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Clerk of the Commission
c/o Document Control Center
PO Box 2118
Richmond, VA 23218-2118

RE: Case Number PUE 2009-00071

Thank you for the opportunity to provide comments on the draft State Corporation Commission rules for implementation of the Chapter 825 (House bill 2506), specifically the new language in §56.585.1 A 5 c. on behalf of the Virginia Manufacturers Association and its members, I am submitting the following comments for your consideration.

The following comments pertain to the rules language on *20VAC5-316-30. Standard criteria for notice to utility*:

- 1) **Section B** does not reflect the legislative intent of HB 2506. It is too burdensome to the utility and the customer, as well as lacks confidentiality protections for the customer, to expect the submission of receipts and invoices. We would like to see Section B in its current format deleted and replaced with language reflecting the understanding that documentation to back-up a customer's notice would be available to the SCC if a request for additional information would be made in the case of reasonable belief that a customer has knowingly misrepresented its energy efficiency achievement. This should include a requirement for the Commission's protection of all business sensitive and proprietary information for the customer.

Furthermore, Section B is not in conformity with North Carolina and other states that provide an "opt out" provision by way of a "notice" to the utility. The protection of the public trust is provided in the SCC empowerment to intervene if said "notice" is questioned. The resolution would be to have a standardized form to be used to provide notice requiring a signature of an appropriate company representative. It would be the request of the VMA that each utility and the SCC work together to develop a standardized form that would clarify and simplify the "opt out" notice. This would be similar to the process the Bureau of Insurance manages for forms in the insurance industry.

- 2) **Section C** offers concern with its request for a description including specific measures undertaken to achieve energy efficiency savings to be included with the notice of

nonparticipation. Again, this offers concern regarding confidentiality of details of those programs being implemented by a customer. Global competition forces companies to implement unique programs to become more energy (and thus cost) efficient. A customer's confidentiality of processes must be protected.

- 3) **Section D** is far too involved. This should be a simple calculation of total energy used on an annual basis as a ratio of production. There should be another option where a specific program, process or investment reduces the energy consumed to produce the same or similar product or process. The complexities of each technological business environment are far too involved to have such a proscriptive requirement. This should be kept simple.
- 4) **Section E** appears to be outside the bounds of the statute, as it adds a new requirement for non-participation customers, requiring additional energy reductions equivalent to the reductions expected by the utility energy efficiency program. Many existing systems in industry already operate at a higher energy efficiency rate than any of the utilities. In fact, Virginia's industrial sector has increased its gross state product per kilowatt hour (kWh) of electricity input from about \$2.00 to \$3.14 since 1997 alone. This equates to a 64% increase in production per kWh of electricity input in less than a decade. Therefore, it would be unfair and unnecessarily burdensome to penalize these customers, and this was not the intent of the legislation. Each utility must define its own program with the SCC, and the consumers in question will have to respond to those SCC-approved programs.
- 5) **Section F** should allow for a broad array of measurement and verification plans. Currently, 56-576 of the Code of Virginia states the definition of "measured and verified" as "...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." Therefore, once the utility proposes goals against which to measure the customers who will give notice, the standards will then be whatever the SCC approves for each utility. It should be left to the customers (as was the original intent of the legislation) to determine the most appropriate industry standards by which to measure the "opt-out" notices.

Other comments on the rules language are as follows:

- 1) There is a question as to whether it is realistic to require the 500 kilowatt - 10 MW literally per meter in all business environments, as many have collocated meters which serve the same mission of the customer. It is recommended that the exemption for the 500 kilowatt - 10 MW opt out provision apply to the customer, not to the account. The same would be true for the 10 MW exemptions. We believe this was the legislative intent, and the goal was to disallow multi-site companies from aggregating all their meters. In other words, the single meter provision should be single meters aggregated serving a single site and a single business.
- 2) Frequency with which a customer would be required to submit notice of non-participation is not addressed in the rules language, as we could identify. The VMA would like to see a customer's

notice to a utility to be sufficient for the life of the investment. The customer should only be required to re-file with the utility if the conditions of the previous notice change. If annual notice would be required, we request clarification that it would only be to indicate that an energy efficiency program still exists.

- 3) The Dispute Resolution section is missing any reference to remedies. It would be preferable that the remedy be limited to the terms and conditions or payment process of each utility. We would like this section to also include a provision for or reference to a customer's right of refund if a dispute is resolved in its favor, with such refund to be dated to the date the customer's initial notice of nonparticipation is filed with the commission.

We appreciate your consideration of our comments. If there are any questions, please contact me at the address above or at 804-643-7489 ext 25.

Sincerely,

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