

Why Large Electricity Consumers Should Become Accelerated Renewable Energy Buyers

By Timothy G. McCormick and Danniela N. McLean

The Virginia State Corporation Commission (“SCC”) recently approved regulations that allow some large electricity consumers to avoid certain utility charges by buying renewable energy supply and Renewable Energy Certificates (“RECs”) or just RECs that offset their carbon footprint.

In 2020, the General Assembly passed the Virginia Clean Economy Act (“VCEA”), which, broadly speaking, sets a goal for Virginia’s two largest electric utilities -- Appalachian Power Company (“Appalachian”) and Dominion Energy Virginia (“Dominion”) to generate 100% of their retail sales from eligible renewable sources by 2045 and 2050, respectively. To that end, the VCEA requires the two utilities to procure or use and “retire” an increasing number of RECs every year. The VCEA also directs Dominion and Appalachian to, among other things, apply for approval to add new renewable energy and storage resources.

The VCEA incentivizes certain large customers to move toward renewable energy by becoming Accelerated Renewable Energy Buyers (“ARBs”) which exempts them from certain charges. The potential value of these exemptions could increase considerably as the utilities’ costs for new renewable supply and RECs continue to ramp up. Attorneys representing large industrial, commercial, educational, healthcare, governmental, or other large-scale electricity users in the service territories of Appalachian and Dominion should acquaint themselves with relevant Virginia Code provisions (e.g., Va. Code § 56-585.5) and the SCC’s ARB regulations, particularly, the current ARB exemption and certification criteria. An introductory overview is provided below.

1. What is an ARB?

Generally, an ARB is a commercial or industrial customer of Dominion or

Appalachian (regardless of whether the customer purchases generation from a third-party supplier) with an aggregate electric load (across one or more accounts or locations) of more than 25 megawatts that contracts with the utility or another person for the purchase of energy, capacity and RECs or just RECs from eligible renewable energy portfolio standard (“RPS”) program requirements. The VCEA RPS program requires Dominion and Appalachian to procure and retire RECs each year from eligible renewable generation sources based on goals in the VCEA and each utility’s total (non-nuclear) electric sales. Utilities recover the related costs and other costs of VCEA compliance from their respective ratepaying customers through “non-bypassable” surcharges. Such charges, with only a few exceptions generally must be paid by *all* retail electricity customers of the utility, including those that purchase electricity from a third-party supplier other than the utility itself.



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ARBs, however, can be exempted from some or most of these otherwise “non-passable” charges.

There are two types of ARBs: “bundled” ARBs and “REC-only” ARBs. Bundled ARBs contract for the combined purchase of capacity, energy, and RECs from certain qualifying renewable sources (e.g., certain solar generating sources), while “REC-only” ARBs contract solely for the purchase of RECs, which are “unbundled” from their energy or capacity purchases.

The primary difference between bundled ARBs and REC-only ARBs is the scope of their exemption, which ultimately impacts cost-savings, from certain VCEA compliance costs incurred by the utilities. REC-only ARBs are exempt from certain utility charges that recover the utilities’ costs incurred to purchase RECs. Bundled ARBs are generally exempt from such REC-related charges as well, but are *also* exempt from charges that recover costs that the utilities incur for eligible renewable electricity generation and storage (this exception, however, does not exempt bundled ARBs from paying charges related to costs for Dominion’s offshore wind project).

2. How will becoming ARB certified impact my clients’ electric bill?

The VCEA requirements will drive significant cost increases in the coming decades. For example, in 2021, Appalachian was required to procure or use, and retire, RECs amounting to 6% of its total (non-nuclear) electric energy sales, while Dominion was required to procure or use, and retire, 14%. These percentages will eventually expand to 100% by 2050 for Appalachian and 2045 for Dominion. Likewise, as the utilities acquire and construct more solar, wind, and energy storage facilities, the costs to ratepayers appear likely to expand significantly. According to a recent report by the SCC, Dominion identified to its investors \$24 billion in anticipated growth capital expenditures over the period 2021-2025, most of which comes from solar, wind, and energy storage investments.¹

Customers that become ARB certified, depending on their ARB designation, stand to avoid potentially significant, increasing costs on their monthly bills associated with the utilities’ new supplies of solar, on-shore wind, and energy storage facilities and the retirement of RECs.

3. Does a customer have to purchase a minimum of 25 MW of renewables or 100% of its energy from renewables in order to be ARB certified?

No. The VCEA permits an ARB to offset “all or a portion” of its electric load depending on the scope of the ARB’s contractual arrangement to independently procure RECs only or RECs, capacity, and energy. The VCEA further provides that the extent of an ARB’s exemption is based on the amount of RECs obtained by the ARB *in proportion* to its total electric energy consumption. The recently approved regulations similarly specify that ARB certified customers can obtain either *full or partial* exemptions.²

4. How does a customer become ARB certified?

The SCC recently approved *Regulations Governing Accelerated Renewable Energy Buyers*. The regulations provide two methods for a qualifying electricity customer to become ARB certified: (1) by the utility provider, or (2) by the SCC Staff.³

Customers seeking ARB certification by their utility provider may apply directly to the utility. Appalachian and Dominion have been instructed to develop procedures to process certification requests. Importantly, the regulations instruct the utilities to implement appropriate protections to safeguard the confidentiality of contractual and other commercially-sensitive information from utility personnel serving in marketing roles or other unauthorized third parties. Customers may contest the utility’s ARB decision by filing a formal complaint with the SCC within ten days of the decision.

Customers may also become ARB certified by the SCC Staff. The SCC recognizes that some customers may prefer not to share their contractual data with the utility, particularly if such customers purchase energy from competitive service providers. Customers seeking certification from SCC Staff may submit their application and supporting contractual information, under seal, to the SCC Staff, which will review the customer’s supporting documents but will not forward contracts or other commercially-sensitive information to the utility. SCC Staff will then determine the type of ARB certification for which the customer qualifies -- REC-only ARB or bundled ARB -- and assign a percentage exemption.

Customers seeking ARB certification from SCC Staff must submit their certification request *annually* by March 1st in order to be exempt in the upcoming year (which runs from June 1 to May 31).

Large-scale electricity users in Virginia should consider whether they may qualify for ARB certification and seek counsel on whether and how to obtain ARB certification for the coming rate year. ■

Endnotes

1. See Report to the Governor of the Commonwealth of Virginia, the Chairman of the Senate Committee on Commerce and Labor, the Chairman of the House Committee on Labor and Commerce, and the Commission on Electric Utility Regulation of the Virginia General Assembly, Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to § 56-596 B of the Code of Virginia, Commonwealth of Virginia State Corporation Commission at 12 (Sept. 1, 2021).

2. See *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 G of the Code of Virginia related to accelerated renewable energy buyers*, Case No. PUR-2021-00089, Doc. Con. Cen. No. 211220106, Order Adopting Regulations, (Dec. 10, 2021).

3. *Id.*