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SENATE BILL NO. 860

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 9, 2020)

(Patron Prior to Substitute—Senator Mason)

A BILL to amend the Code of Virginia by adding a section numbered 56-585.1:11, relating to electric utilities; development of offshore wind generation facilities.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-585.1:11 as follows:

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

A. In order to meet the Commonwealth's clean energy goals, prior to December 31, 2034, 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, 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 in a proportion greater than the utility's share of the facility.

B. 1. Pursuant to subsection A, 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, 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 D, (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 1.6 times the comparable cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating facility as most recently estimated by the U.S. Energy Information Administration in its Annual Energy Outlook at the time of the utility's initial cost recovery request, 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 prior to January 1, 2028. The Commission shall disallow costs, or any portion thereof, only if they are otherwise unreasonably and imprudently incurred. In its review, the Commission shall give great weight to the public interest determination in this subsection.

2. Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate of return to a Phase II Utility constructing 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 pursuant to this section.

3. Any such costs proposed for recovery through a rate adjustment clause pursuant to subdivision A 6 of § 56-585.1 shall be allocated to all customers of the utility in the Commonwealth as a non-bypassable charge, regardless of the generation supplier of any such customer, other than (i) low-income residential customers and (ii) commercial and industrial customers, regardless of the generation supplier, with (a) an aggregate load over 100 megawatts and (b) an aggregate load of at least 200 megawatts of renewable energy supply under a long-term contract from facilities located within the Commonwealth prior to January 1, 2024, which directly procure from the utility the electricity and environmental attributes of the 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. No electric cooperative customer of the utility shall be assigned, nor shall the utility collect from any such cooperative, any of the costs of such facilities, including electrical transmission or distribution facilities associated therewith for interconnection. The Commission may promulgate such rules, regulations, or other directives necessary to administer the eligibility for this exemption.

4. For purposes of this subsection, "low-income residential customer" includes any residential customer of a Phase II Utility where the customer or a dependent is a recipient of a state or federally funded public assistance program for the indigent and requests exemption from the utility from such charges, and "aggregate load" means the combined electrical load associated with selected nonresidential customer accounts with the same entity name or in the name of affiliated entities under a common parent company.

60 C. In constructing any such facility contemplated in subsection A, the utility shall (i) identify options
61 for utilizing local workers; (ii) identify the economic development benefits of the project for the
62 Commonwealth, including capital investments and job creation; (iii) consult with relevant governmental
63 entities, including the Commonwealth's Chief Workforce Development Officer and the Virginia Economic
64 Development Partnership, on opportunities to advance the Commonwealth's workforce and economic
65 development goals, including furtherance of apprenticeship and other workforce training programs; and
66 (iv) give priority to the hiring of local workers, including workers from historically economically
67 disadvantaged communities. For purposes of this subsection, "historically economically disadvantaged
68 community" means a community a majority of the population of which are people of color or are in a
69 low-income geographic area. Relevant state agencies shall identify historically economically
70 disadvantaged communities utilizing geographic information systems, U.S. Census tract demographic and
71 poverty threshold data for the Commonwealth, and zip code areas.

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

78 E. Any project shall include an environmental and fisheries mitigation plan submitted to the
79 Commission for the construction and operation of such offshore wind facilities, provided that such plan
80 includes a description of the best management practices the bidder will employ that considers the latest
81 science at the time the plan is submitted to mitigate any adverse impacts to wildlife, natural resources,
82 ecosystems, and traditional or existing water-dependent uses. The plan shall also include a summary of
83 pre-construction assessment activities, consistent with federal requirements, to determine the spatial and
84 temporal presence and abundance of marine mammals, sea turtles, birds, and bats, in the offshore wind
85 lease area.

86 2. That the utility constructing a facility pursuant to § 56-585.1:11 of the Code of Virginia, as
87 created by this act, shall provide the State Corporation Commission (the Commission) with reports
88 on the facility's construction progress, including performance to construction timeline and budget,
89 on no less than a quarterly basis throughout the construction period. The Commission shall retain
90 ongoing authority to review the reasonableness and prudence of any increases in the total
91 projected cost of the facility during its construction period.