

SCC Order Reinforces Renewable Purchases by Large Customers

Dominion loses on legal claim intended to discourage renewable energy sales by competitive suppliers in Virginia

On April 26, 2017, the [Virginia State Corporation Commission](#) (“Commission”) entered an order that gives greater regulatory certainty to competitive electric service providers wishing to sell electricity to large retail customers in the Commonwealth.

The case was initiated by [Direct Energy Services, LLC](#) (“Direct”), a competitive supplier licensed to do business in Virginia. Virginia law allows competitive suppliers to sell electricity to retail customers only under certain circumstances. For example, competitive suppliers may sell electricity to large customers (i.e., those with annual demands over 5 MW). Competitive suppliers may also sell energy consisting of “100 percent renewable energy” to any retail customer if the customer’s monopoly electric utility does not offer an approved tariff consisting of exclusively renewable energy. (See [Va. Code § 56-577 A 5](#).) But in most other situations, customers would be required to purchase power from their incumbent monopoly electric utilities.



Direct filed a petition for declaratory judgment asking the Commission to clarify the meaning of several portions of Virginia’s retail choice statute, Virginia Code § 56-577. One part of the statute, [Va. Code § 56-577 A 3](#), provides that large customers purchasing energy from competitive suppliers

must provide “five years’ advance written notice” if they wish to go back to receiving service from their incumbent utility. But, as mentioned above, another part of the statute, Va. Code § 56-577 A 5, provides that all retail customers, regardless of their size, may purchase 100% renewable energy from competitive suppliers if their incumbent utility does not offer a 100% renewable energy tariff. Notably, this statutory provision *does not* include a five-year notice requirement.

In particular, Direct sought clarification from the Commission that large customers purchasing energy from a competitive supplier under the renewable provision – Va. Code § 56-577 A 5 – would *not* be subject to the five-year notice provision. Direct argued that it needed clarification on this issue before “expending considerable resources” that would be necessary to provide renewable energy service to Virginia customers. The company said that, if potential customers are subject to the five-year notice provision, customers may be discouraged from entering into electricity contracts with Direct, making it “virtually impossible for Direct to offer a 100% renewable energy product to Virginia businesses.”

The Commission entered an order on March 17, 2017, agreeing with Direct that if a large customer purchases 100% renewable energy pursuant to Va. Code § 56-577 A 5, the five-year minimum notice requirement contained in Section A 3 would not apply.

But Dominion Virginia Power (“Dominion”), Virginia’s largest investor-owned electric utility, filed a motion requesting that the Commission reconsider this decision and find instead that all large customers taking service from competitive suppliers would be subject to the five-year notice provision. Dominion argued that exempting “large customers from the five-year advance notice requirement would jeopardize [Dominion’s] ability to plan appropriately” and that “[Dominion’s] customers would ultimately suffer” if the utility were required to serve a large customer without adequate notice.

The Commission rejected Dominion's arguments that the five-year notice provision applies to third-party power purchase agreements authorized under Section A 5. The Commission characterized Dominion's claims as "policy arguments" that "are not part of the Commission's analysis." The Commission recognized that the General Assembly has chosen to "give special status to electric energy provided 100% from renewable energy" and also noted that it will decline to "add language to the statute that the General Assembly has not seen fit to include."

Another important statutory question was left unresolved in this case, however: whether a competitive supplier selling energy to a retail customer under Section A 5 must provide 100% of a customer's energy requirements in addition to providing 100% renewable energy. Virginia's two largest electric utilities, Dominion and Appalachian Power, have argued that a competitive supplier must be able to offer both 100% renewable energy and be able to supply 100% of a customer's energy requirements. In 2016, a Commission Hearing Examiner analyzed the statute and concluded that, based on the plain language of the statute, competitive suppliers do not need to satisfy all of a customer's energy needs, so long as they are providing 100% renewable energy. This finding, however, was not binding, and the underlying case was ultimately dismissed by the Commission.

Please contact one of our [renewable energy lawyers](#) or [regulatory attorneys](#) should you have questions about this case. The Commission case number for this matter is PUE-2016-00094.