

## STATE CORPORATION COMMISSION

AT RICHMOND, MAY 29, 2020

*Document Control Center 05/29/20@4.39 PM*COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE-2013-00045

Concerning the establishment of a renewable energy  
pilot program for third party power purchase agreements

ORDER UPDATING GUIDELINES

On March 14, 2013, the Virginia General Assembly enacted Chapter 382 of the 2013 Virginia Acts of Assembly ("2013 Legislation") requiring the State Corporation Commission ("Commission") to conduct a renewable energy pilot program for third party power purchase agreements ("Pilot Program") within the service territory of Virginia Electric and Power Company and to establish certain guidelines regarding implementation of this Pilot Program. Pursuant to the 2013 Legislation, on November 14, 2013, the Commission established the Pilot Program and developed Guidelines Regarding Notice Information for a Third Party Renewable Power Purchase Agreement ("Guidelines").

On April 5, 2017, the Virginia General Assembly approved Chapter 803 of the 2017 Virginia Acts of Assembly ("2017 Amendments"), which, among other things, re-enacted the 2013 Legislation with amendments requiring that the Pilot Program be conducted within the certificated service territory of each investor-owned electric utility in Virginia, excepting any utility described in § 56-580 G of the Code of Virginia. As a result, updates to the *Applicability* and *Program Cap Management* sections of the Guidelines were made by the Commission on June 29, 2017, in this docket.

During its 2020 Session, the Virginia General Assembly enacted Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly which, *inter alia*, amended the

Pilot Program ("2020 Amendments").<sup>1</sup> The 2020 Amendments require that the Pilot Program be conducted within the certificated service territory of each investor-owned electric utility in Virginia, now including Kentucky Utilities Company d/b/a Old Dominion Power Company in addition to Virginia Electric and Power Company and Appalachian Power Company. The 2020 Amendments also: (i) increase the renewable generation capacities available for this program, (ii) increase the size of the renewable generation facilities eligible for inclusion in the program, and (iii) increase the overall caps of this program in the investor-owned utilities' service territories, based upon the utilities' peak load forecasts. As a result, updates to the *Applicability, Contents of Filing and Program Cap Management* sections of the Guidelines are necessary to reflect these legislative changes.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Guidelines should be updated as set forth in Attachment A to this Order to reflect the 2020 Amendments.<sup>2</sup>

Accordingly, IT IS ORDERED THAT:

(1) The instant case is moved from "closed" to "active" status in the records maintained by the Clerk of the Commission and is restored to the Commission's docket for the purpose of updating the Commission's Guidelines.

(2) The Guidelines, which were established pursuant to the 2013 Legislation and previously updated to reflect changes to the Pilot Program resulting from the 2017 Amendments,

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<sup>1</sup>These Acts of Assembly are duplicate enactments known as the "Virginia Clean Economy Act." The 2020 Amendments to the Pilot Program are also included in Chapters 1178 (HB 572), 1187 (SB 710), 1189 (HB 1184, and 1239 (HB 1647) of the 2020 Acts of Assembly.

<sup>2</sup> A copy of the Guidelines that highlights the updates included in Attachment A also is attached to this Order as Attachment B. A copy of the Guidelines set forth in Attachment A and Attachment B also may be viewed at <https://scc.virginia.gov/pages/Renewable-Energy-Pilot-Program>.

hereby are further updated as set forth in Attachment A to this Order to reflect the changes to the Pilot Program resulting from the 2020 Amendments.

(3) On and after the effective dates of these updates, any renewable third-party power purchase agreement established pursuant to the Pilot Program shall be established in accordance with these Guidelines and shall comply with the attendant statutory requirements.

(4) The updates to these Guidelines shall become effective on July 1, 2020.

(5) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to: (i) all current Pilot Program participants; and (ii) individuals, organizations, and companies who (a) previously participated in the Commission's dockets establishing and updating the Pilot Program Guidelines, or (b) have otherwise been identified by the Commission Staff as interested in the development of solar and wind powered generation in the Commonwealth. This Order shall also be posted on the Commission's website.

(6) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Paul E. Pfeffer, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Riverside 2, Richmond, Virginia 23219, [paul.e.pfeffer@dominionenergy.com](mailto:paul.e.pfeffer@dominionenergy.com); Noelle J. Coates, Esquire, American Electric Power Service Corporation, 1051 E. Cary Street, 3 James Center, Suite 1100, Richmond, Virginia 23219, [njcoates@aep.com](mailto:njcoates@aep.com); Allyson K. Sturgeon, Esquire LG&E and KU Energy LLC, 220 West Main Street, Louisville, Kentucky 40202, [allyson.sturgeon@lge-ku.com](mailto:allyson.sturgeon@lge-ku.com); C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, Floor 8, Richmond, Virginia 23219, [mbrowder@oag.state.va.us](mailto:mbrowder@oag.state.va.us); and a copy shall be delivered to the Commission's

Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

**Attachment A****UPDATED GUIDELINES REGARDING NOTICE INFORMATION FOR A THIRD PARTY RENEWABLE POWER PURCHASE AGREEMENT****A. Purpose.**

The Commission is establishing these guidelines pursuant to Chapter 382 of the 2013 Virginia Acts of Assembly ("Chapter 382") regarding a pilot program for third party power purchase agreements for renewable generation. Chapter 382 specifically provides that the State Corporation Commission ("Commission") must establish guidelines concerning (i) information to be provided in written notices and (ii) procedures for collecting and posting information derived from such notices on the Commission's website. In addition, the Commission may establish general guidelines for its administration of the pilot program.

**B. Applicability.**

These guidelines are applicable to any owner or operator of a solar-powered or wind-powered electric generation facility (referred to herein as "owner-operator") located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, within the certificated service territory of an investor-owned electric utility ("Pilot Utility").<sup>1</sup> Such a facility shall have a generation capacity of 50 kW to 3 MW. If the eligible customer-generator served by the owner-operator is a low-income utility customer, as defined in § 56-576 of the Code of Virginia, or is an entity with tax-exempt status in accordance with § 501(c)3 of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it

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<sup>1</sup> As described in Chapter 382, the Pilot Utility is an investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002. The utility is Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("DEV"). Pursuant to Chapter 803 of the 2017 Virginia Acts of Assembly, this pilot program was expanded to include Appalachian Power Company ("APCo"). Pursuant to Chapters 1193 and 1194 of the 2020 Virginia Acts of Assembly, this pilot program was expanded to include Kentucky Utilities d/b/a Old Dominion Power Company ("ODP") and to increase program capacity limits for each investor-owned utility.

does not meet the 50 KW minimum size requirement. An eligible facility shall provide electricity to only one customer.

The owner-operator shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement to provide such eligible customer-generator third party financing of the costs of such a renewable generation facility. The owner-operator also may be subject to any requirements of its local governing body and the Virginia Department of Environmental Quality.

The pilot program limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of six percent of each Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia. Further, these limits shall not exceed (i) 500 MW for DEV's Virginia jurisdictional customers, or 500 MW for DEV's Virginia non-jurisdictional customers, or (ii) 40 MW for customers of APCo or ODP.

**C. Filing of Notice.**

Any party who intends to enter into a third party power purchase agreement under the pilot program must provide written notice to the Commission and to the Pilot Utility of the party's intent to enter into such agreement not less than 30 calendar days before the effective date of such agreement.

**D. Contents of Filing.**

The owner-operator shall provide written notice to the Commission and the Pilot Utility not less than 30 calendar days before the effective date of such agreement and shall include the following information:

- Identity of the owner-operator of the renewable electric generation facility;

- The name, address, and under seal as "confidential" or "extraordinarily sensitive" information, the Pilot Utility and the respective electric account number of the eligible customer-generator;
- Identity of each Pilot Utility electric account number, as applicable, as a jurisdictional or non-jurisdictional customer-generator;
- Location of the premise(s) upon which the renewable electric generation facility will be installed;
- Renewable source of the electric generation facility;
- Generation capacity of the renewable electric generation facility expressed in terms of kW available for delivery to the end-user stated in alternating current (AC);
- Expected date that the electric generation facility will be placed in service. The term "placed in service" shall have the same meaning as used in 26 U.S.C. § 48 of the federal Business Energy Investment Tax Credit for certain renewable energy technologies;
- Duration of the third party power purchase agreement;
- Proof of § 501(c)3 tax exempt status (when applicable); and
- Under seal as "confidential" or "extraordinarily sensitive" information, the projected installation cost of the renewable electric generation facility, in dollars per Watt (AC). Subsequent to the placed-in-service date, such projected cost of installation shall be updated for the actual cost of installation.

**E. Posting and Tracking.**

Within three business days of receiving a written notice of intent, the Commission Staff shall post to its website the cumulative amount of solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity associated with the notice

of intent, expressed in kW or MW (AC), and the remaining aggregate capacity available for future pilot projects.

Within three business days of the placed-in-service date of such facility, the owner-operator shall provide written notification of such placed-in-service date to the Commission and the Pilot Utility. Within three business days of receiving such written notice of the placed-in-service date, the Commission Staff shall post to its website the cumulative amount of installed solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity, expressed in kW or MW (AC). Simultaneously, the capacity remaining available for future pilot projects also shall be posted. The owner-operator also shall provide written notice to the Commission and the Pilot Utility of any change to the generating capacity of the facility or of the parties to the third party power purchase agreement within three business days of any such change.

On an annual basis, the Pilot Utility shall submit to the Commission under seal as "confidential" or "extraordinarily sensitive" information, a report of the individual and aggregated amount of energy generated (kWhs) and peak capacity (kW) provided from all pilot renewable generation facilities combined, with separate totals for wind pilot projects and solar pilot projects. The Pilot Utility's report also shall identify and quantify any system benefits, such as but not limited to, transmission and distribution system benefits, line loss savings, generation capacity savings, wholesale energy purchase offsets, fuel cost savings, and any economic development and job creation benefits across the region or the Commonwealth.

Subsequent to the Pilot Utility's report, the Commission Staff shall aggregate and post to its website the following information obtained from such report and any information filed by owner-operators, with separate data for wind-powered and solar-powered projects:



- Average projected installation costs of projects in the pilot program, in dollars per Watt (AC);
- Average duration of the third party power purchase agreements;
- Total number of customer-generators participating in the pilot program;
- Total number of owner-operators participating in the pilot program; and
- The city and/or county location of projects in the pilot program that have been placed in service.

**F. Program Cap Management.**

The owner-operator shall fulfill the following requirements and provide written confirmation to the Commission and the Pilot Utility that it has met each requirement:

- The owner-operator must provide a written notice of intent as described in Section C of these guidelines;
- The owner-operator must (i) confirm that it is a party to a fully executed third party power purchase agreement under the pilot program, and (ii) provide the effective date of such agreement, all within 3 business days of such agreement's execution;
- Within 90 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 5% of projected pilot costs have been incurred under a binding written contract as per the Section 461(h) economic performance definitions of the U.S. Treasury Safe Harbor Rules, or that all local permitting and zoning approvals have been secured;
- Within 180 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 25% of projected pilot costs have been incurred under a binding

written contract as per the Section 461(h) economic performance definitions of the U.S. Treasury Safe Harbor Rules; and

- Within 270 calendar days of filing the written notice of intent, the owner-operator must confirm that the project has been "placed in service," as that term is used in 26 U.S.C. § 48.

Upon receipt of the required confirmations, the Commission Staff shall post to its website the following for informational purposes:

- Date of notice of intent;
- Date of fully executed agreement;
- Effective date of agreement;
- Placed-in-service date of the renewable generation facility;
- Installed capacity of the renewable generation facility, with separate data for wind-powered and solar-powered projects; and
- Subject to the limit of 6% of each Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia, (i) available capacities remaining under the 500 MW jurisdictional and 500 MW non-jurisdictional limits for DEV, and (ii) available capacities remaining under the 40 MW limits for APCo and ODP.

The Commission shall review the pilot program in 2015, and every two years thereafter during the existence of the program, to determine whether the statutory limitations on the capacity of generation facilities included in the program should be continued, expanded, or reduced. Before recommending any changes to such statutory limitations, the Commission may solicit input from all interested parties.

## Attachment B

**UPDATED GUIDELINES REGARDING NOTICE INFORMATION FOR A THIRD PARTY RENEWABLE POWER PURCHASE AGREEMENT**

**A. Purpose.**

The Commission is establishing these guidelines pursuant to Chapter 382 of the 2013 Virginia Acts of Assembly ("Chapter 382") regarding a pilot program for third party power purchase agreements for renewable generation. Chapter 382 specifically provides that the State Corporation Commission ("Commission") must establish guidelines concerning (i) information to be provided in written notices and (ii) procedures for collecting and posting information derived from such notices on the Commission's website. In addition, the Commission may establish general guidelines for its administration of the pilot program.

**B. Applicability.**

These guidelines are applicable to any owner or operator of a solar-powered or wind-powered electric generation facility (referred to herein as "owner-operator") located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, within the certificated service territory of an investor-owned electric utility ("Pilot Utility").<sup>1</sup> Such a facility shall have a generation capacity of 50 kW to 13 MW, ~~except that if~~ the eligible customer-generator served by the owner-operator is a low-income utility customer, as defined in § 56-576 of the Code of Virginia, or is an entity with tax-exempt status in accordance with § 501(c)3 of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the

<sup>1</sup> As described in Chapter 382, the Pilot Utility is an investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002. The utility is Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("DEV") ~~Power~~. Pursuant to Chapter 803 of the 2017 Virginia Acts of Assembly, this pilot program was ~~is~~ expanded to include ~~an investor-owned electric utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, identified as Appalachian Power Company ("APCo"), and that such expansion expires on July 1, 2022.~~ Pursuant to Chapters 1193 and 1194 of the 2020 Virginia Acts of Assembly, this pilot program was expanded to include Kentucky Utilities d/b/a Old Dominion Power Company ("ODP") and to increase program capacity limits for each investor-owned utility.

~~pilot program even if it does not meet the 50 KW minimum size requirement, not limited by the 50 kW minimum, and can qualify with a generation capacity range of 1 kW to 1 MW.~~ An eligible facility shall provide electricity to only one customer.

The owner-operator shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement to provide such eligible customer-generator third party financing of the costs of such a renewable generation facility. The owner-operator also may be subject to any requirements of its local governing body and the Virginia Department of Environmental Quality.

~~The pilot program limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of six percent of each Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia. Further, these limits shall not exceed (i) 500 MW for DEV's Virginia jurisdictional customers, or 500 MW for DEV's Virginia non-jurisdictional customers, of 50 MW for Dominion Energy Virginia and or (ii) 40 MW for customers of APCo or ODP, includes participation among jurisdictional and non-jurisdictional customers, and the limitation of 7 MW for Appalachian Power Company targets participation among nonprofit, private institutions of higher education.~~

**C. Filing of Notice.**

Any party who intends to enter into a third party power purchase agreement under the pilot program must provide written notice to the Commission and to the Pilot Utility of the party's intent to enter into such agreement not less than 30 calendar days before the effective date of such agreement.

**D. Contents of Filing.**

The owner-operator shall provide written notice to the Commission and the Pilot Utility not less than 30 calendar days before the effective date of such agreement and shall include the following information:

- Identity of the owner-operator of the renewable electric generation facility;
- The name, address, and under seal as "confidential" or "extraordinarily sensitive" information, the Pilot Utility and the respective electric account number of the eligible customer-generator;
- Identity of each Pilot Utility electric account number, as applicable, as a jurisdictional or non-jurisdictional customer-generator;
- Location of the premise(s) upon which the renewable electric generation facility will be installed;
- Renewable source of the electric generation facility;
- Generation capacity of the renewable electric generation facility expressed in terms of kW available for delivery to the end-user stated in alternating current (AC);
- Expected date that the electric generation facility will be placed in service. The term "placed in service" shall have the same meaning as used in 26 U.S.C. § 48 of the federal Business Energy Investment Tax Credit for certain renewable energy technologies;
- Duration of the third party power purchase agreement;
- Proof of § 501(c)3 tax exempt status (when applicable); and
- Under seal as "confidential" or "extraordinarily sensitive" information, the projected installation cost of the renewable electric generation facility, in dollars per Watt (AC).

Subsequent to the placed-in-service date, such projected cost of installation shall be updated for the actual cost of installation.

**E. Posting and Tracking.**

Within three business days of receiving a written notice of intent, the Commission Staff shall post to its website the cumulative amount of solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity associated with the notice of intent, expressed in kW or MW (AC), and the remaining aggregate capacity available for future pilot projects.

Within three business days of the placed-in-service date of such facility, the owner-operator shall provide written notification of such placed-in-service date to the Commission and the Pilot Utility. Within three business days of receiving such written notice of the placed-in-service date, the Commission Staff shall post to its website the cumulative amount of installed solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity, expressed in kW or MW (AC). Simultaneously, the capacity remaining available for future pilot projects also shall be posted. The owner-operator also shall provide written notice to the Commission and the Pilot Utility of any change to the generating capacity of the facility or of the parties to the third party power purchase agreement within three business days of any such change.

On an annual basis, the Pilot Utility shall submit to the Commission under seal as "confidential" or "extraordinarily sensitive" information, a report of the individual and aggregated amount of energy generated (kWhs) and peak capacity (kW) provided from all pilot renewable generation facilities combined, with separate totals for wind pilot projects and solar pilot projects. The Pilot Utility's report also shall identify and quantify any system benefits, such as but not limited to, transmission and distribution system benefits, line loss savings, generation capacity

savings, wholesale energy purchase offsets, fuel cost savings, and any economic development and job creation benefits across the region or the Commonwealth.

Subsequent to the Pilot Utility's report, the Commission Staff shall aggregate and post to its website the following information obtained from such report and any information filed by owner-operators, with separate data for wind-powered and solar-powered projects:

- Average projected installation costs of projects in the pilot program, in dollars per Watt (AC);
- Average duration of the third party power purchase agreements;
- Total number of customer-generators participating in the pilot program;
- Total number of owner-operators participating in the pilot program; and
- The city and/or county location of projects in the pilot program that have been placed in service.

**F. Program Cap Management.**

The owner-operator shall fulfill the following requirements and provide written confirmation to the Commission and the Pilot Utility that it has met each requirement:

- The owner-operator must provide a written notice of intent as described in Section C of these guidelines;
- The owner-operator must (i) confirm that it is a party to a fully executed third party power purchase agreement under the pilot program, and (ii) provide the effective date of such agreement, all within 3 business days of such agreement's execution;
- Within 90 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 5% of projected pilot costs have been incurred under a binding written contract as per the Section 461(h) economic performance definitions of the U.S.

Treasury Safe Harbor Rules, or that all local permitting and zoning approvals have been secured;

- Within 180 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 25% of projected pilot costs have been incurred under a binding written contract as per the Section 461(h) economic performance definitions of the U.S. Treasury Safe Harbor Rules; and
- Within 270 calendar days of filing the written notice of intent, the owner-operator must confirm that the project has been "placed in service," as that term is used in 26 U.S.C. § 48.

Upon receipt of the required confirmations, the Commission Staff shall post to its website the following for informational purposes:

- Date of notice of intent;
- Date of fully executed agreement;
- Effective date of agreement;
- Placed-in-service date of the renewable generation facility;
- Installed capacity of the renewable generation facility, with separate data for wind-powered and solar-powered projects; and
- Subject to the limit of 6% of each Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia, (i) Available capacity-capacities remaining under the 50\_500 MW jurisdictional and 500 MW non-jurisdictional limits for Dominion Energy Virginia DEV, and (ii) available capacity-capacities remaining under the 7 40 MW limits for Appalachian Power CompanyAPCo and ODP.



The Commission shall review the pilot program in 2015, and every two years thereafter during the existence of the program, to determine whether the statutory limitations on the capacity of generation facilities included in the program should be continued, expanded, or reduced. Before recommending any changes to such statutory limitations, the Commission may solicit input from all interested parties.