



## Virginia State Corporation Commission Approves Energy Storage Regulations

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In December 2020, the Virginia State Corporation Commission (the "Commission") issued an order (the "Order") adopting Regulations Governing the Deployment of Energy Storage, 20 VAC 5-335-10 *et seq.* (the "Rules"). The Rules were adopted pursuant to Virginia Code § 56-585.5 E 5 and are effective as of January 1, 2021.

### **Background**

As background, the Virginia Clean Economy Act (VCEA), enacted by the General Assembly in 2020, requires Appalachian Power Company (APCo) and Virginia Electric and Power Company (Dominion) to petition the Commission for approval to construct or acquire 400 MWs and 2,700 MWs, respectively, of new utility-owned energy storage resources by 2035.

The VCEA, specifically Va. Code § 56-585.5 E 5, provides that "[b]y January 1, 2021, the Commission shall adopt regulations to achieve the deployment of energy storage for the Commonwealth required in subdivisions 1 and 2, including regulations that set interim targets and update existing utility planning and procurement rules. The regulations shall include programs and mechanisms to deploy energy storage, including competitive solicitations, behind-the-meter incentives, non-wires alternatives programs, and peak demand reduction programs."

### **Who Is Subject to the Rules?**

APCo and Dominion are subject to 20 VAC 5-335-30 through 20 VAC 5-335-70, relating to the establishment of certain minimum interim energy storage targets, procurement of energy storage projects, behind-the-meter incentives, non-wire alternative programs, and peak demand reduction programs. APCo and Dominion are also subject to 20 VAC 5-335-120 (confidentiality) and 20 VAC 5-335-130 (waiver).

Non-utility developers, owners, operators, and aggregators of energy storage are subject to 20 VAC 5-335-80, relating to permitting of non-utility energy storage facilities, and 20 VAC 5-335-90 through 20

VAC 5-335-130, relating to licensing, registration and marketing of energy storage aggregators, and confidentiality and waiver.

Electric cooperatives are not subject to the Rules.

**Minimum Interim Targets for Energy Storage Deployment**

The Rules establish certain minimum interim targets for APCo and Dominion to achieve energy storage deployment in Virginia. The following chart sets forth the target amounts and dates by which APCo and Dominion are to petition the Commission for necessary approvals to construct or acquire the specified level of energy storage power rating[1]:

<b>Utility</b>	<b>By December 31, 2025</b>	<b>By December 31, 2030</b>	<b>By December 31, 2035</b>
<b>APCo</b>	25 MWs	Additional 125 MWs (total 150 MWs)	Additional 250 MWs  (total 400 MWs)
<b>Dominion</b>	250 MWs	Additional 950 MWs (total 1,200 MWs)	Additional 1,500 MWs  (total 2,700 MWs)

At least 35% of the energy storage facilities placed into service by APCo and Dominion are to be (i) purchased by APCo and Dominion from a party other than the utility, or (ii) owned by a party other than APCo or Dominion, with the capacity of such facilities sold to the utility. The 35% threshold is to apply to each interim target set forth above.

**Competitive Procurement**

Under the Rules, APCo and Dominion are to use competitive bidding in procuring energy storage projects, to the extent practicable (consistent with Va. Code § 56-233.1). Beginning in 2021 and ending in the earlier of 2035 or when such storage targets are met, APCo and Dominion are to conduct at least one competitive solicitation for energy storage projects annually. The Rules provide additional requirements for such competitive solicitations. APCo and Dominion are to report on any competitive

solicitations for energy storage projects as part of the annual plan required by Va. Code § 56-585.5 D 4.

### **Behind-the-Meter Incentives; Non-Wires Alternative Programs; Peak Demand Reduction Programs**

The Rules provide that, as part of the annual proceeding required by Va. Code § 56-585.5 D 4, APCo and Dominion are to address:

- Behind-the-meter incentives related to energy storage;
- Non-wires alternative programs related to energy storage; and
- Peak demand reduction programs related to energy storage.

### **Permitting of Non-Utility Energy Storage Facilities**

- *Energy Storage Facilities 1 MW or Greater*

The Rules also include requirements for permitting of non-utility energy storage facilities. In particular, the Rules provide that each person (other than APCo or Dominion) seeking to construct and operate an energy storage facility[2] in the Commonwealth with an energy storage power rating of one (1) megawatt or greater, either on a stand-alone basis or on an aggregated basis facilitated by an energy storage aggregator, are to:

1. obtain a permit from the Commission pursuant to 20 VAC 5-335-80 (a ?Permit?); or
2. apply for and receive a certificate of public convenience and necessity (CPCN) from the Commission pursuant to Va. Code § 56-580.[3]

In evaluating a Permit application, the Commission is to 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; and (iii) is not otherwise contrary to the public interest[4]

Additional Permit application information requirements are included in the Rules.

- *Energy Storage Facilities Less than 1 MW*

For construction and operation of an energy storage facility with an energy storage power rating of less than one (1) megawatt, persons are required to 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 certified service territory the energy storage facility is located.

### **Energy Storage Aggregators**

The Rules require that any person (other than APCo or Dominion) seeking to conduct business as an energy storage aggregator is to first obtain a license from the Commission prior to commencing operations. The Rules include application information requirements. Once an energy storage aggregator is licensed by the Commission, it is required to register with the utility in whose certificated service territory it intends to operate.

Finally, the Rules require energy storage aggregators to provide accurate, understandable information in any advertisements, solicitations, marketing materials or customer service contracts in a manner that is not misleading. The Rules also require energy storage aggregators to include specific information in their customer service contracts, including explanations of the price for the energy storage aggregator's services, explanations of how the customer will be compensated for the value of its energy storage, and length of the service contract, among others.

For more information about the Rules or about development or permitting of energy storage in Virginia, please contact Brad Nowak, co-Chair of Williams Mullen's Solar & Energy Storage Practice.

[1] "Energy storage power rating" is defined as "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." 20 VAC 5-335-20.

[2] The Rules define (a) "energy storage facility," in part, as "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" and (b) "energy storage resource" as "(i) 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 (ii) a resource capable of the active or dynamic exchange of energy." 20 VAC 5-335-20.

[3] 20 VAC 5-335-80 A.

[4] 20 VAC 5-335-80 B.

## Related People

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