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SENATE BILL NO. 1477

Senate Amendments in [] - February 2, 2023

A *BILL to amend and reenact §§ 56-585.1:11 and 58.1-400.3 of the Code of Virginia, relating to electric utilities; affiliated interest for certain offshore wind projects; minimum tax for electric utilities.*

Patron Prior to Engrossment—Senator Lewis

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.1:11 and 58.1-400.3 of the Code of Virginia are 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.

"Offshore wind affiliate" means a regulated affiliate company of a Phase II Utility [subject to the Commission's jurisdiction] established by such utility in connection with any project constructed pursuant to subsection B for the purpose of securing a noncontrolling equity financing partner for the project.

"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 ownership share of the facility, *including any ownership share held by an offshore wind affiliate.*

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 or its offshore wind affiliate 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

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59 Information Administration in its Annual Energy Outlook 2019; and (iii) the utility has commenced
60 construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan
61 for such facility or facilities to be in service prior to January 1, 2028. The Commission shall disallow
62 costs, or any portion thereof, only if they are otherwise unreasonably and imprudently incurred. In its
63 review, the Commission shall give due consideration to (a) the Commonwealth's renewable portfolio
64 standards and carbon reduction requirements, (b) the promotion of new renewable generation resources,
65 and (c) the economic development benefits of the project for the Commonwealth, including capital
66 investments and job creation.

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

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

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

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

G. In connection with any project constructed by a Phase II Utility pursuant to subsection B, such utility may, subject to Commission approval pursuant to Chapter 4 (§ 56-76 et seq.), establish an offshore wind affiliate for the purpose of securing a noncontrolling equity financing partner for the project, and such offshore wind affiliate may be permitted to construct, own, or operate the project, or a portion thereof. Notwithstanding the provisions of the Utility Facilities Act (§ 56-265.1 et seq.), an offshore wind affiliate shall be permitted to operate as a public utility in association with the Phase II Utility and shall be entitled to all rights and privileges of a public utility [solely] in connection with the project. Nothing in this subsection shall prevent the Phase II Utility or its offshore wind affiliate from recovering the prudently incurred costs of constructing or operating the project pursuant to this section or subdivision A 6 of § 56-585.1, regardless of whether such costs are incurred by the utility or its offshore wind affiliate. In acting upon any such request for cost recovery by the Phase II Utility, the Commission shall utilize the capital structure and cost of capital of the utility, consistent with subdivision A 10 of § 56-585.1, and the capital structure and cost of capital of any noncontrolling entity's interest in the offshore wind affiliate shall be disregarded. If any ownership interest in the offshore wind affiliate is transferred to such a noncontrolling entity, the Commission shall ensure, in granting any approval for such transfer pursuant to the Utility Transfers Act (§ 56-88 et seq.), or for cost recovery under this section or subdivision A 6 of § 56-585.1, that any gain on the utility's basis for the project is credited to the utility's customers through a rate adjustment clause credit mechanism and amortized over such period as the Commission determines to be appropriate.

§ 58.1-400.3. Minimum tax on certain electric suppliers.

A. 1. An electric supplier, except for those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax imposed by this section, instead of the corporate income tax imposed by § 58.1-400 if applicable, net of any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this subsection. An electric supplier that is organized as a limited liability, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts for the calendar year that ends during the taxable year minus the state's portion of the electric utility consumption tax billed to consumers.

B. 1. An electric supplier that is organized as a cooperative and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax, instead of the tax on modified net income imposed by § 58.1-400.2, if the tax imposed by § 58.1-400.2, net of any credits that may be used to offset such tax, is less than the minimum tax imposed by this subsection.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts from sales to nonmembers for the calendar year that ends during the taxable year minus the consumption tax collected from nonmembers.

C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be based on the gross receipts for the calendar year that ends during the taxable period or, if none, the most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

D. The State Corporation Commission shall calculate and certify to the Department for each tax year as defined in § 58.1-2600 the name, address, and minimum tax for each electric supplier. The Commission shall mail or otherwise deliver a copy of the certification to each affected electric supplier.

E. When an electric supplier subject to the tax imposed by this section is one of several affiliated corporations that file a consolidated or combined income tax return, the portion of the affiliated corporations' tax liability that is attributable to the electric supplier shall be computed as follows:

1. Each corporation included in the consolidated or combined return shall recompute its corporate income tax liability, net of any income tax credits, as if it were filing a separate return. The separate income tax liability of the electric supplier shall then be compared to the affiliated corporations' tax liability, net of any income tax credits, indicated on the consolidated or combined return. For purposes of this section, the lesser amount shall be deemed to be the corporate income tax imposed by § 58.1-400 and attributable to the electric supplier.

2. a. If such corporate income tax amount is less than the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall be subject to the minimum tax in lieu of the corporate income tax imposed by § 58.1-400.

b. If such corporate income tax amount exceeds the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall not owe the minimum tax.

F. The requirements imposed under Article 20 (§ 58.1-500 et seq.) of Chapter 3 of this title regarding the filing of a declaration of estimated income taxes and the payment of such estimated taxes, shall be

182 applicable to electric suppliers regardless of whether such taxpayer expects to be subject to the minimum
183 tax imposed herein or to the corporate income tax imposed by § 58.1-400.

184 For purposes of determining the applicability of the exceptions under which the addition to the tax
185 for the underpayment of any installment of estimated taxes shall not be imposed, it shall be irrelevant
186 whether the tax shown on the return for the preceding taxable year is the corporate income tax or the
187 minimum tax.

188 G. To the extent that a taxpayer is subject to the minimum tax imposed under this section, there
189 shall be allowed a credit against the separate, combined, or consolidated corporate income tax for the
190 total amount of minimum tax paid by the electric supplier in all previous years that is in excess of the
191 tax imposed by § 58.1-400 on the electric supplier for such years.

192 H. 1. To the extent an electric supplier or its parent company has remitted estimated income tax
193 payments in excess of its corporate income tax liability for the taxable years beginning on or after
194 January 1, 2001, but before January 1, 2004, such overpayments shall only be utilized to offset any
195 corporate income tax liabilities incurred pursuant to § 58.1-400 for taxable years beginning on and after
196 January 1, 2004, and shall not be claimed as a refund of overpaid taxes, except as provided in
197 subdivision 2 of this subsection. For the purposes of this subsection, estimated income tax payments
198 shall include any overpayments from a prior taxable year carried forward as an estimated payment to be
199 credited towards a future tax liability.

200 2. If an electric supplier has had a corporate income tax liability of greater than \$0 for each taxable
201 year beginning on or after January 1, 2001, but before January 1, 2003, then such electric supplier may
202 claim a refund of any estimated income tax payments in excess of their taxable year 2003 corporate
203 income tax liability.

204 I. Every electric supplier which owes the minimum tax imposed by this section shall remit such tax
205 payment to the Department of Taxation.

206 J. Notwithstanding any of the foregoing provisions, an electric supplier may not adjust capped rates
207 pursuant to § 56-582 of the Code of Virginia on any portion of the minimum tax due to the
208 Commonwealth.

209 K. The following words and terms, for purposes of this section, shall have the following meanings:

210 "Consumption tax" means the state's portion of the electric utility consumption tax billed pursuant to
211 Chapter 29 (§ 58.1-2900 et seq.) of this title, for which the electric supplier is defined as the "service
212 provider" pursuant to § 58.1-2901 less any amounts billed on behalf of utilities owned and operated by
213 municipalities.

214 "Electric supplier" means an incumbent electric utility in the Commonwealth that, prior to July 1,
215 1999, supplied electric energy to retail customers located in an exclusive service territory established by
216 the State Corporation Commission. *However, "electric supplier" also includes an offshore wind affiliate*
217 *as defined in § 56-585.1:11.*

218 "Gross receipts" has the same meaning as defined in § 58.1-2600 less receipts from sales to federal,
219 state and local governments for their own use.

220 "Nonmember" has the same meaning as defined in § 58.1-400.2.