

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, SEPTEMBER 29, 2022

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00251

*Ex Parte*: In the matter of amending regulations  
governing net energy metering

ORDER ADOPTING REGULATIONS

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 *et seq.* ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 *et seq.*) of Title 56 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

On November 12, 2021, the Commission entered an Order Establishing Proceeding ("Order Establishing Proceeding") in this docket to consider revisions to the Net Energy Metering Rules to reflect a statutory change enacted by Chapter 266 of the 2021 Acts of Assembly, Special Session I ("Chapter 266"), which amended the definition of "[s]mall agricultural generator" in § 56-594.2 of the Code as follows:

"Small agricultural generator" means a customer that:

...

2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1;

...

The Staff of the Commission prepared a proposed amendment to Rule 20 VAC 5-315-20 of the Net Energy Metering Rules ("Proposed Amendment") to reflect the revisions mandated by Chapter 266.

It came to the Commission's attention that the Order Establishing Proceeding was entered without the Proposed Amendment being appended thereto. Therefore, the Commission entered an Order *Nunc Pro Tunc* on November 16, 2021, to which the Proposed Amendment was appended and made a part of the record.<sup>1</sup>

Ordering Paragraph (4) of the Order Establishing Proceeding, as modified by Ordering Paragraph (3) of the Order *Nunc Pro Tunc*, required each Virginia electric distribution company to which the Net Energy Metering Rules apply to serve a copy of the Order Establishing Proceeding and the Order *Nunc Pro Tunc* (including the attached Proposed Amendment) upon each of their respective net metering customers and each of their existing small agricultural generators.

On November 22, 2021, Virginia Electric and Power Company ("Dominion") and Appalachian Power Company (collectively, "the Companies") filed a joint motion seeking an order from the Commission replacing the above-referenced notice and service requirement with a provision authorizing the Companies to provide notice of this proceeding by publication in newspapers of general circulation throughout their respective service territories in Virginia. The Companies also sought to extend the service deadline. On November 24, 2021, the Virginia Electric Cooperatives ("the Cooperatives") filed a motion requesting that the Commission allow for notice of this proceeding by publication, as well as to modify the procedural schedule.

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<sup>1</sup> The Order *Nunc Pro Tunc* also removed and replaced an incorrect date reference in Ordering Paragraph (7) of the Order Establishing Proceeding.

Upon consideration of the Companies' and the Cooperatives' motions, the Commission entered the Order Modifying Notice Requirements and Procedural Schedule ("Modifying Order") on December 3, 2021. In the Modifying Order, the Commission amended Ordering Paragraph (4) of the Order Establishing Proceeding, as modified by Ordering Paragraph (3) of the Order *Nunc Pro Tunc*, to allow the option for notice of this proceeding and the Proposed Amendment by publication. The Commission also amended procedural deadlines to accommodate such publication.

Notice of this proceeding and the Proposed Amendment were published in the *Virginia Register of Regulations* on December 6, 2021 and January 17, 2022. Interested persons were directed to file any comments and requests for hearing on the Proposed Amendment on or before May 27, 2022.

Dominion and the Cooperatives filed comments. No one requested a hearing on the Proposed Amendment. Dominion states that "the proposed revisions track the changes made to Va. Code § 56-594.2." The Cooperatives state that they "strongly support the amendment" to the Net Energy Metering Rules.

Additionally, on May 16, 2022, Kentucky Utilities Company d/b/a Old Dominion Power Company in the Commonwealth of Virginia ("KU-ODP") filed its Motion for Deviation from Notice Requirements ("Motion").<sup>2</sup>

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<sup>2</sup> In its Motion, KU-ODP asserts that it served a copy of the Order *Nunc Pro Tunc* (including the attached Proposed Amendment) on each of its net metering customers. KU-ODP also states that it has no existing small agricultural generators. However, KU-ODP explains that it inadvertently failed to include copies of the Order Establishing Proceeding and Modifying Order in such service, but upon becoming aware of such omission, it mailed all three Commission orders to net metering customers on May 12, 2022, which was past the April 1, 2022 service deadline. *See* Motion at 2.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulation attached hereto as Appendix A should be adopted as a final rule, as discussed herein.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Net Energy Metering, as shown in Appendix A to this Order, are hereby adopted and are effective as of October 14, 2022.

(2) A copy of this Order with Appendix A including the Regulations Governing Net Energy Metering shall be forwarded to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

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

[scc.virginia.gov/pages/Rulemaking](http://scc.virginia.gov/pages/Rulemaking).

(4) On or before January 3, 2023, each Virginia electric distribution company to which the Regulations Governing Net Energy Metering apply shall file in this docket, with the Clerk of the Commission, any revised tariff provisions necessary to implement the regulations adopted herein, and shall also provide a copy of the document containing the revised tariff provisions with the Commission's Division of Public Utility Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(5) This docket shall remain open to receive the filings from electric utilities pursuant to Ordering Paragraph (4).

(6) KU-ODP's Motion is granted.

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.

**Project 6231 - Other Action**

**State Corporation Commission**

**CH 315 Rules Governing Net Energy Metering**

**20VAC5-315-20. Definitions.**

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

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the production and sale of plants and animals, products collected from plants and animals, or plant and animal services that are useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters serving the agricultural net metering customer that are located at the same or adjacent sites and that may be aggregated into one account. This account shall be served under the appropriate tariff.

"Agricultural renewable fuel generator" or "agricultural renewable fuel generating facility" means one or more electrical generators that:

1. Use as their sole energy source solar power, wind power, or aerobic or anaerobic digester gas;
2. The agricultural net metering customer owns and operates, or has contracted with other persons to own or operate, or both;

3. Are located on land owned or controlled by the agricultural business;
4. Are connected to the agricultural net metering customer's wiring on the agricultural net metering customer's side of the agricultural net metering customer's interconnection with the distributor;
5. Are interconnected and operated in parallel with an electric company's distribution facilities; and
6. Are used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular agricultural net metering customer or a net metering customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the agricultural net metering customer's or net metering customer's bills.

"Billing period credit" means, for a nontime-of-use agricultural net metering customer or a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the agricultural net metering customer's agricultural renewable fuel generator or by the net metering customer's renewable fuel generator in excess of the electricity supplied to the customer over the billing period. For time-of-use agricultural net metering customers or time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric cooperative" means an electric distribution company organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia, owned by its members.

"Electric distribution company" means the entity that owns or operates the distribution facilities delivering electricity to the premises of an agricultural net metering customer or a net metering customer.

"Energy service provider (supplier)" means the entity providing electricity supply service, either tariffed or competitive service, to an agricultural net metering customer or a net metering customer.

"Excess generation" means the amount of electrical energy generated in excess of the electrical energy consumed by the agricultural net metering customer or net metering customer over the course of the net metering period. For time-of-use agricultural net metering customers or net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" or "generating facility" means an electrical generating facility consisting of one or more renewable fuel generators or one or more agricultural renewable fuel generators that meet the criteria under the definition of "net metering customer" and "agricultural net metering customer," respectively.

"Low-income utility customer" means the same as that term is defined in § 56-576 of the Code of Virginia.

"Net metering customer" means for an electric cooperative, a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers. The generating facility shall be operated under a net metering service arrangement. For an investor-owned electric distribution company, "net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 25 kilowatts for residential customers and not more than three megawatts for nonresidential customers. The generating facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the final interconnection of an agricultural net metering customer or a net metering customer's generating facility consisting of one or more agricultural renewable fuel generators or one or more renewable fuel generators, respectively, with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to an agricultural net metering customer operating an agricultural renewable fuel generating facility or a net metering customer operating a renewable fuel generating facility and measuring the difference, over the net metering period, between the electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Nonprofit customer" or "not-for-profit customer" means a person that is exempt from federal income taxation, including (without limitation) schools, hospitals, institutions of higher education,

public charities, and churches and other houses of religious worship, as determined by the Internal Revenue Service.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, county, town, authority, or other political subdivision of the Commonwealth.

"Phase I Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Purchase power agreement provider" or "PPA provider" means, in an electric cooperative service territory, a person registered with the commission's Division of Public Utility Regulation pursuant to 20VAC5-315-77 to offer third-party partial requirements power purchase agreements to customers.

"Registry" means, in reference to a PPA provider, the list of those persons registered with the commission's Division of Public Utility Regulation as PPA providers.

"Renewable Energy Certificate" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy by a generator.

"Renewable fuel generator" or "renewable fuel generating facility" means one or more electrical generators that:

1. Use renewable energy, as defined by § 56-576 of the Code of Virginia, as their total fuel source;

2. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on land owned or leased by the net metering customer and connected to the net metering customer's wiring on the net metering customer's side of its interconnection with the distributor;
4. Are interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's distribution facilities; and
5. Are intended primarily to offset all or part of the net metering customer's own electricity requirements. For an electric cooperative, the capacity of any generating facility installed on or after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. For an investor-owned electric distribution company, the capacity of any generating facility installed between July 1, 2015, and July 1, 2020, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity of not more than 1.5 megawatts and does not exceed 150% of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;
2. Uses as its total source of fuel renewable energy;
3. Is located on the customer's premises and is interconnected with the utility's distribution system through a separate meter;

4. Is interconnected and operated in parallel with an electric utility's distribution system but not transmission facilities;
5. Is designed so that the electricity generated is expected to remain on the utility's distribution system; and
6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-594 of the Code of Virginia;
2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1 of the Code of Virginia;
3. May be served by multiple meters that are located at separate but contiguous sites;
4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150% of the customer's expected annual energy consumption but not for billing or retail service purposes, provided that the same utility serves all of its meters;
5. Uses not more than 25% of the contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and
6. Provides the electric utility with a certification, attested under oath, as to the amount of land being used for renewable generation.

"System peak" for an electric cooperative, means the highest peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric

cooperative's customers of the past three years listed in Part O, Line 20 of Form 7 (Financial And Operating Report - Electric Distribution) filed with the U.S. Department of Agriculture's Rural Utilities Service (RUS), or an equivalent form if a cooperative is not an RUS borrower, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate.

"Third-party partial requirements power purchase agreement" or "third-party PPA" means, for an electric cooperative, an agreement entered into pursuant to § 56-594.01 K of the Code of Virginia between a customer engaging in net energy metering and a registered PPA provider pursuant to 20VAC5-315-77.

"Time-of-use customer" means an agricultural net metering customer or net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.