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Richmond, VA 23219

Mr. Joel H. Peck, Clerk
State Corporation Commission Document Control Center
P.O. Box 2118
Richmond, Virginia 23218

November 17, 2020

RE: 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.

Dear Mr. Peck:
The Virginia Energy Efficiency Council ("VAEEC") submits the following comments for consideration by the Virginia State Corporation Commission ("Commission") in regards to the proposed rules issued by the Commission's Staff ("Staff") in Case No. PUR-2020-00172.

Founded in 2012, VAEEC is a 501c3 organization headquartered in Richmond, whose goal is to facilitate discussions and share resources to advance energy efficiency throughout the Commonwealth. We engage our members to identify barriers to and opportunities for energy efficiency advancement, and to develop a strong, fact-based, and balanced industry voice before policymakers and regulators. Our diverse group of over 100 members includes Fortune 500 companies, nonprofits, local governments, state agencies, and more, whose vision is for energy efficiency to be an integral part of Virginia's economy and clean energy future.

Earlier this year, the Virginia General Assembly enacted the Virginia Clean Economy Act ("VCEA"), which requires the investor-owned electric utilities ("IOUs") to be carbon-free as early as 2045. As the cheapest and largest zero-emissions resource, energy efficiency will play a critical role in ensuring that the transition to a 100% clean energy future is affordable and equitable.

The VCEA establishes an energy savings mandate for the IOUs through 2025, with the Commission determining further savings in three-year increments thereafter. A diverse portfolio of energy efficiency programs will be crucial in meeting these savings goals in later years. To that end, the VCEA allows all jurisdictional customers to participate in utility-managed energy efficiency programs. With this proceeding (PUR-2020-00172), Large General Service customers ("LGS customers") who use more than 1MW of electricity annually will soon be able to request an exemption from utility Rate Adjustment Clause charges for energy efficiency programs if they can provide verified savings from internal energy efficiency programs.

In reviewing the proposed rules submitted by Staff, the VAEEC respectfully submits the following comments, which are separated into four categories:

- Definition of Large General Service Customers;
- Specified savings targets;
- Measurement and Verification and reporting requirements for customer-financed energy efficiency programs; and

- Enforcement.

Large General Service Customer Definition
Under current Virginia law, 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."*

This definition leaves several elements up to interpretation, particularly as they relate to how one megawatt of demand is determined and what is meant by "verifiable history". Additionally, the proposed rules allow an LGS customer who has only used one megawatt of electricity in just one month to be eligible for the exemption.

We suggest using language similar to the Dominion Energy GS-3 and GS-4 rate schedules[1], which use a three-month minimum instead of a one-month minimum.

We recommend the following language to further define an eligible LGS customer:

> ***To qualify for an exemption, a facility whose peak measured demand has reached or exceeded one megawatt during at least three billing months within any prior 12-month period during the last three years prior to the exemption.***

Additionally, using a three-year look back will address any temporary reductions in demand due to weather or changes in operations, including COVID-19 related effects.

Savings Targets
The proposed rules do not provide an energy-savings threshold for LGS customers to meet in order to receive an exemption from paying utility Rate Adjustment Clause charges for energy efficiency programs. Is the intent that an LGS customer with <u>any</u> verified energy savings- even a minimal amount- is eligible for an exemption, or will a minimum target be set in order for an exemption to be granted? While the energy savings accrued by LGS customers via their own internal programs can be counted by the IOUs towards the VCEA energy savings goals, setting a low threshold for exemption will not only put greater onus on the IOUs to meet those targets, but will also reduce the pool of customers paying for the utility-managed energy efficiency programs, which may create equity concerns.

As the VCEA energy efficiency goals continue to increase in future years, programs that cater to LGS customers will be pivotal. Nationwide, states that are most successful in saving energy and reducing carbon emissions either do not have an opt-out option or have successfully kept the majority of their LGS customers engaged in energy efficiency programs.[2] Allowing LGS customers to opt-out of utility-managed energy efficiency programs with minimal internal

[1] *Dominion Business Rate Schedules: https://www.dominionenergy.com/virginia/rates-and-tariffs/business-rates*
[2] ACEEE 2019 State Scorecard: https://www.aceee.org/state-policy/scorecard

savings of their own, could potentially create a wave of LGS customers who opt-out with little to no savings.
As one of the four main pillars of the VCEA, energy efficiency goals are critical to ensuring that the transition to a 100% clean energy future is affordable and equitable. If LGS customers are able to opt-out of paying for energy efficiency programs with little to no energy savings of their own, then more of them will potentially do so, thereby shrinking the pool of customers paying for these programs. This may result in increasing costs for those customers who are already struggling to pay their electric bills each month.

It will be imperative to maximize program participation from LGS customers in order to drive down program portfolio costs, which results in higher efficiency and lower overall system costs.[3]

It is our recommendation 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 to also set it at such a level that these internal programs are producing effective energy savings for the customer.

Measurement and Verification (M&V) and reporting requirements
As described in the promulgated rules, *"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."*

According to § 56-576, *"Measured and verified means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission."*

An LGS customer who is utilizing self-directed energy efficiency programs, may be utilizing an Energy Savings Performance Contract ("ESPC"). An energy savings performance contract is an effective, budget-neutral approach for businesses and localities to implement energy-saving improvements without using large up-front expenditures. ESPC projects are managed by energy service companies who guarantee the cost savings over the lifetime of the installed equipment.

In Virginia, public bodies and state agencies can take advantage of the statewide Energy Savings Performance Contracting (ESPC) program, managed by the Department of Mines, Minerals, and Energy ("DMME")[4]. Annual M&V reports for public ESPC projects are required by § 11-34.3 of

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[3] *Myths and Facts about Industrial Opt-Out Provisions, ACEEE, 2016: https://www.aceee.org/fact-sheet/ieep-myths-facts*
[4] *DMME Energy Savings Performance Contracting website: https://www.dmme.virginia.gov/de/performancecontractingsupport.shtml*

the Code of Virginia, and DMME goes further by requiring use of the Federal Energy Management Program ("FEMP") M&V protocols[5], which is also listed in § 56-576.

The FEMP M&V protocols state, "*M&V options and methods proposed for each [measure] shall comply with the latest version (in effect at the time of award) of the "DOE/ FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects" and the "International Performance Measurement and Verification Protocol (IPMVP)." If there is a discrepancy between these two documents, the DOE/FEMP M&V Guideline takes precedence*."[6]

Regardless if an LGS customer utilizes ESPC for their efficiency project or not, these protocols can still be used for M&V. The DOE/ FEMP M&V Guidelines state, "*While the focus here is on performance-based contracts, the procedures can be adapted to determine savings from conservation measures installed in any project, regardless of funding source*."[7]

Additionally, these protocols should be applied to all customer-reported energy savings, including those savings reported in the initial exemption request as well as annual M&V reports.

In terms of reporting requirements, DMME also requires[8] vital information such as summary details, measure descriptions, base year energy data, and savings calculations, which should also be incorporated into the requirements for LGS customers seeking the exemption.

We recommend aligning LGS customer internal program M&V protocols and reporting requirements with the FEMP protocols as used by DMME for public ESPC contracts.

Enforcement
According to the promulgated rules issued by Staff, *"the Commission may on its own motion initiate steps necessary to verify such nonparticipant's achievement of energy efficiency if the Commission has a body of evidence that the nonparticipant has knowingly misrepresented its energy efficiency achievement."*

It is unclear what the steps will be to verify the level of savings from an LGS customer who may be misrepresenting their energy savings. Will there be some form of penalty for submitting misrepresented data? Could data misrepresentation result in revoking that LGS customer's exemption?

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[5] *DMME Energy Savings Performance Contract Forms: https://www.dmme.virginia.gov/de/PerformanceContractingForms2.shtml*
[6] *2017 DOE IDIQ ESPC Generic Contract, page 8: https://www.energy.gov/sites/prod/files/2019/05/f63/2017_generic_doe_idiq_espc_contract.pdf*
[7] *DOE/ FEMP M&V Guidelines, section 1.2: https://www.energy.gov/sites/prod/files/2016/01/f28/mv_guide_4_0.pdf*
[8] *DMME Energy Savings Performance Contract Forms: https://www.dmme.virginia.gov/de/PerformanceContractingForms2.shtml*

In addition to developing a specific process for misrepresented data reporting, the Commission should also have a process for addressing annual M&V reports from LGS customers that are not meeting a stated savings threshold.

We recommend 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.

Finally, what will be the process when the energy efficiency measures outlined in an LGS customer's annual M&V report reach end-of-life? Will the LGS customer automatically begin paying for utility Rate Adjustment Clause charges for energy efficiency programs if a new M&V plan is not submitted? Will there be a certain length of time they have to provide a new M&V plan for new energy-saving measures before the utility can begin applying the Rate Adjustment Clause?

We recommend developing a process to address end-of-life measure savings in relation to the customer exemption, which should include a timeline for submitting M&V plans for new measures.

In conclusion, we appreciate the opportunity to weigh in on the development of the Commissions exemption process for LGS customers.