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Guide to the Virginia Electric Utility Regulation Act

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Chapter 23 of Title 56 of the Code of Virginia
Va. Code § 56-576 et seq.

PREPARED BY

ReisingerGooch PLC
Attorneys at Law
Richmond, Virginia

ReisingerGooch.com

INTRODUCTION

The following Guide is intended to be an accessible, plain-English explanation of some of Virginia’s most notable public utility laws.

While there is no single definition of “public utility,” firms characterized as such usually possess two characteristics. First, they provide essential goods and/or services. Second, they have the exclusive right to sell those goods and/or services in a particular geographic region. Indeed, “necessity and monopoly are almost prerequisites to public utility status.”¹

Public utility regulation, therefore, has enormous consequences for both the regulated businesses and their customers. State regulatory commissions determine the prices consumers must pay for essential goods and services, such as electricity, water, or natural gas service. Public utility regulation is also increasingly used by lawmakers as a means to advance public policy goals, such as regional economic development or carbon reductions. A typical utility rate proceeding often combines law, accounting, finance, engineering, environmental policy, and more.

The pages that follow will focus on a subset of Virginia’s utility code: the statutes governing Virginia’s two largest electric utility companies, Dominion Energy Virginia (“Dominion”) and Appalachian Power Company (“Appalachian Power”). These statutes prescribe the rate-setting process and include the latest clean energy mandates enacted by the General Assembly. Each explanatory page includes excerpts of the Code on the left-hand side of the page, with explanatory text on the right.

While a document of this length can only scratch the surface, we have tried to highlight some of the most consequential statutes affecting energy policy in the Commonwealth. We hope that this resource will be useful to anyone trying to understand Virginia’s byzantine – but incredibly important – system of energy regulation.

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¹ Eli W. Clemens, *Economics and Public Utilities* at 25 (1950).

CHAPTER 23 OVERVIEW

This Guide is focused on a small portion of Virginia’s utility code that governs Virginia’s two largest electric utility companies, Dominion and Appalachian Power.

This part of the code is referred to as the **2007 Virginia Electric Utility Regulation Act** or “**Chapter 23**,” because most of the 2007 act’s provisions were codified in Chapter 23 of Title 56. For background, the Code of Virginia is divided into dozens of “titles.” Title 56 of the Code governs “public service companies.” Title 56, in turn, is comprised of numerous subparts called “chapters.” Chapter 23 of Title 56 includes many of the key ratemaking provisions that apply to Dominion and Appalachian Power. Chapter 23 contains rules and procedures that apply to both utilities and the **State Corporation Commission** (“SCC” or “Commission”). The SCC is the state agency that regulates public utilities.

Chapter 23 also contains Virginia’s mandatory **renewable portfolio standard** and most of the other terms of the 2020 **Virginia Clean Economy Act**.

This Guide includes summaries of excerpts of many (but not all) of the statutes contained within Chapter 23. It would not be possible, in a guide such as this, to quote and summarize all provisions within Chapter 23. Nor would it be possible to quote all provisions within most individual statutes. For example, one particularly complex statute within Chapter 23 (Section 56-585.1) contains over 12,000 words. Therefore, throughout this document you will see selections of relevant statutory provisions. To understand the full context and meaning of a particular law, one must of course read and understand the entire statute.

Some parts of Chapter 23 are obsolete as a legal or a practical matter. For example, some statutes within Chapter 23 describe the rules for Virginia’s planned **transition to retail choice** for generation. This transition began pursuant to a 1999 electric restructuring law, but was never completed. Instead, the General Assembly chose to “re-regulate” electric utility companies pursuant to the 2007 act. Some other portions of Chapter 23 are obsolete for other reasons. For example, Section 56-585.1 prescribes the procedures for rate proceedings conducted in 2009. While these provisions are still “on the books,” they are obsolete as a practical matter. This Guide attempts to highlight some of this clutter in the utility code by quoting this language in ~~format~~.

Finally, note that other statutes in other parts of the Code of Virginia also apply to the utilities regulated under Chapter 23. For example, Chapter 10 of Title 56 includes numerous ratemaking provisions that apply to Dominion and Appalachian Power – in addition to the provisions of Chapter 23.

Throughout the Guide, key terms are emphasized in **bold lettering**. These terms are briefly defined in a Glossary at the end of this Guide.

Definitions, retail access, and regional transmission organizations

The first explanatory page that follows describes Va. Code § 56-576, the “definitions” section. Section 56-576 is the first statute appearing in Chapter 23 and defines a number of key terms used throughout the chapter. Note that while Section 56-576 defines many key terms, other defined terms are also defined in the individual statutory provisions. In other words, just because a term is not defined in Section 56-576, that does not mean that it is not defined elsewhere in Chapter 23. For example, the terms “**Phase I Utility**” and “**Phase II Utility**” are used throughout Chapter 23, but they are defined in Section 56-585.1, not Section 56-576.

Section 56-577 and 56-577.1 are sometimes called Virginia’s **retail access** statutes because they describe some of the circumstances when customers can purchase electricity from companies or individuals other than their **incumbent electric utility**. Some of the provisions of 56-577 are left over from Virginia’s **1999 Restructuring Act**. The 1999 law established a **transition period** for full retail choice (or deregulation) in the electric generation market in Virginia. In the pages that follow, provisions that are mostly obsolete as a legal or practical matter are noted in strikethrough format.

The General Assembly, when it enacted Va. Code § 56-579, also directed Virginia utilities to join regional transmission entities, sometimes referred to as **regional transmission organizations** or “RTOs.” Dominion and Appalachian Power are members of the **PJM** RTO. PJM has operational control of the regional grid and operates wholesale energy and capacity markets.

§ 56-576. Definitions.

As used in this Chapter:

...

“Commission” means the State Corporation Commission.

“Distributor” means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

“Electric utility” means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

“Incumbent electric utility” means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.

- “Renewable energy” means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), ♦ energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. “Renewable energy” also includes the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass. “Renewable energy” does not include waste heat from fossil-fired facilities or electricity generated from pumped storage but includes run-of-river generation from a combined pumped-storage and run-of-river facility.

“Transmission of,” “transmit,” or “transmitting” electric energy means the transfer of electric energy through the Commonwealth’s interconnected transmission grid from a generator to either a distributor or a retail customer.

Defined terms used in Chapter 23 of Title 56

- Code Section 56-576 is the first statute falling within Chapter 23 of Title 56 of the Code of Virginia. This compiled set of statutes is collectively known as **Chapter 23** or the **2007 Virginia Electric Regulation Act**.
- This section defines almost 50 separate terms that are used throughout Chapter 23. Technically, the definitions are applicable only to these terms as they are used in Chapter 23. Other chapters within Title 56 also include definition sections, sometimes defining the same or similar terms. For example, the Chapter 10.1 of Title 56, defines the term “Public Utility,” while Chapter 23 does not.²
- Section 56-576 includes separate definitions for “electric utility,” “incumbent electric utility,” and “distributor” – all of which are companies that provide electric distribution service to retail customers.
- Notably, Section 56-576 does not define “**Phase I Utility**” and “**Phase II Utility**.” Instead, these terms are defined in Code § 56-585.1 A. Throughout Chapter 23, “Phase I Utility” means Appalachian Power Company while “Phase II Utility” means Dominion Energy Virginia.³ This nomenclature may be used so as to avoid a conflict with the “special law” provision of the Virginia Constitution.⁴ Many of the statutes within Chapter 23 apply only to Dominion and Appalachian Power.
- Section 56-576 defines “renewable energy.” This definition applies to all programs falling under Chapter 23, including Virginia’s mandatory renewable portfolio standard. ♦ In Virginia, renewable energy includes energy generated from biomass resources, such as wood waste, regardless of whether the material was obtained in a “sustainable” manner. The Code also states that the definition of biomass shall be “liberally construed.”

² That definition applies to the term “Public Utility” as it is used within Chapter 10.1, but may not necessarily apply if this term is used within other chapters of the Code of Virginia.

³ The definition of Phase II Utility is written in such a way as to ensure that no other electric utility qualifies.

⁴ Article IV, Section 14 of the Virginia Constitution prohibits “special legislation.” Special laws include laws written to benefit a particular person or corporation. See, e.g., *King v. Virginia Birth-Related Neurological Injury Compensation Program*, 242 Va. 404 (1991) (“the pervading philosophy of Article IV, sections 14 and 15 reflects an effort to avoid favoritism, discrimination, and inequalities in the application of the laws.”)

§ 56-577.

Schedule for transition to retail competition; Commission authority; exemptions; pilot programs.

- A.** Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:
1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity ... to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.
 2. The generation of electric energy shall be subject to regulation as specified in this chapter.
 3. Subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts ♦ ... shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth...
 5. Individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:
 - a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory in which such a customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy ●...

Virginia's retail access statute

- Code Section 56-577 was originally enacted in 1999 as part of Virginia's planned transition to **retail choice**. Among other things, this section required Virginia's utilities to join **regional transmission organizations**. Dominion and Appalachian Power both joined the **PJM Interconnection** in the early 2000s.
- Code Section 56-577, Virginia's **retail access statute**, also sets forth the terms under which customers may purchase electric generation from non-utility suppliers, called **competitive service providers** ("CSPs"). ♦ Larger customers, with greater than 5 MW of demand, are generally permitted to purchase generation from CSPs.
- ● Smaller customers that don't meet the 5 MW demand requirement may purchase 100% renewable generation from CSPs if the **incumbent electric utility** does not offer an approved tariff "provided 100 percent from renewable energy." Both Dominion and Appalachian Power offer SCC-approved renewable energy **tariffs**, so customers of these utilities are not permitted to shop for generation under the renewable energy provision of the retail access statute.⁵
- Additionally, multiple customers may combine or "aggregate" their demand in order to reach the 5 MW threshold required for shopping. The SCC must approve such aggregation requests, however, after considering the effects on non-shopping customers.⁶

⁵ See Case Nos. PUR-2017-00179 and PUR-2019-00094. In these proceedings, the SCC approved voluntary renewable energy tariff options for Appalachian Power and Dominion customers, respectively.

⁶ See Code § 56-577 A 4. The SCC has only approved one aggregation request, while rejecting several other petitions. See *Petition of Reynolds Group Holdings Inc., For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56- 577 A 4 of the Code of Virginia*, Case No. PUR-2017-00109, Final Order (February 21, 2018) (SCC order approving a customer's aggregation request) and *Petition of Wal-Mart Sam's East LP., For permission to aggregate or combine demands of two or more individual nonresidential retail customers of electric energy pursuant to § 56-577 A 4 of the Code of Virginia*, Case No. PUR-2017-00173 (SCC order rejecting Walmart's aggregation request after finding that aggregation would result in cost increases for non-shopping customers).

§ 56-577.1.

Electric utilities; retail competition; pilot program.

- A.** The Commission shall conduct a pilot program under which two or more nonresidential customers that, as of February 25, 2019, had filed applications seeking to aggregate their load pursuant to subdivision A 4 of § 56-577 within the service territory of a Phase II Utility, as that term is defined in subsection A of § 56-585.1, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell electric energy within the Commonwealth, subject to the following terms, conditions, and restrictions:
1. A pilot program shall be conducted within the certified service territory of the Phase II Utility in which such nonresidential customers are located.
 2. The aggregated load participating in the pilot program shall not exceed 200 megawatts.
 3. All customers participating in the pilot program shall be subject in all respects to the provisions of subdivision A 3 of § 56-577, with participation in this pilot program being deemed to satisfy subdivision A 4 of § 56-577 and with the load set forth in each application being treated as a single, individual customer for purposes of said subdivision, and shall submit an annual report to the Commission by March 31 each year to demonstrate that, for the preceding calendar year, such load continued to meet the demand limitations of subdivision A 3 of § 56-577.
- B.** The Commission shall review the pilot program established pursuant to subsection A in 2022.

Retail access “Pilot Program” for nonresidential customers

- Virginia law allows customers to purchase electric generation from suppliers other than their **incumbent electric utility** in a few circumstances.⁷ In particular, the law allows large customers with more than 5 MW of demand to buy generation service from non-utility suppliers.⁸ These companies are called **competitive service providers** (“CSPs”) and must be licensed by the SCC before providing service.⁹
- The law also allows non-residential customers to “**aggregate**” or combine their demand in order to reach the 5 MW threshold required for shopping. Importantly, however, customers must request SCC approval to aggregate their demand. The SCC can deny these requests if it finds that the result would be “contrary to the public interest.”¹⁰
- Several non-residential customers, including large retailers such as Walmart and Kroger, have filed aggregation requests in recent years. The SCC has denied all but one of these applications, expressing concern that allowing these companies to switch generation providers would shift fixed generation costs to the utility’s remaining customers.¹¹
- **◆** In 2020, the General Assembly passed legislation¹² directing the SCC to conduct a “pilot” program for Dominion customers who had previously requested permission to aggregate their demand. **◆** This legislation was codified in Va. Code § 56-577.1. Customers wishing to participate in the pilot must file a notice of intent in SCC Case No. PUR-2020-00114. If they comply with the other requirements of the statute, these customers will be “deemed to satisfy” the aggregation provision of the **retail access statute** and may shop for electricity from CSPs.

⁷ Va. Code § 56-577.

⁸ Va. Code § 56-577 A 3.

⁹ Companies wishing to provide competitive electric service must comply with the SCC’s retail access regulations, found in Title 20 of the Virginia Administrative Code (20VAC5-312-10 et seq.).

¹⁰ Va. Code § 56-577 A 4.

¹¹ See SCC Case No. PUR-2017-00173 (February 25, 2019, Final Order denying Walmart’s aggregation request).

¹² 2020 House Bill 889.

§ 56-578.

Nondiscriminatory access to transmission and distribution system.

- A. All distributors shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service. ◆
- B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory to suppliers of electric energy, including distributed generation, as the Commission may determine. The distribution services provided to each supplier of electric energy shall be comparable in quality to those provided by the distribution utility to itself or to any affiliate.
- C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. ● The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

...

Right to interconnect projects

- ◆ Section 56-578 provides that all **distributors**, including **incumbent utilities** such as Dominion and Appalachian Power, have an obligation to interconnect **distributed generation** facilities, such as rooftop solar panels.
- The statute provides that the right to interconnect to a utility's distribution system is "subject to Commission rules and regulations and approved tariff provisions." ● The statute also provides that the SCC "shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive."
- The SCC's regulations governing interconnection procedures are found in **Chapter 314** of the **Virginia Administrative Code**. The interconnection regulations describe the process that generators must follow when seeking to interconnect new generation facilities. Importantly, the SCC has jurisdiction only over intra-state distribution facilities. Inter-state transmission facilities, however, are subject to federal regulation by the **Federal Energy Regulatory Commission**. Typically, larger facilities (i.e., larger than 20 MW) interconnect to a utility's transmission system. Transmission-level interconnections are subject to **PJM** tariff provisions.
- In a 2009 case, *Piedmont Environmental Council v. Virginia Electric and Power Company*, the Virginia Supreme Court discussed the distinction between the terms "transmission" and "distribution" under Virginia law, noting that "[t]he terms generation, transmission, and distribution have specific meanings within the electric utility industry, and the definitions of these terms have been adopted within the statutes and regulations that govern that industry." "Generation is the production of electric power, usually on a large scale for wholesale delivery; transmission is the transfer of electric energy from its sources of generation across high voltage lines to either a local distributor or a large-scale industrial consumer; distribution is the transfer of electric energy through a retail delivery system to industrial, commercial, and residential consumers."¹³

§ 56-579.

Regional transmission entities.

- A.** As set forth in § 56-577, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which hereafter may be referred to as “RTE,” to which such utility shall transfer the management and control of its transmission assets, subject to the following:
- 1.** No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth prior to July 1, 2004, and without obtaining, following notice and hearing, the prior approval of the Commission, as hereinafter provided...
 - 2.** The Commission shall develop rules and regulations under which any such incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon such terms and conditions that the Commission determines will:
 - a.** Promote:
 - (1)** Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto; and
 - (2)** Policies for the pricing and access for service over such systems that are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth [and] ... [g] enerally promote the public interest, and are consistent with (i) ensuring that consumers’ needs for economic and reliable transmission are met and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth...

...

Virginia utilities directed to join regional power grid

- Section 56-579 directed Virginia utilities to join **regional transmission entities** (“RTEs”), subject to SCC approval. RTEs, sometimes referred to as **regional transmission organizations** (“RTOs”), are independent non-profit entities that operate a regional transmission system. The SCC authorized Dominion and Appalachian Power to join PJM in 2004.¹⁴ The **PJM Interconnection** (“PJM”) is an RTO that maintains operational control over each utility’s transmission system and assists with regional transmission planning and expansion projects.
- The PJM area covers all or parts of Delaware, Indiana, Illinois, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.
- PJM also operates a regional **energy and capacity market**. PJM’s capacity market is intended to ensure that each **load serving entity** (“LSE”) maintains sufficient generating capacity to meet system reliability requirements. Since joining PJM, Appalachian Power has opted to meet PJM’s reliability requirements by securing its own capacity instead of participating in the capacity market. In 2021, Dominion also notified PJM that it intended to self-supply capacity using PJM’s **Fixed Resource Requirement** alternative.¹⁵
- Section 56-579 G states that the Commission “shall report annually” to the General Assembly’s Commission on Electric Utility Regulation (“CEUR”) regarding “the practices and policies of [PJM].” The CEUR was established for the purpose of “monitor[ing] the State Corporation Commission’s implementation of the Virginia Electric Utility Regulation Act.”¹⁶

¹⁴ See Case Nos. PUE-2000-00550, August 30, 2004 Order Granting Approval (authorizing Appalachian Power to join PJM) and PUE-2000-00551, November 10, 2004 Order Granting Approval (authorizing Dominion to join PJM).

¹⁵ See *Dominion’s exit from regional capacity market raises some eyebrows — and questions*, Virginia Mercury, Sarah Vogelsong (May 25, 2021).

¹⁶ See Va. Code § 30-201. The CEUR’s website is available at <http://dls.virginia.gov/commissions/eur.htm>

The SCC's jurisdiction over rates and facilities

The following pages include provisions granting the SCC jurisdiction over the construction of new generation facilities. Virginia Code Section 56-580 D requires any person or company that intends to construct and operate a generation facility to obtain a **certificate of public convenience and necessity** ("CPCN") from the Commission. When evaluating CPCN requests, the SCC considers a number of factors including whether the facility is needed and its potential environmental impacts. Other statutes, including Va. Code § 56-46.1, may also apply to CPCN applications. Additionally, some renewable energy facilities are eligible to receive a permit by rule from the Department of Environmental Quality instead of receiving a CPCN.¹⁷

Virginia Code Section 56-581 describes the SCC's jurisdiction generally. The SCC only has jurisdiction over utility rates charged to "jurisdictional customers." **Nonjurisdictional** customers, including government agencies, are generally permitted to negotiate their own rates and terms and conditions of service.

¹⁷ The permit by rule program for small renewable energy projects is governed by Va. Code § 10.1-1197.5 et seq.

§ 56-580.

Transmission and distribution of electric energy.

- A.** Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth...
- D.** The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest... ♦
- G.** The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003... ♦

Provisions regarding construction and operation of utility facilities

- As a general matter, a utility or other developer must obtain a **certificate of public convenience and necessity** (“CPCN”) pursuant to Section 56-580 D before constructing or operating a generation facility with a capacity of 5 MW or more. Before approving a CPCN application, the SCC must evaluate the facility’s potential effect on reliability and whether the facility is “**required by the public convenience and necessity.**”¹⁸ ♦ The SCC must also consider whether the project would be “otherwise contrary to the public interest.” Other Virginia laws, including Va. Code § 56-46.1, may also apply in CPCN proceedings.
- Section 56-580 D applies to all developers proposing to construct and operate generating facilities, including regulated utilities and non-utility companies such as independent power producers. The Code states, however, that only utilities whose rates are regulated under Section 56-585.1 (Dominion and Appalachian Power) are subject to the “required by the public convenience and necessity” criterion.¹⁹
- In lieu of obtaining a CPCN, developers of certain small renewable energy projects may obtain a permit from the Department of Environmental Quality (“DEQ”). Solar and wind generation projects of 150 MW and under may seek a siting permit via DEQ’s **Renewable Energy Permit by Rule** (“PBR”) process.²⁰
- ♦ Section 56-580 G effectively exempts Kentucky Utilities, an affiliate of Louisville Gas & Electric Company, from the majority of Chapter 23. Kentucky Utilities is an investor-owned electric utility providing service only in southwest Virginia. Its rates and terms and conditions of service are regulated under **Chapter 10** of Title 56. Therefore, Kentucky Utilities is not subject to the **triennial review** provisions of Section 56-585.1.

¹⁸ Although the phrase “required by the public convenience and necessity” is not defined in the Code, the SCC has interpreted this analysis to include “an evaluation of the need for the project as well as the reasonableness of the cost.” See, e.g., *Petition of Virginia Electric and Power Company, For approval and certification of the proposed US-3 Solar Projects pursuant to §§ 56-580 D and 56-46.1 of the Code of Virginia*, SCC Case No. PUR-2018-00101, January 24, 2019, Order Granting Certificates at 9.

¹⁹ See *Application of C4GT LLC*, For certification of an electric generating facility in Charles City County pursuant to § 56-580 D of the Code of Virginia, SCC Case No. PUE-2016-00104, May 3, 2017, Final Order. In this case, the SCC authorized a non-utility company to construct and operate a natural-gas-fired generation facility. As the applicant was not a utility regulated pursuant to Section 56-585.1, the SCC to not evaluate whether the project was “required by the public convenience and necessity.”

²⁰ See Va. Code § 10.1-1175 et seq. and Va. Admin Code 9VAC15-60-10 et seq. (describing the regulations governing DEQ’s PBR process for solar facilities).

§ 56-581.

Regulation of rates subject to Commission's jurisdiction.

- A. After the expiration or termination of capped rates ♦ except as provided in § 56-585.1, the Commission shall regulate the rates of investor-owned incumbent electric utilities for the transmission of electric energy, to the extent not prohibited by federal law, and for the generation of electric energy and the distribution of electric energy to retail customers pursuant to § 56-585.1.
- B. Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be made to such cooperative's rates as a consequence thereof.
- C. Except for the provision of default services under § 56-585 or emergency services in § 56-586, nothing in this chapter shall authorize the Commission to regulate the rates or charges for electric service to the Commonwealth and its municipalities. ●

The Commission's jurisdiction

- Section 56-581 describes the SCC's jurisdiction over **retail electric sales** in Virginia. The Commission does not regulate **wholesale energy sales** or interstate energy transactions.²¹
- ♦ Section 56-585.1 A and other provisions within Chapter 23 refer to the **"capped rate"** period, which was the period following the **1999 Restructuring Act** during which time the rates of Dominion and Appalachian Power were **"capped."** Between 1999 and 2007 rates were held constant while the Commonwealth prepared to deregulate its generation system.
- This Code section provides that the SCC "shall regulate" the rates of investor-owned incumbent electric utilities for the transmission, distribution, and generation services. This rate regulation is conducted pursuant to § 56-585.1.²²
- ● Section 56-581 states that the SCC is not authorized to regulate the electric rates paid by the Commonwealth of Virginia or municipalities. The Commonwealth and its municipalities are often referred to as **"non-jurisdictional"** customers because the rates they pay are not subject to SCC jurisdiction. Instead, non-jurisdictional customers are allowed to negotiate their rates and terms and conditions of service directly with the utility.²³

²¹ Retail sales are transactions in which the buyer is the end user of electricity (such as when a residential customer buys energy from his or her electric utility). Wholesale sales are transactions in which the buyer will resell the electricity.

²² The two investor-owned electric utilities subject to regulation under Section 56-585.1 are Dominion and Appalachian Power. Kentucky Utilities, doing business as Old Dominion Power ("KU/ODP"), operating in southwest Virginia, is not subject to regulation under Section 56-585.1. See Va. Code § 56-580 G (exempting ODP from the majority of Chapter 23 of Title 56). Instead, ODP's rates are regulated pursuant to Chapter 10 of Title 56.

²³ For example, municipal customers of Dominion negotiate their rates and terms and conditions of service as an association, the Virginia Electric Purchasing Governmental Association ("VEPGA"). VEPGA's contract with Dominion is available on its website: <https://vepga.org/about/>

Key ratemaking provisions applicable to Dominion and Appalachian Power

Some of the most important – and complex – ratemaking provisions in Chapter 23 are codified in Section 56-585.1. This statute provides the rules for **triennial rate and earnings reviews** for Dominion and Appalachian Power. Triennial review cases allow the SCC to evaluate the past earnings of the utilities. Section 56-585.1 also allows each utility to request permission to recover certain types of project costs through **rate adjustment clauses** instead of through **base rates**. Some of the provisions of Section 56-585.1 are no longer operative. Some of the provisions that are mostly or wholly obsolete are shown in this guide in strikethrough format.

The following pages also describe some of the renewable energy statutes enacted by the General Assembly since 2018, including provisions establishing community or “shared” solar options for customers. Some of the following statutes, including Section 56-585.1:11, were included as part of the omnibus **Virginia Clean Economy Act** legislation.

§ 56-585.1

Generation, distribution, and transmission rates after capped rates terminate or expire.

...

Commencing in 2011, the Commission, after notice and opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the provision of generation, distribution and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive 12-month test periods beginning January 1, 2017, and ending December 31, 2019. ♦ Thereafter, reviews for a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase II Utility in 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and ending December 31, 2020, with subsequent reviews on a triennial basis utilizing the three successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. All such reviews occurring after December 31, 2017, shall be referred to as triennial reviews. For purposes of this section, a Phase I Utility is 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, and a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement... ●

SCC review of utility rates and earnings

- Section 56-585.1 is the longest and most complex statute within Chapter 23. This section describes, among other things, the triennial rate review process for Dominion and Appalachian Power.
- ♦ A triennial review proceeding includes a review of the utility's earnings during the preceding three years. Each calendar year is referred to as a "test period." The SCC reviews the utility's reported earnings to determine whether the utility's revenues during the combined test periods resulted in earnings that were above or below the utility's authorized rate of return on common equity ("ROE").²⁴
- Dominion and Appalachian Power are required to file triennial review applications every three years on March 31. The SCC completed its review of Appalachian Power's triennial review in November 2020. In its final order, the Commission found that Appalachian Power earned within its authorized earnings band and that no change to the utility's rates was necessary. Appalachian Power and the Virginia Attorney General's Office, however, have both filed notices of appeal to the Virginia Supreme Court, albeit for different reasons.²⁵
- The law contains special provisions governing Dominion's first triennial review proceeding in 2021. The law states that the SCC may only reduce Dominion's base rates by a maximum of \$50 million. The law also states that the SCC may not increase Dominion's rates by any amount as part of the triennial review.²⁶
- ● This Code section contains the definitions of "Phase I Utility" and "Phase II Utility" used throughout Chapter 23. Based on the definitions contained in Section 56-585.1 A 1, Phase I Utility generally means Appalachian Power only, while Phase II Utility generally means Dominion only. The third investor-owned incumbent utility operating in Virginia, Kentucky Utilities, is exempt from the majority of Chapter 23.²⁷

²⁴ At the conclusion of the review, the SCC is authorized to take certain actions that retroactively impact costs, revenues, or earnings from the years including in the historical period.

²⁵ See Application of Appalachian Power Company, For a triennial review of rates, SCC Case No. PUR-2020-00015.

²⁶ See page 33 for more information regarding the 70-basis points earnings band described in Va. Code § 56-585.1 A 8.

²⁷ See Va. Code § 56-580 G (exempting KU/ODP from the majority of Chapter 23).

§ 56-585.1

A Generation, distribution, and transmission rates after capped rates terminate or expire (continued)

...

2. [Each utility's ROE] shall be determined by the Commission during each such triennial review, as follows:
 - a. The Commission may use any methodology to determine such return it finds consistent with the public interest, but for applications received by the Commission on or after January 1, 2020, such return shall not be set lower than the average of either (i) the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such triennial review or (ii) the authorized returns on common equity that are set by the applicable regulatory commissions for the same selected peer group... ◆
 - b. In selecting such majority ... the Commission shall first remove from such group the two utilities within such group that have the lowest reported or authorized, as applicable, returns of the group, as well as the two utilities within such group that have the highest reported or authorized, as applicable, returns of the group, and the Commission shall then select a majority of the utilities remaining in such peer group. In its final order regarding such triennial review, the Commission shall identify the utilities in such peer group it selected for the calculation of such limitation. For purposes of this subdivision, an investor-owned electric utility shall be deemed part of such peer group if (i) its principal operations are conducted in the southeastern United States east of the Mississippi River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission and distribution services whose facilities and operations are subject to state public utility regulation in the state where its principal operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the most recent test period subject to such triennial review, and (iv) it is not an affiliate of the utility subject to such triennial review.

²⁸ *Commonwealth of Virginia v. Virginia Elec. & Power Co.*, 211 Va. 758 (1971).

²⁹ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

³⁰ See, e.g., *Application of Appalachian Power Company*, For a triennial review of base rates, SCC Case No. PUR-2020-00015, November 24, 2020, Final Order at 30.

Setting a utility's ROE during a triennial review proceeding

- Section 56-585.1 directs the SCC to set each utility's authorized rate of return on common equity ("rate of return" or "ROE") as part of the **triennial review** proceeding. The ROE established in the triennial review applies to **base rates** and **rate adjustment clauses**. As a general matter, and under traditional regulation, a utility's rates are set at a level that would allow the utility to recover its **costs of service**, including its ROE.
- The ROE for a public utility must be "sufficient to enable the [utility] to attract the necessary capital to carry out its obligation to render service to the public."²⁸ Moreover, the U.S. Supreme Court has held that "the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks."²⁹
- State public utilities commissions typically consider several factors when setting a utility's ROE, including the level of risk associated with the utility's stock and the current prices of other lower-risk securities, such as government bonds. Because of their captive customer base, utilities are generally lower-risk investments for stockholders. And since Dominion and Appalachian Power are permitted to recover a large portion of their expenses through **rate adjustment clauses**, which provide guaranteed revenues, the common stock of these utility companies is even less risky.
- ◆ Section 56-585.1 A 2, however, includes limits on the SCC's ability to set ROEs for Dominion and Appalachian Power. This Code section states that the SCC may use "any methodology" when setting the ROE, except that the return may not be set lower than the average of a peer group of utilities. The Code includes a formula designed to result in a "**peer group floor**" ROE for Dominion and Appalachian Power.
- The peer group section prescribes a complicated procedure that the SCC must follow when selecting utilities for inclusion in the peer group and calculating the peer group floor. The SCC may calculate the peer group floor using either the authorized ROEs or the actual earned ROEs of the peer utilities. The selection of the utilities that will comprise the peer group can be a highly contentious issue and is litigated as part of a triennial review proceeding.³⁰

§ 56-585.1

A Generation, distribution, and transmission rates after capped rates terminate or expire (continued)

5. A utility may at any time, after the expiration or termination of capped rates, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the **timely and current recovery** ♦ from customers of the following costs:

...

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs or pilot programs. Any such petition shall include a proposed budget for the design, implementation, and operation of the energy efficiency program, including anticipated savings from and spending on each program, and the Commission shall grant a final order on such petitions within eight months of initial filing. The Commission shall only approve such a petition if it finds that the program is in the public interest...

d. Projected and actual costs of compliance with renewable energy portfolio standard requirements pursuant to § 56-585.5 that are not recoverable under subdivision 6. The Commission shall approve such a petition allowing the recovery of such costs incurred as required by § 56-585.5, provided that the Commission does not otherwise find such costs were unreasonably or imprudently incurred;

e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate impacts to marine life caused by construction of offshore wind generating facilities, as described in § 56-585.1:11, or to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations, including the costs of allowances purchased through a market-based trading program for carbon dioxide emissions.

...

7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility.

Rate adjustment clauses

- In addition to prescribing the rules for **triennial reviews**, Section 56-585.1 also authorizes Dominion and Appalachian Power to recover certain types of costs through single-issue rate riders called **rate adjustment clauses** (“RACs”). RACs are tracked separately from **base rates** and are adjusted on an annual basis to ensure that the correct rate levels are in place going forward.
- Section 56-585.1 A 5 authorizes RAC recovery for several categories of costs, including energy efficiency program expenses, renewable portfolio standard compliance costs, and costs necessary to comply with environmental laws and regulations.
- A separate provision, Section 56-585.1 A 6, authorizes utilities to request cost recovery for generation projects through RACs. Utilities are also permitted to recover transmission costs, including costs assessed by **PJM**, through RACs.³¹
- Recovering costs through RACs as opposed to through base rates benefits utilities in several ways. ♦ **Importantly, RACs allow for “timely and current” recovery of costs.** In other words, a utility may begin recovering project costs, including financing expenses, immediately; they do not have to wait for the project to be placed into service.
- Because RACs are adjusted and reset annually, the utility is also guaranteed to recover all approved costs more or less immediately. This means that the utility is subject to little or no risk with regard to projects recovered through RACs. If a utility sells fewer kilowatt-hours than expected in a particular year, the RAC will be adjusted so the shortfall is recovered in the next year. By contrast, the base rates of Dominion and Appalachian Power are generally only adjusted in **triennial review** proceedings. Additionally, under traditional base rate recovery, a utility is not permitted to begin recovering costs until the asset is in service.
- Not only are RACs calculated separately from base rates, but the SCC is not permitted to consider base rate earnings when approving RACs or adjusting RAC rates.³² This means, for example, that the SCC would not be allowed to reduce RAC charges if it finds that the utility’s base rates are too high.

³¹ The transmission RAC provision is found in Section 56-585.1 A 4.

³² Section 56-585.1 A 7 refers to petitions filed pursuant to “subdivisions 4, 5, or 6.” Subdivision 4 (i.e., Section 56-585.1 A 4) authorizes transmission cost recovery, while subdivision 5 identifies the various categories of distribution costs that may be recovered through RACs. Subdivision 6 provides the terms for generation RACs.

§ 56-585.1:5.

Pilot program for underground transmission lines.

A. There is hereby established a pilot program to further the understanding of underground electric transmission lines in regard to electric reliability, construction methods and related cost and timeline estimating, the probability of meeting such projections, and the benefits of undergrounding existing electric transmission lines to promote economic development within the Commonwealth...

B. Notwithstanding any other law to the contrary, as a part of the pilot program established pursuant to this section, the Commission shall approve as a qualifying project a transmission line of 230 kilovolts or less that is pending final approval of a certificate of public convenience and necessity from the Commission as of December 31, 2017, for the construction of an electrical transmission line approximately 5.3 miles in length utilizing both overhead and underground transmission facilities, of which the underground portion shall be approximately 3.1 miles in length, which has been previously proposed for construction within or immediately adjacent to the right-of-way of an interstate highway...

The Commission shall approve such underground construction within 30 days of receipt of the written request of the public utility to participate in the pilot program pursuant to this section. The Commission shall not require the submission of additional technical and cost analyses as a condition of its approval but may request such analyses for its review. The Commission shall approve the underground construction of one contiguous segment of the transmission line that is approximately 3.1 miles in length that was previously proposed for construction within or immediately adjacent to the right-of-way of the interstate highway, for which, by resolution, the locality has indicated general community support...

H. For the qualifying projects chosen pursuant to this section and not fully recoverable as charges for new transmission facilities pursuant to subdivision A 4 of § 56-585.1, the Commission shall approve a rate adjustment clause. **The rate adjustment clause shall provide for the full and timely recovery of any portion of the cost of such project not recoverable under applicable rates, terms, and conditions approved by the Federal Energy Regulatory Commission** ♦ and shall include the use of the fair return on common equity most recently approved in a State Corporation Commission proceeding for such utility. Such costs shall be entirely assigned to the utility's Virginia jurisdictional customers.

Legislative approval of controversial transmission project

- Sometimes the General Assembly passes laws directing the SCC to approve certain projects, or authorize the recovery of costs, that the Commission otherwise would have rejected. The 2018 **Grid Transformation and Security Act** (“GTSA”) included a provision requiring the SCC to approve a particular Dominion transmission line project in Prince William County. Section 56-585.1 established a “pilot program” directing the SCC to grant Dominion permission to construct a specific 5.3-mile route for a transmission line extension.
- The final cost estimate for the underground route was approximately \$172 million. Prior to the passage of the GTSA, the SCC had approved an overhead routing option estimated to cost approximately \$62 million, but rejected the more expensive underground route.³³
- ♦ **Section 56-585.1:5 H provides that the additional costs of the underground route may be recovered from customers, even if such costs were not recoverable through Dominion’s existing transmission rate adjustment clause.**
- In its 2020 **Integrated Resource Plan filing**, Dominion stated that it intends to pursue an additional underground transmission project pursuant to Section 56-585.1:5.³⁴

³³ See *Application of Virginia Electric and Power Company, For approval and certification of electric transmission facilities*, SCC Case No. PUE-2015-00107, July 26, 2018, Order on Request to Participate in Pilot Program.

³⁴ See Dominion’s 2020 Integrated Resource Plan at 35, available at <https://www.dominionenergy.com/-/media/pdfs/global/company/2020-va-integrated-resource-plan.pdf>.

§ 56-585.1:9.

Pilot program for broadband capacity to unserved areas of the Commonwealth.

- A.** The Commission shall establish pilot programs under which each Phase I Utility and each Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1, may submit one or more petitions to provide or make available broadband capacity to nongovernmental Internet service providers in areas of the Commonwealth unserved by broadband. Any such petitions that a Phase I Utility submits shall not exceed \$60 million in costs annually. Any such petitions that a Phase II Utility submits shall not exceed \$60 million in costs annually. **The provision of such broadband capacity to nongovernmental Internet service providers in areas of the Commonwealth unserved by broadband pursuant to this section is in the public interest.** ♦
- B.** The incremental costs of providing broadband capacity pursuant to any such pilot program, net of revenue generated therefrom, shall be eligible for recovery from customers as an electric grid transformation project pursuant to clause (vi) of subdivision A 6 of § 56-585.1 filed on or after July 1, 2020.
- ...
- D.** Each petition to provide broadband capacity pursuant to this section that an investor-owned utility submits to the Commission shall identify the nongovernmental Internet service provider to which the utility shall lease such capacity, together with the area to be served using such capacity. The Commission shall, after notice and opportunity for hearing, initiate proceedings to review each petition submitted. In determining whether an area is unserved by broadband, the Commission shall take into account the impact of any grants or loans made to provide broadband access to the designated area. The Commission's final order regarding any such petition shall be entered by the Commission not more than six months after the date of the filing of such petition. The Commission shall condition any approval of such petition on the requirement that construction shall commence within three years of such approval...

Dominion and Appalachian Power broadband internet programs

- 2018 legislation, House Bill 2691, authorized Dominion and Appalachian Power to provide broadband capacity in underserved areas of Virginia and to recover the costs from ratepayers. The legislation limited broadband program investments to \$60 million annually.
- Although internet service is not a typical function of an electric utility, Section 56-585.1:9 provides that the costs of such projects qualify as “electric distribution grid transformation project” expenses. This means that the utility may recover broadband expansion costs through a **rate adjustment clause** pursuant to Section 56-585.1 A 6 or through its **base rates**. Dominion and Appalachian may also recover grid transformation costs via the **Customer Credit Reinvestment Offset** mechanism provided in Section 56-585.1 A 8 d.³⁵
- ♦ Section 56-585.1:9 also provides that such investments are “in the public interest.” When the General Assembly declares a particular project or type of investment to be “in the public interest,” that does not require the SCC to approve it. But such declarations express the policy preference of the General Assembly, which is often a factor in the SCC’s decision-making.
- Section 56-585.1:9 F defines “areas unserved by broadband” as “areas in which less than 10 percent of residential and commercial units are capable of receiving broadband service.” The definitions section of the statute also provides that “the Department of Housing and Community Development for its Virginia Telecommunication Initiative may by guideline increase such percentage from time to time.”
- Both Dominion and Appalachian Power have filed initial broadband expansion plans that will expand service in several areas, including the Northern Neck of Virginia and Grayson County.³⁶

³⁵ The Customer Credit Reinvestment Offset (“CCRO”) mechanism is another means for utilities to pay for renewable energy and/or grid transformation costs. The CCRO provision essentially allows the utility to use funds that otherwise would be refunded to customers as part of a triennial review proceeding to “pay for” project costs that have not yet been recovered. In this way, the CCRO “offsets” or cancels out funds that would be credited to customers’ bills. See 56-585.1 A 8 d.

³⁶ See SCC Case Nos. PUR-2020-00269 (Appalachian Power request for approval to provide broadband service in Grayson County Virginia) and PUR-2020-00197 (Dominion proposal to provide service in areas including the Northern Neck, Botetourt County, and Surry County).

§ 56-585.1:11.

Development of offshore wind capacity

- B.** [P]rior to December 31, 2034, the construction or purchase by a public utility of one or more offshore wind generation facilities located off the Commonwealth's Atlantic shoreline or in federal waters and interconnected directly into the Commonwealth, with an aggregate capacity of up to 5,200 megawatts, is in the public interest and the Commission shall so find...◆
- C.** 1. Pursuant to subsection B, construction by a Phase II Utility of one or more new utility-owned and utility-operated generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's Atlantic shoreline, with an aggregate rated capacity of not less than 2,500 megawatts and not more than 3,000 megawatts, along with electrical transmission or distribution facilities associated therewith for interconnection is in the public interest. In acting upon any request for cost recovery by a Phase II Utility for costs associated with such a facility, the Commission shall determine the reasonableness and prudence of any such costs, provided that such costs shall be presumed to be reasonably and prudently incurred● if the Commission determines that (i) the utility has complied with the competitive solicitation and procurement requirements pursuant to subsection E; (ii) the project's projected total levelized cost of energy, including any tax credit, on a cost per megawatt hour basis, inclusive of the costs of transmission and distribution facilities associated with the facility's interconnection, does not exceed 1.4 times the comparable cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating facility as estimated by the U.S. Energy Information Administration in its Annual Energy Outlook 2019; and (iii) the utility has commenced construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in service prior to January 1, 2028...
- 2.** Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate of return to a Phase II Utility for the construction of one or more new utility-owned and utility-operated generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's Atlantic shoreline pursuant to this section. *

Up to 5,200 MW of offshore wind deemed “in the public interest”

- In 2020, the General Assembly enacted legislation declaring up to 5,200 MW of new offshore wind capacity obtained by utilities to be “in the public interest.”
 - ◆ While Section 56-585.1:11 B states that new offshore wind capacity of up to 5,200 MW is “in the public interest,” Section 56-585.1:11 C applies a different standard to certain offshore wind projects proposed by Dominion. ● This section provides that an offshore wind project between 2,500 and 3,000 MW that is proposed by Dominion shall be “presumed to be reasonably and prudently incurred,” provided certain criteria and cost parameters are satisfied.
- The language in Section 56-585.1:11 was included in multiple bills, including the omnibus legislation known as the **Virginia Clean Economy Act**.³⁷
- Section 56-585.1:11 permits Dominion to recover offshore wind costs through a new rate adjustment clause or as a **Customer Credit Reinvestment Offset** (“CCRO”). Using the CCRO means that the project costs would essentially be “paid for” with overearnings amounts that otherwise would have been refunded to customers as part of a **triennial review**.³⁸
- The SCC approved a 12 MW offshore wind pilot program proposed by Dominion in 2018.³⁹ In its order, however, the SCC signaled that the proposal would have been rejected if not for the General Assembly’s public interest declaration.⁴⁰
- * The statute also provides that “the Commission shall not grant an enhanced rate of return to [Dominion]” for the construction of new offshore wind facilities. Before it was amended in 2013, Section 56-585.1 A 6 of the Code required the SCC to authorize bonus rates of return for several Dominion coal, gas, and renewable energy facilities. These bonus returns, ranging from 100 to 200 basis points (1%-2%), resulted in increased rates for consumers.⁴¹

³⁷ 2020 HB 1526 and SB 851.

³⁸ See SCC Case No. PUR-2021-00058.

³⁹ See Case No. PUR-2018-00121.

⁴⁰ The Commission stated in its final order that the project “would not be deemed prudent as that term has been applied by this Commission in its long history of public utility regulation or under any common application of the term.” SCC Case No. PUR-2018-00101, November 2, 2018, Final Order at 15.

⁴¹ See page 34 (describing enhanced rates of return).

§ 56-585.1:12.

Multi-family shared solar program.

...

"Shared solar facility" means a facility that:

1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does not exceed 3,000 kW alternating current at any single location or that does not exceed 5,000 kW alternating current at contiguous locations owned by the same entity or affiliated entities;
2. Is operated pursuant to a program whereby at least three subscribers receive a bill credit for the electricity generated from the facility in proportion to the size of their subscription;
3. Is located in the service territory of an investor-owned utility;
4. Is connected to the electric distribution grid serving the Commonwealth; and
5. Is located on a parcel of land on the premises of the multi-family utility customer or adjacent thereto.

"Subscriber" means a multi-family customer of an investor-owned electric utility⁴² that owns one or more subscriptions of a shared solar facility that is interconnected with the utility.

"Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more shared solar facilities. A "subscriber organization" shall not be considered a utility solely as a result of its ownership or operation of a shared solar facility.

- B.** The Commission shall establish by regulation a program that affords eligible multi-family customers of investor-owned utilities the opportunity to participate in shared solar projects. The regulations shall be adopted by the Commission by January 1, 2021.

Opportunities for residential customers to “subscribe” to off-site solar generation

- In 2019, the General Assembly established a “**shared solar**” program for residential customers in multi-family housing facilities. “Shared” or “community” solar programs allow customers to purchase solar energy even if they are not able to install solar panels. The multi-family shared solar program is intended to allow more Virginia customers, including customers living in apartment buildings, to purchase and use renewable energy.
- ♦ The statute describes customers as “**subscribers.**” Subscribers may purchase a share of the solar output from a solar facility from a “**subscriber organization,**” which is a third-party organization and not an electric utility.⁴² Subscribers continue to purchase all of their electric requirements from **their incumbent electric utility,** but receive a bill credit based on the subscriber’s proportional share of the output from the solar facility.⁴³
- The statute directed the SCC to adopt initial regulations no later than January 1, 2021. The SCC promulgated initial rules on December 23, 2020.⁴⁴
- Code Section 56-585.1:12 defines “investor-owned utilities” in a way that includes Dominion and Kentucky Utilities, but excludes Appalachian Power. Therefore, there is no multi-family shared solar in Appalachian Power’s service territory.⁴⁵ Note that another statute, Section 56-594.3, creates a different shared solar program for Dominion’s service territory only. This shared solar program is not limited to customers of multi-family housing. In 2020, the SCC opened a rulemaking docket to adopt regulations for the Dominion shared solar program in SCC Case No. PUR-2020-00125.

⁴² The SCC’s regulations clarify that electric utilities may not participate as subscriber organizations. The rules provide that affiliates of electric utility companies may qualify as subscriber organizations. See Rule 20VAC5-340-30 A 7.

⁴³ Va. Code § 56-585.1:12 D.

⁴⁴ See SCC Case No. PUR-2020-00125. The multi-family shared solar regulations are found in Section 20VAC5-340-10 of the Virginia Administrative Code.

⁴⁵ “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.

Virginia Clean Economy Act renewable energy provisions

The 2020 **Virginia Clean Economy Act** (“VCEA”) included a number of provisions designed to encourage renewable energy and energy storage development. Key provisions include a mandatory renewable portfolio standard in Va. Code § 56-585.5. This provision requires Dominion and Appalachian Power to obtain an increasing portion of their electricity sales from renewable sources. The VCEA also encourages the utilities to develop or purchase projects located in Virginia and that support economic development in the Commonwealth.

The VCEA also established a Percentage of Income Payment Plan (“PIPP”) program that is intended to limit the electric bills of lower-income customers of Dominion and Appalachian Power.

Also included in the following pages is Virginia’s **net metering** statute, Va. Code § 56-594, which allows customers to purchase and use energy generated at onsite renewable energy facilities, and Va. Code § 56-587 which describes the licensing requirements for generation suppliers other than electric utilities.

§ 56-585.5.

Generation of electricity from renewable and zero carbon sources

...

- C. Each Phase I and Phase II Utility shall participate in a renewable energy portfolio standard program (RPS Program) that establishes annual goals for the sale of renewable energy to all retail customers in the utility's service territory ... To comply with the RPS Program, each Phase I and Phase II Utility shall procure and retire Renewable Energy Certificates (RECs) originating from renewable energy standard eligible sources (RPS eligible sources)...◆

...

A Phase II Utility shall meet one percent of the RPS Program requirements in any given compliance year with solar, wind, or anaerobic digestion resources of one megawatt or less located in the Commonwealth, with not more than 3,000 kilowatts at any single location or at contiguous locations owned by the same entity or affiliated entities and, to the extent that low-income qualifying projects are available, then no less than 25 percent of such one percent shall be composed of low-income qualifying projects.

Beginning with the 2025 compliance year and thereafter, at least 75 percent of all RECs used by a Phase II Utility in a compliance period shall come from RPS eligible resources located in the Commonwealth.*

Any Phase I or Phase II Utility may apply renewable energy sales achieved or RECs acquired in excess of the sales requirement for that RPS Program to the sales requirements for RPS Program requirements in the year in which it was generated and the five calendar years after the renewable energy was generated or the RECs were created. To the extent that a Phase I or Phase II Utility procures RECs for RPS Program compliance from resources the utility does not own, the utility shall be does not own, the utility shall be entitled to recover the costs of such certificates at its election pursuant to § 56-249.6 or subdivision A 5 d of § 56-585.1.◆

Key Virginia Clean Economy Act energy requirements

- Section 56-585.5 contains the key renewable energy and energy storage provisions of the 2020 **Virginia Clean Economy Act** (“VCEA”). Section 56-585.5 C requires Dominion and Appalachian Power to participate in a **renewable portfolio standard** (“RPS”) program. The RPS requires the utilities to meet an increasing percentage of their energy sales from clean energy sources.⁴⁶ Dominion must reach a 100% clean energy target by 2045, while Appalachian Power must reach 100% by 2050.⁴⁷
- ◆ The statute provides that the utilities must demonstrate compliance with the RPS by obtaining and retiring **renewable energy certificates** (“RECs”). RECs are tradable commodities that validate one megawatt-hour of generation from a renewable resource, such as a solar facility. Utilities may obtain RPS-compliant RECs from their own generation facilities, or by purchasing them from private generators.
- ◆ Section 56-585.5 C contains a **distributed generation “carveout”** applicable to Dominion. This provision requires Dominion to obtain 1% of its RPS requirements from smaller resources located in Virginia.
- * Beginning in 2025, Dominion must obtain 75% of the RECs used for its RPS compliance obligations from Virginia resources. Appalachian Power is not subject to this requirement, however.
- ◆ If a utility procures RECs from a facility it does not own, those purchase costs may be recovered through a separate rate rider.⁴⁸

⁴⁶ The annual RPS targets are based on the “total electric energy” sold by the utility during the prior calendar year. The definition of “total electric energy” does not include energy generated by nuclear facilities. Because about one-third of Dominion’s portfolio consists of nuclear resources, Dominion’s RPS obligation is effectively reduced by this amount. See Code Section 56-585.5 A.

⁴⁷ In a provision omitted here for space, Section 56-585.5 C outlines the annual percentage targets for each utility between 2021 and 2050.

⁴⁸ A rate rider is a line item on a customer’s bill that allows the utility to recover and track certain costs separately. Code Section 56-249.6 is the Code’s fuel recovery provision, while Section 56-585.1 A 5 d is a rate adjustment clause provision for RPS costs.

§ 56-585.5.

Generation of electricity from renewable and zero carbon sources (continued)

D. Each Phase I or Phase II Utility shall petition the Commission for necessary approvals to procure zero-carbon electricity generating capacity as set forth in this subsection... All costs not sought for recovery through a rate adjustment clause pursuant to subdivision A 6 of § 56-585.1 associated with generating facilities provided by sunlight or onshore or offshore wind are also eligible to be applied by the utility as a customer credit reinvestment offset as provided in subdivision A 8 of § 56-585.1... ◆

1. Each Phase I Utility shall petition the Commission for necessary approvals to construct, acquire, or enter into agreements to purchase the energy, capacity, and environmental attributes of 600 megawatts of generating capacity using energy derived from sunlight or onshore wind...
2. By December 31, 2035, each Phase II Utility shall petition the Commission for necessary approvals to (i) construct, acquire, or enter into agreements to purchase the energy, capacity, and environmental attributes of 16,100 megawatts of generating capacity located in the Commonwealth using energy derived from sunlight or onshore wind, which shall include 1,100 megawatts of solar generation of a nameplate capacity not to exceed three megawatts per individual project and 35 percent of such generating capacity procured shall be from the purchase of energy, capacity, and environmental attributes from solar facilities owned by persons other than a utility, including utility affiliates and deregulated affiliates ◆ and (ii) pursuant to § 56-585.1:11, construct or purchase one or more offshore wind generation facilities located off the Commonwealth's Atlantic shoreline or in federal waters and interconnected directly into the Commonwealth with an aggregate capacity of up to 5,200 megawatts.

The VCEA's new generation requirements

- Another important part of the **VCEA** is codified in Section 56-585.5 D. This section (“Section D”) is related to, but separate from, the **RPS** provisions found in Section 56-585.5 C (“Section C”). Section D requires Dominion and Appalachian Power to propose – or “petition the Commission” for approval of – certain quantities of new renewable generation between 2020 and 2035. Importantly, this new generation must be located in Virginia.
- Per Section 56-585.5 D, Appalachian Power must propose at least 600 MW of new solar or onshore wind resources by 2035, while Dominion must propose at least 16,100 MW. ◆ The utility may request to recover the costs of new generation through **base rates, rate adjustment clauses, or through a customer credit reinvestment offset.**⁴⁹
- The statute also provides that 35% of such generating capacity “shall be from the purchase of energy, capacity, and environmental attributes from solar facilities owned by persons other than a utility” ◆ This means that 35% of the generating capacity shall be purchased via **power purchase agreements** (“PPAs”) with third-party generation owners.⁵⁰
- Utilities generally recover PPA costs through the **fuel recovery clause**, with no rate of return applied.⁵¹ When a utility owns a facility, however, the capital costs become part of the utility’s **rate base**, to which the utility’s **rate of return** is applied. For this reason, **vertically integrated** utilities have a financial incentive to own and operate their own generation facilities.

⁴⁹ See Va. Code § 56-585.1 A 8 d and the discussion on page 18.

⁵⁰ The PPA provision applicable to Appalachian Power is omitted here for space. Note, however, that the PPA provisions for Dominion and Appalachian are slightly different. The statute provides that Dominion may purchase power from “utility affiliates and deregulated affiliates,” while the PPA language applicable to Appalachian Power does not include this language.

⁵¹ Va. Code § 56-249.6. Note that the VCEA may allow utilities to recover a portion of PPA costs through non-fuel riders. See SCC Case No. PUR-2020-00134.

§ 56-585.5.

Generation of electricity from renewable and zero carbon sources (continued)

...

[D 4]. In connection with the requirements of this subsection, each Phase I and Phase II Utility shall, commencing in 2020 and concluding in 2035, submit annually a plan and petition for approval for the development of new solar and onshore wind generation capacity. Such plan shall reflect, in the aggregate and over its duration, the requirements of subsection D concerning the allocation percentages for construction or purchase of such capacity. Such petition shall contain any request for approval to construct such facilities pursuant to subsection D of § 56-580 and a request for approval or update of a rate adjustment clause pursuant to subdivision A 6 of § 56-585.1 to recover the costs of such facilities. Such plan shall also include the utility's plan to meet the energy storage project targets of subsection E, ♦ including the goal of installing at least 10 percent of such energy storage projects behind the meter. In determining whether to approve the utility's plan and any associated petition requests, the Commission shall determine whether they are reasonable and prudent and shall give due consideration to (i) the RPS and carbon dioxide reduction requirements in this section, (ii) the promotion of new renewable generation and energy storage resources within the Commonwealth, and associated economic development, and (iii) fuel savings projected to be achieved by the plan. ♦ Notwithstanding any other provision of this title, the Commission's final order regarding any such petition and associated requests shall be entered by the Commission not more than six months after the date of the filing of such petition.

Annual plans for new generation and energy storage

- Section 56-585.5 D 4 requires Dominion and Appalachian Power to file annual “plans and petitions” for approval of new solar and/or onshore wind generation capacity. These plans must propose new generation resources equal to the megawatt targets identified in Section 56-585.5 D 1-3.⁵²
- Additionally, the statute provides that the annual filings shall describe the utility's plan to comply with the energy storage targets of Section 56-585.5 E. This provision, another key provision of the **VCEA**, requires Dominion and Appalachian Power to propose at least 3,100 MW of new energy storage resources by 2035.⁵³
- The annual plans filed pursuant to this section may also include requests for **certificates of public convenience and necessity** (“CPCNs”) and/or requests to recover the costs of the facilities through rate adjustment clauses (“RACs”).♦⁵⁴
- A separate provision of Section 56-585.5 requires Dominion and Appalachian Power to conduct **requests for proposals** (“RFPs”) for new generation on an annual basis. Section 56-585.5 D 3 contains specific requirements for the terms of these annual solicitations.
- ♦ The SCC must determine whether the plans are “reasonable and prudent,” after considering several factors such as the utility's **renewable portfolio standard** obligations and the plan's impact on economic development in Virginia. In 2021, the SCC approved initial plans filed by Dominion and Appalachian Power in Case Nos. PUR-2020-00134 and PUR-2020-00135, respectively.

⁵² Those provisions require Appalachian Power to petition the SCC for approval of at least 600 MW of solar and/or onshore wind resources located in Virginia, while Dominion must propose at least 16,100 MW of such resources.

⁵³ See page 24 for discussion of Section 56-585.5 E.

⁵⁴ See pages 10, 15, and 23 for discussion of CPCNs and RACs.

§ 56-585.5. Generation of electricity from renewable and zero carbon sources (continued)

E. To enhance reliability and performance of the utility's generation and distribution system, each Phase I and Phase II Utility shall petition the Commission for necessary approvals to construct or acquire new, utility-owned energy storage resources.

1. By December 31, 2035, each Phase I Utility shall petition the Commission for necessary approvals to construct or acquire 400 megawatts of energy storage capacity. ♦ Nothing in this subdivision shall prohibit a Phase I Utility from constructing or acquiring more than 400 megawatts of energy storage, provided that the utility receives approval from the Commission pursuant to §§ 56-580 and 56-585.1.
2. By December 31, 2035, each Phase II Utility shall petition the Commission for necessary approvals to construct or acquire 2,700 megawatts of energy storage capacity. ● Nothing in this subdivision shall prohibit a Phase II Utility from constructing or acquiring more than 2,700 megawatts of energy storage, provided that the utility receives approval from the Commission pursuant to §§ 56-580 and 56-585.1.
3. No single energy storage project shall exceed 500 megawatts in size, except that a Phase II Utility may procure a single energy storage project up to 800 megawatts... *
5. After July 1, 2020, at least 35 percent of the energy storage facilities placed into service shall be (i) purchased by the public utility from a party other than the public utility or (ii) owned by a party other than a public utility, with the capacity from such facilities sold to the public utility. By 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...

New energy storage requirements

- ♦ In addition to the **renewable portfolio standard** targets and the new generation petition requirements, the **VCEA** requires Dominion and Appalachian Power to add large quantities of energy storage resources. ● Appalachian Power is required to petition the Commission for approval of at least 400 MW of energy storage by 2035, while Dominion must add 2,700 MW.
- The statute directed the SCC to adopt rules necessary to achieve the Code's energy storage requirements. These regulations are found in Section 20VAC5-335-10 et seq. of the **Virginia Administrative Code**.⁵⁵
- While Code Section 56-585.5 E describes the total amount of storage resources that must be proposed by 2035, the SCC's regulations provide the schedule for these proposals. Per the SCC's rules, the majority of the storage additions must be made towards the end of the 2020-2035 time period. Appalachian Power must propose at least 25 MW by 2025; an additional 125 MW by 2030; and an additional 250 MW by 2035. Dominion must propose at least 250 MW by 2025; an additional 950 MW by 2030; and an additional 1,500 MW by 2035.
- The SCC's regulations also establish a new permitting process for non-utility companies wishing to construct and operate energy storage facilities. This permit provides an alternative to obtaining a **certificate of public convenience and necessity**.
- * Section 56-585.5 E 3 provides that no single energy storage project may exceed 500 MW, except that Dominion is permitted to procure a single project up to 800 MW in size. This language may have been included in the **VCEA** in order to allow Dominion to pursue a large pumped hydroelectric storage project in Southwest Virginia.⁵⁶

⁵⁵ See SCC Case No. PUR-2020-00120, December 18, 2020, Order Adopting Regulations.

⁵⁶ In its 2020 Integrated Resource Plan filing, Dominion stated that it is continuing to develop feasibility studies for a potential pumped storage facility in Tazewell County, Virginia. See Case No. PUR-2020-00035, May 1 IRP at 85.

§ 56-585.5.

Generation of electricity from renewable and zero carbon sources (continued)

"Accelerated renewable energy buyer" means a commercial or industrial customer of a Phase I or Phase II Utility, irrespective of generation supplier, with an aggregate load over 25 megawatts in the prior calendar year, that enters into arrangements pursuant to subsection G, as certified by the Commission.

- G. 1. An accelerated renewable energy buyer may contract with a Phase I or Phase II Utility, or a person other than a Phase I or Phase II Utility, to obtain (i) RECs from RPS eligible resources or (ii) 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. Such an accelerated renewable energy buyer may offset all or a portion of its electric load for purposes of RPS compliance through such arrangements. **An accelerated renewable energy buyer shall be exempt from the assignment of non-bypassable RPS compliance costs pursuant to subsection F, with the exception of the costs of an offshore wind generating facility pursuant to § 56-585.1:11, ♦ based on the amount of RECs obtained pursuant to this subsection in proportion to the customer's total electric energy consumption, on an annual basis, however, an accelerated renewable energy buyer obtaining RECs only shall not be exempt from costs related to procurement of new solar or onshore wind generation capacity, energy, or environmental attributes, or energy storage facilities by the utility pursuant to subsections D and E. To the extent that an accelerated renewable energy buyer contracts for the capacity of new solar or wind generation resources pursuant to this subsection, the aggregate amount of such nameplate capacity shall be offset from the utility's procurement requirements pursuant to subsection D...**

Special provisions for "accelerated renewable energy buyers"

- The VCEA allows certain larger customers of Dominion and Appalachian Power to obtain exemptions from some of the VCEA's renewable energy costs if the customers qualify as "**accelerated renewable energy buyers**" or "ARBs." ARBs are customers that have entered into voluntary agreements to purchase **renewable energy certificates** or contracts for **bundled power**. Some of these customers may have entered into such agreements in order to meet corporate renewable energy or "zero carbon" goals.
- ♦ Customers that are certified as ARBs may be exempt from some or all of the utility's costs to comply with the **renewable portfolio standard** ("RPS"), provided the RPS costs are recovered through a rate adjustment clause.⁵⁷
- Section 56-585.5 G provides that "the calculation of the utility's RPS Program requirements shall not include the electric load covered by customers certified as accelerated renewable energy buyers." This means that each utility's RPS targets will be reduced by the amount of ARB load.
- In May, 2021, the SCC opened a rulemaking docket to evaluate some of the issues associated with ARB certification.⁵⁸
- The statute also provides that any agreements between utilities and ARBs "shall not be deemed a special rate or contract requiring Commission approval pursuant to Va. Code § 56-235.2," provided that the utility does not recover any "incremental costs" from its other customers. Section 56-235.2 allows the SCC to approve "special contracts" with individual customers when the SCC finds such contracts would be "in the public interest."⁵⁹

⁵⁷ Section 56-585.5 G, however, provides that ARBs shall not be exempt from the costs of an offshore wind facility approved pursuant to Va. Code § 56-585.1:11.

⁵⁸ See SCC Case No. PUR-2021-00089.

⁵⁹ A "special contract" could be if, for example, a utility proposes to offer an alternative rate design or a floating per-kWh rate that is based on PJM market energy prices. Such a contract would be different from the standard tariff rate.

§ 56-585.6.

Universal service fee; Percentage of Income Payment Program and Fund.

- A.** The Commission shall, after notice and opportunity for hearing, initiate a proceeding to establish the rates, terms, and conditions of a non-bypassable universal service fee to fund the Percentage of Income Payment Program (PIPP). Such universal service fee shall be allocated to retail electric customers of a Phase I and Phase II Utility on the basis of the amount of kilowatt-hours used and be established at such level to adequately address the PIPP's objectives to (i) reduce the energy burden of eligible participants by limiting electric bill payments directly to no more than six percent of the eligible participant's annual household income if the household's heating source is anything other than electricity, and to no more than 10 percent of an eligible participant's annual household income on electricity costs if the household's primary heating source is electricity, and (ii) reduce the amount of electricity used by the eligible participant's household through participation in weatherization or energy efficiency programs and energy conservation education programs; and (iii) reduce the amount of electricity energy, regardless of primary heating source, used by the eligible participant's household through participation in weatherization or energy efficiency programs...◆
- C.** The Department of Social Services (the Department), in consultation with, as it deems necessary, the Department of Housing and Community Development, shall adopt rules or establish guidelines for the adoption, implementation, and general administration of the PIPP and the Percentage of Income Payment Fund established in subsection G, consistent with this section. Such rules or guidelines shall include exemptions for terms of program participation or energy use reduction as the Department deem appropriate. The PIPP shall commence no later than March 1, 2022. Each Phase I and Phase II Utility shall cooperate with the requests of the Department and the Commission in the implementation and administration of the PIPP. The Commission shall promulgate any rules necessary to ensure that (i) funds collected from each utility's universal service fee are directed to the Percentage of Income Payment Fund and (ii) utilities receive adequate compensation from the Fund, on a timely basis....

Energy burden reductions through Percentage of Income Payment Plan

- The **VCEA** included a **Percentage of Income Payment Plan** (“PIPP”) provision intended to limit the energy bills of lower-income residential customers. The PIPP program is designed to limit electricity bill payments to no more than six percent of the customer's annual household income (if the household's primary heating source is not electricity) or 10 percent (if the household's primary heating source is electricity). Customers eligible for PIPP include “any person or household whose income does not exceed 150 percent of the federal poverty level.”⁶⁰
- The legislation also provides that the objectives of the PIPP program go beyond energy bill reductions. ◆ Code Section 56-585.6 states that other objectives of the program include energy usage reductions through participation in weatherization and energy efficiency programs.
- The PIPP program will commence no later than March 1, 2022. The legislation established a **PIPP fund** from which eligible customers may seek bill payment assistance. The PIPP fund will be maintained by the Virginia Department of Social Services.
- The SCC established the initial **universal service fee** (“USF”) to fund the PIPP.⁶¹ The initial USF is designed to recover \$25 million and \$93 million annually for Appalachian Power and Dominion, respectively. The USF will be recovered from a separate PIPP rider. The USF may be adjusted or “trued up” on an annual basis based on customer participation levels and the actual costs of the program.

⁶⁰ Code § 56-576 provides the definition of “Percentage of Income Payment Program (PIPP) eligible utility customer.”

⁶¹ See Case Nos. PUR-2020-00109 (establishing the USF for Dominion) and PUR-2020-00117 (establishing the USF for Appalachian Power).

§ 56-587.

Licensure of retail electric energy suppliers and persons providing other competitive services.

- A.** As a condition of doing business in the Commonwealth, each person except a default service provider seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, on and after January 1, 2002, shall obtain a license from the Commission to do so. A license shall not be required solely for the leasing or financing of property used in the sale of electricity to any retail customer in the Commonwealth...
- B. 1.** As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate (i) technical capabilities as the Commission may deem appropriate; (ii) in the case of a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence to minimum market conduct standards...

Licensing requirements for competitive service providers

- Section 56-587 provides the licensing requirements for **competitive service providers** (“CSPs”). CSPs are non-utility companies that provide **retail electric service** to Virginia customers. Customers that purchase generation service from CSPs remain distribution customers of their **incumbent electric utility**.
- The SCC has adopted regulations governing CSPs, which are found in Section 20VAC5-314-10 of the **Virginia Administrative Code**. Companies applying to serve as CSPs must demonstrate financial fitness and satisfy numerous other requirements before providing service in Virginia.
- CSPs are **load-serving entities** (“LSEs”) in PJM and must satisfy the same reliability requirements as **vertically integrated electric utilities**.
- Another statute within Chapter 23, Section 56-588, provides the licensing requirements for **aggregators**. Aggregators are entities that are authorized to act as intermediaries for multiple retail customers, arranging for the purchase of electricity or natural gas from licensed CSPs.⁶²
- Many of the provisions of Section 56-587 were codified as part of the **1999 Restructuring Act**. The Restructuring Act was intended to establish a transition to retail choice for all Virginia consumers. In retail choice jurisdictions, customers are permitted to choose their generation supplier. The Commonwealth abandoned the planned transition to retail choice when the General Assembly Enacted the **2007 Regulation Act**.⁶³

⁶² See 20VAC5-312-10 et seq.

⁶³ See *Appalachian Power Company v. SCC*, 284 Va. 695 (2012) (describing the 1999 Restructuring Act and the General Assembly’s decision to abandon the transition to retail choice for generation).

§ 56-594.

Net energy metering provisions.

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for customers of investor-owned utilities and to begin no later than July 1, 2015, and to end July 1, 2019, for customers of electric cooperatives as provided in subsection G, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering...

B. For the purpose of this section ...

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 25 kilowatts for residential customers and not more than three megawatts for nonresidential customers; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on land owned or leased by the customer and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements... ◆

"Net energy metering" is defined as "measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator or eligible agricultural customer-generator..."

G. [N]et energy metering in the service territory of each electric cooperative shall be conducted as provided in a program implemented pursuant to § 56-594.01. ●

Customer self-generation

- Section 56-594 contains Virginia's net energy metering (or "**net metering**") provisions. Net metering allows utility customers to generate and use energy from onsite renewable energy systems, such as solar panels. The customer remains connected to the utility's distribution system, but only pays for the electricity usage that is in excess of his or her energy generation.
- Section 56-594 applies to all Virginia investor-owned electric utilities, including Dominion, Appalachian Power, and Kentucky Utilities. While most of **Chapter 23** applies only to Dominion and Appalachian Power, the net metering provisions also apply to Kentucky Utilities. ◆ A related Code provision, Section 56-594.01, governs net metering in the service territories of **Virginia's electric cooperatives**.
- ● For some net metering customers, the renewable energy system must be intended "primarily to offset all or part of the customer's electricity requirements." This means, for example, that a customer cannot install a system that is designed to produce more electricity than the customer typically uses. Note, however, that Phase II utility customer systems may be designed to generate up to 150% of the customer's annual electricity requirements.
- The net metering tariff is available until the aggregate generating capacity of net metering customers equals six percent of the utility's peak load. A related Code provision, Section 56-594.02, authorizes certain customer-generators to purchase power from on-site facilities owned by third parties under **power purchase agreements**.⁶⁴
- In addition to the provisions of Section 56-594, utilities and customers must comply with the SCC's net metering regulations found in Section 20VAC5-315-10 et seq of the **Virginia Administrative Code**, as well as any utility tariff provisions, if applicable.

⁶⁴ See page 29 (describing Virginia's power purchase agreement pilot program).

§ 56-594.02.

Solar-powered or wind-powered electricity generation; power purchase agreements; pilot programs.

- A.** The Commission shall conduct pilot programs under which a person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator, as defined in § 56-594, shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement ... subject to the following terms, conditions, and restrictions:
1. Notwithstanding subsection G of § 56-580 or any other provision of law, a pilot program shall be conducted within the certified service territory of each investor-owned electric utility ("Pilot Utility")... ♦
 3. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than three megawatts shall be eligible for a third party power purchase agreement under a pilot program; however, if the customer under such agreement is a low-income utility customer, as defined in § 56-576, or is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it does not meet the 50 kilowatts minimum size requirement. The maximum generation capacity of three megawatts shall not affect the limits on the capacity of electrical generating capacities of 25 kilowatts for residential customers and three megawatts for nonresidential customers set forth in subsection B of § 56-594...
- C.** Any third party power purchase agreement that is not entered into pursuant to the pilot program established pursuant to subsection A is prohibited in the Pilot Utility's service territory, unless such third party power purchase agreement is entered into between a licensed supplier and a retail customer pursuant to § 56-577 where such supplier is responsible for serving 100 percent of the load requirements for each retail customer account it serves...

Power purchase agreement “pilot program”

- Section 56-594.02 codifies a **power purchase agreement** (“PPA”) pilot program that has been in place since 2013. Under the PPA pilot program, customers of Dominion, Appalachian Power, and Kentucky Utilities may purchase power via PPAs from onsite renewable energy facilities owned by third parties. The renewable energy facilities must be interconnected pursuant to the net metering statute and count towards the **net metering caps** in each utility’s service territory.
- ♦ The phrase “notwithstanding subsection G of § 56-580 G or any other provision of law” is intended to ensure that Kentucky Utilities is subject to the PPA pilot program statute. Subsection G of § 56-580 states that Kentucky Utilities is exempt from most of **Chapter 23** of Title 56. The **VCEA** expanded the pilot program by increasing the capacity (in megawatts) and by incorporating Kentucky Utilities.
- PPAs provide an alternative means to finance renewable energy projects. Usually, no upfront cost is required by the building owner. PPAs may be especially useful for tax-exempt customers, such as non-profit organizations and localities, that are not eligible for federal tax credits for renewable energy investments.
- The PPA pilot program is one of the handful of exceptions to the **monopoly franchise** rights of Virginia’s electric utilities. Incumbent electric utilities are generally permitted to be the exclusive provider of retail electric service within their service territory.⁶⁵
- Customers wishing to participate in the PPA pilot program must comply with all the terms of the statute and net metering regulations. The SCC maintains a website describing additional terms and conditions of the program.⁶⁶
- Note that the 50 kW floor effectively precludes residential customers from participating in the pilot program, given the limit on residential net metering at 25kW. See Va. Code 56-594 A (definition of “eligible customer-generator”).

⁶⁵ See Va. Code § 56-265.3.

⁶⁶ See <https://scc.virginia.gov/pages/Renewable-Energy-Pilot-Program>.

§ 56-582. Rate caps.

- A.** The Commission shall establish capped rates, effective January 1, 2001, for each service territory of every incumbent utility as follows:
1. Capped rates shall be established for customers purchasing bundled electric transmission, distribution and generation services [from a utility].
 2. Capped rates for electric generation services, only, shall also be established for the purpose of effecting customer choice for those retail customers authorized under this chapter to purchase generation services from a supplier other than the incumbent utility during this period.
 3. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter...
- C.** A utility may petition the Commission to terminate the capped rates to all customers any time after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an effectively competitive market for generation services within the service territory of that utility. If its capped rates, as established and adjusted from time to time pursuant to subsections A and B, are continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for approval of a one-time change in its rates...
- F.** The capped rates established pursuant to this section shall expire on December 31, 2008, unless sooner terminated by the Commission pursuant to the provisions of subsection C; however, rates after the expiration or termination of capped rates shall equal capped rates until such rates are changed pursuant to other provisions of this title.⁶⁷

The “capped rate” period

- Practitioners and observers should be aware that a number of statutes, and portions of statutes, within **Chapter 23** are no longer in effect as a practical matter. Some statutes, for example, are relics of the **1999 Restructuring Act** and Virginia’s planned transition to deregulation. Section 56-582 is an example of a statute that still appears in the Code of Virginia, but is obsolete as a practical matter.
- This statute described the “**capped rate**” period during Virginia’s planned transition to **retail choice**. The **1999 Restructuring Act** established this period, during which time incumbent utility rates were frozen or “capped” at an SCC-approved level. It was the intent of the General Assembly that meaningful competition for electric generation would develop during the capped rate period.
- In 2006, the SCC issued a report casting doubt upon the transition to retail choice, noting that “retail competition has yet to develop.” The SCC stated that it “continues to question the ability of retail electric competition to provide Virginians with lower prices for electric service than those that would have prevailed under traditional regulation of the industry.”⁶⁸
- The capped rate statute was rendered obsolete after the passage of the **2007 Regulation Act**. This law halted Virginia’s planned transition to deregulation, and instead “re-regulated” Dominion and Appalachian Power. The key rate-setting provisions are found in **Chapter 23**, in particular in Section 56-585.1.
- The excerpted portion of Section 56-582 is shown in “~~strikethrough~~” format to demonstrate that this Code provision is now obsolete. The actual statute as it appears in the Code of Virginia does not contain any designation or indication that it is no longer operative law.

⁶⁷ See *Appalachian Power Company v. SCC*, 284 Va. 695 (2012) (describing the 1999 Restructuring Act and the General Assembly’s decision to abandon the transition to retail choice for generation).

⁶⁸ SCC Status Report: The Development of a Competitive Retail Market for Electric Generation (2006).

§ 56-585.

Default service.

- A.** The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them during the availability throughout the Commonwealth of customer choice for all retail customers as established pursuant to § 56-577. For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform. Availability of default service shall expire upon the expiration or termination of capped rates.♦
- B.** A distributor shall have the obligation and right to be the supplier of default services in its certificated service territory, and shall do so, in a safe and reliable manner, at rates determined pursuant to subsection...
- C.** Until the expiration or termination of capped rates, the rates for default service shall equal the capped rates established pursuant to subdivision A 2 of § 56-582.
- D.** A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation and right to be the supplier of default services in its certificated service territory. A distribution electric cooperative's rates for such default services shall be the capped rate for the duration of the capped rate period. Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default services, for the purposes of this subsection, shall include the supply of electric energy.⁶⁹

Default service provider provisions during transition to retail choice

- Section 56-585 is another example of a now-defunct statute. This statute, a relic of Virginia's planned transition to **retail choice**, directed the SCC to establish **default service providers**. ♦ Default service providers are electric suppliers in **retail choice** jurisdictions that offer a commission-approved service offering. Default service ensures that customers who do not exercise their rights to shop for generation still have access to electric service at fair, commission-approved rates.
- In a regulated jurisdiction, the default service provider is the **incumbent electric utility**. In regulated states, **vertically integrated electric utilities** such as Dominion and Appalachian Power have a monopoly on retail sales of electric generation in a defined service territory.⁷⁰
- The default service statute was included as part of the **1999 Restructuring Act**, but is no longer operative after the passage of the **2007 Regulation Act**. The statute also states that default service will no longer be available after the termination of "**capped rates**."

⁶⁹ The excerpted portion of Section 56-585 is shown in "strikethrough" format to demonstrate that this Code provision is now obsolete. The actual statute as it appears in the Code of Virginia does not contain any designation or indication that it is no longer operative law.

⁷⁰ There are a few exceptions to the monopoly rights of Dominion and Appalachian Power. These exceptions allow retail customers to purchase electricity from non-utility companies in certain circumstances. See Va. Code § § 56-577, 56-577.1, 56-594 and 56-594.02.

§ 56-590.

Divestiture, functional separation and other corporate relationships.

- A.** The Commission shall not require any incumbent electric utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter.
- B.**
1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be completed by January 1, 2002.
 2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates, or through such other means as may be acceptable to the Commission.
 3. Consistent with this chapter, the Commission may impose conditions, as the public interest requires, upon its approval of any incumbent electric utility's plan for functional separation, including requirements that (i) the incumbent electric utility's generation assets or, at the election of the incumbent electric utility and if approved by the Commission pursuant to subdivision 4 of this subsection, their equivalent are made available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period the distributor serves as a default provider as provided for in § 56-585; (ii) the incumbent electric utility receive Commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period the distributor serves as a default provider; and (iii) any such generation asset sold, transferred, or otherwise disposed of by the incumbent electric utility with Commission approval shall not be further sold, transferred, or otherwise disposed of during the capped rate period and, if applicable, during any period the distributor serves as default provider, without additional Commission approval...⁷¹

Functional separation plans by incumbent electric utilities

- Section 56-590 is another relic of the **1999 Restructuring Law** and the Commonwealth's planned transition to **retail choice**. This statute required **incumbent electric utilities** to separate the various components of their transmission, distribution, and generation businesses.
- The goal of retail choice for generation is to encourage a competitive market for generation supply. **Functional separation** was intended to ensure that incumbent electric utilities did not exercise undue market power or anti-competitive behavior.
- The functional separation requirements of Section 56-590 are now obsolete, as the Commonwealth abandoned the planned transition to retail choice. The **2007 Regulation Act** "re-regulated" Virginia's two largest electric utilities. As a result, Dominion and Appalachian Power are **vertically integrated electric** utilities, meaning they provide transmission, distribution, and generation services at regulated rates.

⁷¹ The excerpted portion of Section 56-590 is shown in "strikethrough" format to demonstrate that this Code provision is now obsolete. The actual statute as it appears in the Code of Virginia does not contain any designation or indication that it is no longer operative law.

§ 56-585.1.

Generation, distribution, and transmission rates after capped rates terminate or expire.

~~A. During the first six months of 2009, the Commission shall ... review the rates, terms and conditions for the provision of generation, distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such proceedings the Commission shall determine fair rates of return on common equity applicable to the generation and distribution services of the utility. In so doing, the Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher than such average... In such a proceeding, the Commission shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points below the combined rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such combined rate of return. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than the fair rates of return on common equity applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008 be credited to customers' bills...⁷²~~

Defunct provisions within Section 56-585.1

- At over 13,000 words, Section 56-585.1 is the longest and most complex statute within **Chapter 23**. This statute provides the rules governing **triennial rate and earnings reviews** for Dominion and Appalachian Power. This statute also authorizes utilities to recover certain types of costs through **rate adjustment clauses**.
- Several provisions within this very complex statute, however, are no longer operative. For example, Section 56-585.1 A goes into great detail regarding how the SCC was required to review Dominion's and Appalachian Power's rates during 2009 rate cases. These provisions are not applicable to any rate reviews after 2009. The current rules governing triennial review procedures are found elsewhere in Section 56-585.1.
- Section 56-585.1 A contains several provisions that could be confusing to anyone who does not regularly participate in SCC proceedings. For example, this provision references a 50 basis points (0.5%) earnings collar. This section also states that 60% of any overearnings above this earnings collar shall be refunded to customers. The earnings sharing rules that apply to current triennial rate reviews, however, are found in a different provision, Section 56-585.1 A 8. That provision includes a larger (70 basis points) earnings collar, meaning that a utility is permitted to retain more earnings before it has to issue refunds to customers.

⁷² The excerpted portion of Section 56-585.1 is shown in "strikethrough" format to demonstrate that this Code provision is now obsolete. The actual statute as it appears in the Code of Virginia does not contain any designation or indication that it is no longer operative law.

§ 56-585.1.
(continued)

A utility that constructs or makes modifications to any such facility ... shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below.... Such enhanced rate of return on common equity shall be applied to allowance for funds used during construction and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility...

The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:

Type of Generation Facility	Basis Points	First Portion of Service Life
Nuclear-powered	200	Between 12 and 25 years
Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
Coalbed methane gas powered	150	Between 5 and 15 years
Landfill gas powered	200	Between 5 and 15 years
Conventional coal or combined-cycle combustion turbine years	100	Between 10 and 20 years ⁷³

Ratepayer-funded bonuses to construct coal, gas, and renewable facilities.

- Section 56-585.1 also contains language referencing “**enhanced rates of return**” for utilities to construct or acquire new generation facilities. The statute states that utilities are eligible to receive a bonus, or enhanced, rate of return for building certain types of generation facilities.
- Another portion of the statute, however, provides that enhanced rates of return are not available for any projects proposed after January 1, 2013.

⁷³ The excerpted portion of Section 56-585.1 is shown in “strikethrough” format to demonstrate that this Code provision is now obsolete. The actual statute as it appears in the Code of Virginia does not contain any designation or indication that it does not apply to new generation projects.

GLOSSARY OF TERMS

1999 Restructuring Act

In 1999, the General Assembly enacted legislation (Senate Bill 1269) to restructure Virginia's energy market and allow competition for electric generation. The planned transition to full competition (or retail choice) was abandoned with the passage of the 2007 Virginia Electric Utility Regulation Act.

2007 Virginia Electric Utility Regulation Act

In 2007, the General Assembly passed omnibus legislation (Senate Bill 1416 and House Bill 3068) re-establishing retail rate regulation for most Virginia customers. This law is often referred to as the "Regulation Act" or "Re-Regulation Act" because it regulated electric utilities after lawmakers decided to abandon the planned transition to retail choice. Most of the provisions of the 2007 law are codified in Chapter 23 of Title 56 of the Code of Virginia.

"Aggregation"

Virginia's retail access statute (Section 56-577) authorizes customers to purchase generation from competitive service providers in certain circumstances. One of the exceptions is for large customers with more than 5 MW of demand. The retail access statute also contains a provision authorizing "aggregation," whereby multiple customers can combine or aggregate their demand so as to reach the 5 MW threshold. See Va. Code § 56-577 A 4. The statute, however, allows the SCC to approve or deny aggregation petitions based on whether the Commission decides the aggregation would be "in the public interest."

Aggregators

Aggregators are entities that are authorized to act as intermediaries for multiple retail customers, arranging for the purchase of electricity or natural gas from licensed competitive service providers ("CSPs"). Aggregators must be licensed by the SCC.

Base rates

A utility's base rates are set at a level designed to allow the utility to recover capital and operating costs. Base rates generally include all of the utility's costs of service, except those costs that are recovered through separate rate riders. In recent years, Virginia electric utilities have recovered significant costs outside of base rates, through rate riders called rate adjustment clauses and a fuel recovery rider.

Bundled power contracts

A utility or a third party may purchase power through a power purchase agreement ("PPA"). If a PPA provides the buyer with energy, capacity, and environmental attributes (i.e., renewable energy certificates or "RECs"), the contract is sometimes called a contract for bundled power. By contrast, a contract that only conveys RECs might be called a "REC-only" contract.

Certificate of public convenience and necessity

Virginia electric utilities must obtain a certificate of public convenience and necessity ("CPCN") from the SCC in order to construct and operate many types of facilities, such as power plants and transmission lines. See, e.g., Va. Code § 56-580. The SCC also grants CPCNs when authorizing a company to provide utility services in a particular geographic area. See Va. Code § 56-265.3.

Chapter 23

"Chapter 23" as used in this Guide refers to Chapter 23 of Title 56 of the Code of Virginia. The Code is comprised of dozens of titles, which include multiple chapters. Chapter 23 contains many of the ratemaking provisions governing the rate-setting process for Dominion and Appalachian Power. Chapter 23 also includes most of the Virginia Clean Economy Act provisions.

Competitive service provider

In Virginia, non-utility companies that sell electric generation to retail customers are called competitive service providers (“CSPs”). CSPs can sell electricity to retail customers only in certain circumstances. The SCC issues licenses to CSPs pursuant to regulations found in the Virginia Administrative Code. See Section 20VAC5-312-40 of the Virginia Administrative Code.

Customer Credit Reinvestment Offset

The 2018 Grid Transformation and Security Act (Senate Bill 966) authorized Dominion and Appalachian to recover certain renewable energy and grid transformation costs through what is called a customer credit reinvestment offset (“CCRO”). The CCRO allows the utilities to in effect “pay for” certain projects with funds that otherwise would be refunded to customers. See Va. Code § 56-585.1 A 8 d.

Capped rates

When used in Chapter 23, the “capped rate period” refers to the years between 1999 and 2007 when the rates of Dominion and Appalachian Power were frozen or “capped.” During Virginia’s planned transition to retail choice, rates were capped in order to allow competition for electric generation to develop. The General Assembly abandoned Virginia’s transition to retail choice when it enacted the 2007 Electric Utility Regulation Act.

Default service

Default service providers are electric suppliers in competitive jurisdictions that offer a commission-approved service offering. Default service ensures that customers who do not exercise their rights to shop for generation still have access to electric service at fair, commission-approved rates.

“Distributor”

Virginia uses several different terms to describe electric utilities that provide distribution services. A “distributor” is defined as “a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.” The Code also provides separate definitions of “electric utility” and “incumbent” electric utility.” See Va. Code § 56-576.

Distributed generation

In the energy industry, distributed generation refers to smaller generation facilities. Distributed resources would include commercial or residential rooftop solar facilities.

Distributed generation carveout

Virginia’s renewable portfolio standard (“RPS”) law, Va. Code § 56-585.5 C, includes a distributed generation “carveout.” This carveout, which applies only to Dominion, requires the utility to satisfy at least 1% of its RPS obligations with distributed generation resources located in Virginia.

Electric cooperatives

Electric cooperatives are non-profit, member-owned incumbent electric utilities. The SCC regulates thirteen electric cooperatives operating in Virginia.

Energy and capacity market

Regional transmission organizations like PJM often offer both wholesale energy and capacity markets. PJM’s energy market allows generators, including incumbent electric utilities and non-utility generators, to buy and sell energy for resale. PJM’s capacity market allows load-serving entities (“LSEs”), such as utilities or competitive service providers, to buy and sell generation capacity. LSEs in PJM must meet stringent capacity requirements in order to ensure the reliability of the regional grid.

Enhanced rates of return

The 2007 Virginia Electric Regulation Act authorized “enhanced rates of return,” or ratepayer-funded bonuses, for Dominion and Appalachian Power to build certain types of generation facilities. Virginia Code Section 56-585.1 A 6 authorized bonuses of between 1-2% for the utilities to construct fossil, nuclear, and renewable energy facilities. A subsequent law change removed these bonuses for future projects, but the enhanced rate of return provision still appears in the statute.

Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission or “FERC” is the federal agency charged with regulating interstate energy activities, including wholesale energy sales, rates for transmission services, and oil and gas pipeline construction. FERC does not have jurisdiction over purely intrastate economic activity. FERC commissioners are nominated by the President, subject to confirmation by the U.S. Senate.

Functional separation

The phrase “functional separation” is often used in jurisdictions where utilities have been required to separate their different business functions. In a market where there is competition for example, an incumbent utility may be required to separate its generation and distribution business.

Incumbent electric utility

An incumbent utility is a state-regulated utility that has the exclusive right to provide utility service in a particular geographic area. See Va. Code § 56-265.3 (describing procedures whereby the State Corporation Commission may allot territory to particular utilities).

Net metering

Virginia’s net metering program allows customers to own and operate (or contract with third parties to own and/or operate) onsite renewable facilities such as rooftop solar panels. Net metering customers continue to purchase energy from their incumbent electric utility. Net metering customers, however, only pay for their usage that is in excess of the amount generated by the onsite generation facility. See Va. Code § 56-594.

Non-jurisdictional customers

The Commonwealth of Virginia and local government customers are often referred to as “non-jurisdictional” customers because the rates they pay are not set by the SCC. The SCC does not have jurisdiction over rates paid by these customers. Instead, non-jurisdictional customers are allowed to negotiate their rates and terms and conditions of service directly with the utility.

PJM Interconnection

The PJM Interconnection (“PJM”) is the regional transmission organization covering most of Virginia. PJM coordinates the movement of electric generation over interstate transmission lines. PJM also operates wholesale energy and capacity markets.

Percentage of Income Payment Plan

The Virginia Clean Economy Act established a percentage of income payment plan (“PIPP”) program for qualifying residential customers. The program is designed to provide funding in order to limit electric bill payments for certain lower-income customers of Dominion and Appalachian Power. The PIPP program is funded by a universal service fee paid by all utility customers. A PIPP-eligible customer is “any person or household whose income does not exceed 150 percent of the federal poverty level.” See Va. Code § 56-576.

“Phase I Utility” and “Phase II Utility”

“Phase I Utility” and “Phase II Utility” is the nomenclature generally used by the General Assembly to refer to Appalachian Power and Dominion, respectively. These terms are defined in Section 56-585.1.

Power purchase agreement

A power purchase agreement (or purchased power agreement) (“PPA”) is a contract to purchase electricity. Utilities, for example, may obtain some of their power by entering into wholesale PPAs with private generators. Virginia law allows retail customers to buy power via PPAs from non-utility companies in a few circumstances. See Va. Code § 56-594.02 (describing Virginia’s renewable PPA pilot program).

Rate adjustment clauses

Rate adjustment clauses or “RACs” are single-issue rate riders. RACs allow utilities to recover certain types of expenses outside of base rates. Virginia law allows Dominion and Appalachian Power to recover several categories of costs through RACs, including power plant construction and environmental compliance costs.

Rate base

A utility’s rate base is essentially the cumulative value of the utility’s assets used to serve customers (including, for example, power plants, distribution facilities, vehicles, and office buildings). A utility is permitted to earn a fair rate of return on the assets it uses to provide service. For these reasons, utilities have a natural economic incentive to expand their rate base so as to increase their revenues and profits.

Rate of return

As a general matter, utilities are permitted to recover their prudently incurred costs of service, including a fair rate of return on their rate base. A utility’s authorized rate of return, established by state regulators, is used to set rates charged to customers.

Regional Transmission Organization

A regional transmission organization or entity (“RTO” or “RTE”) is a non-profit organization that has operational control of a regional transmission system. RTOs are intended to coordinate the sale and dispatch of generation resources and ensure system reliability. The PJM RTO covers the majority of the transmission system in Virginia.

Renewable energy certificates

Renewable energy certificates (“RECs”) are tradable commodities that validate the generation of one megawatt-hour of energy from a renewable source such as solar or wind. Virginia’s renewable portfolio standard requires Dominion and Appalachian Power to obtain and retire RECs.

Renewable energy permit by rule program

A solar or wind developer that receives a permit under the Virginia Department of Environmental Quality’s permit by rule (“PBR”) program does not need a certificate of public convenience and necessity from the SCC. The renewable energy PBR program was intended to be a less burdensome permitting option for certain clean energy projects with minimal environmental impacts.

Renewable portfolio standard

A renewable portfolio standard (“RPS”) is a state policy requiring electricity suppliers to procure a portion of their electricity sales from renewable resources. Virginia’s RPS, found in Va. Code § 56-585.5 C, applies to both Dominion and Appalachian Power. The law requires Dominion and Appalachian Power to meet increasing renewable energy targets. The utilities must comply with the RPS by obtaining and retiring renewable energy certificates or “RECs.”

Requests for proposal

The Virginia Clean Economy Act requires Dominion and Appalachian Power to conduct requests for proposal (“RFPs”) for new renewable resources on an annual basis. See Va. Code § 56-585.5 D 3. The utilities may evaluate the responses to its RFPs based on several criteria, including price and potential economic development benefits in Virginia.

Retail access statute

Virginia’s retail access statute, Code Section 56-577, allows retail customers to purchase electric generation from competitive suppliers in certain situations.

Shared solar

“Shared” or “community” solar programs allow customers to purchase and use renewable energy from specific facilities, even if they are not able to install rooftop solar panels.

Tariff

An electricity tariff is the rate schedule providing the terms and conditions for different types of electricity service. Virginia utility tariffs, for example, include multiple service options, or rate schedules, such as a residential rate schedule and multiple rate schedules available to commercial and industrial customers.

Transition to retail choice or retail access

“Retail choice,” “competition,” or “deregulation” refers to a regulatory environment where consumers can choose from whom to buy their power. In particular, customers are not required to purchase generation from their incumbent electric utility, but can purchase electricity from alternative suppliers. In 1999, the General Assembly passed a law to transition Virginia to retail choice. This planned transition was abandoned when the General Assembly passed the 2007 Electric Regulation Act.

Triennial review of rates and earnings

The 2018 Grid Transformation and Security Act (Senate Bill 966) reinstated regular rate and earnings review proceedings for Dominion and Appalachian Power. The triennial review statute, Va. Code § 56-585.1, directs the SCC to review each utility’s rates and determine whether rates should be adjusted. The law includes a number of limitations on the SCC’s ability to reduce the utilities’ base rates, however.

Universal service fee

The percentage of income payment plan (“PIPP”) program in Dominion and Appalachian Power service territories is funded by a universal service fee (“USF”). The USF is a non-bypassable charge, meaning that it is paid by all customers. The USF can be adjusted by the SCC depending on the PIPP program participation levels. See Va. Code § 56-585.6.

Vertically integrated utility

A vertically integrated electric utility is a company that provides generation, transmission and distribution services to retail customers. In regulated jurisdictions such as Virginia, incumbent electric utilities generally have a monopoly on these services.

Virginia Administrative Code

Similar to the Code of Federal Regulations, the Virginia Administrative Code includes the regulations (sometimes called “rules”) promulgated by Virginia government agencies. The regulations codified in the Administrative Code have the force of law. Agency regulations, however, are subordinate to statutes passed by the General Assembly.

Virginia Clean Economy Act

The 2020 Virginia Clean Economy Act or VCEA was omnibus legislation (Senate Bill 851 and House Bill 1526) that established several statutes within Chapter 23 and amended several others. Among other things, the VCEA established mandatory renewable portfolio standards for Dominion and Appalachian Power and expanded options for customers to purchase and use renewable energy. Many of the VCEA provisions are codified in Chapter 23 of Title 56 of the Code of Virginia.

