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SENATE BILL NO. 1441

Offered January 11, 2023

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

Patrons—Locke; Delegate: Scott, D.L.

Referred to Committee on Commerce and Labor

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, and nacelle and ancillary electrical and other equipment that is affixed to a foundation of which multiple structures comprise a generating facility.

B. In order to meet the Commonwealth's clean energy goals, prior to December 31, 2034 2024, 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

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59 review, the Commission shall give due consideration to (a) the Commonwealth's renewable portfolio
60 standards and carbon reduction requirements, (b) the promotion of new renewable generation resources,
61 and (c) the economic development benefits of the project for the Commonwealth, including capital
62 investments and job creation. *The Commission shall also give preference to requests for cost recovery*
63 *by a Phase II Utility for generating facilities utilizing energy derived from offshore wind that maximize*
64 *economic benefits to the Commonwealth, such as benefits arising from the construction and operation of*
65 *such facilities and the manufacture of wind turbine generator components.*

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

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

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

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

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

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