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Periodic Review and Small Business Impact Review Report of Findings

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| Agency name | Department of Environmental Quality |
| Virginia Administrative Code (VAC) Chapter citation(s) | 9VAC15-40 |
| VAC Chapter title(s) | Small Renewable Energy Projects (Wind) Permit by Rule Regulation |
| Date this document prepared | September 19, 2023 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DEQ – means Department of Environmental Quality.

FERC – means Federal Energy Regulatory Commission.

MW – means Megawatt, a measure of generated electricity.

NOI – means Notice of Intent.

PBR – means Permit by Rule, provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

PJM – means Pennsylvania-New Jersey-Maryland and is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia.

PPA – means power purchase agreement, a contract between a power producer who generates electricity and a customer who uses or trades electricity.

RAP – means regulatory advisory panel.

SCC – means Virginia State Corporation Commission.

VLR – means Virginia Landmarks Register.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Department of Environmental Quality is authorized by § 10.1-1197.6 of the Code of Virginia to adopt regulations for permits or permits by rule (PBR) if the Department determines permits are necessary for the construction and operation of small renewable energy projects. The Department of Environmental Quality determined that a PBR was needed for wind energy projects with a rated capacity greater than 5MW and less than 100MW and adopted Small Renewable Energy Wind Projects Permit by Rule on December 22, 2010. The regulation was amended in 2017 to increase the size of the small renewable wind energy projects eligible for coverage under the PBR from 100 MW to 150 MW. State law requires other necessary environmental permits to be obtained in addition to this PBR (§10.1-1197.6 B 12).

Statutory Authority

Code of Virginia [§10.1-1197.5 et seq.](#)

Promulgating Entity

Department of Environmental Quality

Federal Requirements

There are no federal standards associated with this regulation.

State Requirements

- Code of Virginia [§10.1-1197.5 et seq.](#)
- Administrative Code Chapter 70, Small Renewable Energy Projects (Wind) Permit by Rule, [9VAC15-40](#)

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Alternatives to the proposal have been considered by the department. The department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the statutory requirements and the purpose of the regulation. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are discussed below.

1. Retain the regulation without amendment. **This option is being selected** because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates. The current method of regulating this activity by the use of a PBR protects human health and the environment while minimizing the burden on the operators of renewable energy wind projects. The PBR provides a mechanism for applicants to evaluate and review natural resource impacts not otherwise covered under regulatory permit programs. The PBR process also encourages the development of renewable energy wind projects, benefitting air quality.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.
3. Repeal the regulation or amend it to satisfy the provisions of legally binding state mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed for the purpose of this periodic review. Twelve public comments from nine individuals/organizations were submitted via Town Hall during the public comment period. No public hearing was held, nor were any comments submitted directly to DEQ.

| Comment Number | Commenter | Comment | Agency response |
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| 1 | Eric Clauch | <p>This regulation should be repealed. It does not serve the Commonwealth or small businesses. It created a separate bureaucracy parallel to the State Corporation Commission and it is inadequately trained to perform its duties effectively; the regulation was poorly written, leading to lawsuits; and the regulation does not have an effective management controls or an oversight body ensuring accountability of its actions. This regulation has caused far more harm than good and has resulted in absolutely zero value in all the years in which it has been in force as there are no onshore wind energy projects that have been constructed under its purview.</p> | <p>The PBR process did not remove the State Corporation Commission’s authority but provides a more streamlined approach to the permitting process. The General Assembly determined a streamlined approach was necessary and established a permitting program for wind renewable energy projects under Article 5 in Chapter 11.1 of Title 10.1 of the Code of Virginia..</p> <p>A facility may choose to receive authorization through the DEQ PBR process or the SCC CPCN process. Both avenues require an environmental analysis. The SCC retains legal authority over projects larger than 150 MW.</p> <p>The commenter has not provided any specific instances of inadequate regulatory language or provided any recommended alternatives. It is unclear what, if any, association can be made between the regulation and the absence of wind project construction.</p> |

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| <p>2</p> | <p>Jeff Scott</p> | <p>Being one of just a few dozen people in Virginia who have had personal experience with the PBR for “small” wind projects, I believe that I am highly qualified to make some comments “to determine whether this regulation should be repealed, amended, or retained in its current form.” My opinion is that the current form of the PBR is a complete failure with respect to its goal of being “necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.” My conclusion is that the current PBR should be repealed or significantly amended. My reasons for this conclusion are listed below.</p> <p>As some background before I begin the list, I have been involved with the effort to prevent the construction of the Rocky Forge Wind project in Botetourt County along a mountain ridgeline which is zoned as a Forest Conservation District. This project will require the construction of several miles of access roads, and destruction of over 200 acres of forest habitat that is a watershed for class IV wild trout streams. The proposed turbines will be 680’ to the tips of the blades, the tallest structures on land in Virginia, and will kill eagles and bats. Blasting foundations will result in altered surface and groundwater flows, and will require hundreds of loads of concrete. The total cost for this project is many millions of dollars. It is important to note that Rocky Forge is the only project for which the PBR for wind has been applied.</p> <p>Below are my comments on the failures of the PBR.</p> <ol style="list-style-type: none"> 1. The term “small project” is completely misleading. A wind project that requires the complete destruction of over 200 acres of an environmentally important mountain ridgeline is not small. How many commercial and industrial projects of any type require that many acres, and result in that amount of environmental destruction? 2. The term “small business” is completely misleading. Ares Management (\$300 billion in managed assets) acquired a majority stake in Apex Clean Energy, the company responsible for Rocky Forge. The announcement of this acquisition states “Apex has commercialized | <p>Public policy regarding renewable energy has been established by the General Assembly. The definition of “small” is provided in the statute and the statute can only be changed by the General Assembly, not by regulatory action. Section 10.1- 1197.5 of the Code of Virginia defines a "small renewable energy project" as an electrical generation facility with a rated capacity not exceeding 150 MW that generates electricity only from sunlight or wind.</p> <p>The commenter conflates the concepts of a "small project" and a "small business." A "small project" is defined by state law. A "small business" is also defined by state law, but in another law and in another context. A large business may avail itself of the PBR process as long as the project qualifies as a small project. A small business may likewise develop a project that qualifies as a small project and therefore subject to the PBR. One of the purposes of this periodic review is to identify any disproportionate impacts on small businesses, not whether a specific project can be owned by a particular business regardless of the business's size.</p> <p>While evaluating the suitability of a project does impose work on the part of a locality, it nevertheless remains the responsibility of each locality to determine what types of land uses are appropriate given local needs and conditions. Section 10.1-1197.6 of the Code of Virginia requires a certification to be provided by the governing body of the locality or localities wherein the small renewable energy project</p> |
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| | <p>more than \$9 billion of utility-scale projects and has a leading and diversified clean energy portfolio with more than 30 GW in development” and has a “mission-driven team of more than 300 professionals”. According to the Virginia Small Business Financing Authority (VSBFA), a small business is “\$10 million or less in annual revenues over each of the last three years, or a gross net worth less than \$2 million; or 250 employees or fewer in Virginia; or qualification as a 501(c)(3) nonprofit entity.” Apex is most certainly not a small business.</p> <p>3. The PBR places too much burden on local governments to thoroughly evaluate the impact of an industrial wind project. The information that the developer provides about the presumed advantages of the project are frequently overstated, and the adverse impacts are minimized. Local governments may not even have wind ordinances, or they have adopted the “model” ordinance provided by wind advocacy groups that are weighted in favor of developers.</p> <p>4. The question of the PBR being “necessary for the protection of public health, safety, and welfare” is 100% NO. There is absolutely no language in the PBR that mentions any requirements for protecting the health, safety, and welfare of the public. There is no mention of audible sound dB levels or low-frequency (i.e., infrasound) limits. Both of these can significantly have adverse effects on both people and animals. There is no mention of the adverse effects on property values. There is no mention of divulging wind speed data so that local governments and citizens can make an informed decision if the costs will outweigh the benefits. When a proposed project is close to governmental boundaries, there is no ability for those other jurisdictions to have any role in approving or denying the project. Without these types of requirements the PBR is toothless and worthless.</p> <p>5. The public participation requirement of the PBR is woefully lacking in requiring the applicant to respond to public comments. There is actually no dialogue between the applicant and the public. The public submits questions, both written and verbal, and the applicant might respond to them in a written report. There is no opportunity for the commenter to ask any follow-up questions, and in many cases the applicant’s response is “Rocky Forge Wind respectfully disagrees with</p> | <p>will be located that the project complies with all applicable land use ordinances.</p> <p>Section 10.1-1197 et.seq. of the Code of Virginia does not provide authority to the Department for siting criteria within the PBR regulation for proposed wind projects. The local governing body makes determinations regarding siting of wind facilities proposed within their jurisdictional control and can choose to not allow such development.</p> <p>Generally, wind energy projects are beneficial to the environment because they generate electricity that would otherwise be generated by highly polluting fossil fuel facilities. Non-renewable electricity generation results in emissions of pollutants that cause serious harm to public health and welfare, including particulate matter, ozone, acid gases, carbon dioxide, and hazardous air pollutants. The legal basis for control of these pollutants is the federal Clean Air Act and the State Air Pollution Control Law, including a suite of federal and state implementing regulations.</p> <p>In contrast, sound dB levels, low frequency noise and shadow flicker, while potentially concerning to the public, are not classified as pollutants and are not regulated by DEQ. There is no underlying state law or regulation that enables DEQ to regulate these issues. These types of intermittent local phenomena are under the purview of local governments, which have the legal ability to enact nuisance and other ordinances.</p> <p>Although disruptions to sight and sound may be a concern</p> |
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| | | <p>the arguments you make throughout your comment but respects your right to express your opinions." This cannot be viewed as any type of Q & A or establishing a dialogue.</p> <p>6. The DEQ appears to have not even read comments that were submitted. Many significant issues were raised by public commenters about many environmental concerns, and yet there is no record of DEQ and other agencies reviewing the comments or the responses (or lack thereof) of the applicant. Article XI, Section 1 of the Virginia Constitution states "it shall be the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment and general welfare of the people of the commonwealth." Based on the lack of any evidence of consideration of the issues raised, it is impossible for me to understand how DEQ thinks that they met that constitutional mandate.</p> | <p>with a particular project, DEQ does not have the legal right or ability to control them. The purpose of the wind PBR program is to regulate wind projects in such a way as to prevent harm to the environment, and the current regulation does so.</p> <p>As discussed in the response to comment 1, DEQ's legislative mandate to establish and maintain a permitting program for wind renewable energy projects was imposed by the General Assembly under Article 5 in Chapter 11.1 of Title 10.1 of the Code of Virginia. In accordance with state law, the SCC retains authority over projects larger than 150 megawatts.</p> <p>Whether or not a specific project complies with state code is not the subject of this periodic review. The appropriate venue for that discussion is in the context of the specific project and its associated permits.</p> |
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| <p>3</p> | <p>Tenney Mudge</p> | <p>The Permit by Rule Regulation (PBR) regulation process for small renewable wind energy projects fails to protect citizens, communities, the environment and governmental entities.</p> <ul style="list-style-type: none"> • The PBR regulation fails to protect counties and governmental jurisdictions located close to or adjoining proposed industrial wind turbine project areas. The PBR regulation process must allow for all jurisdictions in close or adjoining proximity to a proposed project to be involved in the approval or denial permitting process from beginning to conclusion. • The PBR regulation fails to protect citizens from property value reductions resulting from industrial wind turbine construction negatively impacting the marketability of previously serene and desirable areas to live. • The PBR regulation fails to protect land owners and land conserved by Conservation Easements. • The PBR regulation fails to protect the public health, safety and welfare of citizens by not addressing sound dB levels, low frequency noise limitations and shadow flicker each having public health adverse impacts. • The PBR regulation falsely implies that small renewable wind projects are small. These are large-scale industrial construction projects. The corporations that build industrial turbine projects are not small but are multi-billion dollar corporate enterprises. Impacts of multi-county view shed annihilation, commercial destruction and habitat loss of hundreds of acres of fragile mountain topography, road construction erosion, adverse watershed and wildlife impacts are not small. • The PBR regulation does not address that wildlife and environmental analyses that become invalid and exceed their defined shelf-life during the project permitting process must be redone and resubmitted. | <p>See the response to comment 2 for discussion of legal and regulatory factors, local impacts, and health and welfare effects. DEQ can only regulate what is expressly granted to it by the legislature, and the Wind PBR cannot regulate beyond what the law requires.</p> |
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| <p>4</p> | <p>Harrison T Godfrey, Advanced Energy United</p> | <p>Advanced Energy United (“United”) respectfully submits the following comments in response to this periodic review of the Permit by Rule (PBR) Process for Small Wind Projects. United is a national association of businesses committed to making the energy we use secure, clean, and affordable. We are the only industry association in the U.S. that represents the full range of advanced energy technologies and services, including companies involved in the manufacture, installation, and operation of wind energy generation. We represent over 100 companies in the \$240B U.S. advanced energy industry, which employs over 3.2 million American workers, including over 97,000 people in the Commonwealth.</p> <p>We are writing today to encourage the Department of Environmental Quality (DEQ) to retain the PBR process for small wind projects in its present form. These regulations streamline permitting for wind projects, reduce bureaucratic burden both on private companies and government, and provide a predictable framework for wind project developers. This predictability helps attract business and capital investment to the Commonwealth, facilitating the direct and indirect economic benefits that flow from renewable development. At the same time, this framework does not override the rights and powers of localities and landowners, ensuring that all stakeholders have a say in project development. Here are five reasons why Virginia's permit by rule regulations for wind projects should be retained.</p> <p>First, PBR simplifies the permitting process, making it more efficient and less time-consuming. By establishing clear guidelines and standards, developers can navigate the regulatory landscape with greater ease and certainty. The development of wind generation projects, including small projects, requires extensive upfront capital investment. Legal and regulatory uncertainty is one of the primary obstacles to securing such investment. Reducing such uncertainty helps facilitate wind development and drives investment into the Commonwealth.</p> <p>Second, the PBR process helps reduce the administrative burden upon state regulators and, thereby, the cost to Virginia taxpayers.</p> | <p>DEQ agrees that the Wind PBR is needed to encourage the development of renewable energy projects in a streamlined, effective manner.</p> |
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| | | <p>PBR does this not by eliminating regulations – indeed small wind projects must still adhere to rigorous standards for noise levels, setback distances, and other environmental factors to receive a permit – but instead by placing that administrative burden on the project developer rather than DEQ staff. By setting clear guidelines, PBR strikes a balance between renewable energy development and other community priorities. Indeed, it is worth noting that state-level PBR standards do not override local permitting processes, nor other legal standards such projects may meet.</p> <p>Third, these regulations contribute to economic growth and job creation in Virginia. By providing a predictable framework, wind project developers, which often develop solar, storage, and other clean energy resources as well, are more inclined to invest time, energy, and capital in the Commonwealth’s energy sector. Not only can wind development produce jobs directly – in the form of manufacturing, construction, operations, and maintenance positions – but also indirectly – by helping support local goods and service providers.</p> <p>Moreover, as shareholders require more and more companies to meet rigorous suitability standards, including decarbonization of their energy footprints, Virginia’s PBR standards help to facilitate decarbonization of the Commonwealth’s electric grid, a key draw for such companies. This is particularly salient given one of the key drivers of economic growth in the Commonwealth. Virginia as benefited from the rapid expansion of the data center industry. Leaders in this industry, including a number of firms in United’s membership, have robust clean energy standards. PBR helps to ensure that they will be able to expand that footprint while meeting their (rising) sustainability commitments.</p> <p>Fourth – and building upon the prior point – PBR helps the Commonwealth meet its overall clean energy standards. In 2020, the General Assembly passed, and the Governor signed into law, the Virginia Clean Economy Act (VCEA). This law requires Virginia’s investor-owned utilities (Dominion and Appalachian Power) to reach 100% clean energy on the Virginia grid by mid-century. Decarbonizing Virginia’s grid while maintaining reliability and affordability will require the swift and</p> | |
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| | | <p>substantial development of a diverse mix of clean energy resources, including wind generation. By facilitating the development of wind projects, PBR enables this reliable and affordable transition to a more sustainable energy mix.</p> <p>Lastly, it is worth noting that Virginia's PBR regulation applies not only to wind energy, but also a range of other advanced energy generation and storage technologies. While only that segment of the regulation regarding wind energy is under review at this moment, undoing even a portion of the rule is likely to have a chilly effect upon the generation and storage industries as a whole. Project developers would be prompted to reconsider the stability and predictability of Virginia's regulatory regime and may be inclined to move staff and capital elsewhere, to more conducive and reliable markets.</p> <p>In conclusion, Virginia's permit by rule regulations for wind projects offer numerous advantages. They streamline the permitting process, reduce administrative burden while preserving the rights of localities and landowners, promote economic growth, facilitate Virginia's clean energy transition, and establish a stable, attractive business climate. By creating a favorable environment for wind energy development, these regulations position Virginia as a state open for business. We appreciate the opportunity to provide these comments and welcome any questions or inquiries the Department may provide.</p> | |
| 5 | Karen Lanning | <p>The Permit by Rule Regulation (PBR) regulation process for small renewable wind energy projects FAILS to protect citizens, communities, the environment and governmental entities.</p> <p>The Rocky Forge project by Apex in northern Botetourt County is NOT a small renewable wind project—it is a large-scale industrial construction project, which will irrevocably alter the natural beauty of North Mountain, spoiling the peace and serenity so valued by the residents and the tourists who come here to enjoy the outdoors.</p> <p>The PGR regulation and the Rocky Forge project FAILS to protect the health, safety and welfare of the citizens and the environment.</p> | See the response to comment 2. |

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| <p>6</p> | <p>Stephen L Neas</p> | <p>The PBR process should have a rejection criteria.</p> <p>The purpose of the PBR regulation was to simplify the permitting process for small renewable energy projects. Witnessing the process for the Rocky Forge project, the process goes too far by not having a rejection criteria. It is apparent that a company receives approval by simply submitting the required information, regardless of its content or accuracy . A couple of examples are:</p> <ul style="list-style-type: none"> • PBR requires a interconnect agreement. The one presented for Rocky Forge had expired, yet accepted. The permit should have been rejected until Apex submitted a valid agreement. • Apex had not decided on the type of turbine and its capacity rating, yet DEQ accepted the certification from an engineer, while not knowing the type or number of turbines, certified the rated capacity of the project anyway. • The original noise survey was flawed, yet accepted. <p>The regulation should be modified include some higher rejection criteria other than just checking off boxes.</p> <p>I agree with other comments addressing the size vs rated energy capacity.</p> | <p>As with any of its environmental permitting programs, DEQ cannot issue a permit that does not meet all legal and regulatory requirements. If a project can meet all of those requirements, then the owner has the legal right to proceed with the project. The purpose of a PBR is to streamline the permitting process; however, it is not a carte blanche to avoid elements of that permitting process.</p> |
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| <p>7</p> | <p>Evan Vaughan, MAREC Action</p> | <p>On behalf of MAREC Action (MAREC informally stands for “Mid-Atlantic Renewable Energy Coalition”), I respectfully submit the following comment in SUPPORT of retaining Virginia’s Small Renewable Wind Energy Projects Permit by Rule (PBR) regulations. MAREC Action is a non-profit coalition of utility-scale wind, solar and energy storage businesses dedicated to the growth and development of renewable energy in Virginia and across the PJM grid region. The PBR regulations continue to work well in Virginia, allowing for the deployment of low-impact wind (and solar) projects less than 150 megawatts (MW) in a comparatively expedient fashion. Renewable energy sources, with no fuel consumption, are some of the least expensive sources of energy available today. As the PJM Interconnection notes in their Third Phase of Energy Transition Study (published Feb. 2023), it is critical for more energy sources to come online with power plant retirements at risk of outpacing the construction of new resources. Virginia’s PBR regulations help ensure that state law does not contribute to or worsen various, and sometimes project-killing, delays. Even as the PBR rules expedite project permitting, they preserve public feedback and rigorous environmental assessments. Permitting more wind farms, faster, will unlock private investment and job creation across Virginia. Already, Virginia’s clean energy industry has created nearly 7,000 in-state jobs and invested over \$5 billion in the Commonwealth. Though much of the current clean energy development pipeline utilizes solar technology, wind projects should be encouraged to compete and be permitted where technologically feasible. Ensuring robust deployment of solar, wind, and other clean energy resources will provide Virginia’s homes and businesses with affordable, reliable power for years to come. Streamlined PBR regulations are a good fit for the wind industry. Wind energy arguably has the smallest environmental impact of any energy resource, producing no air or water pollution and creating comparatively small disruption to the landscape. Those already small impacts continue to shrink as technology improves. The average capacity of newly installed U.S. wind turbines in 2021 was 3.0 megawatts (MW)—up 9% since 2020 and 319% since 1998–1999. This upward trend in</p> | <p>DEQ agrees that the Wind PBR is a tool to efficiently and effectively permit these types of environmentally important projects.</p> <p>Regarding the suggestion to amend the regulation to allow for small design enhancements or technological enhancement, this is already addressed in the existing statute. Section 10.1-1197.6 B 11. states, "Changes to the site plan that occur after the applicant has submitted an application shall be allowed by the Department without restarting the application process, if the changes were the result of optimizing technical, environmental, and cost considerations, do not materially alter the environmental effects caused by the facility, or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain."</p> <p>Once DEQ is in receipt of a PBR, the agency has 90 days to determine if the application is complete or incomplete. If the application is deemed complete, the owner/applicant will receive a PBR authorization letter, which grants authority for the project to construct and operate. Once the PBR authorization letter is issued, modifications to the design and or operation of the project can be authorized through a project modification, as detailed in section 100 of 9VAC15-40.</p> |
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| | | <p>the power rating of individual wind turbines has resulted in reduced project footprints over time.</p> <p>As previously stated, we support the retention of the PBR program for small wind projects. We also suggest one amendment that would better align the regulation with the development process. As projects proceed from land acquisition through permitting, it is common that small design adjustments or technological enhancements are identified that could improve a project's efficiency or lessen local impacts. For example, wind turbine technology is advancing rapidly to the point of more efficient turbines with a smaller footprint potentially being available at the end of the development process compared to what was proposed at the start of the PBR application. We propose that the PBR process could be modified to allow some minor changes to project design without triggering a full permitting reset and restudy, assuming studies of the originally proposed project show minimal or no impact to various environmental resources.</p> <p>We thank the Virginia Department of Environmental Quality for its diligence in implementing regulations that protect the environment and enable the deployment of wind energy and other energy resources. MAREC Action staff and its members would be glad to elaborate on the merits of this program, our proposed amendment, and address questions from the Department.</p> | |
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| <p>8</p> | <p>Dave Condon</p> | <p>Several years ago in an authorized DEQ open comment with Apex Clean Energy regarding Rocky Forge LLC in Botetourt, County, I specifically asked how many wind turbines were to be built along with the coordinates. Apex responded that had not been determined as yet; however, Rocky Forge LLC had already applied for 22 sites with coordinates as noted by the FAA Aeronautical Study 2019-WTE-8774-OE representing all 22 sites. DEQ was informed of this without any action on their part.</p> <p>Infrasound is known to create health issues to humans although wind energy companies will deny this. In 2017, the Massachusetts Courts ordered the City of Falmouth to shutter it's wind turbine facilities due to 22 plus medical cases were settled due to Infrasound. In the past two years, whales who died on the beaches of New Jersey have been linked to Infrasound supposedly linked to an offshore wind turbine facility. There is another wind turbine project called Pinewood which is proposed by Apex to be built on land owned by the Blue Ridge Mountains Council located in Pulaski County VA which overlooks Powhatan Boy Scout Camp putting the lives of Boy Scouts and Staff at risk. Will DEQ investigate Rocky Forge and Pinewood to protect people? Probably not!</p> <p>There is no Power Purchase Agreement with Dominion Energy, Virginia, with Rocky Forge, LLC at this time. In a letter dated Decembe19, 2022 from Attorney Jacquylynn Hugee with Dominion Energy, she states "It is Dominion Energy's understanding that this project is being developed by Rocky Forge LLC, an affiliate of Apex Clean Energy, Inc. To update our prior responses, please be advised that Dominion Energy and its subsidiaries do not own the project, are not currently developing, building or operating the project, nor do they have any application pending to do so."</p> <p>Furthermore, there is no current interconnection agreement between PJM LLC with Dominion Energy and Rocky Forge LLC. Further, it is my understanding that no wind energy projects in Virginia have been applied for since January 21, 2022 when Rocky Forge LLC applied for 13 new sites with coordinates without advising DEQ. Without a Current Interconnection Agreement and Power Purchase Agreement, why will DEQ allow this project to move forward as it will sit idle and rot?</p> | <p>See the response to comment 2 for discussion of legal and regulatory factors, local impacts, and health and welfare effects. DEQ can only regulate what is expressly granted to it by the legislature, and the Wind PBR cannot regulate beyond what the law requires.</p> <p>An amended Interconnection Service Agreement among PJM, Rocky Forge Wind and Dominion Energy was accepted for filing by FERC effective June 12, 2023.</p> <p>The Small Renewable Energy Wind Permit by Rule Program does not regulate power purchase agreements (PPAs). PPAs are approved by the Virginia State Corporation Commission.</p> |
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| | | <p>Although DEQ and the FAA have no jurisdiction over each other, there are many active military low level high speed training routes that aircraft fly over Rocky Forge versus one. Should an aircraft go down, water cannot put out aviation fuel fires as Botetourt County does not have the equipment or training. In 1971, I fought a forest fire in north Botetourt County called the Rathole Mountain fire. Due to the terrain, it was difficult to get equipment to help fight that fire. Over 3000 acres were burned with the loss of life. In fact, the group I was with had to run from being engulfed in that fire. One fire fighter was burned alive as I recall. The fire was started by a child playing with matches. Does anyone recall or remember that fire? As a former investigator, DEQ lacks the training to properly investigate; therefore I recommend that the Permit By Rule or PBR for renewable energy be repealed.</p> | |
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| <p>9</p> | <p>Jeff Scott</p> | <p>This comment is in response to the submittal by Harrison T. Godfrey, the Managing Director of Advanced Energy United. I am making this response because some of the “benefits” that he claims the PBR produces for Virginia, are, in fact, detriments. Below are several comments in response to some of the statements made by Mr. Godfrey.</p> <p>1. Godfrey stated: “First, PBR simplifies the permitting process, making it more efficient and less time-consuming. By establishing clear guidelines and standards, developers can navigate the regulatory landscape with greater ease and certainty.” Virginia already had a framework in place for the regulation of energy projects, and did not need another, which has actually increased the regulatory burden on the DEQ. The PBR removed the State Corporation Commission (SCC) from its role as the agency for approval of energy projects. Why was this done?</p> <p>2. Godfrey stated: “Second, the PBR process helps reduce the administrative burden upon state regulators and, thereby, the cost to Virginia taxpayers. PBR does this not by eliminating regulations – indeed small wind projects must still adhere to rigorous standards for noise levels, setback distances, and other environmental factors to receive a permit – but instead by placing that administrative burden on the project developer rather than DEQ staff.” There are at least two reasons why these statements are incorrect. First, as I stated in the previous item, Virginia already had the regulatory mechanism in place for energy projects in the form of the SCC. Now there is another regulatory mechanism, the PBR. If the goal was to reduce cost and burden, then modify the existing requirements, don’t create new ones. And in fact, the PBR complicates the regulatory environment since it is now up to each jurisdiction in Virginia to enact “Wind Ordinances” which will not be uniform around the state. In addition, the burden is now placed on local governments which most likely do not have the expertise for evaluating information submitted by energy developers, and will need to hire, or contract with experts to perform the evaluations. Second, the “rigorous standards” claim is simply not true. The PBR does not, at all, place any restrictions on noise, setbacks, etc. These requirements are completely overlooked by the PBR. Once again, the burden is placed on local governments to</p> | <p>The PBR process did not remove the State Corporation Commission's authority but provides a more streamlined approach to the permitting process. The General Assembly determined a streamlined approach was necessary and established a permitting program for wind renewable energy projects under Article 5 in Chapter 11.1 of Title 10.1 of the Code of Virginia. The SCC retains legal authority over projects larger than 150 MW.</p> <p>A facility may choose to receive authorization through the DEQ PBR process or the SCC CPCN process. Both avenues require an environmental analysis.</p> <p>Land use and items such as noise have always been the responsibility of local governments. The Wind PBR does not remove these responsibilities from the localities.</p> |
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| | | <p>enact the necessary regulations, and then spend the time and money to try and determine that the claims made by the project developer are true. And energy developers will not have a uniform code for what is required, but it will vary by jurisdiction.</p> <p>3. Godfrey stated: "Fourth – and building upon the prior point – PBR helps the Commonwealth meet its overall clean energy standards." This may be true, but what is the actual cost to taxpayers and the environment? As I noted in my comments previously submitted, "small" wind projects are actually large industrial projects requiring dozens, if not hundreds, of acres of land. And where in Virginia does the wind blow on land? On mountain ridges that are environmentally, as well as economically, important to Virginia. What irreversible damage will result?</p> <p>In closing, the PBR for "small" wind projects must be revoked or significantly revised to ensure that the environment and the citizens of Virginia are adequately protected. Making it easier for large, multi-billion corporations to destroy the environment and harm citizens does not meet the requirements of the Virginia Constitution.</p> | |
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| <p>10</p> | <p>Jeff Scott</p> | <p>Having submitted two other comments, the Town Hall review team may be irritated to have a third one from me. But, I think it is necessary to raise an issue that I have not seen in other submissions. And that issue is the handling of the public comment requirement in the “small” wind PBR. Below is an excerpt of a comment I submitted following the public comment meeting for the Rocky Forge Wind project: The failure of Apex to comply with Code of Virginia § 10.1-1197.6 is perhaps the most egregious of the two violations described in this comment. That is because it is the simpler of the two. All it requires is common courtesy and respect for individuals, qualities that should be common business practice. The details of this violation are described below.</p> <p>A friend of mine who attended the public comment meeting at the Fincastle Community Center on June 15, 2022 attempted to have a conversation with some of the Apex employees who were in attendance. He was not permitted to do so by Robert Loftin, an attorney for Apex. My friend described what happened:</p> <p>Jeff and all, before you got there, I talked with the two of the Apex people sitting at the table and asked them a few questions. Loftin came over and told me I could not talk to them, that time was a public comment time and I could submit written or oral comments. He did not allow me to have a conversation with Apex.</p> <p>So, this is the method that Apex uses to facilitate communication, and to establish a dialogue between the owner or operator and persons who may be affected by the project. A more blatant disregard for the regulation could not be imagined. I also attempted to ask questions of Karlis Povisils (Apex Senior Vice President of Development) who was at the meeting and was not busy with any other persons, but he refused to answer any of my questions.</p> <p>I strongly urge the Town Hall review team to carefully review all of the comments in full (and not just the summaries provided by Apex) that were submitted by the public, and the responses that were, or were not, made by Apex to the comments. The documents of interest are identified as Attachment 13, with</p> | <p>Provision B 12 under Virginia Code § 10.1-1197 contains the following condition:</p> <p><i>“A requirement that the applicant hold a public meeting. The public meeting shall be held in the locality or, if the project is located in more than one locality in a place proximate to the location of the proposed project. Following the public meeting, the applicant shall prepare a report summarizing the issues raised at the meeting, including any written comments received. The report shall be provided to the Department;”</i></p> <p>The code does not establish specific protocols for the meetings and places the burden of how the meeting is run on the source. The statute does not include DEQ in the public comment process other than to assure a meeting was conducted and that a summary report is prepared and submitted.</p> |
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| | | <p>various suffixes. In doing the review you will see the many significant questions and comments about the many different impacts that Rocky Forge would have. If, after that review you can honestly say that the PBR for “small” wind projects does not need to be repealed, or that significant changes do not need to be made, then there is no hope for the environment or the citizens of Virginia.</p> | |
| <p>11</p> | <p>Michael Jamison</p> | <p>Rocky Forge Wind project is not a small wind energy project and should not be ruled under the PBR. The PBR does not take into account the adverse health effects wind turbines may have on people. The PBR does not offer adequate protection from wind turbines for Bald Eagles , Golden Eagles and endangered bat species. The PBR does not protect our beautiful mountain views from unsightly industrial wind projects. The negative impact of the Rocky Forge Wind project does not stop at the county line. The PBR does nothing to address those negative impacts on surrounding counties. The PBR should be repealed because it is totally biased in favor of industrial wind projects and discriminates against anyone or anything that may be negatively impacted by those projects.</p> | <p>See the response to comment 2 for discussion of legal and regulatory factors, local impacts, and health and welfare effects. DEQ can only regulate what is expressly granted to it by the legislature, and the Wind PBR cannot regulate beyond what the law requires</p> |

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| 12 | Alan Brown | <p>Streamlined PBR regulations may be a good fit for wind energy corporations but they are a bad and catastrophic fit for for citizens, communities, governmental entities and the environment.</p> <p>Permitting wind turbine projects faster is the wrong answer.</p> <p>The PBR regulation process of simply granting approval if required documents are submitted without any evaluation of validity and accuracy is wrong. The simplistic procedure of a wind energy company checking the right boxes is a wrong way for a PBR to be granted when so much is at stake.</p> <p>The PBR regulation process creates a public health and safety risk with failure to protect citizens from dB sound, infra-sound, and fire and contamination hazards.</p> <p>The PBR regulation process fails to protect adjoining counties and government entities that must have a defined voice in the permitting process approval or denial.</p> <p>The PBR regulation process fails to protect conserved land and fails to protect citizens from reduction in property values.</p> <p>The PBR regulation process should not be a streamlined rubber-stamped pathway for corporations to build large scale industrial wind turbines in fragile non-renewable mountain ridge lines.</p> | <p>See the response to comment 2 for discussion of legal and regulatory factors, local impacts, and health and welfare effects.</p> |
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation enhances the department's ability to ensure compliance with all specific requirements under the state code through the approval of a Wind permit by rule for wind energy projects with rated capacity not exceeding 150 megawatts.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the following goals:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To provide a streamlined administrative mechanism for a “permit by rule,” which means the permit requirements are set forth “up front” within the regulation, rather than being developed on a case-by-case basis, thus reducing burdensome and costly permit application, review, and issuance procedures.
3. To meet specific requirements of the Code of Virginia to develop requirements for permits by rule for wind energy projects with rated capacity not exceeding 150 megawatts

The regulation provides a permitting process for small renewable energy wind projects with a rated capacity greater than five megawatts and less than one hundred and fifty megawatts that is protective of human health and the environment. State law requires other necessary environmental permits to be obtained in addition to this PBR. (§10.1-1197.6 B 12)

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

This regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed as it provides applicants with the most cost-effective means of fulfilling ongoing state requirements that protect natural and historic resources. The regulation also provides a permitting process for small renewable energy wind projects. The regulation details the permitting process, and a small renewable energy wind project is deemed to operate under the PBR provision if it meets the requirements of the regulation. Other necessary environmental permits will need to be obtained in addition to the PBR.

DEQ received 11 comments from 9 individuals/organizations during the public comment period. Comments from 2 individuals/organizations were in favor of retaining the regulation as is, with no amendments. Comments from 6 of the remaining 7 individuals/organizations were primarily focused on the Rocky Forge Wind Project in Botetourt County, Virginia, which is not the subject of this periodic review. Several commenters indicated that the Small Renewable Energy Wind Permit by Rule program is not "small". The definition of a Small Renewable Energy Wind Permit by Rule is provided in the statute, which can only be changed by the General Assembly, not by regulatory action

The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last reviewed in 2019. Prior to the 2009 legislation small renewable energy projects were to be permitted on a case-by-case basis by the Virginia State Corporation Commission (SCC). For those considering small wind energy projects there was large uncertainty concerning the requirements and potential costs of completing a project, as well as how long the permitting process would take. The

permit by rule framework eliminates much of that uncertainty. Applicants need to meet the 14 criteria set forth by §§ 10.1-1197.6(B) of the Code of Virginia to obtain a permit by rule. Further, the proposed regulations specify that DEQ must render a decision concerning the permit application within 90 days. This significant reduction in uncertainty is in itself beneficial and will increase the likelihood that net beneficial projects will go forward. To date, the Rocky Forge Wind project is the only on-shore wind project permitted through the wind PBR process. DEQ authorized the use of the Small Renewable Energy Wind PBR for the Rocky Forge Wind project on March 2, 2017, with a modification of the project authorized on October 16, 2020.

The department, through examination of the regulation and conversations with developers and others in the renewable energy sector, has determined that the regulatory requirements currently minimize the economic impact of permitting a small wind energy project. The statutes and regulation will increase the likelihood that small wind energy projects will go forward. Consequently, the proposed regulation may have a small positive impact on employment. The statutes and proposed regulation will reduce risk, time costs, and administrative costs for small firms wishing to develop a small wind energy project.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

DEQ has not identified any potential impacts on the institution of the family and family stability in relation to the small renewable energy wind regulation.
