

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, NOVEMBER 3, 2009

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00117

*Ex Parte*: In the matter of considering  
§ 532 (b) of the Energy Independence  
and Security Act of 2007

CLERK'S OFFICE  
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ORDER ESTABLISHING PROCEEDING

Section 303 (a) of the Public Utility Regulatory Policies Act of 1978 ("PURPA")<sup>1</sup> requires each state regulatory authority, with respect to each gas utility for which it has ratemaking authority, to consider certain federal standards established by PURPA. Each such state regulatory authority is required to determine whether it is appropriate, to the extent consistent with otherwise applicable state law, to adopt these standards.<sup>2</sup> The State Corporation Commission ("Commission") has conducted various proceedings concerning energy standards since PURPA's adoption in 1978.<sup>3</sup>

On December 19, 2007, President George W. Bush signed the Energy Independence and Security Act of 2007<sup>4</sup> ("Energy Independence and Security Act" or "Act") into law. The stated purposes of this Act include moving the United States toward greater energy independence; increasing the production of clean renewable fuels; promoting research on the capture and storage of greenhouse gases; increasing energy efficiency in buildings, vehicles, and other

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<sup>1</sup> 15 U.S.C.S. § 3203 (a) (2006).

<sup>2</sup> *Id.*

<sup>3</sup> Such proceedings include, for example: *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Consideration of standards for integrated resource planning and investments in conservation and demand management for natural gas utilities*, Case No. PUE-1994-00030 (Final Order) (Oct. 14, 1994).

<sup>4</sup> Pub. L. 110-140, 121 Stat. 1492.

products; improving the energy performance of the federal government; and protecting consumers.

Section 532 (b) of the Energy Independence and Security Act amends § 303(b) of PURPA<sup>5</sup> by adding the following standards for consideration:

(5) Energy efficiency

Each natural gas utility shall—

(A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and

(B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

(6) Rate design modifications to promote energy efficiency investments

(A) In general

The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.

(B) Policy options

In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

(i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;

(ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;

(iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and

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<sup>5</sup> 15 U.S.C.S. § 3203 (b) (2006).

(iv) adopting rate designs that encourage energy efficiency for each customer class.

For purposes of applying the provisions of this subtitle to this paragraph, any reference in this subtitle to the date of enactment of this Act [November 9, 1978], shall be treated as a reference to the date of enactment of this paragraph [December 19, 2007].

Section 532 (c) of the Energy Independence and Security Act also amends § 303 (a) of PURPA by adding the following conforming amendment: "Section 303 (a) of the Public Utility Regulatory Policies Act of 1978 (15 U.S.C. 3203(a)) is amended by striking 'and (4)' inserting '(4), (5), and (6)'."

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that, notwithstanding the Commission's reservations as to its legal propriety,<sup>6</sup> a proceeding will be established to consider for implementation in the Commonwealth the two federal standards enumerated in Section 532 (b) of the Energy Independence and Security Act. This action shall not constitute a waiver of any right of the Commission or the Commonwealth of Virginia, including hereafter any right to claim immunity or to challenge or object to any actions that may be taken by any person, federal authority, or other entity in relation to the Energy Independence and Security Act.

The Commission will direct that notice be given to the public and that interested persons have an opportunity to comment on the issues raised herein. The Staff has developed lists of individuals, organizations, and companies that may be interested in this proceeding. We will direct the Staff to provide copies of this Order Establishing Proceeding by electronic transmission, or when electronic transmission is not possible, by mail, to individuals,

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<sup>6</sup> The Commission notes that developments in the law subsequent to the original adoption of PURPA raise doubt about the constitutionality of the co-opting of state regulatory agencies to implement a federal regulatory scheme. See, e.g., *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

organizations, and companies on these lists. We will also direct that a copy of this Order Establishing Proceeding be forwarded to the *Virginia Register* for publication.

Therefore, the Commission invites interested persons to comment on any of the following issues: (1) whether the Commission has the authority to consider these two federal standards; (2) whether the implementation of such standards would be consistent with otherwise applicable Virginia law; (3) whether any Virginia laws presently address the issues presented in these two federal standards; (4) whether the energy efficiency requirements set forth in § 532 (b) (5) of the Energy Independence and Security Act should be adopted by this Commission; and (5) whether the rate design modifications to promote energy efficiency investments set forth in § 532 (b) (6) of the Energy Independence and Security Act should be adopted by this Commission. If an interested person advocates implementing either of the standards listed in § 532 (b) of the Energy Independence and Security Act, such person should describe in their comments how such standards would best be implemented.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00117.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulation for publication in the *Virginia Register*.
- (3) Within five business days of the filing of this Order with the Clerk of the Commission, the Staff shall transmit electronically or mail copies of this Order to interested persons and organizations as discussed in this Order.
- (4) On or before November 20, 2009, the Staff shall file with the Clerk of the Commission a certificate of the transmission or mailing required by Ordering Paragraph (3) and

include a list of the names and addresses of persons to whom the Order was transmitted or mailed.

(5) On or before December 2, 2009, any interested person may file an original and fifteen (15) copies of comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2009-00117 and address the specific issues raised in this Order. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(6) On or before December 8, 2009, the Staff may file comments with the Commission presenting its findings and recommendations, or responding to any comments filed by interested persons in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:  
C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; the natural gas public utilities subject to the Commission's jurisdiction set forth in Appendix A to this Order; and the Commission's Divisions of Economics and Finance and Energy Regulation.

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