KIRKLAND & ELLIS

Blog Post

Clean Energy Legislation Arrives in Virginia — Will it Become Law this Week?

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Update: Virginia Governor Ralph Northam signed the Virginia Clean Economy Act into law on Saturday, April 11. While we do not plan to update this blog post, we will actively monitor the implementation of the law and encourage you to reach out to us with any questions.

On March 6, 2020, the Virginia General Assembly passed the Virginia Clean Economy Act ("VCEA"), which seeks to decarbonize Virginia's power grid by, among other things, adopting a new renewable energy portfolio standard ("RPS") program that will require the investor-owned utilities in the state to acquire 100% of their power supply from renewable generation resources by 2050. Meeting this renewable energy procurement mandate will require significant investment in new renewable energy projects, energy storage systems, and the necessary transmission and distribution infrastructure to bring such resources online.

Virginia Governor Ralph Northam is expected to sign the VCEA into law, but the timing is uncertain, particularly due to the state's ongoing response to the coronavirus pandemic. By law, the governor has until April 11 to act on the bill. If he takes no action by that deadline, the bill will automatically become law.

Key Aspects of the VCEA

The VCEA includes a new, mandatory RPS program that requires all electric utilities and retail electric suppliers to satisfy their load obligations utilizing 100% renewable sources by 2045 for the Dominion Energy Virginia ("Dominion") service territory and by 2050 for the service territory of Appalachian Power Company, a subsidiary of American

Electric Power ("AEP"). The VCEA's definition of "renewable energy" explicitly excludes resources that generate electricity using coal, oil, natural gas or nuclear fuel, as well as waste heat from fossil fuel-fired generation facilities. Any entity failing to meet the RPS requirements will be required to make deficiency payments, the proceeds of which will fund training programs and renewable energy programs and offset administrative costs.

The VCEA also establishes a schedule by which Dominion and AEP must seek all necessary approvals to construct, acquire or enter into power purchase agreements for specified amounts of generating capacity from solar and onshore wind resources, as well as energy storage capacity. Specifically, Dominion must: (1) seek all necessary approvals for at least 16,100 megawatts ("MW") of new solar and onshore wind resources by December 31, 2035; (2) seek all necessary approvals to construct or acquire at least 5,200 MW of offshore wind generating capacity by December 31, 2035; (3) seek all necessary approvals to construct or acquire 2,700 MW of energy storage capacity by December 31, 2035; and (4) together with AEP, construct or acquire 2,700 MW of energy storage capacity by January 1, 2035. AEP must: (1) seek all necessary approvals for at least 600 MW of solar and onshore wind resources by December 31, 2030; (2) seek all necessary approvals to construct or acquire 400 MW of energy storage capacity by December 31, 2035; and (3) together with Dominion, construct or acquire 2,700 MW of energy storage capacity by January 1, 2035. The VCEA also requires Dominion and AEP to achieve incremental annual energy efficiency savings.

Recognizing that the cost of developments and investments to comply with the new RPS requirements will be passed through by the investor-owned utilities to their ratepayers, the VCEA includes some provisions designed to protect ratepayers within Virginia, including provisions that give the Virginia State Corporation Commission additional oversight over utilities' renewable energy project costs. The VCEA also requires Dominion and AEP to conduct competitive solicitations for energy, capacity and environmental attributes to procure at least 35% of their new RPS requirements from third parties. Consequently, the legislation likely will facilitate competition in the development of new renewables projects by requiring that a significant amount of those projects be developed by entities other than Virginia's existing, incumbent investor-owned utilities, Dominion and AEP.

Looking Ahead

Assuming the VCEA is enacted, either by signature or operation of law, it will have significant implications for energy infrastructure investments in Virginia and in nearby states, including ancillary infrastructure. As the state's reliance on intermittent renewable generation increases, Virginia — and the interstate power system of which it is an integral part — likely will need to rely on energy storage resources, as well as upgraded or expanded transmission and distribution system infrastructure, to maintain reliability.

Energy market participants and investors with interests in the region should closely monitor the VCEA, and any follow-on regulatory proceedings implementing it, to help inform their market participation and investment decisions.

Read more insights from Kirkland's Energy & Infrastructure blog.

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