examiner, appointing a Hearing Examiner to conduct all further proceedings in this matter on behalf of the

Commission, including filing a final report containing the Hearing Examiner's findings and recommendations.

The following filed notices of intent to participate as a respondent: Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Appalachian Voices ("Environmental Respondent"); Sierra Club; Steel Dynamics, Inc.; Old Dominion Committee for Fair Utility Rates; Virginia Poverty Law Center ("VPLC"); and the Agencies (collectively, "Respondents").

On October 15, 2020, the hearing in this matter was convened via Skype for Business, with no party present in the Commission's physical courtroom.⁴ APCo, Consumer Counsel, Environmental Respondent, Sierra Club, VPLC, the Agencies, and the Staff participated in the hearing.⁵ A late-filed exhibit was reserved for the Agencies' Report upon filing with the legislative committees.⁶

On October 20, 2020, Appalachian Voices, Sierra Club, and VPLC filed post-hearing briefs. The Report of D. Mathias Roussy, Jr., Hearing Examiner ("Report"), was filed on November 16, 2020. In his Report, the Hearing Examiner summarized the record and made the following findings and recommendations:⁷

⁴ The hearing originally scheduled for October 13, 2020, to receive the testimony of public witnesses, was cancelled after no public witnesses signed up by the appointed deadline.

⁵ Respondents Sierra Club, Environmental Respondent and the Agencies pre-filed testimony and exhibits. Staff pre-filed testimony and exhibits on September 17, 2020, and APCo filed rebuttal testimony on October 1, 2020.

⁶ The Commission received the Agencies' Report, for which Exhibit No. 7 was reserved during the hearing, on December 18, 2020.

⁷ Report at 22-23.

1. A PIPP fee set to recover between approximately \$20 million and \$25 million annually would allow APCo to adequately address the two objectives of Code § 56-585.6 A and to recover the estimated administrative costs identified in the record;
2. Record evidence supports a broad range of PIPP cost estimates because of uncertainties regarding the future implementation of the PIPP and participation therein;
3. The process for establishing the PIPP remains ongoing. Late-filed Exhibit 7 - legislative implementation recommendations from the stakeholder group led by the Departments - will provide an update on this process;
4. Enactment Clause 12 of the VCEA prohibits any PIPP fee set in this case from being collected from APCo's customers until such time as the PIPP is established;
5. The PIPP fee set in this case should be approved, subject to condition(s) to ensure the Commission's review and, if necessary, revision of such fee prior to collection from APCo's customers;
6. Approving a PIPP fee to recover approximately \$25 million - without a downward adjustment for program "ramp up" - could increase regulatory flexibility for the Commission to review and, if necessary, revise the PIPP fee prior to any collection from customers;
7. A flat per-kilowatt hour rate design for the PIPP fee is consistent with Code § 56-585.6 A;
8. After the PIPP is established and implemented, an annual or semi-annual review of the PIPP fee should allow for the timely consideration of whether the level of the fee remains adequate; however, a PIPP fee with formulaic components should also be considered; and
9. An arrearage estimate should be incorporated in a PIPP fee that becomes effective at least three months prior to the first arrearage write-down in order to, among other things, mitigate the rate impact associated with the incurrence of this significant cost.

In addition, the Hearing Examiner made the following findings that were not included in the enumerated list of "Findings and Recommendations":⁸

⁸ Although these findings were not numbered in the Report, we assign numbers herein for purposes of discussing the Commission's findings.

10. The record does not support APCo's proposal to expense certain information technology costs that would typically be capitalized for ratemaking purposes;⁹
11. The PIPP fee could result in double-recovery of costs if not adjusted to account for uncollectible expense currently recovered through base rates. Given the uncertain implications of the government-ordered moratorium on service disconnections on APCo's incurrence and recovery of arrearages and bad debt, however, the PIPP fee should not incorporate a specific credit at this time;¹⁰
12. The mandatory nature of participation in weatherization or energy efficiency programs by PIPP participants appears to be a policy decision already made by the General Assembly. The current language is mandatory in nature. Accordingly, the cost implications of such policy must be considered in setting the PIPP fee;¹¹
13. Based on legal and factual uncertainties, it is unclear whether incorporating a specific energy efficiency budget into the initial PIPP rate calculation is necessary; however, it is reasonable at this time to incorporate an estimate of APCo's share of the \$3 million amount reimbursable to the Agencies for administrative cost of the PIPP, which could be used for, among other things, the Agencies' planned expansion of the existing weatherization program;¹²
14. The Commission should not exercise its discretion to use lower caps on participant payments than the maximum 6% cap (if heating with another energy source) and 10% cap (if heating with electricity) set forth in the VCEA until after the program has been implemented; however, based on updated information, it may be appropriate to adjust these percentages;¹³
15. It is premature at this time to incorporate the cost to establish an escrow account to act as a cushion in the event PIPP reimbursement to participants exceeds recovery for a given period,¹⁴ and
16. Program participants are not statutorily exempted from being assessed the PIPP fee.¹⁵

⁹ Report at 20.

¹⁰ *Id.* at 16.

¹¹ *Id.* at 18.

¹² *Id.* at 18-19.

¹³ *Id.* at 14.

¹⁴ *Id.* at 16, 20. However, based on updated information on administrative costs, adjustments to a recovery mechanism for these costs may be necessary. *Cf. id.* at 20.

¹⁵ *Id.* at 14-15.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows:

Recommendation Nos. 1, 2, 3 and 6

The Commission adopts the Hearing Examiner's Recommendation Nos. 1, 2, 3 and 6 for the reasons stated in the Report.¹⁶ As noted in the Report, the low-end of the Hearing Examiner's recommended range of \$20 million to \$25 million for the initial PIPP annual revenue requirement corresponds to Staff's estimate, and the high-end of the range corresponds to Sierra Club's customer credit and administrative costs plus APCo's agency energy efficiency estimate.¹⁷ We agree with the Hearing Examiner that approving a PIPP fee to recover approximately \$25 million could increase regulatory flexibility.¹⁸ We further note that the \$25 million PIPP revenue requirement could be adjusted up or down in a future proceeding depending on additional information that may hereafter become available, further direction from the General Assembly, and other factors.

Recommendation No. 4

We agree with and adopt the Hearing Examiner's Recommendation No. 4.¹⁹ By doing so, the Commission is following Enactment Clause 12 of the VCEA by not allowing any PIPP fee to be collected until the General Assembly establishes the PIPP.²⁰

¹⁶ See *id.* at 1, 21-22.

¹⁷ *Id.* at 21 n.136.

¹⁸ *Id.* at 21-22.

¹⁹ *Id.* at 22.

²⁰ 2020 Va. Acts Chs. 1193, 1194.

Recommendation No. 5

We adopt the Hearing Examiner's Recommendation No. 5. Specifically, the Commission is adopting a PIPP fee with no effective date. We will direct APCo to return to the Commission to request review and, if necessary, revision of the PIPP fee in a separate proceeding once more details have been established through future legislation by the General Assembly. As part of that later proceeding, it is envisioned that the PIPP fee and an effective date will be set. The timing for such filing by APCo will be determined based on future PIPP legislation.

Recommendation No. 7

We adopt the Hearing Examiner's Recommendation No. 7 for the reasons stated in the Report.²¹ A flat per-kilowatt hour ("kWh") rate design for the universal service fee based on a PIPP revenue requirement of \$25 million is \$0.001803/kWh, or \$1.80/month for a customer using 1,000 kWh/month.²²

Recommendation No. 8

We adopt the Hearing Examiner's Recommendation No. 8. To clarify, the Commission is not adopting any specific timing for review now. The Commission will consider the timing of regular review of the PIPP fee in the next PIPP case, as discussed in connection with the Hearing Examiner's Recommendation No. 5, above. After the PIPP has been established, the Commission will then prescribe an appropriate review process going forward.

²¹ Report at 21.

²² A flat rate universal service fee based on a \$20 million revenue requirement would be \$0.001443/kWh, or \$1.44/month for a customer using 1,000 kWh/month.

Recommendation No. 9

We agree with the Hearing Examiner that an arrearage estimate should be incorporated in the PIPP fee in the future. We decline to specify a certain timeframe for incorporating an arrearage estimate in the PIPP fee. We further clarify that no arrearage estimate is included in the estimated \$25 million PIPP revenue requirement now. We recognize that much is still unknown, such as how federal funding through the Coronavirus Aid, Relief, and Economic Security Act²³ may help to alleviate utility bill arrearages.²⁴

Finding No. 10

We agree with the Hearing Examiner's Finding No. 10, as identified above. APCo should capitalize its information technology costs related to PIPP consistent with the Company's standard amortization practice.²⁵

Finding No. 11

We decline to make a finding as to the potential for double recovery of costs if the PIPP fee is not adjusted to account for uncollectible expense recovered through base rates. This issue will be addressed in future proceedings when APCo will provide more data to support a fully informed evaluation.

Finding No. 12

With regard to the issue of mandatory participation in weatherization or energy efficiency programs by PIPP participants, the Commission reads the statute to require the PIPP to address

²³ Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

²⁴ We further note that arrearages will drive up the PIPP fee until they are extinguished, and the record did not contain reliable Virginia-specific estimates, only extrapolations from other states.

²⁵ APCo's normal amortization period for capitalized software costs is five years. *See* Ex. 6 (Wong) at 6 n.10.

the objective to reduce energy use as described in Code § 56-585.6 A (ii) ("Subsection A (ii)"). We further note the singular nature of Subsection A (ii): ". . . electricity used by the eligible participant's household through participation . . ." (emphasis added). To make participation in weatherization or energy efficiency programs optional for PIPP participants is to ignore Subsection A (ii). Accordingly, the Commission views such participation as mandatory unless and until another way is apparent to accomplish the objectives of the PIPP fee as set forth in Code § 56-585.6 A.

Finding No. 13

We agree with the Hearing Examiner that it is not now necessary to include a specific energy efficiency budget in the PIPP rate calculation. Meeting the requirement in Subsection A (ii) is the combined obligation of the utilities and the executive agencies involved, as both are able to offer programs of the types designated in Subsection A (ii). The adequacy of the PIPP fee is in part dependent on rates set in other cases (e.g., APCo's EE-RAC case²⁶). It is currently unclear whether programs being used now will be enlarged, or currently are sufficient, to cover PIPP participants. Accordingly, in this case it is not necessary to include a specific energy efficiency budget in the PIPP fee calculation. We note that the Hearing Examiner found that it is reasonable at this time to incorporate an estimate of APCo's share of the \$3 million amount reimbursable to the Agencies for administrative cost of the PIPP, which could be used for the Agencies' planned expansion of the existing weatherization program. Though APCo's

²⁶ See, e.g., *Petition of Appalachian Power Company, For approval to continue rate adjustment clause, the EE-RAC, and for approval of new energy efficiency programs pursuant to §§ 56-585.1 A 5 c and 56-596.2 of the Code of Virginia*, Case No. PUR-2019-00122, Doc. Con. Cen. No. 200550013, Final Order (May 21, 2020). APCo's current EE-RAC proposal is being considered in Case No. PUR-2020-00251. See *Petition of Appalachian Power Company, For approval to continue a rate adjustment clause, the EE-RAC, and for approval of new energy efficiency programs pursuant to §§ 56-585.1 A 5 c and 56-596.2 of the Code of Virginia*, Case No. PUR-2020-00251, filed November 30, 2020.

exact share of the \$3 million is not yet known, we find that setting the PIPP fee on the higher end (at \$25 million) provides flexibility to cover this cost. With updates, this amount can be adjusted up or down depending on the facts.

Finding No. 14

We agree with and adopt the Hearing Examiner's Finding No. 14. Adopting caps on income that are lower than the 6% and 10% caps in the statute is a matter of discretion that the Commission chooses not to exercise at this time. Currently, there are many unknowns as to how many people qualify for the PIPP and the cost of using even the 6% and 10% caps. Lowering the caps would require more funding for the PIPP, which we do not find reasonable at this nascent stage of PIPP establishment and implementation.

Finding No. 15

We agree with the Hearing Examiner that it is premature to incorporate the cost to establish an escrow account to act as a cushion in the event PIPP reimbursement to participants exceeds recovery for a given period. Accordingly, we deny APCo's request. The higher \$25 million estimate for the initial PIPP revenue requirement provides a cushion such that an escrow account is not now needed.

Finding No. 16

We agree with the Hearing Examiner that program participants are not statutorily exempted from being assessed the PIPP fee. This finding was not disputed by any of the case participants. The VCEA calls the fee a "non-bypassable universal service fee" (emphasis added).²⁷ Therefore, all retail electric customers of APCo will be charged the fee. We recognize, however, that most PIPP participants will reach the 6% or 10% cost cap, as

²⁷ Code § 56-585.6 A.

applicable, based on their energy use alone, so the PIPP fee will be part of the "bill overage" that participants will not pay.²⁸

Accordingly, IT IS ORDERED THAT:

(1) A PIPP fee of \$0.001803/kWh, to recover \$25 million annually, is approved, with no effective date at this time.

(2) Upon enactment of legislation setting forth further details on the PIPP and subsequent direction by this Commission, APCo shall file for review and revision (if necessary) of the PIPP fee, prior to collection of the fee from customers.

(3) This matter is dismissed.

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.

²⁸ See Report at 14-15. As noted by the Hearing Examiner, "PIPP participants with low usage during the relevant period could receive bills for less than the statutory capped amounts. Application of the universal fee would increase the bills for such customers." *Id.* at 15 n.96.