

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, DECEMBER 10, 2021

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00089

Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 G of the Code of Virginia related to accelerated renewable energy buyers

ORDER ADOPTING REGULATIONS

On May 12, 2021, the State Corporation Commission ("Commission") issued an Order Establishing Proceeding ("Initial Order") docketing this matter for the purpose of determining whether rules and regulations are necessary to implement the provisions of Code § 56-585.5 G and, if so, the appropriate rules and regulations that should be adopted. Enacted as part of the Virginia Clean Economy Act by the 2020 Virginia General Assembly,¹ Code § 56-585.5 G permits certain customers of Appalachian Power Company ("APCo") and Virginia Electric and Power Company ("Dominion") to be certified as accelerated renewable energy buyers ("ARBs"). Among other things, the Initial Order directed APCo and Dominion to submit comments and permitted any other interested person or entity to submit comments regarding specific issues identified therein. The Commission further permitted commenters to propose specific regulations.

The following entities filed comments in response to the Initial Order: Dominion and APCo, jointly ("Joint Commenters"); the Virginia Office of the Attorney General, Division of Consumer Counsel; Walmart Inc. ("Walmart"); the Data Center Coalition ("DCC"); and the

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

Advanced Energy Buyers Group ("AEBG"). The Joint Commenters included draft proposed regulations with their comments. On July 7, 2021, the Commission issued an Order for Additional Comment permitting additional comments in response to comments previously filed in this matter on or before July 29, 2021. Additional comments were filed by the Joint Commenters, Walmart, DCC, and AEBG.

On August 25, 2021, the Commission issued an Order for Notice and Comment ("Procedural Order") in this docket. Draft proposed Regulations Governing Accelerated Renewable Energy Buyers ("Proposed Rules" or "Rules") prepared by the Commission Staff ("Staff") were appended to the Procedural Order. The Procedural Order permitted interested persons to submit comments on or before November 5, 2021, which could include proposals and hearing requests. The Procedural Order further required Staff to file, on or before November 19, 2021, a report ("Staff Report") providing any response to comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

Comments concerning the Proposed Rules were filed by: Joint Commenters, Walmart, DCC, and AEBG. No requests for hearing were received. On November 19, 2021, Staff filed a Staff Report including certain revisions to the Proposed Rules proposed by Staff after reviewing the comments provided.

NOW THE COMMISSION, upon consideration of the foregoing, finds that we should adopt the Rules appended hereto as Attachment A effective February 1, 2022. As an initial matter, the Commission expresses appreciation to those who have submitted written comments for our consideration. We have carefully considered the comments and proposals filed in this matter. As experience is gained and lessons are learned, these Rules may be updated and

revised. In this regard, we further note that the Rules, as adopted herein, permit requests for waiver for good cause shown.²

The Rules we adopt herein contain certain modifications to those that were first proposed by Staff and published in the *Virginia Register of Regulations* on September 27, 2021. These modifications follow our consideration of further proposed changes made by the Staff in its Staff Report and the comments filed in this proceeding. Although we will not comment on each Rule in detail, there are several issues that we will address further herein.

20 VAC 5-319-20 Definitions.

The Commission agrees the Rules should incorporate the 2021 amendments to Code § 56-585.5 G and finds Staff's proposal to modify the definition of "Bundled contract" reasonable to reflect these amendments.³

The Commission further finds the Joint Commenters' proposal to change the definition of "REC-only contract," as further modified by Staff, is reasonable.⁴ Under the Rules, a REC-only contract is now defined as "a contract for purchase of unbundled RECs from RPS eligible resources as that term is described in § 56-585.5 C of the Code of Virginia."

20 VAC 5-319-40 Commission certification process.

Each of the commenting entities offered suggested changes to the Proposed Rules related to the provision and exchange of sensitive commercial information.⁵ As adopted, the Rules

² 20 VAC 5-319-70.

³ See Nov. 5, 2021 DCC Comments ("DCC Comments") at 5-6; Nov. 5, 2021 Joint Commenters Comments ("Joint Comments") at 7; Nov. 5, 2021 AEBG Comments ("AEBG Comments") at 2; Staff Report at 9; 2021 Va. Acts (Special Session I) ch. 140.

⁴ Joint Comments at 7; Staff Report at 10.

⁵ Joint Comments at 2-5; AEBG Comments at 2-3; Nov. 5, 2021 Walmart Comments ("Walmart Comments") at 1-2; DCC Comments at 2-4.

strike a reasonable balance in the provision and exchange of such information. As an initial matter, we note that the Rules permit all market sensitive information to be redacted from contracts other than what is necessary to verify the information required in Schedule 2 of the ARB Certification Form, regardless of whether a potential ARB proceeds through the Commission certification process or the utility certification process.

The Joint Commenters request that Rule 40 A 2 be amended to require potential ARBs to provide copies of redacted contracts to the utility upon request as part of the Commission certification process.⁶ Joint Commenters are concerned the utility will not be able to provide complete commentary on whether the customer qualifies as an ARB.⁷ AEBG, on the other hand, supports the Rule as drafted, stating "it is very important to renewable energy buyers that information about private contracts be kept confidential."⁸ The Commission will not require a potential ARB utilizing the Commission certification process to provide copies of redacted contracts to the applicable utility upon request. In so deciding, we recognize that certification through the Commission is a statutorily required alternative to directly certifying with the utility under Code § 56-585.5 G, and thus want to provide an avenue for potential ARBs that may not be comfortable sharing contractual information directly with the utility. We further agree with Staff that a Form Agreement to Adhere to Confidential Treatment pursuant to 5 VAC 5-20-170

⁶ Joint Comments at 2-5.

⁷ *Id.* at 3.

⁸ AEBG Comments at 2-3.

of the Commission's Rules of Practice and Procedure⁹ is not appropriate in this context, which is outside of a formal docketed proceeding.¹⁰

Finally with respect to Rule 40 and the ARB Certification Form, we will clarify in the Rules that, in lieu of resubmitting executed contract or excerpts from contracts on an annual basis, previously-certified ARBs may be recertified by providing an attestation from a corporate officer affirming that there have been no material changes to the relevant contract during the previous year.¹¹

Accelerated Renewable Energy Buyers Certification Form

The Commission does not adopt the Joint Commenters' proposal to include a table with the Annual RPS Program Requirement in the ARB Certification Form, as that table is already included in Code § 56-585.5 and need not be repeated.¹²

We further agree with Joint Commenters and DCC that language should be added permitting potential ARBs to provide "a copy of the first and last page of all executed contracts along with the relevant provisions," as an alternative to providing "a copy of all executed contracts."¹³

To address the comments of Walmart and AEBG, we further find that the ARB Certification Form should be modified to clarify that an ARB include information on "the actual production from the resources sold to the ARB in megawatt-hours in the prior calendar year in

⁹ 5 VAC 5-20-10 *et seq.*

¹⁰ Staff Report at 11.

¹¹ AEBG Comments at 1-2.

¹² Joint Comments at 5; Staff Report at 12.

¹³ *See* Joint Comments at 4-5; DCC Comments at 2-3.

the case of a bundled contract or the number of RECs sold to the ARB in the case of a REC-only contract."¹⁴

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Accelerated Renewable Energy Buyers, 20 VAC 5-319-10 *et seq.*, as shown in Attachment A to this Order, are hereby adopted and are effective as of February 1, 2022.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Attachment A, to the Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(3) An electronic copy of this Order with Attachment A shall be made available on the Division of Public Utility Regulation's section of the Commission's website:

scc.virginia.gov/pages/Rulemaking.

(4) Within five (5) business days of the date of this Order, APCo and Dominion shall transmit to each customer eligible to be certified as an ARB, by separate first class mailing, by electronic mail, or by bill insert, a copy of this Order including Attachment A.

(5) Within ten (10) business days of the date of this Order, APCo and Dominion shall file an affidavit of compliance with the requirement in Ordering Paragraph (4) with the Clerk of the Commission by filing electronically at scc.virginia.gov/clerk/efiling/. The affidavit shall not include the names or other identifying information of the notified customers, but each utility shall maintain a record of such information.

(6) This docket is dismissed.

¹⁴ Walmart Comments at 2; AEBG Comments at 3-4.

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.

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ATTACHMENT A

State Corporation Commission

Regulations Governing Accelerated Renewable Energy Buyers

Chapter 319Regulations Governing Accelerated Renewable Energy Buyers**20VAC5-319-10. Purpose and applicability.**

This chapter is promulgated pursuant to § 56-585.5 G 2 of the Code of Virginia to implement the provisions of § 56-585.5 of the Code of Virginia related to accelerated renewable energy buyers.

20VAC5-319-20. Definitions.

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

"Aggregate load" means the combined electrical load associated with selected accounts of an ARB with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of affiliated entities under a common parent.

"ARB" means accelerated renewable energy buyer as defined in § 56-585.5 A of the Code of Virginia.

"Bundled contract" means [(i)] a contract for the bundled capacity, energy, and RECs from solar or wind generation resources located within the PJM region and initially placed in commercial operation after January 1, 2015, including any contract with a utility for such generation resources that does not allocate to or recover from any other customer of the utility the cost of such resources [; and (ii) a subscription by a customer of a Phase II Utility, as of March

1, 2020, to a voluntary companion experimental tariff offering of the utility for the purchase of renewable attributes from renewable energy facilities that requires a renewable facilities agreement and the purchase of a minimum of 2,000 renewable attributes annually].

"Commission" means the Virginia State Corporation Commission.

"Electrical load associated with the selected accounts of an accelerated renewable energy buyer" means the aggregate demand to be determined based on the sum of the maximum non-coincident peak demand metered on the utility's distribution system for each customer account in the previous calendar year. The maximum non-coincident peak demand for each customer account is the highest average kilowatt measured during any 30-minute interval in the previous calendar year.

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

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

"REC" means renewable energy certificate.

"REC-only contract" means a contract for purchase of unbundled RECs from RPS eligible resources [as that term is described in § 56-585.5 C of the Code of Virginia] .

["RPS" means the renewable energy portfolio standard pursuant to § 56-585.5 of the Code of Virginia.]

20VAC5-319-30. Certification of accelerated renewable energy buyers.

Any potential ARB must be certified annually either (i) through the Phase I or Phase II Utility in whose certificated service territory its accounts are located through the process established by that utility or (ii) through the commission pursuant to 20VAC5-319-40.

20VAC5-319-40. Commission certification process.

A. The commission establishes the following process for certification through the commission:

1. Any potential ARB that chooses to certify directly with the commission must submit to the director of the commission's Division of Public Utility Regulation an Accelerated Renewable Energy Buyer Certification Form by March 1 for the upcoming year, starting June 1 and concluding May 31, based on load data and information from the prior calendar year.

2. Upon receipt of a completed Accelerated Renewable Energy Buyer Certification Form pursuant to subdivision A 1 of this section, commission staff shall provide the appropriate Phase I or Phase II Utility with a copy of the completed Accelerated Renewable Energy Buyer Certification Form, excluding copies of any executed contracts provided to commission staff by the potential ARB, and set a deadline by which the utility shall submit comments to commission staff. The utility's comments shall include confirmation to commission staff that the potential ARB meets the aggregate load requirements of § 56-585.5 of the Code of Virginia. The utility shall also send a copy of its comments to the potential ARB.

3. Following receipt of a completed Accelerated Renewable Energy Buyer Certification Form pursuant to subdivision A 1 of this section, based on its review and the comments received, commission staff shall determine by May 1 whether the potential ARB meets the requirements of § 56-585.5 G of the Code of Virginia and this chapter, the type of certification (i.e., REC-only contract or bundled contract), and the percentage exemption.

4. Within five business days of its certification decision, commission staff shall provide the appropriate Phase I or Phase II Utility with a list of customer accounts associated with each certified ARB, the type of certification (i.e., REC-only contract or bundled contract), and the percentage exemption. Commission staff shall also provide each Phase I Utility and Phase II Utility with the nameplate capacity of the solar and wind generation of certified ARBs with bundled contracts.

B. Any potential ARB or Phase I or Phase II Utility that contests the certification decision made by commission staff must file a formal complaint with the commission pursuant to 5VAC5-20-100 within [five ten] business days of the certification decision. Any statutorily exempt charges incurred by the potential ARB after June 1 are subject to collection or refund, depending on the certification decision.

C. Customers certified as ARBs through this process shall be exempt from the applicable charges [, which could be a full or partial exemption,] for one year starting June 1 and concluding May 31 following certification.

D. For a potential ARB that seeks certification based on its load and renewable energy under contract for the 2020 calendar year, the ARB must submit an Accelerated Renewable Energy Buyer Certification Form by March 1, 2022, based on information for the 2020 calendar year. Customers that are certified as ARBs based on 2020 calendar year information will receive a refund of applicable charges for the period of June 1, 2021, to May 31, 2022.

[E. In lieu of resubmitting executed contracts or excerpts of such contracts on an annual basis, customers previously certified as ARBs may be recertified by providing an attestation from a corporate officer affirming that there have been no material changes to the relevant contracts during the previous year.]

20VAC5-319-50. Utility certification process.

A. Each Phase I Utility and Phase II Utility shall establish a process to certify ARBs based on receipt and review of Accelerated Renewable Energy Buyer Certification Forms submitted to the utility by potential ARBs. In reviewing the information submitted by potential ARBs required for certification, each Phase I Utility and Phase II Utility shall ensure that the appropriate internal protections are in place to protect the confidentiality of that information from those within the utility serving in marketing roles [or from unauthorized disclosure to third parties] .

B. By May 1 annually, each Phase I Utility and Phase II Utility shall submit to commission staff a complete list of ARBs certified by the utility. Each Phase I Utility and Phase II Utility shall submit additional information to support its certification decisions to commission staff upon request. Any potential ARB that contests the certification decision made by a Phase I or Phase II Utility may file a formal complaint with the commission pursuant to 5VAC5-20-100 within [five ten] business days of the certification decision. Commission staff may contest the certification decision made by a Phase I or Phase II Utility by filing a motion with the commission pursuant to 5VAC5-20-90, or, as appropriate, through other relevant proceedings before the commission. [Any statutorily exempt charges incurred by the potential ARB after June 1 are subject to collection or refund, depending on the certification decision.]

C. Customers certified as ARBs through this process shall be exempt from the applicable charges [, which could be a full or partial exemption,] for one year starting June 1 and concluding May 31 following certification.

D. For a potential ARB that seeks certification based on its load and renewable energy under contract for the 2020 calendar year, the ARB must submit an Accelerated Renewable Energy Buyer Certification Form by March 1, 2022, based on information for the 2020 calendar year. Customers that are certified as ARBs based on 2020 calendar year information will receive a refund of applicable charges for the period of June 1, 2021, to May 31, 2022.

20VAC5-319-60. Confidentiality.

Where any Accelerated Renewable Energy Buyer Certification Form or other information submitted to commission staff under this chapter, including any supporting documents, contains information that the ARB asserts is confidential, it shall be treated in accordance with 5VAC5-20-170.

20VAC5-319-70. Waiver.

The commission may waive any part or all parts of this chapter for good cause shown.

FORMS (20VAC5-319)

[~~Accelerated Renewable Energy Buyer Certification Form, (draft 8/2021)~~]

[Accelerated Renewable Energy Buyer Certification Form (eff. 2/2022)]

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Accelerated Renewable Energy Buyer Certification Form

Deadline: Annually by March 1 based on information from the prior calendar year

Customer Name: _____

Generation Supplier: _____

RPS Program Compliance Year: _____ **Prior Calendar Year:** _____

Please provide the following information along with this completed form:

1. A list of the account numbers, marked as Schedule 1, to be aggregated for purposes of certifying as an accelerated renewable energy buyer ("ARB") under § 56-585.5 G of the Code of Virginia, along with the legal entity associated with that account, the maximum non-coincident peak ("NCP") demand in kilowatts for each account in the relevant calendar year, and the account's electric energy consumption in kilowatt-hours the prior calendar year. The maximum NCP demand for each account is the highest average kilowatt measured during any thirty-minute interval in the previous calendar year. Schedule 1 provides a suggested format for this information.
2. An itemized list, marked as Schedule 2, of each qualifying Renewable Energy Portfolio Standard ("RPS") eligible resource, as defined in § 56-585.5 C of the Code of Virginia, that is under contract, including the name of the RPS eligible resource; the commercial operation date; the megawatts (alternating current) rating of the resource, as defined in the interconnection agreement; the actual production from the resources sold to the ARB in megawatt-hours in the prior calendar year in the case of a bundled contract or the number of RECs sold to the ARB in the case of a REC-only contract; the contract delivery term start and end date, as defined in the power purchase agreement; a statement of the type of qualifying contract (*i.e.*, only for renewable energy certificates ("RECs") or, for bundled capacity, energy, and RECs, etc.); and a statement of whether the contract has been reviewed before as part of an annual ARB certification process. Schedule 2 provides a suggested format for this information.
3. Either (i) a copy of all executed contracts for the resources listed in Schedule 2; all market sensitive information may be redacted from the contracts other than what is necessary to verify the information required in Schedule 2; or (ii) a copy of the first and last page of all executed contracts along with the relevant provisions necessary to verify the information required in Schedule 2. To the extent a contract has been reviewed and approved as part of a prior ARB certification process, the copy of the contract need only be provided if any of the relevant provisions have changed.
4. A list, marked as Schedule 3, of the relevant RECs retired through PJM-EIS's Generation Attribute Tracking System ("GATS"). Please provide the information from the summary or reserved certificates in GATS. Schedule 3 provides a suggested format for this information.

By signing this form, I certify the following:

- That I have the authority to make and sign this form on behalf of the customer, or that I am a corporate officer or management employee fully and duly authorized to make and sign the statements contained herein on behalf of the customer.
- That all information submitted with this form is accurate to the best of my knowledge and belief.
- That all accounts listed in Schedule 1 are associated "with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of affiliated entities under a common parent." Va. Code § 56-585.5 A.
- That all relevant provisions of the contracts provided to support the information listed in Schedule 2 have been provided.
- For any contract marked in Schedule 2 as having already been reviewed and approved as part of a prior ARB certification process, that none of the relevant provisions have changed.
- That the RECs listed in Schedule 3 have been retired in the PJM or the then-current registry utilized for Virginia RPS Program compliance.

Signature

Mailing Address

Title

Email Address

Print Name

Date

