

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 11, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00120

Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 E 5 of the Code of Virginia related to the deployment of energy storage

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted the Virginia Clean Economy Act ("VCEA").¹ Among other things, the VCEA, in Code § 56-585.5 E, requires Appalachian Power Company ("APCo") and Virginia Electric and Power Company ("Dominion") to petition the State Corporation Commission ("Commission") for approval to construct or acquire 400 megawatts ("MW") and 2,700 MW, respectively, of new utility-owned energy storage resources by 2035. Section 56-585.5 E 5 further provides in part that:

By January 1, 2021, the Commission shall adopt regulations to achieve the deployment of energy storage for the Commonwealth required in subdivisions 1 and 2, including regulations that set interim targets and update existing utility planning and procurement rules. The regulations shall include programs and mechanisms to deploy energy storage, including competitive solicitations, behind-the-meter incentives, non-wires alternatives programs, and peak demand reduction programs.

On June 29, 2020, the Commission established this proceeding for the purpose of complying with this statutory requirement and sought comment on several questions raised by § 56-585.5 E 5 of the Code. The Commission directed APCo and Dominion to submit comments

¹ Senate Bill 851, 2020 Va. Acts ch. 1194, and identical House Bill 1526, 2020 Va. Acts ch. 1193 (effective July 1, 2020).

and permitted any other interested person or entity to submit comments. In addition to answering specific questions, commenters were also permitted to propose specific regulations.²

Comments were filed in this proceeding by: Dominion and APCo; the Virginia Office of the Attorney General, Division of Consumer Counsel; esVolta, LP; Delorean Power LLC ("Delorean"); the U.S. Energy Storage Association ("ESA"); Able Grid Energy Services, Inc.; Virginia Advanced Energy Economy ("AEE"); the Maryland-DC-Delaware-Virginia Solar Energy Industries Association ("MDV SEIA") and the Solar Energy Industries Association ("SEIA"); GRID Alternatives Mid-Atlantic; the Virginia Department of Mines, Minerals and Energy; Highland Electric Transportation, Inc.; the Virginia, Maryland and Delaware Association of Electric Cooperatives; the Sierra Club; the Southern Environmental Law Center, Appalachian Voices, the Virginia Conservation Network, the Chesapeake Climate Action Network, the Virginia League of Conservation Voters, the Piedmont Environmental Council, the Rappahannock League for Environmental Protection, and the National Parks Conservation Association; the Institute for Policy Integrity at New York University School of Law; LS Power Development LLC ("LS Power"); the Virginia Oil and Gas Association ("VOGA"); Solar United Neighbors; and an individual.³

Proposed regulations were filed by APCo and Dominion; ESA; and Delorean.⁴

² On July 20, 2020, Dominion and APCo filed a Motion for Limited Extension of Time to File Proposed Regulations and for Expedited Consideration requesting an extension of the deadline to propose specific regulations implementing Code § 56-585.5 E 5 from July 29, 2020 to August 14, 2020. The Commission subsequently granted the motion and extended the deadline for the filing of proposed regulations in this proceeding to August 14, 2020.

³ LS Power, VOGA and Solar United Neighbors filed comments after the deadline for submission; the Commission exercises its discretion herein to accept those comments out of time.

⁴ MDV SEIA, SEIA, and AEE filed joint comments supportive of the draft regulations filed by ESA.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds as follows. Based on comments and draft regulations filed in this proceeding, the Commission's Staff ("Staff") has prepared Proposed Rules which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

The Commission takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.⁵ The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.⁶ Consistent with

⁵ See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay At Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

⁶ See, e.g., *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments.

Accordingly, IT IS ORDERED THAT:

(1) All filings in this matter should be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁷ For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁸

(2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(3) An electronic copy of the Proposed Rules may be obtained by submitting a request to Michael Cizenski in the Commission's Division of Public Utility Regulation at the following email address: Mike.Cizenski@scc.virginia.gov. An electronic copy of the Proposed Rules can be found at the Division of Public Utility Regulation's website:

<https://scc.virginia.gov/pages/Rulemaking>. Interested persons may also download unofficial copies of the Order and the Proposed Rules from the Commission's website:

<https://scc.virginia.gov/pages/Case-Information>.

(4) 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:

⁷ 5 VAC 5-20-10 *et seq.*

⁸ As noted in the Commission's Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period due to the COVID-19 emergency.

individuals, organizations, and companies who have been identified by the Staff as interested in the development of energy storage in the Commonwealth, including those entities and individuals previously filing comments in this proceeding.

(5) On or before November 2, 2020, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Such comments may also include proposals and hearing requests. All comments shall refer to Case No. PUR-2020-00120. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(6) On or before November 16, 2020, the Staff shall file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(7) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

STATE CORPORATION COMMISSION

Chapter 335 Regulations Governing the Deployment of Energy Storage

CHAPTER 335CHAPTER 335 REGULATIONS GOVERNING THE DEPLOYMENT OF ENERGY STORAGE**20VAC5-335-10. Purpose and applicability.**

This chapter is promulgated pursuant to § 56-585.5 E 5 of the Code of Virginia to achieve the deployment of energy storage for the Commonwealth. Each Phase I and Phase II Utility is subject to 20VAC5-335-30 through 20VAC5-335-70, 20VAC5-335-120, and 20VAC5-335-130 of this chapter. Non-utility developers, owners, operators, and aggregators of energy storage are subject to 20VAC5-335-80 through 20VAC5-335-130 of this chapter. Electric cooperatives are not subject to this chapter.

20VAC5-335-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Behind the meter" means any system that is on the customer side of the utility service meter.

"Behind-the-meter incentive" means any incentive that encourages an end-use electric customer to implement energy storage systems that are connected to the customer side of the utility service meter, regardless of who actually owns the energy storage equipment.

"Commission" means the Virginia State Corporation Commission.

"Demand-side management program" means energy efficiency, demand response, or peak shaving programs approved by the commission that a utility may offer to customers pursuant to § 56-585.1 A 5 of the Code of Virginia.

"Energy storage capacity" means the maximum amount of stored energy of the energy storage system (in kilowatt-hours or megawatt-hours) that can be delivered to the grid.

"Energy storage" means any technology that is capable of absorbing energy, storing that energy for a period of time, and re-delivering that energy after storage.

"Energy storage aggregator" means a person or entity that, as an agent or intermediary, (i) offers to purchase, or purchases, energy storage system capabilities; or (ii) offers to arrange for, or arranges for, the purchase of energy storage system capabilities for the purposes of combining (or aggregating) those capabilities to enable the participation of multiple energy storage systems in electricity markets where such individual systems could not participate individually.

"Energy storage facility" or "energy storage system" means an energy storage resource and any equipment, other than a transmission or distribution line, needed to interconnect the energy storage resource to the utility's electric system. This additional equipment can include, but is not limited to, switchgear, transformers, inverters, switches, cables, wires, conductors, bus work, protection devices and systems, communication and control devices and systems, fire protection systems, and environmental protection systems.

"Energy storage power rating" means the total possible instantaneous discharge capability (in kilowatts or megawatts) of the energy storage system, or the maximum sustained rate of discharge that the energy storage system can achieve starting from a fully charged state to a fully discharged state.

"Energy storage project" means an energy storage facility with a specified location and an associated nameplate capacity.

"Energy storage resource" means a resource capable of collecting energy from the electric power grid or a power generation facility and then discharging the energy at a future point in time

to provide electricity or other grid services, or a resource capable of the active or dynamic exchange of energy.

"Non-wires alternative" means any electricity grid investment, project, or program that uses non-traditional transmission or distribution solutions such as distributed generation, energy storage, energy efficiency, demand response, and grid software and controls to delay or remove the need for traditional system upgrades of equipment such as transmission or distribution lines or transformers, without impacting the safety or overall performance of the electric power system.

"Peak demand reduction program" means any project or program aimed at shifting time of use of electricity from one period to another for the overall economic and reliability benefit of the electric power grid.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Storage duration" means the amount of time an energy storage system can discharge at its energy storage power rating before depleting the stored usable energy when the system is at maximum energy capacity.

20VAC5-335-30. Minimum interim targets for energy storage deployment by Phase I and Phase II Utilities.

A. A Phase I Utility shall petition the commission for any necessary approvals to construct or acquire the level of energy storage capacity by the following dates:

1. By December 31, 2025, 25 megawatts;

2. By December 31, 2030, an additional 125 megawatts for a total of 150 megawatts; and

3. By December 31, 2035, an additional 250 megawatts for a total of 400 megawatts.

B. A Phase II Utility shall petition the commission for any necessary approvals to construct or acquire the level of energy storage capacity by the following dates:

1. By December 31, 2025, 250 megawatts;

2. By December 31, 2030, an additional 950 megawatts for a total of 1,200 megawatts;

and

3. By December 31, 2035, an additional 1,500 megawatts for a total of 2,700 megawatts.

C. At least 35% of energy storage facilities placed into service by a Phase I or Phase II Utility shall be (i) purchased by the Phase I or Phase II Utility from a party other than the utility, or (ii) owned by a party other than the Phase I or Phase II Utility, with the capacity from such facilities sold to the utility. The 35% threshold shall also apply to each interim targets period identified in this section and a Phase I or Phase II Utility's acquisition of energy storage facilities and purchases of capacity from its own utility-affiliated interests shall not count towards this 35% threshold.

D. Any type of energy storage technology shall count toward the interim targets set forth in subsections A and B of this section.

E. Each Phase I and Phase II Utility shall report on its plan to meet these interim targets and its progress toward meeting these interim targets in the proceedings established by § 56-585.5 D 4 and §§ 56-597 through 56-599 of the Code of Virginia, consistent with the requirements of each respective statute.

20VAC5-335-40. Procurement of energy storage projects by Phase I and Phase II Utilities.

A. In procuring energy storage projects, each Phase I and Phase II Utility shall use competitive bidding to the extent practicable, consistent with § 56-233.1 of the Code of Virginia.

B. Beginning in 2021 and ending in 2035 or when the storage targets are met, whichever is sooner, each Phase I and Phase II Utility shall sponsor at least one competitive solicitation for energy storage projects per calendar year, consistent with the following requirements:

1. The request for proposals shall quantify and describe the utility's need for energy or capacity.

2. The request for proposals shall be publicly announced and made available for public review on the utility's website at least 45 calendar days prior to the closing of such request for proposals.

3. The request for proposals shall provide, at a minimum, the following information: (i) the size, type, and timing of energy storage resources for which the utility anticipates contracting; (ii) any minimum thresholds that must be met by respondents; (iii) major assumptions to be used by the utility in the bid evaluation process, including environmental emission standards; (iv) detailed instructions for preparing bids so that bids can be evaluated on a consistent basis; (v) the preferred general location of additional energy storage capacity; and (vi) specific information concerning the factors involved in determining the price and non-price criteria used for selecting winning bids.

4. A utility may evaluate responses to the request for proposals based on any criteria that it deems reasonable, but shall at a minimum consider the following in its selection process: (i) the status of a particular project's development; (ii) the age of existing facilities; (iii) the demonstrated financial viability of a project and the developer; (iv) a developer's prior experience in the field; (v) the location and effect on the transmission grid of an energy

storage facility; (vi) the benefits to the Commonwealth that are associated with particular projects, including regional economic development and the use of goods and services from Virginia businesses; (vii) the environmental impacts of particular resources, including impacts on air quality within the Commonwealth and the carbon intensity of the utility's generation portfolio; and (viii) how any project impacts the goals established by the Virginia Environmental Justice Act (§§ 2.2-234 et seq. of the Code of Virginia).

5. A utility shall maintain documentation of its reasoning for rejecting any specific response.

C. Each utility shall report on any competitive solicitations for energy storage resources as part of the annual plan required by § 56-585.5 D 4 of the Code of Virginia.

20VAC5-335-50. Behind-the-meter incentives by Phase I and Phase II Utilities.

As part of the annual proceeding required by § 56-585.5 D 4 of the Code of Virginia, each Phase I and Phase II Utility shall address behind-the-meter incentives related to energy storage. Each Phase I and Phase II Utility shall file with the commission applications for approval of behind-the-meter incentives related to energy storage. If the utility proposes to offer any such behind-the-meter incentives to customers through a demand-side management program, the utility may seek approval through any existing processes for demand-side management programs under § 56-585.1 A 5 of the Code of Virginia, rather than through a separate proceeding under this section.

20VAC5-335-60. Non-wires alternative programs by Phase I and Phase II Utilities.

As part of the annual proceeding required by § 56-585.5 D 4 of the Code of Virginia, each Phase I and Phase II Utility shall address non-wires alternative programs related to energy storage. Each Phase I and Phase II Utility shall file with the commission applications for approval of non-wires alternative programs related to energy storage. If the utility proposes to offer any such non-wires alternative programs to customers through a demand-side management program,

the utility may seek approval through any existing processes for demand-side management programs under § 56-585.1 A 5 of the Code of Virginia, rather than through a separate proceeding under this section.

20VAC5-335-70. Peak demand reduction programs by Phase I and Phase II Utilities.

As part of the annual proceeding required by § 56-585.5 D 4 of the Code of Virginia, each Phase I and Phase II Utility shall address peak demand reduction programs related to energy storage. Each Phase I and Phase II Utility shall file with the commission applications for approval of peak demand reduction programs related to energy storage. If the utility proposes to offer any such peak demand reduction programs to customers through a demand-side management program, the utility may seek approval through any existing processes for demand-side management programs under § 56-585.1 A 5 of the Code of Virginia, rather than through a separate proceeding under this section.

20VAC5-335-80. Permitting of non-utility energy storage facilities.

A. Other than a Phase I or Phase II Utility, each person seeking to construct and operate an energy storage facility in the Commonwealth with an energy storage power rating of 100 kilowatts or greater, either on a stand-alone basis or on an aggregated basis facilitated by an energy storage aggregator, shall either (i) obtain a permit from the commission pursuant to this section, or (ii) apply for and receive a certificate of public convenience and necessity from the commission pursuant to § 56-580 of the Code of Virginia for the energy storage facility, prior to commencing construction or operation. If such person applies for and receives a certificate of public convenience and necessity from the commission, a permit shall not be required.

B. In evaluating a permit application, the commission shall make a determination for approval based upon a finding that the energy storage facility (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; (ii) does not adversely impact

any goal established by the Virginia Environmental Justice Act (§§ 2.2-234 et seq. of the Code of Virginia); and (iii) is not otherwise contrary to the public interest.

C. Other than a Phase I or Phase II Utility, each person applying for a permit to construct and operate an energy storage facility with an energy storage power rating of 100 kilowatts or greater shall file an application with the clerk of the commission. If the applicant becomes aware of any material changes to any information while the application is pending, the applicant shall inform the commission of such changes within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the associated date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date of issuance).
3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4. Financial information for the applicant, or principal participant or participants in the project. If the applicant or principal participant or participants is a private entity, financial information should include an analysis of the entity's financial condition and audited financial statements for the two most recent fiscal years. If the applicant or principal participant or participants is a public company, financial information should include a copy, or a link to where a copy can be found on the internet, of the entity's most recent stockholder report and most recent Securities and Exchange Commission Form 10 K. If such information is unavailable, provide evidence that applicant has the financial resources, or access to capital, necessary to complete the proposed project.

5. A discussion of the applicant's qualifications, including:

- a. A summary of other projects developed and managed by the applicant. Include location, status, and operational history.
- b. A description of any affiliation or affiliations with an incumbent electric utility as defined in § 56-576 of the Code of Virginia.
- c. A disclosure of any affiliate relationship with any other permit holder.

6. Specific information about the site for the proposed facility, including:

- a. A written description of the location including identification of the city or county in which the facility will be constructed. Such description should be suitable for newspaper publication and sufficiently identify any affected areas.
- b. A description of the site, and a topographical map depiction of the proposed site.
- c. The status of site acquisition (e.g., purchase option, ownership).
- d. A description of any applicable local zoning or land use approvals required and the status of such approvals.

7. Specific information about the proposed facility, including:

- a. Description of all major systems, including energy storage technology type and battery storage chemistry type (if applicable), intended uses, intended facility useful life, facility configuration, and expected suppliers of major components.
- b. Energy storage power rating, energy capacity, and storage duration.
- c. Estimated costs, and schedule for construction, testing and commercialization.
- d. Site layouts that provide for integration of energy storage systems with adequate spacing and property setback requirements incorporated.

e. Codes and standards to which the proposed facility will be constructed.

f. Where applicable, the manner and location of the facility's interconnection to the transmission or distribution grid.

8. A general discussion of the selection process for the energy storage technology, including a description of any competitive procurement processes used.

9. A general discussion of economic development impacts of the project.

10. A list of other local, state or federal government agencies whose requirements must be met in connection with the construction or operation of the project and a statement of the status of the approval procedures for each of these agencies.

11. An analysis of the environmental impact of the project. This analysis shall include the impacts on the environment and natural resources, analysis of alternatives considered, unavoidable adverse impacts, mitigation measures proposed to minimize unavoidable impacts, and any irreversible environmental changes. The information required by this subdivision shall be submitted to the Department of Environmental Quality, simultaneously with its filing with the commission, for coordination and review by state agencies responsible for environmental and natural resource protection. The information shall identify:

a. Required air permits, expected restrictions, expected emissions, rates of emissions, and any needed emissions offsets or allowances.

b. Required permits for water withdrawals, expected restrictions, the amount of water estimated to be used, the source of such water, identification of a backup source of water, if any, and identification of any facilities that need to be constructed to provide such water.

c. Required permits for water discharge and potential impacts on regional water flows.

d. Required permits related to the wetlands and an identification of any tidal and nontidal wetlands located near the proposed site and how such wetlands will be impacted by applicant's proposed facility.

e. Impact of solid and hazardous wastes on local water resources.

f. Impact on natural heritage resources, and on threatened and endangered species.

g. Erosion and sediment control measures.

h. Archaeological, historic, scenic, cultural, or architectural resources in the area.

i. Chesapeake Bay Preservation Areas designated by the locality.

j. Wildlife resources.

k. Agricultural and forest resources and federal, local, state or private parks and recreation areas.

l. Use of pesticides and herbicides.

m. Geology and mineral resources, caves, and sinkholes.

n. Transportation infrastructure.

12. An analysis of the social impact of the project, including a general discussion of why the facility will not have a disproportionate adverse impact on "historically economically disadvantaged communities" as defined in § 56-576 of the Code of Virginia.

13. A general discussion of how the project will promote environmental justice in environmental justice communities and fenceline communities consistent with the Virginia Environmental Justice Act (§§ 2.2-234 et seq. of the Code of Virginia).

14. A general discussion of reliability impacts including:

a. A description of interconnection requirements and needed interconnection facilities.

Any such facilities shall be depicted on a topographic map.

b. A description of the potential impact of the proposed facility on the interconnected system. Discussion should identify and summarize any system impact studies or proposed studies.

c. A description of anticipated services that may be provided to any transmission service provider or local distribution company, including associated costs and benefits.

d. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.

15. A discussion of safety measures the applicant will implement, including fire and explosion protection, detection and mitigation measures, and an emergency response plan, as well as a discussion of whether such measures are compliant with all applicable codes and standards.

16. A discussion of the projected useful life of the energy storage facility, including known or projected performance degradation, roundtrip efficiency, and the proposed plan for and cost of decommissioning at the end of the facility's useful life.

17. A discussion of whether the proposed facility is not contrary to the public interest. The discussion shall include, but is not limited to, an analysis of any reasonably known impacts the proposed facility may have upon reliability of service to, and rates paid by, customers of any regulated public utility providing electric service in the Commonwealth.

Any application that fails to conform to the requirements shall be incomplete. No action shall be taken on any application until deemed complete and filed.

Upon receipt of a complete permit application pursuant to this section, the commission shall enter an order providing notice to appropriate persons and an opportunity to comment on the

application. The commission shall issue a permit for construction and operation of the energy storage facility upon finding the applicant satisfies the requirements established by this section.

D. Construction and operation of an energy storage facility in the Commonwealth with an energy storage power rating of less than 100 kilowatts may be undertaken without complying with the filing requirements established by this section. Persons desiring to construct and operate such facilities shall (i) submit a letter stating the location, size, and technology of the energy storage facility to (a) the Director of the commission's Division of Public Utility Regulation, and (b) the utility in whose certificated service territory the energy storage facility is located; and (ii) comply with all other requirements of federal, state, and local law.

E. In addition to the requirements of this section, each person seeking to operate an energy storage facility must complete either the interconnection process required by the commission's Regulations Governing Interconnection of Small Electrical Generators and Storage (20VAC5-314) or any federally approved process established by the regional transmission organization.

F. Within 30 days of any transfer or assignment of an energy storage facility for which a permit was granted by the commission, the permit holder shall notify the commission and the utility in whose certificated service territory the energy storage facility is located of such transfer or assignment. The notice shall include: (i) the date of transfer or assignment; (ii) the information required in subdivision C 1 through C 5 of this section for the new permit holder; and (iii) a declaration by the new permit holder that it agrees to abide by all initial and continuing requirements of the permit.

G. Any person receiving a permit to operate an energy storage facility in the Commonwealth pursuant to this section shall comply with all initial and continuing requirements of the commission's permitting process. Should the commission determine, upon complaint of any interested person, the Attorney General, upon staff motion, or its own motion, that a permitted operator of an energy storage facility has failed to comply with any of the requirements of this

section or a commission order, the commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the permit or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.

20VAC5-335-90. Licensing of energy storage aggregators.

A. Other than a Phase I or Phase II Utility, each person seeking to conduct business as an energy storage aggregator shall obtain a license from the commission prior to commencing operations.

B. Each person applying for a license to conduct business as an energy storage aggregator shall file an application with the clerk of the commission. If the applicant becomes aware of any material changes to any information while the application is pending, the applicant shall inform the commission of such changes within 10 calendar days. Applications shall include the following information:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the associated date (e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date of issuance).
3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.
5. Whether the applicant is an affiliate of a Phase I or Phase II Utility. If so, the application shall further provide a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant,

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operations, transmission, or reliability functions of the electric generation systems, or (ii) customer service, sales, marketing, metering, accounting or billing functions, do not receive information from the utility or from entities that provide similar functions for or on behalf of the utility as would give the affiliated energy storage aggregator an undue advantage over non-affiliated energy storage aggregators.

6. A list of states in which the applicant or an affiliate conducts business as an energy storage aggregator, the names under which such business is conducted, and a description of the businesses conducted.

7. Toll-free telephone number of the applicant's customer service department.

8. Name, title, address, telephone number, and e-mail address of the applicant's liaison with the commission.

9. Name, title, and address of the applicant's registered agent in Virginia for service of process.

10. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the commission or if a domestic corporation, a copy of the certificate of incorporation from the commission.

11. Sufficient information to demonstrate, for purposes of licensure with the commission, financial fitness commensurate with the service or services proposed to be provided.

Applicant shall submit the following information related to general financial fitness:

a. If available, applicant's audited balance sheet and income statement for the most recent fiscal year and published financial information such as the most recent Securities and Exchange Commission forms 10-K and 10-Q. If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant.

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b. If available, proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility.

12. The name of the utility certificated to provide service in the area in which the applicant proposes to provide service, the type of service or services the applicant proposes to provide, and the class of customers to which the applicant proposes to provide such services.

13. The following information related to the applicant's fitness to operate as an energy storage aggregator:

a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct the same type of business as it proposes to offer in Virginia has ever been denied, and whether any license or authority issued to it or an affiliate has ever been suspended or revoked and whether other sanctions have been imposed.

c. If the applicant has engaged in the provision of energy storage aggregation in Virginia or any other state, a report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards

during the previous three years. The report shall include, for each instance, the following information: (i) a description of the event; (ii) its duration; (iii) its cause; (iv) the number of customers affected; (v) any reports, findings or issuances by regulators or electric and natural gas system reliability organizations relating to the instance; (vi) any penalties imposed; and (vii) whether and how the problem has been remedied.

14. A \$250 registration fee payable to the commission.

15. A discussion of the proposed use or uses of the aggregated resources, including the nature of the intended participation in wholesale electric markets, if any.

16. Sufficient information to demonstrate technical fitness commensurate with the service to be provided, to include:

a. The applicant's experience.

b. Identity of applicant's officers and key managers with direct responsibility for the business operations conducted in Virginia and their experience in the provision of storage aggregation.

c. Documentation of the applicant's membership or participation in regional reliability councils or regional transmission organizations, if any.

d. Billing service options the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.

17. A copy of the applicant's dispute resolution procedure.

18. The standards of conduct to which the applicant adheres or agrees to adhere to.

An officer with appropriate authority, under penalty of perjury, shall attest that all information supplied on the application for licensure form is true and correct, and that, if licensed, the applicant will abide by all applicable regulations of the commission.

C. Any application that fails to conform to the requirements herein, shall be regarded as incomplete. No action shall be taken on any application until deemed complete and filed.

D. Upon receipt of an application for a license to conduct business as an energy storage aggregator, the commission shall enter an order providing notice to appropriate persons and an opportunity for comments on the application. The commission shall issue a license to conduct business as an energy storage aggregator upon finding the applicant satisfies the requirements established by this section.

E. A license to conduct business as an energy storage aggregator granted under this section is valid until revoked or suspended by the commission after providing due notice and an opportunity for a hearing, or until the energy storage aggregators abandons its license.

F. An energy storage aggregator shall comply with all initial and continuing requirements of the commission's licensure process and any reasonable registration processes required by the utility or utilities in whose certificated service territory the energy storage aggregator intends to operate. Should the commission determine, upon complaint of any interested person, the Attorney General, upon staff motion, or its own motion, that an energy storage aggregators has failed to comply with any of the requirements of this section or a commission order, the commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the energy storage aggregator's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.

20VAC5-335-100. Energy storage aggregator registration with utility.

A. An energy storage aggregator shall submit to the utility or utilities in whose certificated service territory it intends to operate proof of licensure from the commission to provide energy storage aggregation services in the Commonwealth. An energy storage aggregator shall provide

notice of any suspension or revocation of its license to the utility or utilities upon issuance of the suspension or revocation by the commission.

B. An energy storage aggregator and the utility or utilities shall exchange the names, telephone numbers, and e-mail addresses of appropriate internal points of contact to address operational and business coordination issues, and the names and addresses of their registered agents in Virginia.

20VAC5-335-110. Marketing by energy storage aggregators.

A. An energy storage aggregator shall provide accurate, understandable information in any advertisements, solicitations, marketing materials, or customer service contracts, in a manner that is not misleading. Marketing material found misleading by the commission will be withdrawn.

B. Customer service contracts shall include:

1. Explanations of the price for the energy storage aggregator's services or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated;
2. Explanations of how the customer will be compensated for the value of their energy storage;
3. Length of the service contract, including any provisions for automatic contract renewal;
4. Provisions for termination by the customer and by the energy storage aggregator;
5. A statement of any minimum contract terms, minimum or maximum storage requirements, minimum or fixed charges, and any other charges;
6. Applicable fees including, but not limited to, start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds;
7. A notice of any billing terms and conditions;
8. A toll-free telephone number and an address for inquiries and complaints;

9. In a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service shall commence;

10. A notice that, upon request by the customer, the energy storage aggregator shall provide a copy of its dispute resolution procedure; and

11. A notice that, upon any change in the terms and conditions of the contract, including any provisions governing price or pricing methodology, or assignment of the contract to another energy storage aggregator, the energy storage aggregator shall communicate such changes to the customer at least 30 days in advance of implementing such changes.

20VAC5-335-120. Confidentiality.

Where any application filed under this chapter, including any supporting documents or pre-filed testimony, contains information that the applicant asserts is confidential, the filing may be made under seal and accompanied by a motion for a protective order or other confidential treatment in accordance with 5VAC5-20-170 of the commission's Rules of Practice and Procedure (5VAC5-20).

20VAC5-335-130. Waiver.

A. Any request for a waiver of any provision in this chapter may be granted upon such terms and conditions as the commission may impose.

B. For good cause shown, any Phase I and Phase II Utility may request a waiver of the commission's Rules Governing Utility Promotional Allowances (20VAC5-313) for any proposed programs or incentives related to energy storage set forth in 20VAC5-335-50 through 20VAC5-335-70 of this chapter.

C. For good cause shown, any Phase I and Phase II Utility may request a waiver of the commission's Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act (20VAC5-202).