

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND

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COMMONWEALTH OF VIRGINIA,

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00023

Ex Parte: In the matter of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric utility identified by Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly

ORDER ESTABLISHING PROCEEDING  
AND SETTING EVIDENTIARY HEARING

Entered this 30 day of April, 2009.

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Ex Parte: In the matter of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric utility identified by Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly

ORDER ESTABLISHING PROCEEDING  
AND SETTING EVIDENTIARY HEARING

The 2009 Session of the Virginia General Assembly enacted Chapters 752 and 855 of the 2009 Acts of Assembly.<sup>1</sup> These identical Acts of Assembly include Second Enactments containing, *inter alia*, the following provisions:

2. § 1. That the State Corporation Commission shall conduct a formal public proceeding that will include an evidentiary hearing for the purpose of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric utility in the Commonwealth. As used in this act, "generating electric utility" means a public service corporation that serves electric load at retail, has rates regulated by the State Corporation Commission, and that, as of January 1, 2009, directly owns and operates electric generation facilities in excess of six megawatts, other than diesel generators used for voltage control. The determination of what consumption and peak load reductions can be achieved cost-effectively shall consider standard industry-recognized tests. The Commission shall determine which test should be given greatest weight when preparing a cost-benefit

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<sup>1</sup> Chapter 855 (Senate Bill 1348) and Chapter 752 (House Bill 2531) of the 2009 Acts of Assembly will become effective on July 1, 2009.

analysis of a demand-side management program, taking into consideration the public interest and the potential impact on economic development in the Commonwealth.

§ 2. That the State Corporation Commission shall report its findings to the Governor and the General Assembly on or before November 15, 2009. Such report shall (i) indicate the range of consumption and peak load reductions that are potentially achievable by each generating electric utility, the range of costs that consumers would pay to achieve those reductions, and the range of financial benefits or savings that could be realized if the targets were met over a 15-year period; and (ii) determine a just and reasonable ratemaking methodology to be employed to quantify the cost responsibility of each customer class to pay for generating electric utility-administered demand-side management programs. This evaluation shall include an examination of the class cost responsibility methods used in other jurisdictions, including, but not limited to, the allocation of costs based on projected class benefits and the allocation of costs based on program participation. The analysis shall also examine other jurisdictions that permit certain nonresidential customers or classes of customers to either be exempt from paying for the utility demand-side management programs or to opt out of participating in or paying for the utility demand-side management programs, and determine if it would be in the public interest for the Commonwealth to have a similar policy.

Accordingly, the State Corporation Commission ("Commission") will undertake to conduct the evidentiary proceeding directed by this legislation. This Order therefore docketed this proceeding and commences the Commission's work therein.

First, the Commission is of the opinion that it should receive input from the broadest range of persons and organizations having an interest in energy conservation within the Commonwealth. Accordingly, the Staff of the Commission ("Staff") is directed to give notice of this proceeding to all incumbent electric utilities and cooperative and municipal providers of electric service in the Commonwealth, PJM Interconnection, the Department of Mines, Minerals and Energy, the Office of the Attorney General, Division of Consumer Counsel, and to individuals, organizations, and companies identified by Staff as potentially having an interest in

this proceeding. We direct the Staff to provide copies of this Order by electronic transmission or, when electronic transmission is not possible, by mail, to such persons to be given notice by Staff as outlined above. We will further prescribe in this Order notice regarding this proceeding to be published in newspapers of general circulation throughout the Commonwealth.

The Commission finds that each "generating electric utility" as defined in the aforesaid legislation should be made a respondent to this proceeding. Accordingly, Virginia Electric and Power Company ("Virginia Power"), Appalachian Power Company and Kentucky Utilities Company d/b/a Old Dominion Power Company are named respondents herein.<sup>2</sup>

The Commission finds that all respondent generating electric utilities shall file on or before June 30, 2009, and any other party proposing to participate herein as a respondent shall file on July 31, 2009, testimony and any supporting legal briefs addressing, at a minimum, the following questions:

1. What is an achievable, cost-effective energy conservation and demand response target that can be realistically accomplished through the generating electric utility's demand-side management portfolio? Generating electric utilities shall also include the most recent 15-year load forecast used in preparation of the Integrated Resource Plan ("IRP") to be filed pursuant to § 56-599 B of the Code and the Commission's Order Establishing Guidelines For Developing Integrated Resource Plans, Case No. PUE-2008-00099, issued December 23, 2008. If the most recent 15-year load forecast used in preparation of the IRP is for a load aggregate other than the respondent generating electric utility's Virginia jurisdictional retail load, the respondent

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<sup>2</sup> The Commission has not designated The Potomac Edison Company d/b/a Allegheny Power ("Allegheny Power") as a respondent in this proceeding inasmuch as the Commission understands that this utility currently does not directly own and operate any electric generation. Allegheny Power therefore is evidently not a "generating electric utility" as defined by the General Assembly for purposes of this proceeding by Chapters 752 and 855 of the 2009 Acts of Assembly. Similarly, the Commission has not designated any of Virginia's electric cooperatives as

generating electric utility is directed to submit its most recent 15-year forecast of Virginia jurisdictional retail load or state why such forecast cannot be provided.

2. What industry-recognized tests should be used in determining cost-effective consumption and peak load reductions and what relative weighting should be afforded to any test recommended for use by the respondent generating electric utility?

3. How should the Commission define the terms "achievable," "cost-effective," and "be realistically accomplished" as they are used in the statute cited above?

4. How should the Commission determine the "public interest" in preparing a "cost-benefit analysis of a demand-side management program"?

5. What is the potential impact of the generating electric utility's demand-side management program on economic development in the Commonwealth?

6. What is "the range of consumption and peak load reductions that are potentially achievable by each generating electric utility"?

7. What is the "range of costs that consumers would pay to achieve those reductions, and the range of financial benefits or savings that could be realized if the targets were met over a 15-year period"?

8. How should the Commission "determine a just and reasonable ratemaking methodology to be employed to quantify the cost responsibility of each customer class to pay for generating electric utility-administered demand-side management programs"?

9. What "class cost responsibility methods [are] used in other jurisdictions," and "would [it] be in the public interest for the Commonwealth to have a similar policy" to other

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respondents in this proceeding since the cooperatives do not directly own and operate any electric generation. The cooperatives and Allegheny Power are, however, welcome to participate in this proceeding as respondents.

jurisdictions that permit certain customers to be exempt from participating in and/or paying for a utility's demand-side management programs.

The respondent generating electric utilities, and any other party proposing to participate herein as a respondent, may address in supporting legal briefs these questions and any other relevant questions and terms used in the aforesaid legislation.

The Staff is directed to file testimony and a report with any supporting legal brief of its investigation of the issues raised herein and by respondents' testimony and briefs, on or before September 9, 2009.

The Commission will convene a public evidentiary hearing to commence September 23, 2009, at 10:00 a.m. to receive the evidence of all parties and Staff.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00023.
- (2) Pursuant to § 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, the Commission assigns a Hearing Examiner to rule on any discovery matter that may arise in this proceeding.
- (3) Virginia Electric and Power Company, Appalachian Power Company, and Kentucky Utilities Company d/b/a Old Dominion Power Company are hereby named respondents.
- (4) Any interested person may participate as a respondent in this proceeding by filing, on or before June 1, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission ("Clerk"), at the address set forth in Ordering Paragraph (7) below, and shall simultaneously serve a copy on the notice of participation on Staff. Pursuant to Rule 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the

specific action sought to the extent then known; and (iii) the factual and legal basis for the action.

Interested parties shall refer in all of their filed papers to Case No. PUE-2009-00023.

(5) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulations for publication in the Virginia Register. On or before May 20, 2009, the Division shall also cause the following notice to be published in newspapers of general circulation throughout the Commonwealth:

NOTICE TO THE PUBLIC OF A FORMAL PUBLIC  
PROCEEDING CONVENED BY THE STATE CORPORATION  
COMMISSION TO DETERMINE ACHIEVABLE,  
COST-EFFECTIVE ENERGY CONSERVATION AND  
DEMAND RESPONSE TARGETS THAT CAN  
REALISTICALLY BE ACCOMPLISHED THROUGH  
DEMAND-SIDE MANAGEMENT PORTFOLIOS  
ADMINISTERED BY EACH GENERATING ELECTRIC  
UTILITY IDENTIFIED IN  
CHAPTERS 752 AND 855 OF THE 2009 ACTS OF ASSEMBLY  
CASE NO. PUE-2009-00023

The 2009 Session of the Virginia General Assembly enacted Chapters 752 and 855 of the 2009 Acts of Assembly. These identical Acts of Assembly include Second Enactments containing, *inter alia*, the following provisions:

2. § 1. That the State Corporation Commission shall conduct a formal public proceeding that will include an evidentiary hearing for the purpose of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric utility in the Commonwealth. As used in this act, "generating electric utility" means a public service corporation that serves electric load at retail, has rates regulated by the State Corporation Commission, and that, as of January 1, 2009, directly owns and operates electric generation facilities in excess of six megawatts, other than diesel generators used for voltage control. The determination of what consumption and peak load reductions can be achieved cost-effectively shall consider standard industry-recognized tests. The Commission shall determine which test should be given greatest weight when preparing a cost-benefit analysis of a demand-side management program, taking into

consideration the public interest and the potential impact on economic development in the Commonwealth.

§ 2. That the State Corporation Commission shall report its findings to the Governor and the General Assembly on or before November 15, 2009. Such report shall (i) indicate the range of consumption and peak load reductions that are potentially achievable by each generating electric utility, the range of costs that consumers would pay to achieve those reductions, and the range of financial benefits or savings that could be realized if the targets were met over a 15-year period; and (ii) determine a just and reasonable ratemaking methodology to be employed to quantify the cost responsibility of each customer class to pay for generating electric utility-administered demand-side management programs. This evaluation shall include an examination of the class cost responsibility methods used in other jurisdictions, including, but not limited to, the allocation of costs based on projected class benefits and the allocation of costs based on program participation. The analysis shall also examine other jurisdictions that permit certain nonresidential customers or classes of customers to either be exempt from paying for the utility demand-side management programs or to opt out of participating in or paying for the utility demand-side management programs, and determine if it would be in the public interest for the Commonwealth to have a similar policy.

The State Corporation Commission ("Commission") has entered an Order Establishing Proceeding and Setting Evidentiary Hearing ("Scheduling Order") that, among other things, scheduled a public hearing to commence at 10:00 a.m. on September 23, 2009, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence from which to make its report to the Governor and the General Assembly on or before November 15, 2009.

The Commission's Scheduling Order is available for public inspection in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. In addition, unofficial copies of the Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website: [www.scc.virginia.gov/case](http://www.scc.virginia.gov/case).

Any interested person may participate as a respondent in this proceeding by filing, on or before June 1, 2009, an original and fifteen (15) copies of a notice of participation as a respondent with the Clerk of the Commission ("Clerk"), c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218-2118. Pursuant to Rule 5 VAC 5-20-80 of the Rules of Practice and Procedure, any notice of participation shall set forth (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Interested parties shall refer in all of their filed papers to Case No. PUE-2009-00023. The Commission has designated Virginia Electric and Power Company, Appalachian Power Company and Kentucky Utilities Company d/b/a Old Dominion Power Company as respondents and directed these utilities to file testimony and, as necessary, legal briefs on issues raised in this matter, on or before June 30, 2009.

On or before July 31, 2009, interested persons may file 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-2009-00023. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: [www.scc.virginia.gov/case](http://www.scc.virginia.gov/case).

On or before July 31, 2009, non-utility respondents shall file with the Clerk at the address above an original and fifteen (15) copies of testimony and any supporting briefs responsive to the issues set forth in the Scheduling Order. All filings shall refer to Case No. PUE-2009-00023.

#### STATE CORPORATION COMMISSION

(6) Within five (5) business days of the filing of this Order with the Clerk, the Staff shall transmit electronically or mail copies of this Order to interested persons identified by Staff. Staff shall file with the Clerk a certificate of transmission or mailing and include a list of names and addresses to whom the Order was transmitted or mailed.

(7) On or before July 31, 2009, interested persons may file 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-2009-00023. 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>.

(8) On or before June 30, 2009, all respondent generating electric utilities shall file with the Clerk, at the address set forth in Ordering Paragraph (7) above, an original and fifteen (15) copies of testimony and any supporting briefs, consistent with the findings above.

(9) On or before July 31, 2009, all other respondents shall file with the Clerk, at the address set forth in Ordering Paragraph (7) above, an original and fifteen (15) copies of testimony and any supporting briefs consistent with the issues set forth above.

(10) The Commission Staff shall file with the Clerk, on or before September 9, 2009, an original and fifteen (15) copies of the Staff's report and any legal brief, consistent with the issues set forth above, and shall promptly serve a copy on counsel for all respondents.

(11) A public evidentiary hearing shall be convened on September 23, 2009, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence in the captioned case.

(12) All respondents shall respond to written interrogatories within five (5) business days after receipt of the same. Except as modified above, discovery shall be in accordance with the Commission's Rules of Practice and Procedure.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:  
Pamela J. Walker, Deputy General Counsel, Dominion Resources, Law Department, P. O. Box 26532 Richmond, Virginia 23261; Mr. Barry Thomas, Director of Regulatory Affairs, America Electric Power, Three James Center, Suite 702, 1051 East Cary Street, Richmond, Virginia 23219 ; Kendrick R. Riggs, Esquire, Ogden, Newell & Welch, 500 West Jefferson Street, Louisville, Kentucky 40202; 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; and the Commission's Office of General Counsel and Divisions of  
Economics and Finance and Energy Regulation.