

24105719D

SENATE BILL NO. 688

Offered January 18, 2024

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

Patron—Suetterlein

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.

"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 subdivision C 1 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.

"Wind turbine generator" means a structure composed 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, 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, 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 Information Administration in its Annual Energy

59 Outlook 2019; and (iii) the utility has commenced construction of such facilities for U.S. income taxation
60 purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in service prior to January
61 1, 2028. The Commission shall disallow costs, or any portion thereof, only if they are otherwise unreasonably
62 and imprudently incurred. In its review, the Commission shall give due consideration to (a) the
63 Commonwealth's renewable portfolio standards and carbon reduction requirements, (b) the promotion of new
64 renewable generation resources, and (c) the economic development benefits of the project for the
65 Commonwealth, including capital investments and job creation, arising from project construction and
66 operation and the manufacture of wind turbine generator 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 6 of §
72 56-585.1 shall be allocated to all customers of the utility in the Commonwealth as a non-bypassable charge,
73 regardless of the generation supplier of any such customer, other than (i) PIPP eligible utility customers, (ii)
74 advanced clean energy buyers, and (iii) qualifying large general service customers. No electric cooperative
75 customer of the utility shall be assigned, nor shall the utility collect from any such cooperative, any of the
76 costs of such facilities, including electrical transmission or distribution facilities associated therewith for
77 interconnection. *In acting upon any request for cost recovery by a Phase II Utility or its offshore wind*
78 *affiliate for costs associated with such a facility, the Commission shall not approve cost recovery in excess of*
79 *\$16 million related to the purchase of a lease area right in an offshore wind auction taking place on or after*
80 *July 1, 2024, or from an awardee of such an auction. The Commission may promulgate such rules,*
81 *regulations, or other directives necessary to administer the eligibility for these exemptions.*

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

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

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

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

120 determine the spatial and temporal presence and abundance of marine mammals, sea turtles, birds, and bats in
121 the offshore wind lease area.

122 G. In connection with any project constructed by a Phase II Utility pursuant to subdivision C 1, such
123 utility may, subject to Commission approval pursuant to Chapter 4 (§ 56-76 et seq.), establish an offshore
124 wind affiliate for the purpose of securing a noncontrolling equity financing partner for the project, and such
125 offshore wind affiliate may be permitted to construct, own, or operate such project pursuant to subdivision C
126 1, or a portion thereof. Notwithstanding the provisions of the Utility Facilities Act (§ 56-265.1 et seq.), an
127 offshore wind affiliate shall be permitted to operate as a public utility in association with the Phase II Utility
128 and shall be entitled to all rights and privileges of a public utility solely in connection with the project.
129 Nothing in this subsection shall prevent the Phase II Utility or its offshore wind affiliate from recovering the
130 prudently incurred costs of constructing or operating the project pursuant to this section or subdivision A 6 of
131 § 56-585.1, regardless of whether such costs are incurred by the utility or its offshore wind affiliate. In acting
132 upon any such request for cost recovery by the Phase II Utility, the Commission shall utilize the capital
133 structure and cost of capital of the utility, consistent with subdivision A 10 of § 56-585.1, and the capital
134 structure and cost of capital of any noncontrolling entity's interest in the offshore wind affiliate shall be
135 disregarded. If any ownership interest in the offshore wind affiliate is transferred to such a noncontrolling
136 entity, the Commission shall ensure, in granting any approval for such transfer pursuant to the Utility
137 Transfers Act (§ 56-88 et seq.), or for cost recovery under this section or subdivision A 6 of § 56-585.1, that
138 any gain on the utility's basis for the project is credited to the utility's customers through a rate adjustment
139 clause credit mechanism and amortized over such period as the Commission determines to be appropriate.

INTRODUCED

SB688