

Laws, regulations pose challenges for retail aggregation in Virginia

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Market Intelligence

Walmart Inc. has for a second time signaled its intent to aggregate the electric load of 120 of its Virginia locations and participate in a newly approved pilot program. Municipal aggregation has been permitted in Virginia for more than 20 years but has largely been untested.

Business customers including Walmart have tried in past years to aggregate their electric load under a provision of Virginia law called Section 56-577 (A)(4). In February 2019, the Virginia State Corporation Commission, or SCC, denied Walmart's request, saying it was not in the public interest. (SCC Case No. PUR-2017-00173, PUR-2017-00174)

The new aggregation pilot, which is part of legislation adopted in April, offers another chance for business customers to access competitive supply. The legislation, House Bill 889, authorizes up to 200 MW of nonresidential load in the service territory of Dominion Energy Inc. subsidiary Dominion Energy Virginia, known legally as Virginia Electric and Power Co., to be served by a nonutility provider.

Walmart said in its refiled application to the SCC on June 11 that its load in the Dominion Energy Virginia service territory totals more than 65 MW. (SCC Case No. 2020-00114)

Also called community choice aggregation, or CCA, municipal aggregation allows a city, county or local jurisdiction to buy power on behalf of its residents and offers communities a way to fulfill renewable energy goals. In California, for example, the California Community Choice Aggregation currently counts 23 members, some serving single cities and others serving multiple cities and counties, that collectively have so far contracted for more than 3,600 MW, all from renewable resources.

Meanwhile, in Virginia, industry observers doubt that aggregation can grow because of confusion under current law.

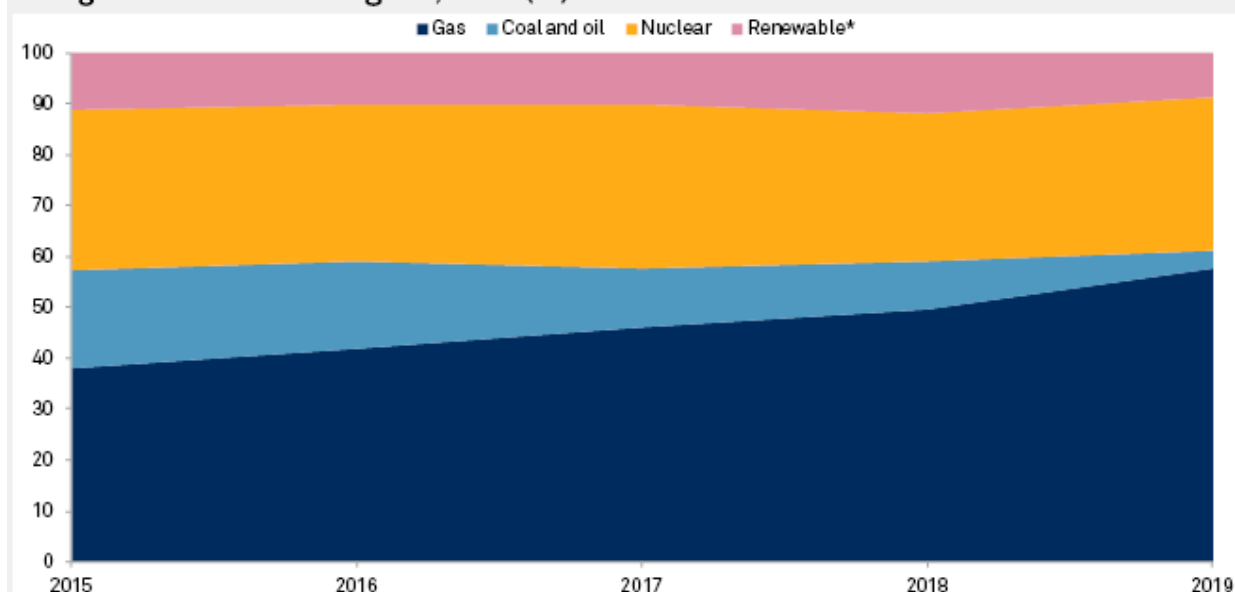
CCAs could get communities to renewables quicker

Virginia in 2020 enacted a clean energy law requiring Dominion Energy Virginia to reach a 100% renewable and carbon-free power supply by 2045 and American Electric Power Co. Inc. utility Appalachian Power Co. to do so by 2050.

That's not quick enough for some market participants. With CCAs, "some of the benefits are faster decarbonization at a larger scale," Silvia Zinetti, co-founder and executive director of the advocacy group Virginia Clean Energy, said during a May 11 webinar on a feasibility study of forming a CCA in the northern Virginia community of Arlington County, which aims to reach 100% renewable energy by 2035. Arlington in January agreed to buy a portion of the output of a solar facility in Pittsylvania County, Va., owned by Dominion, saying it would supply 80% of the county's buildings, streetlights, traffic signals, water pumping and wastewater treatment power needs.

Preliminary data from the U.S. Energy Information Administration show that natural gas, oil, and coal together fueled about 61% of the state's net generation in 2019, with renewable generation forming 9%.

Net generation mix in Virginia, 2019 (%)



Data compiled May 20, 2020.

* Combines biomass, solar and hydro, a category that includes run-of-the-river projects, dams and pumped storage.

Chart excludes power imported or purchased from plants outside the state. The 2019 net generation figures are based on preliminary reports to the U.S. Energy Information Administration's Form 923.

Source: S&P Global Market Intelligence

Va. law poses hurdles to CCA formation

Virginia's law on municipal aggregation makes it difficult for communities to set up a CCA, Ron Cerniglia, director of corporate and regulatory affairs at Centrica PLC, which owns nationwide competitive retail supplier Direct Energy LP, said in an interview May 19.

The law, statute 56-589, allows municipalities to aggregate the load of their own assets, such as buildings, Cerniglia said, but aggregating the load of residential and commercial customers would require them to be licensed by the SCC. "And then, if they wanted to fully manage the CCA on their own, they would have to go through about a six-to-nine month registration process with the utility," Cerniglia added.

Virginia's law allows municipalities to aggregate and choose either an opt-in or opt-out structure, but Cerniglia said additional legislative fixes are needed to clarify the ability of municipalities to form a CCA and implement an opt-out structure. "So, as you know, opt-in means the customer has to affirmatively say, 'Yes, I'm going to be a part of it.' And typically, less participation is more expensive. Whereas in other states, generally where customers are in the program unless they affirmatively say they don't want to participate, that usually results in a much more attractive pricing for the aggregation," Cerniglia said.

Jesse Dickerman, director of corporate affairs at Direct Energy, noted that other states such as California and New York employ an opt-out design.

The current law in Virginia leaves communities hesitating to form a CCA. "Unlike California, Virginia does not provide clear statutory authority regarding municipal aggregation or CCAs and has not established an applicable regulatory framework," Susan Hafeli, Deputy Director of the Office of Environmental and Energy Coordination for Fairfax County, Virginia's most-populous county, said in an email June 11. As a result, "I don't expect CCA or municipal aggregation to be of interest to Fairfax County until legal and other issues associated with aggregation have been addressed and resolved," Hafeli said.

Bigger impacts to competition

Rate riders for utilities are another threat to the potential for CCAs, both Cerniglia and Cliona Mary Robb, a director at law firm ThompsonMcMullan PC, said. Dominion Energy Virginia in May 2019 asked the SCC to approve its total

renewable generation rider, under which Dominion customers could voluntarily request a 100% renewable power supply and Dominion would provide that supply through a mix of resources it owns and has under contract.

Appalachian Power got approval in 2019 for a 100% renewables rider, and Dominion Energy Virginia's proposal was approved by an SCC hearing examiner in April.

"So the way the statute is written currently, if Dominion gets approval of that product, then the customers will no longer have a choice of buying 100% renewable [power] from a competitive service provider," Cerniglia said. "That decision is going to be pretty critical in regards to the future of CCAs."

Robb pointed to three main provisions that open doors for competition under Virginia utility law: Section 56-577 (A)(3), which lets large customers with at least 5 MW of load choose their own electric supplier; Section 56-577 (A)(4), which allows two or more nonresidential customers with less than 5 MW of load to get SCC approval to aggregate; and Section 56-577 (A)(5), which permits retail customers to buy a 100% renewable product from a nonutility supplier.

If Dominion's total renewable generation rider gets approved, the door closes on subdivision (A)(5). "If that goes away, that really puts a dagger in the heart of an expanding competitive electricity market in Virginia," Robb said.

Article amended at 6:50 p.m. ET on June 29, 2020, to clarify the opt-in and opt-out structures allowed for aggregation programs under Virginia law.

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