

# Virginia Clean Energy Advisory Board

% Department of Mines, Minerals and Energy

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<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-2020-00125

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 (the “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 customers of Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Dominion”) pursuant to § 56-594.3 of the Virginia Code (the “Shared Solar Statute”).<sup>1</sup> The Board submitted comments on July 24, 2020 in this docket highlighting important issues to be addressed in the regulations 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’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.<sup>2</sup> 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 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

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<sup>1</sup> Order Directing Comment, Va. State Corp. Comm’n, Docket No. PUR-2020- 00125, at 1 (July 1, 2020), <https://scc.virginia.gov/docketsearch/DOCS/4ns%2301!.PDF>.

<sup>2</sup> HB 2741 (Mar. 18, 2019), <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0554>.

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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. The Shared Solar Statute addresses this goal by specifically mandating that at least 30% of shared solar participants be low-income. In fact, Senator Surovell stated in his letter to the Commission regarding the legislative intent of the Shared Solar Statute that “... it is the intent to make Virginia the national leader for Low and Moderate Income participation.”<sup>3</sup> The regulations should reflect this goal.

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 a low minimum bill and 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 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. Proposed Regulations Do Not Adequately Address Low-Income Participation.**

In order to make Virginia the national leader for low- and moderate-income participation in shared solar, low-income customers need to be able to easily sign-up for this program and the regulations should address this by providing clear guidance. The Board addressed the importance of this issue extensively in our comments filed with the Commission on July 24, 2020 (the “Board’s July Comments”).<sup>4</sup>

### **A. Regulations Do Not Provide Guidance on Low-Income Eligibility Verification.**

As proposed, the regulations do not provide guidance regarding low-income eligibility verification. The only reference to this process is that the regulations state that “[e]ach subscriber organization shall retain a record of all disclosure forms, low-income customer proof of eligibility, and subscriber allocation lists for a period of at least three years.” 20VAC5-340-90(A). But the regulations give no indication of what “customer proof of eligibility” should entail. It is imperative that the Commission provide clear guidance on eligibility requirements. Without thoughtful guidelines for eligibility verification, the verification process could become an insurmountable barrier for otherwise qualified participants. Other states have implemented successful shared solar programs with low-income participation, and these experiences have demonstrated that eligibility

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<sup>3</sup> Letter from Sen. Scott Surovell to the Commission, Va. State Corp. Comm’n, Docket No. PUR-2020-00125, at 2 (July 28, 2020), [https://scc.virginia.gov/docketsearch/DOCS/4\\_%23\\_01!.PDF](https://scc.virginia.gov/docketsearch/DOCS/4_%23_01!.PDF).

<sup>4</sup> Letter from the Clean Energy Advisory Board, Va. State Corp. Comm’n, Docket No. PUR-2020-00125 (July 24, 2020), [https://scc.virginia.gov/docketsearch/DOCS/4\\_6m01!.PDF](https://scc.virginia.gov/docketsearch/DOCS/4_6m01!.PDF).

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verification is an important component.<sup>5</sup> Without clear guidance on this point from the Commission: (i) subscriber organizations will lack clarity on the feasibility of subscribing low-income customers in Virginia and (ii) subscriber organizations will be forced to develop their own policies which may vary and result in a patchwork of confusing standards and policies for customers and renewable energy advocates. The Board recommended certain criteria be used for eligibility verification in the Board’s July Comments and the Board hopes that the Commission will adopt these recommendations in its final regulations or subsequent guidance.

## **B. Regulations Do Not Reference or Create A Stakeholder Working Group.**

The Shared Solar Statute states that “any rule or utility implementation filings approved by the Commission shall ... create a stakeholder working group including low-income community representatives and community solar providers to facilitate low-income customer and low-income service organization participation in the program.” Va. Code § 56-594.3(F)(3). Based on the plain language of the Shared Solar Statute, the regulations should contemplate a stakeholder process to address issues relating to low-income eligibility. Unfortunately, the proposed regulations do not reference this requirement.

This stakeholder process is very important as it is an opportunity to listen to the community that the General Assembly intended this shared solar program to serve. As the Board stated in the Board’s July Comments, low-income communities are best served when they are engaged in the process of developing the programs that serve them and a stakeholder process is the best way to do this.<sup>6</sup> Ideally this stakeholder process would result in a product that the Commission could use to inform Commission guidelines. The Board would eagerly assist and join any such stakeholder process. The Board recommends the Commission revise the regulations to include a stakeholder working group to facilitate low-income customer and low-income service organization participation in the program. The Board also recommends that the Commission adopt the Board’s suggestions from the Board’s July Comments as to the issues to be addressed through the stakeholder process in the final regulations or subsequent Commission guidance.

## **C. Regulations Do Not Include Mechanisms to Ensure Low-Income Customer Participation.**

The Shared Solar Statute states that “[t]he Commission, in collaboration with the Department of Mines, Minerals and Energy, may adopt mechanisms to ensure low-income

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<sup>5</sup> See Heeter, Jenny, Lori Bird, Eric O’Shaughnessy, & Sam Koebrich, Design and Implementation of Community Solar Programs for Low and Moderate-Income Customer, National Renewable Energy Laboratory 28-29 (Dec. 2018), <https://www.nrel.gov/docs/fy19osti/71652.pdf> (hereinafter NREL: Design and Implementation of Community Solar Programs) (describing challenges to enrolling participants if eligibility requirements are complex); see also Shared Renewable Energy for Low- to Moderate-Income Consumers: Policy Guidelines and Model Provisions, Interstate Renewable Energy Council 8-9 (2016), <https://irecusa.org/publications/shared-renewable-energy-for-low-to-moderate-income-consumers-policy-guidelines-and-model-provisions/> (explaining the difficulties in signing up low-income customers in the Colorado Community Solar Gardens program).

<sup>6</sup> See generally, Clean Energy States Alliance, *et. al.*, Solar with Justice: Strategies for Powering Up Under-Resourced Communities and Growing an Inclusive Solar Market, 7 (Dec. 2019), <https://www.cesa.org/resource-library/resource/solar-with-justice/> (stating that partnerships involving trusted community organizations are essential and installations for community institutions deserve special consideration as two of the top ten findings and recommendations in the report).

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customer participation.” Va. Code § 56-594.3(E). The proposed regulations do not reflect any mechanisms to ensure low-income customer participation. The Shared Solar Statute provided the Commission with an opportunity to work with the Department of Mines, Minerals and Energy (“DMME”) to ensure low-income customer participation. It is the Board’s hope that the Commission will take advantage of this opportunity to work with DMME and others to develop mechanism to ensure low-income customer participation and reflect this work in the final regulations or subsequent guidance from the Commission. The Board would be happy to assist in any such process.

## **D. Regulations Do Not Specify Requirements or Approval Process for Low-Income Subscription Plans.**

The Shared Solar Statute states that the Commission shall approve an additional 50 MW of capacity under this program – increasing the program size from 150 MW to 200 MW – upon the determination “that at least 45 MW of the aggregated shared solar capacity in the Commonwealth have been subscribed to by low-income customers.” Va. Code § 56-594.3(E). The program size of 150 MW is very small compared to other comparable programs across the country and it is of vital importance for the success of this shared solar program that the 45 MW low-income customer threshold is met swiftly such that the program may be expanded to reach more customers.

Unfortunately, the regulations do not provide clear guidance on how to trigger this expansion. The proposed regulations state that the 45 MW threshold shall be “demonstrated by the approved low-income subscription plans of projects that have secured capacity in the program.” 20VAC5-340-40(L). But the proposed regulations do not provide guidance as to what these low-income subscription plans should include or the approval process. *See* 20VAC5-340-40(L); 20VAC5-340-90(A)(3). Without this guidance, the shared solar program lacks accountability for low-income customers. To ensure compliance by subscriber organizations and robust low-income participation, the Board recommends that the Commission clarify the requirements for the low-income subscription plan and the process for approval to provide certainty and accountability.

## **II. Proposed Regulations Do Not Adequately Address Subscriber Experience.**

In order to have a successful and robust shared solar program, customers need to experience cost savings, certainty, and transparency. To this end, customer’s bill credits should carry-over each month for an annual period, customers should be able to bring their subscriptions with 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 Similar to Net Metering.**

The Shared Solar Statute states that “[a]ny amount of the bill credit that exceeds the subscriber’s monthly bill, minus the minimum bill, shall be carried over and applied to the next month’s bill.” Va. Code § 56-594.3(B)(1). Furthermore, in the definition of “Subscription” the Shared Solar Statute requires “that the estimated bill credits do not exceed the subscriber’s average *annual* bill for the customer account to which the subscription is attributed.” Va. Code § 56-

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594.3(A) (emphasis added). Yet, the proposed regulations state: “[s]uch carry-over plus the next month’s credit cannot exceed the next month’s bill, minus the minimum bill.” 20VAC5-340-60(F)(2). This provision of the proposed regulations adds an additional requirement not found in the Shared Solar Statute and significantly decreases cost-savings for customers. The bill credits for shared solar should work the same way as they do for net metering in Virginia in that the bill credits should be carried over and applied to the next month for a twelve-month period. *See* Va. Code § 56-594. The Board recommends that the Commission revise the regulations to adhere to the Shared Solar Statute and to clarify that the bill credits should carry over each month for an annual period.

## **B. Regulations Do Not Specify the Transferability of Subscriptions.**

The Shared Solar Statute specifically requires the Commission to “allow for the transferability and portability of subscriptions.” Va. Code § 56-594.3(F)(6). This requirement gives flexibility to subscribers to retain their subscription and bill credits if they continue to be Dominion customers. 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. 20VAC5-340-50(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 Shared Solar Statute and to clarify that customers can transfer their subscriptions to their new address as long as they continue to be Dominion customers.

## **C. Regulations May Prohibit Qualified Project Developers and Operators from becoming Subscriber Organizations.**

The 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 20VAC5-340-30 regarding the licensing of such subscriber organizations. The Board is concerned that the proposed licensing requirements set forth in 20VAC5-340-30 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 low-income customers in community solar programs across the country, but based on the proposed licensing requirements these organizations 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 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:

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- Include a stakeholder process to facilitate low-income customer and low-income service organization participation in the program as required by law.
- Include a mechanism to ensure low-income enrollment and work with DMME to achieve this statutorily mandated goal.
- Include a framework to verify low-income eligibility as originally outlined in the Board's July Comments or reference in the regulations that such framework will be developed through a stakeholder process.
- Include requirements and approval process for low-income subscription plans.
- Revise regulations to specify that bill credits carry-over every month for a twelve (12) month period.
- 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 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. Specifically, the Commission could publish a guidance document in the future with a framework for low-income eligibility verification based on input from a stakeholder process and DMME.

#### **IV. Conclusion.**

The Commission has an opportunity to implement a strong shared solar program that allows Virginia to become a national leader for low- and moderate-income participation in shared solar. By law, these regulations should “reasonably allow for the creation of shared solar facilities” but as proposed, these regulations fall short. Va. Code § 56-594.3(F)(1). The proposed regulations are vague 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 Dominion.

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