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SENATE BILL NO. 860

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on April 11, 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 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.

B. 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.

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, 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 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 due consideration to (a) the Commonwealth's renewable portfolio standards and carbon reduction requirements, (b) the promotion of new renewable generation resources, and (c) the economic development benefits of the project for the Commonwealth, including capital investments and job creation.

2. Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate of

60 return to a Phase II Utility for the construction of one or more new utility-owned and utility-operated
61 generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's
62 Atlantic shoreline pursuant to this section.

63 3. Any such costs proposed for recovery through a rate adjustment clause pursuant to subdivision A
64 6 of § 56-585.1 shall be allocated to all customers of the utility in the Commonwealth as a
65 non-bypassable charge, regardless of the generation supplier of any such customer, other than (i) PIPP
66 eligible utility customers, (ii) advanced clean energy buyers, and (iii) qualifying large general service
67 customers. No electric cooperative customer of the utility shall be assigned, nor shall the utility collect
68 from any such cooperative, any of the costs of such facilities, including electrical transmission or
69 distribution facilities associated therewith for interconnection. The Commission may promulgate such
70 rules, regulations, or other directives necessary to administer the eligibility for these exemptions.

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

86 D. In constructing any such facility contemplated in subsection B, the utility shall develop and submit
87 a plan to the Commission for review that includes the following considerations: (i) options for utilizing
88 local workers; (ii) the economic development benefits of the project for the Commonwealth, including
89 capital investments and job creation; (iii) consultation with the Commonwealth's Chief Workforce
90 Development Officer, the Chief Diversity, Equity, and Inclusion Officer, and the Virginia Economic
91 Development Partnership, on opportunities to advance the Commonwealth's workforce and economic
92 development goals, including furtherance of apprenticeship and other workforce training programs; and
93 (iv) giving priority to the hiring, apprenticeship, and training of veterans, as that term is defined in
94 § 2.2-2000.1, local workers, and workers from historically economically disadvantaged communities.

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

101 F. Any project shall include an environmental and fisheries mitigation plan submitted to the
102 Commission for the construction and operation of such offshore wind facilities, provided that such plan
103 includes an explicit description of the best management practices the bidder will employ that considers
104 the latest science at the time the proposal is made to mitigate adverse impacts to wildlife, natural
105 resources, ecosystems, and traditional or existing water-dependent uses. The plan shall include a
106 summary of pre-construction assessment activities, consistent with federal requirements, to determine the
107 spatial and temporal presence and abundance of marine mammals, sea turtles, birds, and bats, in the
108 offshore wind lease area.

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