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June 3, 2009

**VIA EMAIL & FEDEX**

filed electronically in docket office on 06/03/09

AMEP/z.84398

ATTN: Sharla Dillon, Dockets & Records Manager  
Mr. Eddie Roberson, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re: Appropriateness of Implementation of PURPA  
Standard 16 and Standard 17 for Kingsport Power  
Company d/b/a AEP Appalachian Power  
**TRA Docket No.: 09-00062**

Dear Chairman Roberson:

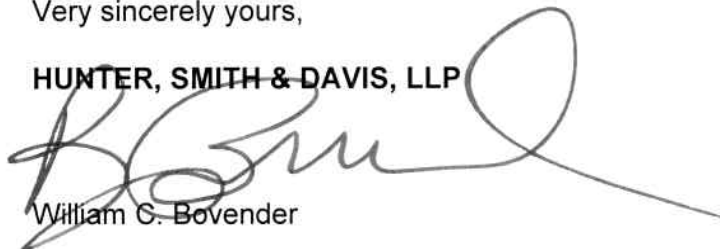
Pursuant to the request of Hearing Officer Hotvedt we submit for filing in this docket the Order of the Virginia State Corporation Commission, filed March 27, 2009, which holds that said Commission will not adopt the PURPA Standards 16 and 17 at issue in this docket.

Pursuant to the request of the Consumer Advocate, we are separately providing a copy of same to that office which is currently only monitoring the docket.

We respectfully request that Virginia Order be filed in this docket.

Very sincerely yours,

**HUNTER, SMITH & DAVIS, LLP**



William C. Bovender

WCB/slb

Enclosure

Eddie Roberson, Chairman

Page 2

June 3, 2009

cc: James R. Bacha, Esq. (via email w/enc.)  
Mr. Barry L. Thomas (via email w/ enc.)  
Mr. Garry Simmons (via email w/enc.)  
Charles E. Bayless, Esq. (via email w/enc.)  
Hearing Officer Gary Hotvedt (via email w/enc.)

## STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 27, 2009

CLERK'S OFFICE

2009 MAR 27 PM 3:30

COMMONWEALTH OF VIRGINIA ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00112

DOCUMENT CONTROL

Ex Parte: In the matter of considering  
§§ 532(a) and 1307(a) of the Energy  
Independence and Security Act of 2007

FINAL ORDER

Section 111 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §§ 2601 et seq. (2006), requires each state regulatory authority to consider certain federal standards for electric utilities. Each such state regulatory authority is required to determine whether it is appropriate, to the extent consistent with otherwise applicable state law, to implement the federal standards.<sup>1</sup> The State Corporation Commission ("Commission") has conducted a number of proceedings since PURPA's adoption in 1978.<sup>2</sup>

On December 19, 2007, the President of the United States signed the Energy Independence and Security Act of 2007 ("Energy Independence and Security Act" or the "Act"), Pub. L. 110-140, H.R. 6, 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 products, improving the energy performance of the federal government, and protecting consumers.

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<sup>1</sup> 16 U.S.C. § 2621(a) (2006).

<sup>2</sup> Such proceedings include Case Nos. PUE-1979-00014, PUE-1980-00076, PUE-1980-00092, PUE-1980-00093, PUE-1980-00094, PUE-1980-00095, PUE-1980-00096, PUE-1980-00102, PUE-1980-00112, PUE-1980-00113, PUE-1980-00114, PUE-1980-00115, PUE-1980-00116, PUE-1980-00117, PUE-2006-00002, PUE-2006-00003 and PUE-2006-00064.

Section 532(a) of the Energy Independence and Security Act amends § 111(d) of

PURPA and adds the following standards for consideration:

- (16) Integrated resource planning.--Each electric utility shall—
  - (A) integrate energy efficiency resources into utility, State, and regional plans; and
  - (B) adopt policies establishing cost-effective energy efficiency as a priority resource.
- (17) Rate design modifications to promote energy efficiency investments.—
  - (A) In general.--The rates allowed to be charged by any electric utility shall—
    - (i) align utility incentives with the delivery of cost-effective energy efficiency; and
    - (ii) promote energy efficiency investments.
  - (B) Policy options.--In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—
    - (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
    - (ii) providing utility incentives for the successful management of energy efficiency programs;
    - (iii) including the impact on adoption of energy efficiency as one (1) of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
    - (iv) adopting rate designs that encourage energy efficiency for each customer class;
    - (v) allowing timely recovery of energy efficiency-related costs; and
    - (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

Section 1307(a) of the Energy Independence and Security Act further amends § 111(d) of PURPA and adds two other standards concerning smart grids that must be considered by the Commission.<sup>3</sup> Specifically, Section 1307(a) provides:

(16) Consideration of smart grid investments.—

- (A) In general.--Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—
  - (i) total costs;
  - (ii) cost-effectiveness;
  - (iii) improved reliability;
  - (iv) security;
  - (v) system performance; and
  - (vi) societal benefit.
- (B) Rate recovery.--Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.
- (C) Obsolete equipment.--Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

(17) Smart grid information.—

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<sup>3</sup> The standards listed in Section 532(a) of the Act discuss "integrated resource planning" and "rate design modifications to promote energy efficiency investments," and are numbered (16) and (17), respectively. The standards listed in Section 1307(a) of the Act discuss "consideration of smart grid investments" and "smart grid information," and are also numbered (16) and (17) respectively.

- (A) Standard.--All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).
- (B) Information.--Information provided under this section, to the extent practicable, shall include:
  - (i) Prices.--Purchasers and other interested persons shall be provided with information on—
    - (I) time-based electricity prices in the wholesale electricity market; and
    - (II) time-based electricity retail prices or rates that are available to the purchasers.
  - (ii) Usage.--Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.
  - (iii) Intervals and projections.--Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.
  - (iv) Sources.--Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.
- (C) Access.--Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

However, it should be noted that Section 1307(b)(3) of the Energy Independence and Security Act and Section 112(d) of PURPA state that regulatory authorities are not required to consider and determine whether the "rate design modifications to promote energy efficiency investments" standard in Section 532(a) of the Act or the "smart grid information" standard in Section 1307(a) of the Act should be implemented, if, prior to the enactment of the statute:

(1) the state implemented the standard or a comparable one; (2) the state regulatory authority conducted a proceeding to consider implementation of the standard or a comparable one; or (3) the state legislature voted on the implementation of the standard or a comparable one. In contrast, the Commission must consider the standard concerning "integrated resource planning" in Section 532(a) of the Act and the standard concerning the "consideration of smart grid investments" in Section 1307(a) of the Act regardless of whether the state regulatory agency or state legislature has previously implemented either those exact standards or comparable standards, conducted a proceeding to consider implementation of the standards, or voted on the implementation of the standards, as neither the Energy Independence and Security Act nor PURPA provides an exemption from consideration for these two standards.

On December 11, 2008, the Commission issued an Order Establishing Proceeding ("Order"), in which a proceeding was initiated to consider whether the new federal standards should be implemented in the Commonwealth of Virginia. In this Order, the Commission granted any interested person the opportunity to file comments with the Clerk of the Commission by February 6, 2009. The Order directed the Staff of the Commission ("Staff") to file comments that presented Staff's findings and recommendations and responded to comments filed by interested persons on or before March 6, 2009.

The Order invited interested persons to comment on the following issues: (1) whether the Commission has the authority to consider these four standards and whether the implementation of such standards would be consistent with otherwise applicable Virginia law; (2) whether any prior state action has occurred such that standards in Section 532(a) of the Act, or comparable standards, have already been implemented or considered in the Commonwealth; (3) whether any prior state action has occurred such that the standards in Section 1307(a) of the Act, or

comparable standards, have already been implemented or considered in the Commonwealth; (4) whether the integrated resource plans that electric utilities are obligated to develop and file with the Commission under Section 56-597 et seq. of the Code of Virginia ("Code") satisfy the requirements set out in (16) of Section 532(a) of the Act; (5) whether electric utilities over which the Commission has ratemaking authority should be required to develop rate design modifications to promote energy efficiency investments; (6) whether electric utilities over which the Commission has ratemaking authority should demonstrate to the State that they considered an investment in a qualified smart grid system based on appropriate factors; and (7) whether electric utilities and providers over which the Commission has ratemaking authority should provide electricity purchasers with direct access, in written or electronic machine-readable form, to information such as prices, usage, sources, and intervals and projections.

Comments were received from Mr. Robert A. Vanderhye ("Mr. Vanderhye"); Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart"); Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU"); The Potomac Edison Company d/b/a Allegheny Power ("Allegheny"); Virginia Electric and Power Company; Virginia Electric Cooperatives<sup>4</sup> ("Cooperatives"); Appalachian Power Company; and the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates.

On March 6, 2009, the Staff requested a seven-day extension for filing its comments, which was granted by the Commission. On March 11, 2009, Staff filed Comments of the Staff of the State Corporation Commission ("Comments").

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<sup>4</sup> Collectively, A&N Electric Cooperative; BARC Electric Cooperative; Central Virginia Electric Cooperative; Community Electric Cooperative; Craig-Botetourt Electric Cooperative; Mecklenburg Electric Cooperative; Northern Neck Electric Cooperative; Northern Virginia Electric Cooperative; Prince George Electric Cooperative; Rappahannock Electric Cooperative; Shenandoah Valley Electric Cooperative; Southside Electric Cooperative; and the Virginia, Maryland & Delaware Association of Electric Cooperatives.

The comments of interested parties, as well as the Staff's findings regarding whether the four federal standards listed in the Energy Independence and Security Act should be implemented in the Commonwealth, are summarized below:

Section 532(a) of the Energy Independence and Security Act - (16) Integrated Resource Planning

The comments from interested investor-owned utilities and the Cooperatives argued that this standard, which concerns integrated resource planning, should not be implemented in the Commonwealth. The utilities claimed that the Commonwealth, pursuant to Section 56-597 et seq. of the Code, has already established guidelines concerning integrated resource planning. Therefore, implementation of a federal standard pertaining to integrated resource planning is unnecessary.

Mr. Vanderhye, an interested electric customer, also asserted that the federal standard concerning integrated resource planning is similar to preexisting Virginia law. However, Mr. Vanderhye cautioned that only a legitimate attempt by the utilities to comply with Section 56-597 et seq. of the Code would satisfy the requirements of the federal standard.

Staff, in its Comments, stated that adoption of this standard was unnecessary, as comparable requirements have been previously considered and implemented into Virginia law. Moreover, the Staff believed that electric utility integrated resource planning filings in 2009 will further satisfy the requirements of the federal standard.

Section 532(a) of the Energy Independence and Security Act - (17) Rate Design Modifications

Electric customers Mr. Vanderhye and Wal-Mart advocated the adoption of this federal standard. These customers stated that electric utilities over which the Commission has ratemaking authority should be required to develop rate design modifications that promote energy efficiency investments. It was suggested that rate design was a simple, but effective, way to achieve energy efficiency and conservation goals.

Neither the Cooperatives nor the investor-owned utilities that filed comments in this case advocated the adoption of this federal standard. The Cooperatives stated that, as consumer-owned, not-for-profit entities, they are intrinsically motivated to operate efficiently and minimize costs. Since they are naturally motivated to promote cost-saving, energy-efficient investments and promote rate design modifications that are in the best interests of their member-customers, no purpose would be served by adopting this federal standard. The investor-owned utilities generally argued that adoption of this standard is unnecessary since numerous Virginia laws, including Sections 56-235.2 and 56-585.2 of the Code, already provide the Commission with the authority to set rates that promote energy efficiency investments, which is the goal of the federal standard. Some of these utilities maintained that the existence of these Virginia laws constitutes prior state action in the area of rate design modifications which promote energy efficiency investments. These utilities claimed that because the Commonwealth adopted these state laws, which are comparable to the federal standard on rate design modifications, prior to the enactment of the federal statute, Section 1307(b) (3) of the Energy Independence and Security Act and Section 112(d) of PURPA hold that the Commission is not even required to examine whether this federal standard should be implemented in the Commonwealth.

In its Comments, Staff noted its agreement with Mr. Vanderhye's statement that rate design is an effective way to achieve energy efficiencies and energy reductions. However, Staff also agreed with the Cooperatives and the investor-owned utilities that adoption of this standard is unnecessary. Staff stated that adoption is unnecessary because comparable rate design requirements have previously been considered or established by the Commission. Further, Staff believed that more rate design modifications will occur this year due to recently enacted and pending legislative directives, incentives, pilot programs and smart grid developments.

Section 1307(a) of the Energy Independence and Security Act - (16) Smart Grid Investments

This federal standard states, in part, that the Commission shall consider requiring electric utilities over which the Commission has authority to demonstrate that they considered an investment in a qualified smart grid system prior to undertaking investments in non-advanced grid technologies, and to demonstrate that they considered appropriate factors when making their decision.

As with other federal standards discussed above, neither the Cooperatives nor the investor-owned utilities that filed comments in this case advocated the adoption of this standard. The Cooperatives stated that they have already been leaders in the development and integration of advanced grid technologies when, and to the extent that, such development has been shown to benefit the member-customers. The Cooperatives further stated that, while they are favorably disposed toward smart grid development, investment in a qualified smart grid system may or may not be appropriate for a given system at any given point in time. Since systems are different, the Cooperatives argued that it would be very difficult to establish a common set of factors that are appropriate for every utility to consider before deciding whether to undertake investments in non-advanced grid technologies, as this federal standard requires. Some investor-

owned utilities argued that this standard should not be adopted because utilities in the Commonwealth have already, of their own volition, undertaken a number of smart grid initiatives, which the Commission already has the authority to review. Other investor-owned utilities argued that it is premature to adopt such a standard because a common definition of a "qualified smart grid system" has not yet been reached.

Mr. Vanderhye was the only electric customer who commented on this federal standard. Mr. Vanderhye advocated the adoption of this standard. He stated that the many benefits of smart grid technologies have been demonstrated, and, therefore, investing in smart grid technologies should be greatly encouraged. Mr. Vanderhye also stated that he believed two of the Commonwealth's largest investor-owned utilities are considering making, or have already made, such investments.

The Staff claimed that implementation of this federal standard is not necessary, as recent legislative actions will persuade utilities to consider evaluating and investing in smart grid technologies as the industry evolves.

Section 1307(a) of the Energy Independence and Security Act - (17) Smart Grid Information

Electric customers Mr. Vanderhye and Wal-Mart advocated the adoption of this federal standard. Both customers believed that the provision of information to consumers is essential in order for conservation measures to be effective. The more information given to customers, the more helpful it would be for the customers. However, Wal-Mart cautioned that not all customers would benefit from the same types of information, and it noted that a comparison between costs and benefits should be considered when the utilities determine what data should be made available. Allegheny agreed that more information must be provided to customers in order to effectively transform customer behavior and improve energy efficiency. However, Allegheny

believed that a balance must be struck between honoring a customer's reasonable expectation of privacy regarding its use of a regulated service and obtaining benefits for customers in general by sharing information involving customers' energy demand and usage. Moreover, Allegheny argued that costs associated with making this information available should be fully recoverable from customers.

The Cooperatives stated that this federal standard should not be adopted. They argued that the Commission should not require electric utilities to provide the information discussed in this standard to electricity purchasers before determining what the costs involved with providing this information would be and who would absorb those costs. Many investor-owned utilities also commented on the potential expense of providing such information. Some utilities argued that adoption of this standard prior to the emergence of the corresponding smart grid technologies would be premature. These utilities believed that such beneficial information will emerge as smart grid technologies emerge and improve. Finally, other utilities argued that adoption of this standard is unnecessary as customers are already given access to much of the information required by the federal standard.

Staff claimed that it is unnecessary to adopt this amendment. Staff agreed that it is premature to define at this time what information must be provided to electricity purchasers. Staff believed that customers will identify and demand the information that they need to make informed energy decisions as smart grid technologies continue to evolve.

NOW THE COMMISSION, upon consideration of the comments filed herein and the applicable law, finds that the four standards established by Sections 532(a) and 1307(a) of the Energy Independence and Security Act should not be implemented in the Commonwealth at this time.

First, the Commission finds that implementation of the federal standard on integrated resource planning, which is part of Section 532(a) of the Energy Independence and Security Act, is unnecessary. Sections 56-597 et seq. of the Code have already established guidelines for integrated resource planning. Specifically, the Code states, in part, that "[b]y September 1, 2009, each electric utility shall file an initial integrated resource plan with the Commission. . . ."<sup>5</sup> The Code also states that the content of integrated resource plans should, in part, "[i]ntegrate, over the planning period, the electric utility's forecast of demand for electric generation supply with recommended plans to meet that forecasted demand and assure adequate and sufficient reliability of service, including but not limited to . . . reducing load growth and peak demand growth through cost-effective demand reduction programs."<sup>6</sup> The Commission believes that these preexisting Virginia laws accomplish the same objectives that the federal standard on integrated resource planning would accomplish, if implemented. Thus, the Commission does not find that adoption of this federal standard is needed.

Second, the Commission finds that adoption of the federal standard found in Section 532(a) of the Energy Independence and Security Act concerning rate design modifications to promote energy efficiency investments is unnecessary since numerous Virginia laws already provide the Commission with the authority to set rates at a level that align utility incentives with the delivery of cost-effective energy efficiency and promote energy efficiency investments, which are the stated purposes of the federal standard. For example, the Code provides the Commission with the ability to set base rates, fuel rates, and "special rates, contracts or

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<sup>5</sup> Va. Code Ann. § 56-599(B) (2008).

<sup>6</sup> Va. Code Ann. § 56-598(1)(c) (2008).

incentives."<sup>7</sup> Additionally, to promote energy efficiency and conservation, the Commission has been given the authority to approve an investor-owned incumbent electric utility's application to participate in a renewable energy portfolio standard program, which provides utilities with rate incentives for reaching certain achievements in conservation.<sup>8</sup>

The Commission finds that implementation of the federal standard on smart grid investments, which is part of Section 1307(a) of the Energy Independence and Security Act, is unnecessary at this time. The Commission finds that comparable requirements have previously been considered by the Commission. For example, the Commission has previously considered a similar federal standard that involved time-based metering and communications. In that proceeding, the Commission found that, at the time, it was not appropriate to require utilities to offer time-based rates and provide time-based meters and communications to all customers.<sup>9</sup>

Finally, the Commission examined the federal standard on smart grid information, which is part of Section 1307(a) of the Energy Independence and Security Act. As with the other three federal standards that have previously been addressed, the Commission finds that adoption of this federal standard is unnecessary, as the matters addressed therein are clearly within the duty and authority already granted to the Commission under the Code. Multiple sections of the Code provide the Commission with the authority to regulate smart grid information and smart grid technology, including § 56-35 of the Code, which states that "[t]he Commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all public service companies doing business in this Commonwealth, in all matters relating to the performance of

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<sup>7</sup> Va. Code Ann. § 56-235.2 (2008).

<sup>8</sup> Va. Code Ann. § 56-585.2 (2008).

<sup>9</sup> Docket No. PUE-2006-00003, Final Order, p. 6.

their public duties and their charges therefor, and of correcting abuses therein by such companies" and § 56-235.1 of the Code, which states,

It shall be the duty of the Commission to investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service. Where the Commission finds that the public interest would be served, it may order any public utility to eliminate, alter or adopt a substitute for any act, practice, rate or charge which is not reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in providing utility service....

After reviewing this federal standard concerning smart grid information, the Commission is not convinced that adoption of the standard is, at this juncture, in the public interest. This federal standard requires all electricity purchasers to be given direct access to information about price and usage. The standard further states that updates of information on prices and usage shall be offered on not less than a daily basis, that updates shall include hourly price and use information where available, and that purchasers shall be able to access their own information at any time through the Internet, as well as through other means of communication elected by the utility for smart grid applications. The Commission finds it to be premature to mandate that utilities provide customers with this information without first examining both the demand for this information and the costs that providing such information would impose on utilities and ratepayers.

Accordingly, IT IS ORDERED THAT:

- (1) This proceeding is hereby closed.
- (2) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all of the persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.