

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 30, 2020

REGISTRATION OF THE
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 FOR NOTICE AND COMMENT

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"), became effective on July 1, 2020. The VCEA, *inter alia*, amended § 56-585.1 A 5 c of the Code of Virginia ("Statute") to require the State Corporation Commission ("Commission") to establish rules by which large general services customers may be exempted from participation in energy efficiency programs. The Statute directs that the new rules are to be effective by June 30, 2021.

Under the Statute, a large general service customer ("LGS customer") is defined as a customer that has a "verifiable history" of having used more than one megawatt of demand from a single site. Further, an LGS customer is exempt from participating in energy efficiency programs if the Commission finds that the LGS customer has, at the customer's own expense, implemented energy efficiency programs that have or will produce measured and verified results.

The Statute requires the Commission to adopt rules (a) establishing the process for large general service customers to apply for such an exemption, (b) establishing the administrative procedures by which eligible customers will notify the utility, and (c) defining the standard criteria that must be satisfied by an applicant in order to notify the utility, including means of

evaluating measurement and verification, as well as confidentiality requirements. Each exempted LGS customer must certify to the utility and Commission that its implemented energy efficiency programs have delivered measured and verified savings within the prior five years.

The Statute further requires the rules concerning this exemption to specify the timing as to when a utility must accept and act on exemption notices, taking into consideration, among other things, the utility's integrated resource planning process and its administration of energy efficiency programs that have been approved for cost recovery by the Commission. Energy savings from LGS customers are required to be accounted for in utility reporting in accordance with Code § 56-596.2. The Statute mandates that a notice of nonparticipation by an LGS customer shall be for the duration of the service life of the customer's energy efficiency measures and provides for Commission verification of such nonparticipant's energy efficiency achievements if the Commission has evidence of the nonparticipant's having knowingly misrepresented such savings.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to promulgate rules governing LGS customer exemptions from utility Rate Adjustment Clause charges for energy efficiency. To initiate this proceeding, the Commission's Staff ("Staff") has prepared proposed rules which are appended to this Order ("Proposed Rules"). We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

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.¹ The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.² 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 comments.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed as Case No. PUR-2020-00172.

(2) All filings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").³ For the duration of the COVID-19 emergency, any person seeking to

¹ 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/>.

² 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).

³ 5 VAC 5-20-10 *et seq.*

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.⁴

(3) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(4) Within five (5) business days of the date of this Order, Staff shall transmit electronically copies of this Order to those persons and entities identified by Staff as potentially having an interest in this matter.

(5) Within ten (10) business days of the date of this Order, Virginia Electric and Power Company and Appalachian Power Company shall transmit, to each of their Large General Service customers, by separate first class mailing, by electronic mail, or by bill insert, the notice in the Attachment to this Order.

(6) Within thirty (30) days of the date of this Order, Virginia Electric and Power Company and Appalachian Power Company shall file an affidavit of compliance with the requirement of Ordering Paragraph (5) with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, or by filing electronically at scc.virginia.gov/clk/efiling/. The affidavit shall not include the names or other identifying information of the notified customers, but each utility shall maintain a record of such information.

(7) An electronic copy of these rules may be obtained by submitting a request to Allison Samuel in the Commission's Division of Public Utility Regulation at the following e-mail

⁴ As noted in the 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.

address: Allison.Samuel@scc.virginia.gov. An electronic copy of the Proposed Rules can also be found at the Division of Public Utility Regulation's website:

scc.virginia.gov/pages/Rulemaking. Additionally, interested persons may download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(8) On or before November 17, 2020, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Such comments may also include proposed modifications and hearing requests. All filings shall refer to Case No. PUR-2020-00172. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be addressed adequately in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(9) On or before December 17, 2020, the Staff may file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(10) 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. A copy hereof also shall be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

**NOTICE TO LARGE GENERAL SERVICE CUSTOMERS
OF CHANGE IN EXEMPTION AND NEW PROPOSED RULES,
STATE CORPORATION COMMISSION CASE NO. PUR-2020-00172**

Prior to July 1, 2020, you may have been exempt from paying a surcharge (called a rate adjustment clause, or "RAC") related to various utility energy efficiency programs. Due to recent changes in the law known as the Virginia Clean Economy Act, this exemption has changed. Virginia Code § 56-585.1 A 5 c now provides a more limited exemption from paying this RAC for a customer (i) that has a verifiable history of having used more than 1 megawatt of demand from a single site, and (ii) that has, at its own expense, implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in the law.

The law requires the Virginia State Corporation Commission ("Commission") to adopt rules and regulations (i) establishing the process for you to apply for an exemption, (ii) establishing administrative procedures by which you will notify your utility, and (iii) defining the standard criteria that you must satisfy to notify the utility, including means of evaluating measurement and verification, as well as confidentiality requirements. Each exempted customer must certify to the utility and to the Commission that its implemented energy efficiency programs have delivered measured and verified savings within the prior five years.

The Commission is considering Proposed Rules to meet these legal requirements in Case No. PUR-2020-00172. According to the Order for Notice and Comment in that case, you may view the Proposed Rules on the Division of Public Utility Regulation website: scc.virginia.gov/pages/Rulemaking. You also may obtain an electronic copy of these rules by submitting a request to Allison Samuel in the Commission's Division of Public Utility Regulation at: Allison.Samuel@scc.virginia.gov. Further, you may download unofficial copies of the Order and Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

You may file comments, proposed modifications, and hearing requests on the Proposed Rules with the Commission on or before November 17, 2020, with the Clerk of the State Corporation Commission at: scc.virginia.gov/casecomments/Submit-Public-Comments. All filings shall refer to Case No. PUR-2020-00172. Any request for hearing must state with specificity why the issues raised in the request for hearing cannot be addressed adequately in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed in the docket.

More information about Case No. PUR-2020-00172 may be found at: scc.virginia.gov/pages/Case-Information.

STATE CORPORATION COMMISSION

Rules Governing Exemption for Large General Services Customers

Under § 56-585.1 A 5 c of the Code of Virginia

CHAPTER 350RULES GOVERNING EXEMPTIONS FOR LARGE GENERAL SERVICES CUSTOMERSUNDER § 56-585.1 A 5 c OF THE CODE OF VIRGINIA**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 demand from a single site. 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, 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 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 (commission) pursuant to § 56-585.1 A 5 c, if any customer can demonstrate that it has implemented an energy efficiency program (program), at the customer's expense, that has produced measured and verified results within the prior five years.

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

A. 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 year in which an exemption is sought. The notice of nonparticipation shall be concurrently filed by the customer with the commission's Division of Public Utility Regulation.

B. Upon receipt of the notice of nonparticipation, a utility shall, within 60 days thereof, verify the customer's highest measured demand in the three prior calendar years preceding the receipt of such notice. The utility shall accept the exemption request if the customer has a highest measured usage in excess of one megawatt 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, 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 by the utility with 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 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.

D. Each notice of nonparticipation which contains confidential information shall be treated in accordance with the commission's Rules of Practice and Procedure (5VAC5-20-170).

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

A. Each notice of nonparticipation shall identify the customer, the customer's billing address and utility account number, and the location of the specific facility and metering point 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 program. 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 the energy efficiency savings achieved in the prior five years from its investment in its program and the specific measures undertaken to achieve those savings.

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. Additionally, each customer providing a notice of nonparticipation to its utility pursuant to this chapter, shall subsequently furnish yearly reports to 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 in effect. 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. 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.

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 the commission's 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 1/2 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 the commission's 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 the commission's Rules of Practice and Procedure (5VAC5-20).