



**Notes from SELC Legal and Regulatory Overview
April 12, 2019
Solar Workgroup of Southwest Virginia
RFP Pre-Bid Meeting
May 1, 2019 Revision**

1. Net Metering

- a. Net metering is available in Virginia. It is available to jurisdictional customers of investor-owned utilities and electric cooperatives. It is available to all classes of customers. (Note that non-jurisdictional customers, such as schools, negotiate their contracts separately.)
- b. **Net Metering in IOUs – Dominion, APCo and ODP**
 - i. The net metering statute is Va. Code Section 56-594 (<https://law.lis.virginia.gov/vacode/title56/chapter23/section56-594/>). Please review the statute.
 - ii. Here is a link to the Virginia administrative code relating to conditions of interconnection: <https://law.lis.virginia.gov/admincode/title20/agency5/chapter315/>
 - iii. The Virginia SCC approved rate riders for net metering (PUR-2017-00099) (<http://www.scc.virginia.gov/docketsearch#caseDocs/137599>), including information regarding notification and interconnection can be found below.
 - iv. In ODP's territory: <http://www.scc.virginia.gov/docketsearch/DOCS/3lv501!.PDF>
 - v. In APCo's territory: <http://www.scc.virginia.gov/docketsearch/DOCS/3lgs01!.PDF>
 - vi. Please note that the utilities must receive 61 days' notice for nonresidential customers and 31 days' notice for residential customers before interconnection.
 - vii. Net metering in IOU territory provides for compensation at a retail rate.
 - viii. Electrical generating facility must have a capacity of not more than 20 kilowatts for residential customers and not more than one megawatt (AC) for nonresidential customers.
 - ix. Electrical generating facility must be located on the **customer's premises** and connected to the customer's wiring on the customer's side of its interconnection with the distributor.
 1. Meter aggregation is not allowed.
 2. The law and regulations are silent on whether you can net meter across a road.
 3. Legislation and regulation do not include a definition of "customer's premises." As a result, we cannot say with certainty whether several parcels owned by the same entity could be a single premises. It would depend on the utility's interpretation of the term. We can always appeal the utility's determination and ask the SCC to weigh in as well.

- x. The capacity of any generating facility installed shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. Note that I've heard from Dominion that in practice they will take into account a load letter provided by an electrician explaining why the previous 12 months of billing history will not accurately reflect the future expected annual energy consumption. I have not heard if other utilities also take load letters into account when setting the capacity size of the generating facility.
 - xi. Net metering is available in each utility territory until such territory reaches one percent of its adjusted Virginia peak-load forecast for the previous year. ("1% cap").
 - xii. Any excess generation in a month rolls over to the next month and the customer is credited on the next bill at retail rate. If there is excess generation on an annual basis, then the customer-generator shall receive payment at an avoided-cost rate from the utility or be credited at an avoided cost rate from the utility.
 - xiii. The eligible customer-generator owns any renewable energy certificates associated with its electrical generating facility.
 - xiv. If the amount generated exceeds the amount used over the course of a year, then the customer-generator can enter into a PPA with the utility for such excess electricity. There is a minimum price that the Commission sets for the electricity price under this type of PPA. The parties can negotiate a higher price. In addition, the customer-generator may also: (i) sell their RECs to the utility at Commission-approved prices at the time that the eligible customer-generator enters into a PPA with its utility, or; (ii) the customer-generator may sell their RECs to the utility at a mutually-agreed to price later.
2. Financing Options – PPAs, SGAs, Loans
- a. A PPA Pilot Program exists in Dominion and APCo territories. (<https://law.lis.virginia.gov/uncodifiedacts/2017/session1/chapter803/>). Please review the statute.
 - i. Aggregated capacity of all generation facilities that are subject to PPAs at any time shall not exceed 50 MWs in Dominion territory or 7 MW in APCo territory. This amount counts towards the 1% cap under net metering as well.
 - ii. PPAs under the pilot are also subject to the net metering regulations.
 - iii. Minimum 50 kilowatt capacity size. In addition, the max capacity size from the net metering statute applies as well – must be not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers.
 - iv. A generation facility subject to a PPA under this pilot program shall only serve one customer and the PPA shall not serve multiple customers.
 - v. The PPA law is a bit unclear. Please note that the term "power purchase agreements" is not defined in the Virginia Code.
 - 1. APCo takes the position that their PPA pilot only applies to "nonprofit, private institutions of higher education."
 - 2. ODP takes the position that PPAs are not allowed in their territory.
 - b. Solar leases are allowed
 - c. Solar Self-Generation Agreement (SGAs) – similar to a PPA, but instead of selling electricity, it is selling solar as a service.

- i. APCo has previously allowed a project that was financed through a self-generation agreement, but it is unclear whether they will allow additional projects in the future.
 - ii. ODP does not currently take a position on whether customers may use self-generation agreements.
 - d. Loans are often available through banks (local banks?) to purchase solar outright.
 - e. Solar is new in SW Virginia. We encourage creativity to make it work!
- 3. Federal Tax Credit (<https://www.irs.gov/pub/irs-drop/n-18-59.pdf>). Please review the IRS regulations.
 - a. As you all probably know, the federal investment tax credit (ITC) will be stepping down at the end of this year. It is currently a 30% tax credit and will step down to 26% for projects that begin construction in 2020.
 - b. In order to obtain the 30% tax credit for these programs, it is imperative that the solar developer who is chosen for this RFP establish that they have begun construction on these projects before the end of the year. The IRS considers the “beginning of construction” to be shown by either:
 - i. Showing that “physical work of a significant nature” has begun OR
 - ii. Showing that the taxpayer has paid or incurred 5% or more of the total cost of the energy project.
 - c. We encourage you to review these IRS regulations to make sure your proposal is in compliance and these projects will receive the full 30% tax credit.