

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 25, 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 FOR NOTICE AND COMMENT

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.

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

The following entities filed comments: Dominion and APCo,² jointly; the Virginia Office of the Attorney General, Division of Consumer Counsel; Walmart, Inc. ("Walmart"); the Data Center Coalition ("DCC"); and the Advanced Energy Buyers Group ("AEBG").³ Dominion and APCo included draft proposed regulations with their joint comments. Among other things, the comments of the AEBG stated that "[i]n addition to providing responses below to the questions posed by the Commission, AEBG also requests the opportunity to reply to feedback submitted by [Dominion and APCo]."⁴

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 Dominion and APCo, jointly; Walmart; DCC; and AEBG.⁵

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

² On June 21, 2021, APCo also filed a Motion to Accept Affidavit Out of Time ("Motion") related to requirements set forth in the Initial Order to transmit a copy of the Initial Order to customers eligible to be certified as ARBs. No responses to APCo's Motion were filed, and the Commission will grant the Motion herein.

³ AEBG filed its comments on June 22, 2021. The Commission hereby exercises its discretion to accept AEBG's comments one day out of time.

⁴ AEBG Comments at 2.

⁵ AEBG filed its comments on July 30, 2021. The Commission hereby exercises its discretion to accept AEBG's comments one day out of time.

Proposed Rules should be sent to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

The Commission takes judicial notice of the ongoing public health issues related to the spread of the coronavirus, or COVID-19. The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.⁶ Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments.

Accordingly, IT IS ORDERED THAT:

(1) All pleadings, briefs, or other documents required to be served in this matter should be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁷

Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document

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

⁷ 5 VAC 5-20-10 *et seq.*

shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁸

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

(3) An electronic copy of the Proposed Rules may be obtained by submitting a request to Allison F. Samuel in the Commission's Division of Public Utility Regulation at the following email address: Allison.Samuel@scc.virginia.gov. An electronic copy of the Proposed Rules can be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking. Interested persons may also download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(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.

(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.

⁸ As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may be subject to delayed processing due to the COVID-19 public health issues.

(6) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to any additional individuals, organizations, and companies who have been identified by the Staff as having interest in this matter.

(7) On or before November 5, 2021, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Such comments may also include proposals and hearing requests. All comments shall refer to Case No. PUR-2021-00089. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(8) On or before November 19, 2021, the Staff shall file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(9) APCo's Motion is granted.

(10) This matter is continued.

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

ATTACHMENT

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 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.

"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 thirty-minute interval in the previous calendar year.

"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.

"RECs" means renewable energy certificates.

"REC-Only Contract" means a contract for purchase of unbundled RECs from RPS eligible resources.

"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 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 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 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.

20VAC5-319-50. Utility certification process.

A. Each Phase I 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 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.

B. By May 1 annually, each Phase I and Phase II Utility shall submit to commission staff a complete list of ARBs certified by the utility. Each Phase I 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 and Phase II Utility may file a formal complaint with the commission pursuant to 5VAC5-20-100 within five business days of the certification decision. Commission staff may contest the certification decision made by a Phase I and 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.

C. Customers certified as ARBs through this process shall be exempt from the applicable charges 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 commission's Rules of Practice and Procedure (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

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 and the maximum non-coincident peak ("NCP") demand in kilowatts for each account in the relevant 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 in megawatt-hours in the prior calendar year; the contract delivery term start and end date, as defined in the power purchase agreement; and a statement of the type of qualifying contract (*i.e.*, only for renewable energy certificates ("RECs") or, for bundled capacity, energy, and RECs, etc.). Schedule 2 provides a suggested format for this information.

3. 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.

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 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

