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*Commonwealth of Virginia, ex rel. State Corporation Commission 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  
Case No. PUR-2020-00120*

Dear Mr. Logan:

Please find enclosed for electronic filing in the above-captioned proceeding the *Joint  
Comments of Virginia Electric and Power Company and Appalachian Power Company on  
Proposed Regulations*.

Please do not hesitate to contact me if you have any questions in regard to the enclosed.

Highest regards,

/s/ Jontille D. Ray

Jontille D. Ray

Enclosures

cc: Audrey T. Bauhan, Esq.  
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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

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 )

**JOINT COMMENTS OF VIRGINIA ELECTRIC AND POWER COMPANY  
AND APPALACHIAN POWER COMPANY ON PROPOSED REGULATIONS**

The State Corporation Commission of Virginia (the “Commission”) established this proceeding to adopt regulations related to the deployment of energy storage for the Commonwealth, as required by the recently-enacted Virginia Clean Economy Act (“VCEA”). Commission Staff (“Staff”) prepared proposed regulations for consideration (the “Proposed Regulations”), which were attached to the Commission’s Order for Notice and Comment dated September 11, 2020. Virginia Electric and Power Company (“Dominion Energy Virginia”) and Appalachian Power Company (“APCo”) (together, the “Joint Commenters”), by their respective counsel, submit their comments on the Proposed Regulations.

**COMMENTS**

The Joint Commenters generally support the Proposed Regulations. Section 30 of the Proposed Regulations recognizes that by back-end loading interim targets, customers will likely benefit from any advancements in rapidly-evolving energy storage technology and from projected decreases in costs. Section 80 acknowledges that the storage regulations should apply to utility and non-utility energy storage uniformly to ensure a level set of standards and expectations as the energy storage industry continues to develop in the Commonwealth, while also safeguarding grid reliability and avoiding cost shifting from storage developers to utility

customers. In addition, Sections 90 to 110 institute licensing and operating standards for energy storage aggregators, which are especially important in light of the recent Order 2222 issued by the Federal Energy Regulatory Commission (“FERC”).

The Joint Commenters oppose only one substantive provision of the Proposed Regulations—the language of Section 30 C as it relates to utility-affiliated interests. The Joint Commenters also seek clarity on two provisions of the Proposed Regulations. Finally, the Joint Commenters offer minor edits to certain definitions and minor changes to wording throughout the Proposed Regulations to conform to the definitions. In addition to the narrative explanation of the Joint Commenters’ proposed revisions below, Attachment 1 to these comments is a redline of the Joint Commenters’ proposed revisions to the Proposed Regulations.<sup>1</sup>

**A. Acquisition of Energy Storage Facilities and Purchases of Capacity from Utility Affiliates**

Section 30 C of the Proposed Regulations states in relevant part that “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” the 35 percent of energy storage facilities required to be (i) purchased from a party other than the utility or (ii) owned by a party other than a public utility with the capacity from such facilities sold to the utility. The Joint Commenters oppose this restriction because it is not supported by the statutory language in Va. Code § 56-585.5.

Under basic rules of statutory construction, a statute must be examined in its entirety.<sup>2</sup> “The primary objective in statutory construction is to determine and give effect to the intent of

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<sup>1</sup> To prepare Attachment 1, the Joint Commenters started with a clean version of Chapter 335 as shown in the attachment to the Commission’s September 11, 2020 Order for Notice and Comment, and then tracked their proposed revisions.

<sup>2</sup> *Harris v. Commonwealth*, 56 Va. App. 253, 254 (2010).

the legislature as expressed in the language of the statute.”<sup>3</sup> Where a statute’s language is unambiguous, as it is here, the plain meaning of the language must apply.<sup>4</sup> Section 56-585.5 E 5 states:

After July 1, 2020, at least 35 percent of the energy storage facilities placed into service shall be (i) purchased by the public utility from a party other than the public utility or (ii) owned by a party other than a public utility, with the capacity from such facilities sold to the public utility.

Under the plain language of the statute, there is only one limitation to the 35 percent requirement—the energy storage facilities must be purchased from or owned by an entity other than a public utility. There is no language indicating that purchases from utility affiliates are to be excluded from this 35 percent requirement. Indeed, to impose such a limitation would be adding language to the statute and be contrary to the legislative intent. “Rules of statutory construction prohibit adding language to or deleting language from a statute.”<sup>5</sup> Indeed, “[a]dding words to a statute . . . violates a well-established tenet of statutory construction,”<sup>6</sup> and “we are not free to add . . . language, nor ignore language, contained in [the] statute[.]”<sup>7</sup>

In fact, where it so desired, the legislature *has* explicitly stated that an “other than a utility” requirement excluded not only the utility but also “utility affiliates and deregulated affiliates.” In particular, Subsection D 2 of § 56-585.5 states in relevant part that “35 percent of such generating capacity procured shall be from the purchase of energy, capacity, and environmental attributes from solar facilities owned by persons other than a utility, *including utility affiliates and deregulated affiliates* . . .” (emphasis added). Accordingly, the plain

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<sup>3</sup> *Appalachian Power Co. v State Corp. Comm’n*, 284 Va. 695, 706 (2012).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 707.

<sup>7</sup> *Id.* (quoting *SIGNAL Corp. v. Keane Fed. Sys.*, 265 Va. 38, 46 (2003)).

language of the statute directs that the acquisition of energy storage facilities and purchases of capacity from utility affiliates should count towards the 35 percent requirement.<sup>8</sup>

Notably, any acquisition of energy storage facilities or purchases of capacity from utility affiliates would be governed by the Affiliates Act, Va. Code § 56-76 *et seq.* Under the Affiliates Act, the utility has the burden of establishing that any affiliate transaction will serve the public interest, such “that an affiliated company of a regulated utility does not receive unjust benefits, to the detriment of the utility’s customers.”<sup>9</sup> Moreover, affiliate arrangements are subject to and reviewed in accordance with the Commission’s pricing standards for all affiliate contracts or arrangements. Specifically, goods and services provided by an unregulated affiliate to a regulated utility must be provided at the lower of cost, which may include a return component (*i.e.*, a reasonable return), or fair market value or market price.<sup>10</sup> In other words, the pricing can be “based on the affiliate’s cost, including a reasonable return, so long as this cost does not exceed the market price. The market test applied by th[e] Commission . . . is to test whether the affiliate’s costs are reasonable.”<sup>11</sup> Therefore, the Affiliates Act provides the necessary protection to ensure that any acquisition of energy storage facilities and purchases of capacity pursuant to

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<sup>8</sup> See *Newberry Station Homeowners Ass’n, Inc. v. Bd. of Sup’rs of Fairfax Cty.*, 285 Va. 604, 616 (2013); see also *Brown v. Commonwealth*, 284 Va. 538, 545 (2012) (alterations and internal quotation marks omitted) (quoting *Halifax Corp. v. Wachovia Bank*, 268 Va. 641, 654 (2004)).

<sup>9</sup> *Roanoke Gas Co. v. State Corporation Commission*, 217 Va. 850, 853-54 (1977).

<sup>10</sup> See *e.g.*, *Application of Virginia Electric and Power Company and Dominion Resources Services, Inc., For approval of a revised services agreement under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2010-00144, Order Granting Approval (Mar. 9, 2011); see also the Division of Public Utility Accounting’s Guidelines for Filing Applications under Title 56, Chapter 4 of the Code of Virginia (Affiliates Act); 20 VAC 5-202-30 B 5 a.

<sup>11</sup> *Application of Roanoke Gas Company, For approval of certain transactions pursuant to the Affiliates Act of the Code of Virginia*, Case No. PUE-2006-00023, Order Granting Approval at 9-10 (Jun. 20, 2006).

Va. Code § 56-585 and the Proposed Regulations will be the most competitively-priced and beneficial to utility customers.

For these reasons, the Joint Commenters request that Section 30 C of the Proposed Regulations be amended to strike the last sentence, as shown in Attachment 1.

**B. Applicability to Electric Cooperatives**

Section 10 notes that electric cooperatives are not subject to the Proposed Regulations. While the Joint Commenters agree that Va. Code § 56-585.5 does not apply to electric cooperatives—as stated in Va. Code § 56-585.5 I—Sections 80 to 110 of the Proposed Regulations seek to ensure a level set of standards and expectations for utility and non-utility energy storage as the industry continues to develop in the Commonwealth. To the extent electric cooperatives directly or indirectly seek business opportunities related to energy storage (as a developer or aggregator) beyond their specific systems, these sections of the Proposed Regulations should arguably apply. The Joint Commenters have suggested language in Attachment 1 to this effect. At minimum, the Joint Commenters ask for clarification that the electric cooperatives must still comply with the Commission’s Regulations Governing Interconnection of Small Electrical Generators as applicable.<sup>12</sup>

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<sup>12</sup> See 20 VAC 5-314-10 *et seq.*

### C. Licensing of Energy Storage Aggregators

As noted above, the Joint Commenters agree with the licensing requirement for energy storage aggregators as set forth in Section 90 of the Proposed Regulations. The need for such a requirement is highlighted by a recent order issued by FERC, Order No. 2222.<sup>13</sup> In Order No. 2222, FERC “adopt[ed] reforms to remove barriers to the participation of distributed energy resource aggregations in the Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets (RTO/ISO markets).”<sup>14</sup> FERC’s definition of “distributed energy resources” includes “electric storage resources.”<sup>15</sup> FERC declined to allow “electric retail regulatory authorities” to “opt-out” of allowing the participation of distributed energy resource aggregators in RTO/ISO markets.

Order No. 2222 also requires, among other things, coordination between aggregators, ISO/RTOs, distribution utilities, and state and local regulatory authorities. In so doing, FERC sought to avoid “creat[ing] undue barriers to entry for distributed energy resource aggregations” while also “consider[ing] the substantial role of distribution utilities and state and local regulators in ensuring the safety and reliability of the distribution system.”<sup>16</sup> The order states that “each RTO/ISO must coordinate with distribution utilities to develop a distribution utility review process that includes criteria by which the distribution utilities would determine whether (1) each proposed distributed energy resource is capable of participation in a distributed energy resource aggregation; and (2) the participation of each proposed distributed energy resource in a

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<sup>13</sup> *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (2020) (“Order No 2222”).

<sup>14</sup> *Id.* P 1.

<sup>15</sup> *Id.* n.1.

<sup>16</sup> *Id.* P 279.



distributed energy resource aggregation will not pose significant risks to the reliable and safe operation of the distribution system.”<sup>17</sup> It also requires that the “results of a distribution utility’s review must be incorporated into the distributed energy resource aggregation registration process.”<sup>18</sup>

The Joint Commenters submit that Section 90 of the Proposed Regulations is consistent with, and will aid in the compliance with, the requirements of FERC Order No. 2222. The Joint Commenters therefore urge that the proposed requirements be maintained in the final regulations promulgated as a result of this proceeding, subject to one clarification. Section 90 B 18 requires each person applying for a license to conduct business as an energy storage aggregator to file an application that includes, among other things, “[t]he standards of conduct to which the applicant adheres or agrees to adhere to.” It is not clear to Joint Commenters what the meaning or intent of this requirement is, and Joint Commenters respectfully suggest that the Commission clarify this requirement.

#### **D. Minor Suggested Edits**

Finally, the Joint Commenters suggest minor edits to the Proposed Regulations, primarily focused on the definitions (Section 20) and minor wording changes throughout the Proposed Regulations to conform to the definitions. Attachment 1 reflects these proposed revisions.

In Section 20, the Joint Commenters suggest edits to the following definitions:

- “Demand-side management program.” Added “or pilots” to reflect amendments to relevant demand-side managed statutes through the Virginia Clean Economy Act, Chapters 1193 and 1194 of the 2020 Acts of Assembly.
- “Energy storage project.” Updated to incorporate other definitions listed in Section 20 (rather than introducing a new definition).

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<sup>17</sup> *Id.* P 292.

<sup>18</sup> *Id.*

- “Non-wires alternative.” Revised to define “non-wires alternative program” for consistency with the inclusion of definitions of “behind-the-meter incentive” and “peak demand reduction program.” Also revised to reflect that the list of examples is not so limited.
- “Storage duration.” Updated to incorporate other definitions listed in Section 20 (rather than introducing a new definition).

In Section 30, the term “energy storage capacity” should be replaced with “energy storage power rating” consistent with the definitions set forth in Section 20. The interim targets are in megawatts (*i.e.*, energy storage power rating) rather than megawatt-hours (*i.e.*, energy storage power capacity)

In Section 40, the Joint Commenters suggest use of “energy storage projects” for consistency with the definitions set forth in Section 20. The Joint Commenters also proposed minor wording edits to provide additional clarity.

In Sections 50, 60, and 70, the Joint Commenters suggest clarifying that these requirements should begin in 2021, as the Proposed Regulations do not otherwise include an effective date. This is consistent with the language of Va. Code § 56-585.5 E 5 requiring the Commission to promulgate energy storage regulations by January 1, 2021.

In Sections 80 and 110, the Joint Commenters suggest minor wording edits.

### CONCLUSION

The Joint Commenters appreciate the opportunity to share these comments with the Commission regarding the Proposed Regulations, and respectfully urge the Commission to include revisions consistent with these comments, as shown in Attachment 1.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY  
and APPALACHIAN POWER COMPANY

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November 2, 2020

STATE CORPORATION COMMISSION

Chapter 335 Regulations Governing the Deployment of Energy Storage

CHAPTER 335

CHAPTER 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, as well as electric cooperatives 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 or pilots 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 energy storage capacity and energy storage power rating~~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 program" means any electricity grid investment, project, or program that uses non-traditional transmission or distribution solutions, including but not limited to 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, including but not limited to 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 storage 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-power rating 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~~ power rating 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 either 2035 or when the storage-targets set forth in section 30 of this chapter 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-projects~~ 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-projects~~; 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~~projects; (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 to the requests for proposals.

C. Each utility shall report on any competitive solicitations for energy storage ~~resources~~projects 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.**

Beginning in 2021, ~~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.**

Beginning in 2021, ~~a~~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.**

Beginning in 2021, 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 under this section 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 subsection~~ B of 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 interconnection 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, 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.

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 by the energy storage aggregator from its published materials.

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).



**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of November 2020, a true and accurate copy of the foregoing filed in Case No. PUR-2020-00120 was delivered by hand, email or mail first class postage pre-paid to the following:

William H. Chambliss, Esq.  
Ashley B. Macko, Esq.  
William H. Harrison, IV, Esq.  
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/s/ Jontille D. Ray