

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00172

Ex Parte: In the matter of adopting new rules of the State Corporation Commission governing exemptions for large general services customers under § 56-585-1 A 5 c of the Code of Virginia

ORDER ADOPTING REGULATIONS

The Virginia General Assembly enacted legislation during its 2020 Session¹ requiring the State Corporation Commission ("Commission") to establish rules by which large general services customers may be exempted from participation in energy efficiency programs.² The new rules are to be effective by June 30, 2021.

On September 30, 2020, the Commission entered an Order for Notice and Comment ("Initial Order") initiating this proceeding to promulgate rules governing the manner in which large general services customers may be exempted from participation in energy efficiency programs. The Commission appended to its Initial Order proposed rules ("Proposed Rules"), which were prepared by the Staff of the Commission ("Staff").

Notice of the proceeding and the Proposed Rules were published in the *Virginia Register of Regulations* on November 9, 2020. Additionally, those persons and entities identified by Staff as potentially having an interest in this matter were provided notice via electronic transmittal of

¹ Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly.

² These duplicate Acts of Assembly, known as the Virginia Clean Economy Act ("VCEA"), became effective on July 1, 2020.

the Initial Order. Furthermore, the notice in the Attachment to Initial Order was sent by Virginia Electric and Power Company ("DEV") and Appalachian Power Company ("APCo"), to each of their Large General Service ("LGS") customers, by separate first class mailing, by electronic mail, or by bill insert. An electronic version of the Proposed Rules was also posted on the Commission's website and the Commission's Division of Public Utility Regulation website. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before November 17, 2020.

The Virginia Committee for Fair Utility Rates & Old Dominion Committee for Fair Utility Rates ("the Committees"), DEV, APCo, the Virginia Department of Mines, Minerals, and Energy ("DMME"), and the Natural Resources Defense Council ("NRDC") filed comments. Comments were also received from the Virginia Poverty Law Center ("VPLC"), Virginia Energy Efficiency Council ("VAEEC"), as well as three LGS customers. (All of these entities collectively are referred to as the "Commenters"). No one requested a hearing on the Proposed Rules. On December 17, 2020, the Staff filed its report.

The Committees, DEV, APCo, and the NRDC proposed specific changes to the language of the Proposed Rules. The other Commenters provided more general recommendations related to the Proposed Rules.

SECTION 20 VAC 5-250-10: APPLICABILITY AND SCOPE

DEV recommended that the rules be modified to require that a customer must have a verifiable history of using at least one megawatt of demand at least three months within a consecutive twelve-month period.³ Per DEV, requiring a minimum of three occurrences would

³ Staff Report at 2; DEV Comments at 3.

eliminate anomalies caused by extreme weather or other external conditions.⁴ DEV also recommended that the twelve-month period in which the demand exceeds one megawatt be required to be within the most recent three years of the customer's electric service.⁵ Finally, DEV recommended that the word "contiguous" be added to the description of a "single site" to avoid ambiguity about certain geographical locations.⁶

APCo recommended that LGS customers have a verifiable history of one megawatt of demand in any single billing month during the three previous calendar years.⁷

NRDC argued that Staff's restatement of § 56-585.1 A 5 c was incomplete and that this provision only permits exemption if an applicant has energy efficiency "programs" in place, that provide measured and verified savings which are both "consistent with industry standards" and "other regulatory criteria stated in § 56-585.1."⁸ NRDC further argued the Code "plainly requires that any applied-for exemption is dependent upon the Commission first making a 'finding' of each of the above requirements."⁹ NRDC proposed changes to Section 20 VAC 5-350-10 that require the customer demonstrate it has implemented energy efficiency programs that the Commission finds are consistent with industry standards for similar such customers and which meet other regulatory criteria in § 56-585.1.¹⁰

⁴ Staff Report at 2; DEV Comments at 3.

⁵ *Id.*

⁶ *Id.*

⁷ Staff Report at 4; APCo Comments at 1.

⁸ Staff Report at 5; NRDC Comments at 1.

⁹ *Id.*

¹⁰ Staff Report at 5; NRDC Comments at 2.

VAEEC recommended that an LGS customer be defined as a facility whose peak measured demand has reached or exceeded one megawatt during at least three billing months within any prior twelve-month period during the last three years prior to the exemption.¹¹

VAEEC further recommended that the Commission not only set an energy savings threshold that must be met in order for an LGS customer to receive an exemption, but also to set it at such a level that these internal programs are producing effective energy savings for the customer.¹²

SECTION 20 VAC 5-350-20: ADMINISTRATIVE PROCEDURES FOR NOTICE TO UTILITY AND COMMISSION

DEV recommended that a deadline be established for utilities to provide responses by June 1 of a given year to the notices of nonparticipation submitted during January 1 through March 1 of that year, rather than utilities having to process the notices on a rolling basis.¹³ Per DEV, having a more structured process with firm dates will better enable utilities to manage workflow and monitor compliance deadlines.¹⁴ Similarly, DEV recommended that the billing changes for nonparticipating LGS customers become effective on July 1 of the applicable calendar year rather than on a rolling basis.¹⁵ DEV further proposed that notices of nonparticipation received after the March 1 deadline not be processed for that year.¹⁶ DEV suggested the customers that provided notices after March 1 should be required to submit a new

¹¹ Staff Report at 7; VAEEC Comments at 2.

¹² Staff Report at 7; VAEEC Comments at 3.

¹³ Staff Report at 2; DEV Comments at 3-4.

¹⁴ *Id.* at 4.

¹⁵ Staff Report at 2-3; DEV Comments at 4.

¹⁶ Staff Report at 3; DEV Comments at 4-5.

notice of nonparticipation for the following year.¹⁷ Lastly, DEV recommended that this section include a notification of material changes by nonparticipating customers to be provided within sixty days of the material change.¹⁸

APCo recommended that customers should not be qualified for exemption if they have participated in or received a rebate through a Commission-approved utility energy efficiency program in the last sixty months.¹⁹

The Committees requested insertion of a new paragraph E in Section 20 VAC 5-350-20 related to customers exempted from any rate adjustment clause approved by the Commission pursuant to § 56-585.1 A 5 c at the time this chapter comes into effect. Pursuant to the Committees' newly proposed paragraph E, such customers would be presumed to remain exempt; those seeking to continue an exemption would have to provide a notice of nonparticipation to their utility on or before March 1 of the year after this chapter is approved.²⁰ The Committees argued these changes provide clarity to customers as to when they must provide their notice of nonparticipation in order to continue exemptions uninterrupted from rate adjustment clauses for energy efficiency programs ("EE RACs").²¹

SECTION 20 VAC 5-350-30: STANDARD CRITERIA FOR NOTICE TO THE UTILITY

DEV recommended that the LGS customers include the applicable utility account numbers within the notice and stated this was relevant for those customers that may seek to

¹⁷ Staff Report at 3; DEV Comments at 5.

¹⁸ Staff Report at 3; DEV Comments at 5.

¹⁹ Staff Report at 4; APCo Comments at 1.

²⁰ Staff Report at 7; Committees' Comments at 1.

²¹ Staff Report at 7; Committees' Comments at 4.

aggregate multiple accounts within a single site to reach the one megawatt demand threshold.²² Regarding annual reporting requirements, DEV recommended that each LGS customer provide an annual report that describes the energy efficiency savings achieved by the customer during each twelve-month period in which such notice of nonparticipation is in effect to both the utility and Commission Staff.²³ DEV proposed that the report also include the status of the measures and operational changes included in the notice of nonparticipation.²⁴

APCo recommended that the notice of nonparticipation describe the energy efficiency savings achieved in kilowatt-hours during each of the prior five years as well as the life expectancy of each measure.²⁵ APCo also recommended a new requirement that energy savings achieved by the customer meet or exceed the required percentage energy reduction as required by the VCEA for their respective utility, and that the customer include analysis in its notice of nonparticipation regarding such savings.²⁶ APCo recommended that the utility have no responsibility for verifying such compliance but would "verify information has been provided by the customer in its notice of nonparticipation."²⁷ In paragraphs E and F of this Section, APCo recommended language stating that it is the customer's sole responsibility to ensure that the energy savings claimed in the customer's notice of nonparticipation meet the definition of "measured and verified" as defined in § 56-576 of the Code, and that compliance be attested to in

²² Staff Report at 3; DEV Comments at 5.

²³ Staff Report at 3; DEV Comments at 5.

²⁴ *Id.*

²⁵ Staff Report at 4; APCo Comments at 2.

²⁶ *Id.*

²⁷ *Id.*

the customer's affidavit.²⁸ Lastly, APCo recommended removing paragraph G of this Section from the rules.²⁹

NRDC argued that Section 20 VAC 5-350-30 also fails to include a Commission finding requirement,³⁰ and NRDC recommended language in paragraph E of this Section that indicates nonparticipation would not be approved by the Commission unless the Commission first finds that each annual report demonstrates energy efficiency savings of a level consistent with commonly accepted industry standards.³¹ NRDC further commented that such industry standards "may be based on ISO 50001 or other similar energy management systems standards."³²

DMME recommended that specific energy savings targets be established that compel participants to implement programs that achieve substantial savings in line with the energy efficiency standards applied to the investor-owned utilities in the VCEA.³³ DMME also encouraged the inclusion of more detailed information on qualifying Evaluation, Measurement, and Verification ("EM&V") measures, including the prescription of an International Performance Measurement and Verification Protocol and its associated options for different types of energy efficiency measures in order to establish a strong performance standard for this program.³⁴

²⁸ Staff Report at 4, 5; APCo Comments at 2, 3.

²⁹ Staff Report at 5; APCo Comments at 3.

³⁰ Staff Report at 5; NRDC Comments at 1.

³¹ Staff Report at 5-6; NRDC Comments at 2.

³² Staff Report at 13; NRDC Comments at 2.

³³ Staff Report at 6; DMME Comments at 1.

³⁴ Staff Report at 6; DMME Comments at 2.

DMME further recommended use of a standardized EM&V tool for administering this program, as the standardization and digitization of data may provide benefits for both users and Commission Staff.³⁵

DMME also suggested adjusting the baselines to the 2016-2019 timeframe given the impacts of COVID-19 affecting energy demand, as well as establishing an energy savings account which could be administered by the Commission or the utility and would enable a participating LGS customer to earmark funds for energy efficiency measures.³⁶

VAEEC recommended aligning LGS customer internal program EM&V protocols and reporting requirements with the Federal Energy Management Program Protocols as used by DMME for public Energy Savings Performance Contracting ("ESPC").³⁷ VAEEC recommended aligning LGS customer self-direct enforcement guidelines with the protocols set forth by DMME for public ESPC contracts with an additional option of revoking an exemption if needed.³⁸ Finally, VAEEC recommended developing a process to address end-of-life measure savings in relation to the customer exemption, which VAEEC argued should include a timeline or submitting EM&V plans for new measures.³⁹

³⁵ Staff Report at 6; DMME Comments at 2.

³⁶ *Id.*

³⁷ Staff Report at 7-8; VAEEC Comments at 4.

³⁸ Staff Report at 8; VAEEC Comments at 5.

³⁹ *Id.*

VPLC did not provide any specific changes to the language of the Proposed Rules but supported the comments of VAEEC and emphasized the importance of incorporating energy savings targets for the LGS customers.⁴⁰

SECTION 20 VAC 5-350-40: DISPUTE RESOLUTION

APCo recommended incorporating language which states, "For the utility, all costs incurred shall be recoverable through rates."⁴¹

STAFF'S REPORT

In its Report, Staff noted some agreement with the Commenters' suggestions, objected to some of the comments as outside the scope of the authority granted by the Code, and proffered modifications to some of the suggested edits in order to both address the concerns of the Commenters as well as alleviate potential undue burdens on LGS participants. A copy of the black-lined Rules with Staff's additional edits was included as Attachment A to the Staff Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulations appended hereto as Attachment A should be adopted as final rules, as discussed herein. As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration and have otherwise participated in this proceeding. We have carefully reviewed and considered all comments, changes to the Proposed Rules, and the Staff Report filed in this case.

The Rules we now adopt strike a reasonable balance of the interests of LGS customers and utilities and support the objectives of Code § 56-585.1 A 5 c, while also protecting the electric system and Virginia consumers. These Rules provide a workable solution for the unique

⁴⁰ Staff Report at 8; VPLC Comments at 2.

⁴¹ Staff Report at 5; APCo Comments at 3.

issues faced in this rulemaking. As experience is gained and lessons are learned, these Rules may be updated and revised. In this regard, we further note that the Rules, as adopted herein, permit requests for waiver for good cause shown.⁴²

The Rules we adopt herein contain certain modifications to those that were first proposed by Staff and published in the *Virginia Register of Regulations* on November 9, 2020. Although we will not comment on each modification in detail, we now address: (i) NRDC's request for Commission findings on initial notices of nonparticipation and annual reports, (ii) NRDC's and DMME' s requests to include in the Rules specifically named energy efficiency protocols, and (iii) the Committees' comments on the timing of the filing of notices of nonparticipation and continued exemptions.

First, NRDC stated in its comments that the Commission must make an affirmative finding regarding each LGS customer's notice of nonparticipation.⁴³ NRDC further asserted that the Commission must make affirmative findings regarding each LGS customer's energy efficiency annual report for that customer to maintain nonparticipant status.⁴⁴ Staff responded by modifying the last sentence of 20 VAC 5-350-10 to require LGS customers to "certify" implementation of energy efficiency programs, at the customer's expense, showing measured and verified results within the prior five years, consistent with industry standards and any other regulatory criteria in Code § 56-585.1 A 5 c that the Commission reasonably deems appropriate.⁴⁵ The Rules we adopt herein incorporate Staff's recommended approach requiring

⁴² 20 VAC 5-350-50 A.

⁴³ NRDC Comments at 2.

⁴⁴ *Id.*

⁴⁵ Staff Report at 10.

certification. To the extent that objections are made to an LGS customer's certified notice of nonparticipation, the Commission's informal and formal complaint processes are available to the disputants to resolve their differences.⁴⁶

Such certification process complies with the VCEA⁴⁷ and provides administrative efficiencies. NRDC's alternative would require the expenditure of significant Commission resources related to the initial notice of nonparticipation and each year thereafter for each and every LGS customer seeking an initial or continuing exemption. Ongoing proceedings before the Commission are not required by the statute, and we decline to adopt such.

Second, NRDC requested that the Commission add language to these rules specifying that industry standards for energy savings "may be based on ISO 50001 or other similar energy management systems standards"⁴⁸ and DMME recommended the use of more detailed information on qualifying EM&V measures, including the prescription of an International Performance Measurement and Verification Protocol.⁴⁹ Similarly, Staff recommended use of the following language: "Such industry standards for energy savings may be based on ISO 50001, or the International Performance Measurement and Verification Protocol, or other similar energy management systems standards."⁵⁰

⁴⁶ See 5 VAC 5-20-70, *Informal complaints*, and 5 VAC 5-20-100, *Other proceedings*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*

⁴⁷ The Commission notes that in the same Code § 56-585-1 A 5 c paragraph cited by NRDC, the Commission is charged with drafting rules wherein LGS customers will: *notify the utility* of their nonparticipation intent; *certify to the utility and the Commission* all claimed energy efficiency measures; and "in adopting such rules or regulations, the Commission shall also specify the timing as to *when a utility shall accept and act on such notice.*" (Emphasis added.)

⁴⁸ NRDC Comments at 2.

⁴⁹ DMME Comments at 2.

⁵⁰ Staff Report at 14.

The Commission appreciates NRDC's, DMME's and Staff's recommendations on this point and encourages the use of highly regarded EM&V protocols. We decline at this time, however, to adopt specific EM&V protocols within the text of these rules. EM&V protocols are updated periodically, so adopting specific protocols may hinder the ability to use the most up-to-date protocols available at the time of such filings.⁵¹

We next address the Committees' concerns related to the expiration of exemptions for those exempt from paying for EE RACs before the effective date of the VCEA and the timing by which such customers must provide notices of nonparticipation to their utilities to continue their exemptions uninterrupted.⁵² As initially proposed, Rule 20 VAC 5-350-20 A provided the relevant deadline by which notices of nonparticipation must be received, specifically "on or before March 1 of the year in which an exemption is sought." In an effort to provide clarification regarding expiration of exemptions and the timing of filing of notices of nonparticipation for those LGS customers that held exemption under the pre-VCEA wording of Code § 56-585.1 A 5 c, the Committees proposed adding a new subsection E to Rule 20 VAC 5-350-20 which, among other things, specifies that "customers seeking to continue an existing exemption must provide a new notice of nonparticipation . . . on or before March 1 of the year after this chapter is approved."⁵³

⁵¹ In fact, Staff's recommended language otherwise, which is being adopted in part, by this Commission, expressly states:

Each customer shall certify that each such annual report demonstrates energy efficiency savings at a level consistent with *commonly accepted industry standards* for energy efficiency savings obtained by similarly situated customers, and adheres to *any other regulatory criteria the commission reasonably deems appropriate*.

Revised 20VAC5-350-30 D (emphasis added). We further note that, if a specific protocol is identified in these final rules, users would be bound to the version of that protocol embedded in the rules, even if such protocols are updated in the future.

⁵² Committees' Comments at 2-4.

⁵³ *Id.* at 1.

Absent swift resolution to this rulemaking and a reasonable opportunity for the filing of notices of nonparticipation by eligible LGS customers, there would be a chance that any LGS customers eligible for exemption under Code § 56-585.1 A 5 c, as revised by the VCEA, and who previously enjoyed exemption from the utilities' EE RACs under the pre-VCEA wording of Code § 56-585.1 A 5 c, would become subject to such RACs with the onset of new EE RAC rates starting in the summer of 2021. To remedy this situation, the Commission has established an April 1 filing deadline for receipt of notices of nonparticipation from all eligible LGS customers for the year 2021, with a standing June 1 deadline for acceptance by the utilities.⁵⁴ Any LGS customer, including those desiring to continue a prior statutory exemption, would thus have the opportunity to provide notice of nonparticipation therefor, on or before April 1, 2021.⁵⁵ This solution, for 2021 only, is a reasonable way in which to ensure the continuation of pre-VCEA exemptions. Further, all LGS customers were provided notice of this rulemaking⁵⁶ and thus, have been on notice of the exemption question and the proposed notice of nonparticipation requirement. Accordingly, all eligible LGS customers should be prepared to act affirmatively should they desire this VCEA exemption.

Accordingly, IT IS ORDERED THAT:

(1) The rules governing exemptions for large general services customers under Code § 56-585-1 A 5 c, as shown in Attachment A to this Order, are hereby adopted and are effective as of February 4, 2021.

⁵⁴ For all subsequent years beyond 2021, the deadline for receipt of notices of nonparticipation is March 1.

⁵⁵ The Commission notes the late-filed motion and comments regarding exemptions filed by the Committees (*Motion for Leave to File Additional Comments and Comments of the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates*, Doc. Con. Cen. No. 210120013 (Jan. 13, 2021)). With the findings made in this Order, the Committees' late-filed submission is rendered moot.

⁵⁶ See Proofs of Service filed by APCo on October 27, 2020 and DEV on October 29, 2020.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(3) An electronic copy of this Order with Attachment A including the rules governing exemptions for large general services customers under Code § 56-585-1 A 5 c shall be made available on the Division of Public Utility Regulation's section of the Commission's website: scc.virginia.gov/pages/Rulemaking.

(4) Any LGS customer seeking an exemption, including those desiring to continue a prior statutory exemption from a rate adjustment clause authorized by the Commission pursuant to Code § 56-585.1 A 5 c for the rate year beginning in 2021, shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before April 1, 2021.

(5) Consistent with the rules adopted herein, on or before June 1, 2021, APCo and DEV shall accept or reject all notices of nonparticipation provided by eligible LGS customers on or before April 1, 2021.

(6) DEV and APCo shall forthwith, but in no event later than February 5, 2021, transmit to each of their Large General Service Customers by electronic mail, or where electronic mail is not available by separate first class mailing, a copy of this Order and Attachment A. Proofs of Service of such notice shall be filed with the Commission by February 15, 2021.

(7) This docket 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. A copy hereof also shall be sent to C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, MBrowder@oag.state.va.us; the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

State Corporation Commission

Rules Governing Exemption for Large General Services Customers

Chapter 350RULES GOVERNING EXEMPTIONS FOR LARGE GENERAL SERVICES COMPANIES**20VAC5-350-10. Applicability and scope.**

This chapter is promulgated pursuant to the provisions of § 56-585.1 A 5 c of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. This chapter is specifically applicable to the large general service customers of Virginia's electric utilities subject to the provisions of § 56-585.1 A 5 c that have verifiable histories of using more than one megawatt of [monthly] demand from a single site [, in any single billing month, during each of the previous three calendar years] . As used in this chapter, a customer comprises all of the individual electric utility accounts owned by a single entity, located on a single site [each of the previous three calendar years] , and that are engaged in the same business. This chapter is also applicable to customers with highest measured demands from a single site of more than one megawatt in any single [billing] month if such customers do not have three calendar years of history. A customer is eligible for an exemption from any rate adjustment clause approved for a utility by the State Corporation Commission pursuant to § 56-585.1 A 5 c, if any customer can [demonstrate certify to the commission] that it has implemented [an] energy efficiency [program programs] , at the customer's expense, that [has have] produced measured and verified results within the prior five years. [Such certification shall be consistent with industry standards for similar customers and meet other regulatory criteria in § 56-585.1 A 5 c that the commission reasonably deems appropriate.]

20VAC5-350-20. Administrative procedures for notice to utility and commission.

A. ~~Any~~ Except for the 2021 notice period, any] customer seeking to establish its exemption from a rate adjustment clause authorized by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before March 1 of the [upcoming rate] year in which [an the customer seeks to begin its] exemption [is sought] . [The notice Any customer seeking to establish its exemption from a rate adjustment clause authorized by the commission pursuant to § 56-585.1 A 5 c for the rate year beginning in 2021 shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before April 1, 2021. All notices] of nonparticipation shall be [filed] concurrently [filed] by the customer with the commission's Division of Public Utility Regulation. [Notices provided after the April 1, 2021 or subsequent annual March 1 deadlines, will not be accepted during that calendar year and must be resubmitted for the next period being sought.]

B. Upon receipt of the notice of nonparticipation, a utility shall, [within 60 days thereof on or before June 1] , verify the customer's highest measured demand in the three prior calendar years preceding the receipt of such notice. [The exemption will commence with the effective date of the utility's next rate adjustment clause.] The utility shall accept the exemption request if the customer [has a highest measured usage in excess of one megawatt meets the criteria for a large general service customer set forth in 20VAC5-350-10] and has submitted the information required by 20VAC5-350-30. In the event the utility fails to notify the customer of any deficiency in its notice of nonparticipation [within the 60 day period by June 1] , the exemption shall be deemed accepted by the utility. The utility's acceptance or denial of any exemption request shall concurrently be sent to the customer and [filed provided] by the utility [with to] the commission's Division of Public Utility Regulation.

C. Once a utility has accepted a customer's exemption request, that customer shall be exempt from any rate adjustment clause approved for the utility by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia, beginning with the [~~billing month~~ effective date of the utility's next rate adjustment clause on or after July 1] following the date of acceptance of the exemption request and continuing throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation. A customer shall notify the utility and the commission if the conditions of the customer's notice of nonparticipation change in any material respect [within 60 days of the change] .

D. Each notice of nonparticipation that contains confidential information shall be treated in accordance with 5VAC5-20-170 of State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

[E. Customers seeking to continue a previous statutory exemption must provide a new notice of nonparticipation, as defined in 20VAC5-350-30, concerning the rate adjustment clause to its utility on or before April 1, 2021.]

20VAC5-350-30. Standard criteria for notice to utility.

A. Each notice of nonparticipation shall identify the customer, the customer's billing address and [all applicable] utility account [~~number numbers~~], and the location of the specific facility and [~~metering point single site~~] for which any such exemption is being sought.

B. The notice of nonparticipation shall also contain an affidavit signed by the customer's president, corporate secretary, or other officer of the customer concerning [~~each the~~] energy efficiency [~~program programs~~]. Such affidavit shall attest to the validity of information submitted in support of the customer's notice of nonparticipation.

C. The notice of nonparticipation shall [~~describe~~ certify] the energy efficiency savings achieved [~~in~~ from investment in such programs, in kWhs, within] the prior five years [~~from its~~

investment in its energy efficiency program; and as well as] the specific measures undertaken to achieve those savings [and the life expectancy of each measure. The notice of nonparticipation shall certify the energy efficiency savings achieved by the customer meets or exceeds the requirements of § 56-596.2 of the Code of Virginia] .

D. [~~The notice of nonparticipation shall include information concerning any anticipated change in operations that may affect achieved or expected energy efficiency savings, including the life expectancy of the energy efficiency measures undertaken.~~

E.] To qualify for the exemption, each customer shall have measurable and verifiable energy efficiency savings in the prior five years consistent with § 56-585.1 A 5 c of the Code of Virginia. [It shall be the customer's sole responsibility to ensure the energy savings claimed in the customer's notice of nonparticipation meets the definition of measured and verified as set forth in §56-576 of the Code of Virginia, and such compliance shall be attested to in the customer's affidavit.] Additionally, each customer providing a notice of nonparticipation to its utility pursuant to this chapter shall subsequently furnish yearly reports to the [utility and the] commission's Division of Public Utility Regulation describing the energy efficiency savings achieved by the customer during each 12-month period in which such notice of nonparticipation is [intended to be] in effect. [The annual reports shall include the status of energy efficiency measures and operational changes included in the customer's notice of nonparticipation. Each customer shall certify that each such annual report demonstrates energy efficiency savings at a level consistent with commonly accepted industry standards for energy efficiency savings obtained by similarly situated customers, and adheres to any other regulatory criteria the commission reasonably deems appropriate.] Such reports shall be filed on or about March 1 of the year following such customer's filing of its notice of nonparticipation, with such March 1 filings continuing thereafter throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation.

[F E] . Each notice of nonparticipation shall also include a measurement and verification plan conforming to the protocol set forth in the definition of "measured and verified" as provided in § 56-576 of the Code of Virginia. [It shall be the customer's sole responsibility to ensure its measurement and verification plan conforms to this definition.]

[G. Not later than December 31 of each year, each utility shall notify its customers of the percentage energy efficiency reductions expected to be achieved by the utility's energy efficiency programs for which the commission has approved rate adjustment clauses pursuant to § 56-585.1 A-5 c of the Code of Virginia.]

20VAC5-350-40. Dispute resolution.

A. Customers and utilities shall seek to resolve all disputes arising out of the exemption process established under this chapter pursuant to the provisions of this section.

B. In the event of any such dispute, either party shall furnish the other a written notice of dispute. The notice shall describe in detail the nature of the dispute. The parties shall make good faith efforts to resolve the dispute informally within 10 business days of the receipt of such notice.

C. If any such dispute has not been resolved within 10 business days following receipt of the notice, either party may seek resolution assistance from the commission's Division of Public Utility Regulation where such matter will be treated as an informal complaint under State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

Alternatively, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service for the purpose of assisting the parties in (i) resolving the dispute or (ii) selecting an appropriate dispute resolution method or mechanism (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. In any such dispute resolution proceeding, each party shall conduct all negotiations in good faith and shall be responsible for one half of any charges for the dispute resolution

provider, but each party shall bear its own legal fees and other costs incurred as a result of the dispute resolution process.

D. If any such dispute remains unresolved following the parties' good faith exercise of the dispute resolution alternatives set forth in this section, either party may file a formal complaint with the commission pursuant to State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

20VAC5-350-50. Waiver and enforcement.

A. The commission may waive any or all parts of this chapter for good cause shown.

B. The commission on its own motion may initiate steps necessary to verify a nonparticipating customer's achievement of energy efficiency if the commission has a body of evidence that the nonparticipating customer has knowingly misrepresented its energy efficiency achievement. Such proceedings shall be governed by State Corporation Commission Rules of Practice and Procedure (5VAC5-20).