

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 663

An Act to amend and reenact § 56-585.1:3 of the Code of Virginia, relating to electric utilities; community solar development pilot program; facilities in low-income communities.

[H 573]

Approved April 6, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.1:3 of the Code of Virginia is amended and reenacted as follows:

§ 56-585.1:3. Pilot programs for community solar development.

A. As used in this section:

"Eligible generation facility" means an electrical generation facility that:

1. Exclusively uses energy derived from sunlight;
2. Is placed in service on or after July 1, 2017;
3. Is not constructed by an investor-owned utility and either (i) is acquired by an investor-owned utility through an asset purchase agreement or (ii) is subject to a power purchase agreement under which an investor-owned utility purchases the facility's output from a third party; and

4. Has a generating capacity of:

- a. Not more than two megawatts; or
- b. More than two megawatts if not more than two megawatts of the output from the electrical generation facility is selected in an investor-owned utility's RFP for dedication to its pilot program.

"Generating capacity" means an electrical generation facility's nameplate rated capacity measured in direct current megawatts.

"Investor-owned utility" means an electric utility that is a Phase I Utility or a Phase II Utility.

"Low-income community" means a census tract within the Commonwealth designated by the U.S. Department of Housing and Urban Development in 2019 or any year thereafter as a qualified census tract for purposes of the Low-Income Housing Tax Credit pursuant to § 42 of the Internal Revenue Code.

"Participating generating facility" means an eligible generation facility that is selected by an investor-owned utility through its RFP for inclusion in its pilot program.

"Participating third party" means, for investor-owned utilities, a Virginia nonresidential-class customer, an affiliate, a solar development entity, or a nonjurisdictional customer that takes on the obligation, as part of a variable-output contract, of pilot program costs not recovered through the voluntary companion rate schedule as specified in subdivision B 8.

"Participating utility" means (i) each investor-owned utility and (ii) any utility consumer services cooperative that elects to conduct a pilot program under subsection C.

"Phase I Utility" means an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002.

"Phase II Utility" means an investor-owned incumbent electric utility that was, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002.

"Pilot program" means a community solar pilot program conducted by a participating utility pursuant to this section following approval by the Commission, under which the participating utility sells electric power to subscribing customers under a voluntary companion rate schedule and the participating utility generates or purchases electric power from participating generation facilities selected by the participating utility.

"Pilot program costs" means all of a participating utility's identified, projected, and actual costs of its pilot program, including costs for (i) purchased power; (ii) renewable and other environmental attributes; (iii) transmission and distribution services; (iv) generating capacity and energy balancing; (v) RFP process costs; (vi) administrative and marketing charges; (vii) capital costs and operations and maintenance expenses related to building, owning, and operating eligible generating facilities; and (viii) a reasonable margin, which margin shall be the weighted average cost of capital.

"Pilot program period" means the three-year period ending three years following the date the first subscription is entered into by a customer.

"RFP" means the request for proposal process conducted by an investor-owned utility.

"Small eligible generation facility" means an eligible generation facility with a generating capacity of less than 0.5 megawatt.

"Solar development entity" means a business entity organized primarily for the purpose of proposing, developing, constructing, purchasing, or selling at wholesale all or part of the output of an eligible

generation facility. A solar development entity may be organized in any form and may be a special purpose entity.

"Utility aggregation cooperative" has the same meaning ascribed to "cooperative" in § 56-231.38.

"Utility consumer services cooperative" has the same meaning ascribed to "cooperative" in § 56-231.15.

"Voluntary companion rate schedule" means a rate schedule approved by the Commission upon application by a participating utility that provides for the recovery of the pilot program costs by the participating utility.

B. Notwithstanding the provisions of subsection B of § 56-234 and §§ 56-249.6 and 56-585.1, each investor-owned utility shall conduct a pilot program for retail customers as follows:

1. Each investor-owned utility shall design its own pilot program and within six months of receiving Commission approval shall make subscriptions for participation in its pilot program available to its retail customers on a voluntary basis.

2. An investor-owned utility shall select eligible generating facilities for dedication to its pilot program through an RFP process, under which process:

a. Each investor-owned utility shall have issued one or more public RFPs for eligible generating facilities and the purchase of all energy output and associated renewable energy certificates and other environmental attributes.

b. Each RFP shall:

(1) State the price and non-price criteria used by the investor-owned utility in selecting proposals for dedication to its pilot program; and

(2) Require as a criterion for selection that eligible generating facilities with a combined generating capacity of not less than two megawatts, and any eligible generating facility with a generating capacity of more than two megawatts, be first placed in service on or after July 1, 2017.

c. Each investor-owned utility is authorized to select, under an asset purchase or power purchase agreement, small eligible generating facilities for dedication to its pilot program without regard to whether price criteria are satisfied by their selection if the selection of the small eligible generating facilities (i) materially advances non-price criteria, including a criterion favoring geographic distribution of eligible generating facilities, provided that the generating capacity of small eligible generating facilities does not exceed 25 percent of the utility's pilot program's minimum generating capacity specified in subdivision 3, *or (ii) is located in a low-income community as provided in subdivision 15.*

d. An investor-owned utility shall not select through its RFP an electrical generation facility with a generating capacity of more than two megawatts for its pilot program unless (i) the costs can be appropriately documented for the portion of the facility's output, which portion shall not exceed two megawatts, that is dedicated to the pilot program and (ii) for a Phase II Utility only, the portion of the facility's generating capacity selected pursuant to this subdivision does not exceed 50 percent of the investor-owned utility's pilot program's minimum generating capacity specified in subdivision 3. The portion of the facility's generating capacity that exceeds the portion of the facility's generating capacity that is selected pursuant to this subdivision shall not be applied in determining whether the pilot program satisfies requirements of subdivision 3 regarding a pilot program's minimum generating capacity.

e. In selecting eligible generating facilities for dedication to its pilot program, an investor-owned utility shall give due consideration to relative costs, economic development benefits, and geographic diversity of eligible generating facilities *and ensure that the selection of such facilities complies with the requirements of subdivision 15 regarding the location of eligible generating facilities in low-income communities.*

f. The investor-owned utility's application to the Commission shall include a description of the application of the price and non-price criteria in the investor-owned utility's selection of participating generating facilities from among the proposals submitted in response to the RFP.

3. The amount of generating capacity of the eligible generating facilities in an investor-owned utility's pilot program shall not be less than (i) 0.5 megawatt if the pilot program is conducted by a Phase I Utility or (ii) 10 megawatts if the pilot program is conducted by a Phase II Utility.

4. The amount of generating capacity of the eligible generating facilities in an investor-owned utility's pilot program shall not exceed (i) 10 megawatts if the pilot program is conducted by a Phase I Utility or (ii) 40 megawatts if the pilot program is conducted by a Phase II Utility.

5. An investor-owned utility shall have the option of increasing the amount of generating capacity of the eligible generating facilities in its pilot program above the amount most recently approved by the Commission, in such increments as the investor-owned utility elects, as follows:

a. Any such increase shall not result in an amount of generating capacity that exceeds the cap specified for the investor-owned utility's pilot program under subdivision 4;

b. No such increase shall be authorized until such time that 90 percent of the amount of generating capacity of the eligible generating facilities then approved for its pilot program has been subscribed by customers through the investor-owned utility's voluntary companion rate schedule;

c. An investor-owned utility may seek any number of increases in the amount of generating capacity

of the eligible generating facilities in its pilot program, subject to the conditions in subdivisions a and b; and

d. The investor-owned utility shall select eligible generating facilities for any increase in the generating capacity of its pilot program through an RFP process that complies with the requirements of subdivision 2.

6. Each pilot program shall expire at the end of its pilot program period, unless renewed or made permanent as provided in subsection G.

7. The renewable energy certificates and other environmental attributes associated with the voluntary companion rate schedule shall be retired by the investor-owned utility on the subscribing customer's behalf.

8. An investor-owned utility shall recover all its pilot program costs primarily through its voluntary companion rate schedule. However, pilot program costs that are not recovered through the voluntary companion rate schedule shall be recoverable from a participating third party and not from the investor-owned utility's Virginia jurisdictional customers. To the extent participating third parties are obligated for pilot program costs not recovered through the voluntary companion rate schedule, variable-output contracts between participating third parties other than affiliates and investor-owned utilities shall be negotiated at arm's length and shall not be reviewable by the Commission and shall require no further Commission approvals pursuant to Chapter 4 (§ 56-76 et seq.) or other applicable law.

9. At the conclusion of the pilot program period, to the extent that the pilot program is not made permanent or extended, each participating generating facility shall cease to be part of the pilot program and shall return to operation under the variable-output contract with a participating third party.

10. Any fixed generation costs and fixed purchased power costs shall remain fixed for subscribing customers throughout the duration of the subscribing customers' continuous and uninterrupted participation in the voluntary companion rate schedule. A subscribing customer's participation in the voluntary companion rate schedule shall be deemed to be continuous and uninterrupted notwithstanding a change in the location where the customer receives service if the new location continues to be within the investor-owned utility's service territory and the customer provides the investor-owned utility with notice of the change prior to or within 90 days following the change. Investor-owned utilities are authorized to decrease the generation or purchased power rate, or both, at any time to reflect cost reductions, if any, subject to Commission review. If, pursuant to subdivision 9, the pilot program is not made permanent or continued, the subscribing customers' subscriptions to the voluntary companion rate schedule shall survive the termination of the pilot program.

11. A subscribing customer's usage that exceeds the amount subscribed for under the voluntary companion rate schedule shall be billed under the customer's applicable standard rate.

12. An investor-owned utility shall not require a subscribing customer to enter an agreement or subscription for participation in a pilot program of more than 12 months' duration unless the subscribing customer's subscription exceeds 100 kW, or its equivalent in kWh, at the time the customer initially enters into the agreement or subscription.

13. As part of an arrangement with a solar development entity, a utility may enter into an agreement that provides for risk sharing and collaboration in marketing a utility's pilot program if the solar development entity is a participating third party.

14. An investor-owned utility shall have the ability to close its pilot program to new subscribers according to the terms of the voluntary companion rate schedule upon notice to the Commission. This option shall be exercisable once per year, upon the anniversary date of the Commission's order approving the voluntary companion rate schedule.

15. Notwithstanding any provision of this section to the contrary, effective July 1, 2020, an investor-owned utility shall not select an eligible generating facility that is located outside a low-income community for dedication to its pilot program unless the investor-owned utility contemporaneously selects for dedication to its pilot program one or more eligible generating facilities that are located within a low-income community and of which the pilot program costs equal or exceed the pilot program costs of the eligible generating facility that is located outside a low-income community.

C. Notwithstanding the provisions of subsection B of § 56-234 and §§ 56-249.6 and 56-585.1, upon application of a utility consumer services cooperative the Commission shall review a proposal submitted by the cooperative for a voluntary companion rate schedule. If the Commission finds that the proposal is reasonable and prudent, it shall approve the voluntary companion rate schedule for the cooperative to conduct a pilot program pursuant to this section. No utility consumer services cooperative shall be required to conduct a pilot program pursuant to this section. In making an application to the Commission pursuant to this subsection, a utility consumer services cooperative shall have flexibility to design its voluntary companion rate schedule in a manner that, notwithstanding anything to the contrary in this section, provides the cooperative the ability to:

1. Construct or purchase its generating facilities, or dedicate a portion of its existing power supply portfolio, for its community solar pilot program along with one or more other utility consumer services cooperatives, one or both Phase I or Phase II Utilities, or a utility aggregation cooperative, through requests for proposal or through a contract with a third party or a utility aggregation cooperative;

2. If constructing or purchasing its generating facilities, or dedicating a portion of its existing power supply portfolio, for its pilot program through a utility aggregation cooperative, include generating facilities that may be already in service or may be first placed into service at any time;

3. Utilize generating facilities of any generating capacity for its pilot program;

4. Physically locate the generating facilities used for the pilot program inside or outside of its certificated service territory;

5. Design its voluntary companion rate schedule in coordination with one or more utility consumer services cooperatives, such that participating subscribers from both cooperatives subscribe to an identical rate schedule;

6. Permanently end its pilot program for all subscribers according to the terms of the voluntary companion rate schedule; and

7. Recover pilot program costs that are not recovered through the voluntary companion rate schedule by including unrecovered purchased power expense in the cooperative's cost of purchased power and through a regulatory asset for unrecovered costs that are not purchased power expense, subject to the oversight of the cooperative's board of directors, which regulatory asset shall be approved by the Commission.

D. The participation of retail customers in a pilot program administered by a participating utility in the Commonwealth is in the public interest. Voluntary companion rate schedules approved by the Commission pursuant to this section are necessary in order to acquire information which is in furtherance of the public interest. The Commission shall approve the recovery of pilot program costs that it deems to be reasonable and prudent. The Commission shall also approve the pilot program design, the voluntary companion rate schedule, and the portfolio of participating generating facilities. No Commission review or approval of individual participating generating facilities, agreements, sites, or RFPs shall be required pursuant to this section or any other section of the Code.

E. Any voluntary companion rate schedule approved by the Commission pursuant to this section shall not be considered a tariff for electric energy provided 100 percent from renewable energy pursuant to § 56-577.

F. Each participating utility shall report on the status of its pilot program, including the number of subscribing customers, to the Governor, the Commission, and the Chairmen of the House and Senate Commerce and Labor Committees. The report shall be filed the earlier of (i) three years after the date a customer of the participating utility first subscribes to its pilot program or (ii) July 1, 2022. If a participating utility closes its pilot program to new subscribers pursuant to subdivision B 14, it shall notify the Governor, the Commission, and the Chairmen of the House and Senate Commerce and Labor Committees not later than three months after such closure, which notification shall (a) describe the reasons for the closure and (b) be provided in lieu of the status report otherwise required by this subsection.

G. At any time after filing its report on the status of its pilot program as required by subsection F, a participating utility may, in its application proceeding, move the Commission to make its pilot program permanent. The motion shall include a compliance filing with conforming changes to the participating utility's applicable rate schedules. Upon the Commission's granting of the motion, the pilot program shall become a regular rate schedule of the participating utility.