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HOUSE BILL NO. 2444

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on March 27, 2023)

(Patron Prior to Substitute—Delegate Bloxom)

A BILL to amend and reenact § 56-585.1:11 of the Code of Virginia, relating to development of offshore wind capacity; cost recovery.

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.1:11 of the Code of Virginia is amended and reenacted as follows:

§ 56-585.1:11. Development of offshore wind capacity.

A. As used in this section:

"Advanced clean energy buyer" means a commercial or industrial customer of a Phase II Utility, irrespective of generation supplier, (i) with an aggregate load over 100 megawatts; (ii) with an aggregate amount of at least 200 megawatts of solar or wind energy supply under contract with a term of 10 years or more from facilities located within the Commonwealth by January 1, 2024; and (iii) that directly procures from the utility the electric supply and environmental attributes of the offshore wind facility associated with the lesser of 50 megawatts of nameplate capacity or 15 percent of the commercial or industrial customer's annual peak demand for a contract period of 15 years.

"Aggregate load" means the combined electrical load associated with selected accounts of an advanced clean energy buyer with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of affiliated entities under a common parent.

"Control" means the legal right, directly or indirectly, to direct or cause the direction of the management, actions, or policies of an affiliated entity, whether through the ability to exercise voting power, by contract, or otherwise. "Control" does not include control of an entity through a franchise or similar contractual agreement.

"Qualifying large general service customer" means a customer of a Phase II Utility, irrespective of general supplier, (i) whose peak demand during the most recent calendar year exceeded five megawatts and (ii) that contracts with the utility to directly procure electric supply and environmental attributes associated with the offshore wind facility in amounts commensurate with the customer's electric usage for a contract period of 15 years or more.

"Wind turbine generator" means a structure comprising of a tower, a rotor with blades connected at the hub, nacelle and ancillary electrical and other equipment that is affixed to a foundation of which multiple structures comprise a generating facility, and submarine export and interarray cables.

B. In order to meet the Commonwealth's clean energy goals, prior to December 31, 2034 2032, the construction or purchase by a public utility of one or more offshore wind generation facilities located off the Commonwealth's Atlantic shoreline or in federal waters and interconnected directly into the Commonwealth, with an aggregate capacity of up to 5,200 megawatts, or the purchase of energy and environmental attributes from such facilities via power purchase agreements as set forth in subdivision C 5 is in the public interest and the Commission shall so find, provided that no customers of the utility shall be responsible for costs of any such facility, including power purchase agreements as described in subdivision C 5, in a proportion greater than the utility's share of the facility or power purchase agreement.

C. 1. Pursuant to subsection B, construction by a Phase II Utility of one or more new utility-owned and utility-operated generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's Atlantic shoreline, with an aggregate rated capacity of not less than 2,500 megawatts and not more than 3,000 megawatts, along with electrical transmission or distribution facilities associated therewith for interconnection is in the public interest. In acting upon any request for cost recovery by a Phase II Utility for costs associated with such a facility, including power purchase agreements as described in subdivision C 5, the Commission shall determine the reasonableness and prudence of any such costs, provided that such costs shall be presumed to be reasonably and prudently incurred if the Commission determines that (i) the utility has complied with the competitive solicitation and procurement requirements pursuant to subsection E; (ii) the project's projected total levelized cost of energy, including any tax credit, on a cost per megawatt hour basis, inclusive of the costs of transmission and distribution facilities associated with the facility's interconnection, does not exceed 1.4 times the comparable cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating facility as estimated by the U.S. Energy Information Administration in its Annual Energy Outlook 2019; and (iii) the utility has commenced construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in service

60 prior to January 1, 2028. The Commission shall disallow costs, or any portion thereof, only if they are
61 otherwise unreasonably and imprudently incurred. In its review, the Commission shall give due
62 consideration to (a) the Commonwealth's renewable portfolio standards and carbon reduction
63 requirements, (b) the promotion of new renewable generation resources, and (c) the economic
64 development benefits of the project for the Commonwealth, including capital investments and job
65 creation, *arising from project construction and operation and the manufacture of wind turbine generator*
66 *components and subcomponents.*

67 2. Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate of
68 return to a Phase II Utility for the construction of one or more new utility-owned and utility-operated
69 generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's
70 Atlantic shoreline pursuant to this section.

71 3. Any such costs proposed for recovery through a rate adjustment clause pursuant to subdivision A
72 6 of § 56-585.1 shall be allocated to all customers of the utility in the Commonwealth as a
73 non-bypassable charge, regardless of the generation supplier of any such customer, other than (i) PIPP
74 eligible utility customers, (ii) advanced clean energy buyers, and (iii) qualifying large general service
75 customers. No electric cooperative customer of the utility shall be assigned, nor shall the utility collect
76 from any such cooperative, any of the costs of such facilities, including electrical transmission or
77 distribution facilities associated therewith for interconnection. The Commission may promulgate such
78 rules, regulations, or other directives necessary to administer the eligibility for these exemptions.

79 4. The Commission shall permit a portion of the nameplate capacity of any such facility, in the
80 aggregate, to be allocated to (i) advanced clean energy buyers or (ii) qualifying large general service
81 customers, provided that no more than 10 percent of the offshore wind facility's capacity is allocated to
82 qualifying large general service customers. A Phase II Utility shall petition the Commission for approval
83 of a special contract with any advanced clean energy buyer, or any special rate applicable to qualifying
84 large general service customers, pursuant to § 56-235.2, no later than 15 months prior to the projected
85 commercial operation date of the facility, and all customer enrollments associated with such special
86 contracts or rates shall be completed prior to commercial operation of the facility. Any such special
87 contract or rate may include provisions for levelized rates of service over the duration of the customer's
88 contracted agreement with the utility, and the Commission shall determine that such special contract or
89 rate is designed to hold nonparticipating customers harmless over its term in connection with any
90 petition for approval by the utility. The utility may petition for approval of such special contracts or
91 rates in connection with any petition for approval of a rate adjustment clause pursuant to subdivision A
92 6 of § 56-585.1 to recover the costs of the facility, and the Commission shall rule upon any such
93 petitions in its final order in such proceeding within nine months from the date of filing.

94 5. *Any purchase or development of offshore wind capacity pursuant to subsection B beyond the*
95 *amount produced by the 2,587 megawatt project approved in December 2022 by the Commission for a*
96 *Phase II Utility shall include a competitive solicitation process subject to Commission oversight and*
97 *approval. When overseeing the solicitation, the Commission shall consider the benefits arising from*
98 *project construction and operation and the manufacture of wind turbine generator components and*
99 *subcomponents in the Commonwealth, benefits to ports in the Commonwealth, and other economic*
100 *development benefits.*

101 *a. Representatives of the Department of Energy and the Virginia Economic Development Partnership*
102 *shall constitute an advisory council that shall collaborate with the Phase II Utility on the development*
103 *and issuance of the solicitation and shall ensure that the solicitation is reasonable and achievable. Each*
104 *member of the advisory council shall appoint two additional members to the advisory council. The*
105 *advisory council shall be chaired by an appointee of the Department of Energy and such chairman shall*
106 *hold the ability to break tie votes. Solicitations shall include a developer comment period during which*
107 *comments shall be considered by the Phase II Utility and the advisory council in the development and*
108 *issuance of the final solicitation.*

109 *b. Contracts shall be selected by the Phase II Utility, in consultation with the advisory council, on at*
110 *least a cost per megawatt hour basis with due consideration granted for the resources and experience of*
111 *the developer. In determining whether to approve a project pursuant to this subsection, the Commission*
112 *shall include the cost of transmission upgrades and utility remuneration in the cost per megawatt hour*
113 *calculation and shall consider economic development benefits.*

114 *c. In any petition for Commission approval to purchase offshore wind generation capacity through a*
115 *competitive solicitation process pursuant to this subsection, a Phase II Utility shall include information*
116 *demonstrating (i) compliance with the considerations set forth in subsection D; (ii) economic*
117 *development benefits to the Commonwealth and otherwise, including capital investments and job*
118 *creation arising from project construction and operation and the manufacture of wind turbine generator*
119 *components and subcomponents; and (iii) an environmental and fisheries mitigation plan consistent with*
120 *subsection F.*

121 *d. The Commission may approve reasonable remuneration of the annual total value of a power*

122 *purchase agreement selected pursuant to this subsection to the Phase II Utility to be distributed*
123 *annually.*

124 D. In constructing any such facility contemplated in subsection B, the utility shall develop and
125 submit a plan to the Commission for review that includes the following considerations: (i) options for
126 utilizing local workers; (ii) the economic development benefits of the project for the Commonwealth,
127 including capital investments and job creation; (iii) consultation with the Commonwealth's Chief
128 Workforce Development Officer, the Chief Diversity, Equity, and Inclusion Officer, and the Virginia
129 Economic Development Partnership on opportunities to advance the Commonwealth's workforce and
130 economic development goals, including furtherance of apprenticeship and other workforce training
131 programs; (iv) giving priority to the hiring, apprenticeship, and training of veterans, as that term is
132 defined in § 2.2-2000.1, local workers, and workers from historically economically disadvantaged
133 communities; and (v) procurement of equipment from Virginia-based or United States-based
134 manufacturers using materials or product components made in Virginia or the United States, if
135 reasonably available and competitively priced.

136 E. Any project constructed or purchased pursuant to subsection B shall (i) be subject to competitive
137 procurement or solicitation for a substantial majority of the services and equipment, exclusive of
138 interconnection costs, associated with the facility's construction; (ii) involve at least one experienced
139 developer; and (iii) demonstrate the economic development benefits within the Commonwealth, including
140 capital investments and job creation. A utility may give appropriate consideration to suppliers and
141 developers that have demonstrated successful experience in offshore wind.

142 F. Any project *constructed or purchased pursuant to subsection B* shall include an environmental and
143 fisheries mitigation plan submitted to the Commission for the construction and operation of such
144 offshore wind facilities, provided that such plan includes an explicit description of the best management
145 practices the bidder will employ that considers the latest science at the time the proposal is made to
146 mitigate adverse impacts to wildlife, natural resources, ecosystems, and traditional or existing
147 water-dependent uses. The plan shall include a summary of pre-construction assessment activities,
148 consistent with federal requirements, to determine the spatial and temporal presence and abundance of
149 marine mammals, sea turtles, birds, and bats in the offshore wind lease area.