Virginia Clean Energy Advisory Board

% Department of Mines, Minerals and Energy
Washington Building, 8th Floor
1100 Bank Street
Richmond, Virginia 23219-3638
(804) 692-3200 FAX (804) 692-3237
https://dmme.virginia.gov/de/CleanEnergyAdvisoryBoard2019.shtml

November 2, 2020

Mr. Joel H. Peck, Clerk
c/o Document Control Center
State Corporation Commission
Tyler Building – First Floor
1300 East Main Street
Richmond, Virginia 23219

Subject: Case Number PUR-2020-00124

Dear Mr. Peck:

The Virginia Clean Energy Advisory Board (the Board) respectfully submits this letter as the comments of the Board to the State Corporation Commission (Commission) in the above-referenced proceeding. The Commission opened this proceeding to receive comments from interested parties to inform regulations for a new shared solar program available to multi-family customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("Dominion") and Kentucky Utilities Company d/b/a Old Dominion Power Company ("ODP") pursuant to § 56-585.1:12 of the Virginia Code (the "Multi-family Shared Solar Statute").[1] The Board submitted comments on July 24, 2020 in this docket highlighting important issues to be addressed in the regulations (the "Board's July Comments") and the Board submits comments today on the Commission's proposed regulations. The Board appreciates the opportunity to provide comments on this very important opportunity to increase access to solar energy for low- and moderate-income Virginians in Dominion and ODP's territory.

In 2019 the Virginia General Assembly passed HB 2741 establishing the Board as an advisory board in the executive branch of state government.[2] The Board's mission is to ensure that low- and moderate-income Virginians can access cost-effective clean energy and are not left behind in Virginia's clean energy transition. Many residential and non-residential electricity customers face significant challenges to installing rooftop solar including: up-front and

[1] Order Directing Comment, Va. State Corp. Comm'n, Docket No. PUR-2020-00124, at 1 (July 1, 2020), https://scc.virginia.gov/docketsearch/DOCS/4nsj01!.PDF.
[2] HB 2741 (Mar. 18, 2019), https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0554.

maintenance costs of the system; suboptimal roof orientation or structural constraints; and shading from trees or other buildings. For renters, residents of multifamily buildings, and low- to moderate income customers, shared solar programs offer customers the opportunity to invest in solar in a way that fits their budgets, and derive some of the benefits (such as lowering monthly electric bills and energy burdens), while a third-party entity is responsible for building and maintaining the solar facility and ensuring the benefits are attributed to participating customers. As a result, the Board's mission includes supporting robust shared solar programs that are broadly available, especially to low- and moderate-income Virginians.

Although the Multi-family Shared Solar Statute does not contain specific provisions for low-income customers, the Board believes that low-income customers should be encouraged to participate. ODP serves an area of the state where between 18.5 percent and 25.4 percent of residents live in poverty[3] and these residents spend a much larger percentage of their income on their energy bills than residents in other parts of the state.[4] In addition, since ODP is exempted from the Virginia Electric Utility Restructuring Act[5] it is not required to offer programs to help customers reduce their energy usage, which means that there are very few opportunities for customers to lower their bills. This multi-family shared solar program is one important avenue for customers to lower their energy bills.

As we did in our original comments, the Board has confined these comments to the issues most directly impacting low-income customers. However, the Board still believes that for this program to be successful for low-income customers, it also needs to be financially attractive to potential subscribers who are not low-income customers. As a result, the bill credits need to provide savings to all subscribers, and this can only be achieved by having low administrative charges. As set forth in these proposed regulations, it is unclear whether this program will result in monetary savings for subscribers.

The Board understands that the Multi-family Shared Solar Statute mandates a tight turnaround time for these regulations. However, we believe that to have a successful program the following issues need to be addressed at a minimum whether here in regulations or in subsequent guidance issued by the Commission.

I. Regulations Impose Additional, Arbitrary Restrictions on Participation.

As proposed, the regulations impose additional restrictions on participation that arbitrarily restrict potential subscribers and limit the potential success of this program.

[3] Small Area Income and Poverty Estimates (SAIPE), Census.gov, https://www.census.gov/data-tools/demo/saipe/#/?map_geoSelector=aa_c&s_state=51&s_year=2018&s_county=51051,51105,51167,51169,51195 (Percent in poverty in Dickenson, Lee, Russell, Scott, and Wise counties based on 2018 data).

[4] Low-Income Energy Affordability Data Tool, Office of Energy Efficiency & Renewable Energy, U.S. Dep't of Energy, https://www.energy.gov/eere/slsc/maps/lead-tool (indicating 3-5% of income is spent on energy bills in ODP territory based on census tract data in comparison to an average of 2% statewide); Affordable Clean Energy Project, Virginia Poverty Law Center, https://vplc.org/affordable-clean-energy-project/ (indicating 5-8.2% of income is spent on energy bills in ODP territory based on zip code level data in comparison to an average of 3.1% statewide).

[5] Va. Code § 56-580(G).

A. Definition for "Multi-family customer" Arbitrarily Restricts Participation.

The proposed regulations define "Multi-family customer" as "an investor-owned utility customer residing in an apartment or condominium complex with at least three individually metered residences." 20VAC5-342-20. This definition is not in the Multi-family Shared Solar Statute and arbitrarily restricts participation. For example, the proposed definition prohibits residents of duplexes from participating in this program. As stated in the Board's July Comments, the Board believes a multi-family customer should be a utility customer for a building with more than one individually metered residence – including duplexes and apartment buildings. In addition, this proposed definition requires that the customer "reside" in the residence. Again, this is not required by the Multi-family Shared Solar Statute. This requirement prevents multi-family housing building owners who do not live in the building from subscribing for electricity to power shared common areas and offices within the multi-family building. This also prevents building owners from subscribing on behalf of their tenants and passing these benefits on to their tenants directly or through tangible benefits to the tenants. It is also unclear under this definition whether a customer that is a limited liability company or other corporate entity could participate in the program. The Board recommends that the Commission revise this provision to allow for customers in buildings with more than one individually metered residence to participate and to allow for building owners (including corporate entities) to participate as recommended in the Board's July Comments.

B. Regulations Need to Apply to Dominion and ODP.

The proposed regulations should be revised to clarify that they apply to both Dominion and ODP. The statute clearly applies to both Dominion and ODP.[6] Va. Code § 56-585.1:12(A). By contrast, the proposed regulations state: "The provisions of this chapter apply to *Phase II utilities*, including, notwithstanding subsection G of § 56-580, any investor-owned utility whose service territory assigned to it by the Commission is located entirely within the Counties of Dickenson, Lee, Russell, Scott and Wise, subscriber organizations, and subscribers, and govern the development of shared solar facilities and participation in the multi-family shared solar program." (emphasis added) 20VAC5-342-10. However, ODP is <u>not</u> a Phase II utility as defined in Va. Code § 56-585.1. Therefore, the Board recommends that the Commission clarify and revise this section of the regulations to mirror the legislation, which clearly states that ODP is subject to this law.

II. <u>Proposed Regulations Do Not Adequately Address Subscriber Experience</u>.

In order to have a successful and robust multi-family shared solar program, customers need to experience cost savings, certainty, and transparency. To this end, customer's bill credits should carry-over each month in perpetuity, customers should be able to bring their subscriptions with

[6] The statute states: "Investor-owned utility" means "each investor-owned utility in the Commonwealth including, notwithstanding subsection G of § 56-580, any investor-owned utility whose service territory assigned to it by the Commission is located entirely within the Counties of Dickenson, Lee, Russell, Scott and Wise. "Investor-owned utility" does not include a Phase I Utility, as that term is defined in subdivision A 1 of § 56-585.1." Va. Code § 56-585.1:12(A).

them when they move, and the licensing and registration requirements should be flexible enough to allow for a robust market of subscriber organizations.

A. Bill Credits Should Roll-Over Month to Month in Perpetuity.

The Multi-family Shared Solar Statute states that "[a]ny amount of the bill credit that exceeds the subscriber's monthly bill shall be carried over and applied to the next month's bill *in perpetuity*" (emphasis added). Va. Code § 56-585.1:12(C). By contrast, the proposed Multi-family Shared Solar regulations require "[s]uch carry-over plus the next month's credit cannot exceed the next month's bill." Va. Code § 56-585.1:12(F)(2). This provision of the proposed regulations is contrary to the plain language of the Multi-family Shared Solar Statute and significantly decreases cost-savings for customers. Moreover, the Multi-family Shared Solar statute and the proposed regulations each have language requiring a subscription to "be sized such that the estimated bill credits do not exceed the subscriber's average annual bill for the customer account to which the subscription is attributed," thereby already limiting the amount of bill credits annually. Va. Code § 56-585.1:12(A); 20VAC5-342-20. The regulations should not add additional requirements that adversely impact the customers' cost savings. The Board recommends that the Commission should clarify that the multifamily shared solar bill credits must be carried over and applied to the next month's bill *in perpetuity*, as required by the statute.

B. Regulations Add Additional Costs Not Contemplated in the Multi-family Shared Solar Statute.

The Multi-family Shared Solar Statute states that the investor-owned utilities should be allowed "to recover reasonable costs of administering the program." Va. Code § 56-585.1:12(E)(7). But, unlike Dominion's shared solar program (established pursuant to § 56-594.3 of the Virginia Code), which includes a minimum bill, the Multi-family Shared Solar Statute does not contemplate any other costs. Furthermore, the Multi-family Shared Solar Statute and proposed regulations state that "[t]he applicable bill credit rate shall be set such that the shared solar program results in robust project development and shared solar program access for all customer classes." Va. Code § 56-585.1:12(A); 20VAC5-342-20.

Yet, the proposed regulations establish four general categories of costs that must be included at a minimum in the "administrative charge."[7] 20VAC5-342-80. These are the same costs that are considered under Dominion's shared solar program as part of a minimum bill, but a minimum bill is not contemplated in the Multi-family Shared Solar Statute. Arguably the plain language of the two statutes indicate that the General Assembly decided to include a minimum bill in Dominion's shared solar program but purposefully did not include this concept in the Multi-family Shared Solar Statute.

[7] The regulations state that the "administrative charge established annually must include, at a minimum, the following four general categories of costs": (a) transmission and distribution costs; (b) standby generation and balancing costs; (c) Non-bypassable charges established by the commission or otherwise by law; and (d) Other administrative costs, including but not limited to, any banking, balancing, and storing fees related to the utility's processing and handling of the excess bill credits." 20VAC5-342-80.

These additional costs contemplated by the proposed regulations are not based on the language in the Multi-family Shared Solar Statute. The Board recommends that the Commission revise the regulations to remove reference to the four categories of costs and limit costs to the reasonable costs of administering the program in accordance with the statute or, in the alternative, state that the administrative charge "*may* include" instead of "*must* include" the four general categories of costs.

C. Regulations Do Not Specify the Transferability of Subscriptions.

The Multi-family Shared Solar Statute specifically requires the Commission to "allow for the transferability and portability of subscriptions." Va. Code § 56-585.1:12(E)(4). This requirement gives flexibility to subscribers to retain their subscription and bill credits if they continue to be Dominion or ODP customers, respectively. By contrast, the Commission's proposed regulations allow subscriber organizations to "re-enroll" customers, but this is different from allowing customers to retain their subscriptions. 20VAC5-342-50(H). Allowing a customer to re-enroll instead of transferring their subscription means that the customer may lose their previously generated bill credits when they move instead of allowing the credits to carry-over to the new address. The Board recommends that the Commission revise the regulations to adhere to the Multi-family Shared Solar Statute and to clarify that customers can transfer their subscriptions to their new address as long as they continue to be Dominion or ODP customers, respectively.

D. Regulations May Prohibit Qualified Project Developers and Operators from becoming Subscriber Organizations.

The Multi-family Shared Solar Statute defines "Subscriber organization" as "any for-profit or nonprofit entity that owns or operates one or more shared solar facilities." The proposed regulations provide additional financial requirements in 20VAC5-342-30 regarding the licensing of such subscriber organizations. The Board is concerned that the proposed licensing requirements set forth in 20VAC5-342-30 would not allow for small companies and non-profits to participate as project developers and operators. For example, certain non-profits such as Groundswell [*add other examples*] have a strong track record of successfully working with customers in community solar programs across the country, but based on the proposed licensing requirements these organizations likely would be unable to enter into the Virginia market. The Board recommends revising the regulations to allow for smaller companies and non-profits to become subscriber organizations with appropriate consumer protections as contemplated by the Multi-family Shared Solar Statute, thereby creating more competition, consumer choice, and transparency in this new market.

III. Board Recommendations.

The following is a summary of the Board's recommendations. The Board recommends that the Commission revise the proposed regulations to:

- Revise definition of "Multi-family customer" to not arbitrarily limit subscriber eligibility.
- Revise regulations to clarify that they apply to ODP.
- Revise regulations to specify that bill credits carry-over in perpetuity as required by law.
- Revise regulations to allow for the transferability and portability of subscriptions as required by law.
- Revise licensing requirements in regulations to allow for smaller companies and non-profits to participate as subscriber organizations as contemplated by the law.

The Board understands that the Multi-family Shared Solar Statute imposes a time limit on the Commission for drafting regulations. As a result, we alternatively suggest that the Commission could address several of these points in the future through guidance documents.

IV. Conclusion.

The Commission has an opportunity to implement a strong multi-family shared solar program and to help ensure that low-income customers are not left behind in the energy transition. By law, these regulations should "reasonably allow for the creation of shared solar facilities" but as proposed, these regulations fall short. Va. Code § 56-585.1:12(E)(4). The proposed regulations do not adhere to the statute and do not provide a clear path for a successful program, especially for low-income customers. The Commission does not need to re-create the wheel with these regulations. Instead the Commission should look to other states with successful programs and the expertise that already exists in the Commonwealth on these issues. The Commission should revise the proposed regulations and finalize robust and detailed regulations that would provide accountability, uniformity and certainty to customers, subscriber organizations, and the utilities.

We appreciate your consideration of these comments. If you need any further information about the role the Board plays in promoting clean energy options for low- to moderate-income customers in Virginia, or the importance of the shared solar regulations, please contact me at 434-220-7595 or hannah.coman@apexcleanenergy.com.

Sincerely,

Hannah Coman
Chair