

Title 56. Public Service Companies

Chapter 23. Virginia Electric Utility Regulation Act

§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot programs

1 A. Retail competition for the purchase and sale of electric energy shall be subject to the
2 following provisions:

3 1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to
4 transmission capacity shall join or establish a regional transmission entity, which entity may be
5 an independent system operator, to which such utility shall transfer the management and control
6 of its transmission system, subject to the provisions of § 56-579.

7 2. The generation of electric energy shall be subject to regulation as specified in this
8 chapter.

9 3. Subject to the provisions of subdivisions 4 and 5, only individual retail customers of
10 electric energy within the Commonwealth, regardless of customer class, whose demand during
11 the most recent calendar year exceeded five megawatts but did not exceed one percent of the
12 customer's incumbent electric utility's peak load during the most recent calendar year unless such
13 customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or
14 any year thereafter, shall be permitted to purchase electric energy from any supplier of electric
15 energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent
16 electric utility other than the incumbent electric utility serving the exclusive service territory in
17 which such a customer is located, subject to the following conditions:

18 a. Such permission shall be limited to the purchase of electric energy provided 100 percent
19 from resources which meet the definition of Renewable Portfolio Standard Program (RPS
20 Program) eligible sources applicable to the customer's incumbent electric utility pursuant to § 56-
21 585.5 C.

22
23 b. Such permission shall be conditioned upon a finding by the Commission, pursuant to a
24 petition filed by the customer, that neither the customer's incumbent electric utility nor retail
25 customers of such utility that do not obtain electric energy from alternate suppliers will be
26 adversely affected in a manner contrary to the public interest by granting such petition, and in
27 making any such finding the Commission shall specifically consider any potential cost shifting
28 impacts to the utility's incumbent electric supply customers should the petition be granted.

29 c. If such customer does not purchase electric energy from licensed suppliers, such
30 customer shall purchase electric energy from its incumbent electric utility.

31 bd. ~~Except as provided in subdivision 4, the~~The demands of individual retail customers may
32 not be aggregated or combined for the purpose of meeting the demand limitations of this
33 provision, any other provision of this chapter to the contrary notwithstanding. For the purposes

34 of this section, each noncontiguous site will nevertheless constitute an individual retail customer
35 even though one or more such sites may be under common ownership of a single person.

36 ee. If such customer does purchase electric energy from licensed suppliers after the
37 expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric
38 energy from the incumbent electric utility without giving five years' advance written notice of
39 such intention to such utility, except where such customer demonstrates to the Commission, after
40 notice and opportunity for hearing, through clear and convincing evidence that its supplier has
41 failed to perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail
42 to perform, through no fault of the customer, and that such customer is unable to obtain service
43 at reasonable rates from an alternative supplier. If, as a result of such proceeding, the
44 Commission finds it in the public interest to grant an exemption from the five-year notice
45 requirement, such customer may thereafter purchase electric energy at the costs of such utility, as
46 determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-
47 year notice period, after which point the customer may purchase electric energy from the utility
48 under rates, terms and conditions determined pursuant to § 56-585.1. However, such customer
49 shall be allowed to individually purchase electric energy from the utility under rates, terms, and
50 conditions determined pursuant to § 56-585.1 if, upon application by such customer, the
51 Commission finds that neither such customer's incumbent electric utility nor retail customers of
52 such utility that do not choose to obtain electric energy from alternate suppliers will be adversely
53 affected in a manner contrary to the public interest by granting such petition. In making such
54 determination, the Commission shall take into consideration, without limitation, the impact and
55 effect of any and all other previously approved petitions of like type with respect to such
56 incumbent electric utility. Any customer that returns to purchase electric energy from its
57 incumbent electric utility, before or after expiration of the five-year notice period, shall be
58 subject to minimum stay periods equal to those prescribed by the Commission pursuant to
59 subdivision C 1.

60 df. The costs of serving a customer that has received an exemption from the five-year notice
61 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including
62 (i) the actual expenses of procuring such electric energy from the market, (ii) additional
63 administrative and transaction costs associated with procuring such energy, including, but not
64 limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a
65 reasonable margin as determined pursuant to the provisions of subdivision A 2 of § 56-585.1.
66 The methodology established by the Commission for determining such costs shall ensure that
67 neither utilities nor other retail customers are adversely affected in a manner contrary to the
68 public interest.

69 4. An individual retail customer of electric energy within the Commonwealth which is, as of
70 July 1, 2023, purchasing electric energy from a licensed supplier other than its incumbent electric
71 utility but thereafter ineligible to purchase electric energy from a supplier other than its
72 incumbent electric utility under this section may continue to purchase such energy pursuant to
73 any agreement with such licensed supplier entered into prior to January 1, 2023 through the
74 unexpired term of such agreement. Thereafter, such customer shall purchase electric energy
75 exclusively from its incumbent electric utility.

76 4. ~~Two or more individual nonresidential retail customers of electric energy the~~
77 ~~Commonwealth, whose individual demand during the most recent calendar year did not exceed~~
78 ~~five megawatts, may petition the Commission for permission to aggregate or combine their~~
79 ~~demands, for the purpose of meeting the demand limitations of subdivision 3, so as to become~~
80 ~~qualified to purchase electric energy from any supplier of electric energy licensed to sell retail~~
81 ~~electric energy within the Commonwealth under the conditions specified in subdivision 3. The~~
82 ~~Commission may, after notice and opportunity for hearing, approve such petition if it finds that:~~

a. ~~Neither such customers' incumbent electric utility nor retail customers of such utility that~~
~~do not choose to obtain electric energy from alternate suppliers will be adversely affected in a~~
~~manner contrary to the public interest by granting such petition. In making such determination,~~
~~the Commission shall take into consideration, without limitation, the impact and effect of any~~
~~and all other previously approved petitions of like type with respect to such incumbent electric~~
~~utility; and~~

b. ~~Approval of such petition is consistent with the public interest.~~
~~If such petition is approved, all customers whose load has been aggregated or combined shall~~
~~thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a~~
~~single, individual customer for the purposes of said subdivision. In addition, the Commission~~
~~shall impose reasonable periodic monitoring and reporting obligations on such customers to~~
~~demonstrate that they continue, as a group, to meet the demand limitations of subdivision 3. If~~
~~the Commission finds, after notice and opportunity for hearing, that such group of customers no~~
~~longer meets the above demand limitations, the Commission may revoke its previous approval of~~
~~the petition, or take such other actions as may be consistent with the public interest.~~

5. ~~Individual retail customers of electric energy within the Commonwealth, regardless of~~
~~customer class, shall be permitted:~~

a. ~~To purchase electric energy provided 100 percent from renewable energy from any~~
~~supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other~~
~~than any incumbent electric utility that is not the incumbent electric utility serving the exclusive~~
~~service territory in which such a customer is located, if the incumbent electric utility serving the~~
~~exclusive service territory does not offer an approved tariff for electric energy provided 100~~
~~percent from renewable energy; and~~

b. ~~To continue purchasing renewable energy pursuant to the terms of a power purchase~~
~~agreement in effect on the date there is filed with the Commission a tariff for the incumbent~~
~~electric utility that serves the exclusive service territory in which the customer is located to offer~~
~~electric energy provided 100 percent from renewable energy, for the duration of such agreement.~~

83 65. To the extent that an incumbent electric utility has elected as of February 1, 2019, the
84 Fixed Resource Requirement alternative as a Load Serving Entity in the PJM Region and
85 continues to make such election and is therefore required to obtain capacity for all load and
86 expected load growth in its service area, any customer of a utility subject to that requirement that
87 purchases energy pursuant to subdivision 3 or 4 from a supplier licensed to sell retail electric

88 energy within the Commonwealth shall continue to pay its incumbent electric utility for the non-
89 fuel generation capacity and transmission related costs incurred by the incumbent electric utility
90 in order to meet the customer's capacity obligations, pursuant to the incumbent electric utility's
91 standard tariff that has been approved by and is on file with the Commission. In the case of such
92 customer, the advance written notice period established in subdivisions 3 c and d shall be three
93 years. This subdivision shall not apply to the customers of licensed suppliers that (i) had an
94 agreement with a licensed supplier entered into before February 1, 2019, or (ii) had aggregation
95 petitions pending before the Commission prior to January 1, 2019, unless and until any customer
96 referenced in clause (i) or (ii) has returned to purchase electric energy from its incumbent electric
97 utility, pursuant to the provisions of subdivision 3 or 4, and is receiving electric energy from
98 such incumbent electric utility.

99 76. A tariff for one or more classes of residential customers filed with the Commission for
100 approval by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric
101 energy provided 100 percent from renewable energy if it provides undifferentiated electric
102 energy and the cooperative retires a quantity of renewable energy certificates equal to 100
103 percent of the electric energy provided pursuant to such tariff. A tariff for one or more classes of
104 nonresidential customers filed with the Commission for approval by a cooperative on or after
105 July 1, 2012, shall be deemed to offer a tariff for electric energy provided 100 percent from
106 renewable energy if it provides undifferentiated electric energy and the cooperative retires a
107 quantity of renewable energy certificates equal to 100 percent of the electric energy provided
108 pursuant to such tariff. For purposes of this section, "renewable energy certificate" means, with
109 respect to cooperatives, a tradable commodity or instrument issued by a regional transmission
110 entity or affiliate or successor thereof in the United States that validates the generation of
111 electricity from renewable energy sources or that is certified under a generally recognized
112 renewable energy certificate standard. One renewable energy certificate equals 1,000 kWh or one
113 MWh of electricity generated from renewable energy. A cooperative offering electric energy
114 provided 100 percent from renewable energy pursuant to this subdivision that involves the
115 retirement of renewable energy certificates shall disclose to its retail customers who express an
116 interest in purchasing energy pursuant to such tariff (i) that the renewable energy is comprised of
117 the retirement of renewable energy certificates, (ii) the identity of the entity providing the
118 renewable energy certificates, and (iii) the sources of renewable energy being offered.

119 B. The Commission shall promulgate such rules and regulations as may be necessary to
120 implement the provisions of this section.

121 C.

122 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if
123 so, for what minimum periods, customers who request service from an incumbent electric utility
124 pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving
125 service from other suppliers of electric energy, shall be required to use such service from such
126 incumbent electric utility or default service provider, as determined to be in the public interest by
127 the Commission.

128 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer
129 of the management and control of an incumbent electric utility's transmission assets to a regional

130 transmission entity after approval of such transfer by the Commission under § 56-579, retail
131 customers of such utility (a) purchasing such energy from licensed suppliers and (b) otherwise
132 subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall
133 nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric
134 energy at the market-based costs of such utility or default providers after a period of obtaining
135 electric energy from another supplier. Such costs shall include (i) the actual expenses of
136 procuring such electric energy from the market, (ii) additional administrative and transaction
137 costs associated with procuring such energy, including, but not limited to, costs of transmission,
138 transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology
139 of ascertaining such costs shall be determined and approved by the Commission after notice and
140 opportunity for hearing and after review of any plan filed by such utility to procure electric
141 energy to serve such customers. The methodology established by the Commission for
142 determining such costs shall be consistent with the goals of (a) promoting the development of
143 effective competition and economic development within the Commonwealth as provided in
144 subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers
145 that do not choose to obtain electric energy from alternate suppliers are adversely affected.

146 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-
147 585, however, any such customers exempted from any applicable minimum stay periods as
148 provided in subdivision 2 shall not be entitled to purchase retail electric energy thereafter from
149 their incumbent electric utilities, or from any distributor required to provide default service under
150 subsection B of § 56-585, at the capped rates established under § 56-582, unless such customers
151 agree to satisfy any minimum stay period then applicable while obtaining retail electric energy at
152 capped rates.

153 4. The Commission shall promulgate such rules and regulations as may be necessary to
154 implement the provisions of this subsection, which rules and regulations shall include provisions
155 specifying the commencement date of such minimum stay exemption program.

156 1999, c. 411;2001, c. 748;2003, cc. 795, 990;2004, c. 827;2007, cc. 888, 933;2010, cc. 326, 397;
157 2019, c. 833.

158 The chapters of the acts of assembly referenced in the historical citation at the end of this
159 section(s) may not constitute a comprehensive list of such chapters and may exclude chapters
160 whose provisions have expired.

§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire

161 A. During the first six months of 2009, the Commission shall, after notice and opportunity
162 for hearing, initiate proceedings to review the rates, terms and conditions for the provision of
163 generation, distribution and transmission services of each investor-owned incumbent electric
164 utility. Such proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.),
165 except as modified herein. In such proceedings the Commission shall determine fair rates of
166 return on common equity applicable to the generation and distribution services of the utility. In
167 so doing, the Commission may use any methodology to determine such return it finds consistent
168 with the public interest, but such return shall not be set lower than the average of the returns on
169 common equity reported to the Securities and Exchange Commission for the three most recent
170 annual periods for which such data are available by not less than a majority, selected by the
171 Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer
172 group of the utility, nor shall the Commission set such return more than 300 basis points higher
173 than such average. The peer group of the utility shall be determined in the manner prescribed in
174 subdivision 2 b. The Commission may increase or decrease such combined rate of return by up
175 to 100 basis points based on the generating plant performance, customer service, and operating
176 efficiency of a utility, as compared to nationally recognized standards determined by the
177 Commission to be appropriate for such purposes. In such a proceeding, the Commission shall
178 determine the rates that the utility may charge until such rates are adjusted. If the Commission
179 finds that the utility's combined rate of return on common equity is more than 50 basis points
180 below the combined rate of return as so determined, it shall be authorized to order increases to
181 the utility's rates necessary to provide the opportunity to fully recover the costs of providing the
182 utility's services and to earn not less than such combined rate of return. If the Commission finds
183 that the utility's combined rate of return on common equity is more than 50 basis points above
184 the combined rate of return as so determined, it shall be authorized either (i) to order reductions
185 to the utility's rates it finds appropriate, provided that the Commission may not order such rate
186 reduction unless it finds that the resulting rates will provide the utility with the opportunity to
187 fully recover its costs of providing its services and to earn not less than the fair rates of return on
188 common equity applicable to the generation and distribution services; or (ii) to direct that 60
189 percent of the amount of the utility's earnings that were more than 50 basis points above the fair
190 combined rate of return for calendar year 2008 be credited to customers' bills, in which event
191 such credits shall be amortized over a period of six to 12 months, as determined at the discretion
192 of the Commission, following the effective date of the Commission's order and be allocated
193 among customer classes such that the relationship between the specific customer class rates of
194 return to the overall target rate of return will have the same relationship as the last approved
195 allocation of revenues used to design base rates. Commencing in 2011, the Commission, after
196 notice and opportunity for hearing, shall conduct reviews of the rates, terms and conditions for
197 the provision of generation, distribution and transmission services by each investor-owned
198 incumbent electric utility, subject to the following provisions:

199 1. Rates, terms and conditions for each service shall be reviewed separately on an
200 unbundled basis, and such reviews shall be conducted in a single, combined proceeding.
201 Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase I
202 Utility in 2020, utilizing the three successive 12-month test periods beginning January 1, 2017,
203 and ending December 31, 2019. Thereafter, reviews for a Phase I Utility will be on a triennial
204 basis through 2023 with ~~subsequent~~such proceedings utilizing the three successive 12-month test
205 periods ending December 31 immediately preceding the year in which such review proceeding is
206 conducted, and on a biennial basis commencing in 2024, with such proceedings utilizing the two
207 successive 12-month test periods ending December 31 immediately preceding the year in which
208 such review proceeding is conducted ~~except that the 2024 review shall utilize the single 12-~~
209 ~~month test period ending December 31 immediately preceding the year in which such review~~
210 ~~proceeding is conducted.~~ Pursuant to subsection A of § 56-585.1:1, the Commission shall
211 conduct a review for a Phase II Utility in 2021, utilizing the four successive 12-month test
212 periods beginning January 1, 2017, and ending December 31, 2020, with subsequent reviews on
213 a ~~triennial~~biennial basis commencing in 2023, utilizing the ~~three~~two successive 12-month test
214 periods ending December 31 immediately preceding the year in which such review proceeding is
215 conducted. ~~All such reviews occurring after December 31, 2017, shall be referred to as triennial~~
216 ~~reviews.~~ For purposes of this section, a Phase I Utility is an investor-owned incumbent electric
217 utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the
218 Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an
219 investor-owned incumbent electric utility that was bound by such a settlement.

220 2. Subject to the provisions of subdivision 6, the fair rate of return on common equity
221 applicable separately to the generation and distribution services of such utility, and for the two
222 such services combined, and for any rate adjustment clauses approved under subdivision 5 or 6,
223 shall be determined by the Commission during each such ~~triennial~~ review, as follows:

224 a. The Commission may use any methodology to determine such return it finds consistent
225 with the public interest, but for applications received by the Commission on or after ~~January~~July
226 ~~1, 2020~~2023, such return shall not be set lower than the average of ~~either (i) the returns on~~
227 ~~common equity reported to the Securities and Exchange Commission for the three most recent~~
228 ~~annual periods for which such data are available by not less than a majority, selected by the~~
229 ~~Commission as specified in subdivision 2 b, of other~~most recently authorized returns on common
230 equity or weighted cost of equity set by the applicable regulatory commissions for all investor-
231 owned electric utilities in the peer group of the utility subject to such ~~triennial~~ review ~~or (ii) the~~
232 ~~authorized returns on common equity that are set by the applicable regulatory commissions for~~
233 ~~the same selected peer group~~, nor shall the Commission set such return more than 150 basis
234 points higher than such average.

235 b. ~~In selecting such majority of peer group investor-owned electric utilities for applications~~
236 ~~received by the Commission on or after January 1, 2020, the Commission shall first remove from~~
237 ~~such group the two utilities within such group that have the lowest reported or authorized, as~~
238 ~~applicable, returns of the group, as well as the two utilities within such group that have the~~
239 ~~highest reported or authorized, as applicable, returns of the group, and the Commission shall then~~
240 ~~select a majority of the utilities remaining in such peer group. In its final order regarding such~~
241 ~~triennial review, the Commission shall identify the utilities in such peer group it selected for the~~

242 ~~calculation of such limitation.~~ For purposes of this subdivision, an investor-owned electric utility
243 shall be deemed part of such peer group if (i) its principal operations are conducted in the
244 southeastern United States east of the Mississippi River in either the states of West Virginia or
245 Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a
246 vertically-integrated electric utility providing generation, transmission and distribution services
247 to at least 200,000 retail electric customers whose facilities and operations are subject to state
248 public utility regulation in the state where its principal operations are conducted, (iii) it had a
249 long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the
250 most recent test period subject to such ~~triennial~~-review, and (iv) it is not an affiliate of the utility
251 subject to such ~~triennial~~-review or a utility whose fair rate of return on common equity is
252 determined by the Commission.

253 c. The Commission may, consistent with its precedent for incumbent electric utilities prior
254 to the enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease
255 the utility's combined rate of return based on the Commission's consideration of the utility's
256 performance.

257 d. In any Current Proceeding, the Commission shall determine whether the Current Return
258 has increased, on a percentage basis, above the Initial Return by more than the increase,
259 expressed as a percentage, in the United States Average Consumer Price Index for all items, all
260 urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
261 Department of Labor, since the date on which the Commission determined the Initial Return. If
262 so, the Commission may conduct an additional analysis of whether it is in the public interest to
263 utilize such Current Return for the Current Proceeding then pending. A finding of whether the
264 Current Return justifies such additional analysis shall be made without regard to any enhanced
265 rate of return on common equity awarded pursuant to the provisions of subdivision 6. Such
266 additional analysis shall include, but not be limited to, a consideration of overall economic
267 conditions, the level of interest rates and cost of capital with respect to business and industry, in
268 general, as well as electric utilities, the current level of inflation and the utility's cost of goods
269 and services, the effect on the utility's ability to provide adequate service and to attract capital if
270 less than the Current Return were utilized for the Current Proceeding then pending, and such
271 other factors as the Commission may deem relevant. If, as a result of such analysis, the
272 Commission finds that use of the Current Return for the Current Proceeding then pending would
273 not be in the public interest, then the lower limit imposed by subdivision 2 a on the return to be
274 determined by the Commission for such utility shall be calculated, for that Current Proceeding
275 only, by increasing the Initial Return by a percentage at least equal to the increase, expressed as a
276 percentage, in the United States Average Consumer Price Index for all items, all urban
277 consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
278 Department of Labor, since the date on which the Commission determined the Initial Return. For
279 purposes of this subdivision:
280 "Current Proceeding" means any proceeding conducted under any provisions of this subsection
281 that require or authorize the Commission to determine a fair combined rate of return on common
282 equity for a utility and that will be concluded after the date on which the Commission determined
283 the Initial Return for such utility.

284 "Current Return" means the minimum fair combined rate of return on common equity required
285 for any Current Proceeding by the limitation regarding a utility's peer group specified in
286 subdivision 2 a.

287 "Initial Return" means the fair combined rate of return on common equity determined for such
288 utility by the Commission on the first occasion after July 1, 2009, under any provision of this
289 subsection pursuant to the provisions of subdivision 2 a.

290 e. In addition to other considerations, in setting the return on equity within the range
291 allowed by this section, the Commission shall strive to maintain costs of retail electric energy
292 that are cost competitive with costs of retail electric energy provided by the other peer group
293 investor-owned electric utilities.

294 f. The determination of such returns shall be made by the Commission on a stand-alone
295 basis, and specifically without regard to any return on common equity or other matters
296 determined with regard to facilities described in subdivision 6.

297 g. If the combined rate of return on common equity earned by the generation and
298 distribution services is no more than 50 basis points above or below the return as so determined
299 or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
300 December 31, 2013, for a Phase I Utility, such return is no more than 70 basis points above or
301 below the return as so determined, such combined return shall not be considered either excessive
302 or insufficient, respectively. However, for any test period commencing after December 31, 2012,
303 for a Phase II Utility, and after December 31, 2013, for a Phase I Utility, if the utility has, during
304 the test period or periods under review, earned below the return as so determined, whether or not
305 such combined return is within 70 basis points of the return as so determined, the utility may
306 petition the Commission for approval of an increase in rates in accordance with the provisions of
307 subdivision 8 a as if it had earned more than 70 basis points below a fair combined rate of return,
308 and such proceeding shall otherwise be conducted in accordance with the provisions of this
309 section. The provisions of this subdivision are subject to the provisions of subdivision 8.

310 h. Any amount of a utility's earnings directed by the Commission to be credited to
311 customers' bills pursuant to this section shall not be considered for the purpose of determining
312 the utility's earnings in any subsequent ~~triennial~~-review.

313 3. Each such utility shall make a triennial filing by March 31 of every third year, with such
314 filings commencing for a Phase I Utility in 2020 and terminating after 2023, and such ~~filings a~~
315 filing commencing for a Phase II Utility in 2021, ~~consisting of the schedules contained in the~~
316 Commission's rules governing utility rate increase applications and terminating thereafter. Such
317 filing shall encompass the three successive 12-month test periods ending December 31
318 immediately preceding the year in which such proceeding is conducted, except that the filing for
319 a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending
320 December 31, 2020. After 2023, for a Phase I Utility, and after 2021, for a Phase II Utility, each
321 such utility shall make a biennial filing by March 31 of every second year, with such filings
322 commencing for a Phase I Utility in 2024, and such filings commencing for a Phase II Utility in
323 2023, with the exception that the 2023 biennial filing for Phase II Utility shall be made on or
324 before July 1, 2023 encompassing the two successive 12-month test periods ending December

325 31, 2022. All biennial filings shall encompass the two successive 12-month test periods ending
326 December 31 immediately preceding the year in which such review proceeding is conducted,
327 except that the 2024 review for a Phase I Utility shall utilize the single 12-month test period
328 ending December 31 immediately preceding the year in which such review proceeding is
329 conducted. All such filings shall consist of the schedules contained in the Commission's rules
330 governing utility rate increase applications, and in every such case the filing for each year shall
331 be identified separately and shall be segregated from any other year encompassed by the filing. If
332 the Commission determines that rates should be revised or credits be applied to customers' bills
333 pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented related to
334 facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be
335 combined with the utility's costs, revenues and investments until the amounts that are the subject
336 of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses
337 with the utility's costs, revenues and investments only after it makes its initial determination with
338 regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after
339 such clauses are combined as herein specified, they shall thereafter be considered part of the
340 utility's costs, revenues, and investments for the purposes of future ~~triennial~~ review proceedings.
341 In a ~~triennial~~ order to promote customer rate relief and stability, effective July 1, 2023, a Phase II
342 Utility shall combine rate adjustment clauses previously implemented pursuant to subdivisions 5
343 or 6 having a combined annual revenue requirement, as of July 1, 2023, of no less than
344 \$300,000,000.00, with the utility's costs, revenues and investments for generation and
345 distribution services. After such clauses are combined as herein specified, they shall thereafter be
346 considered part of the utility's costs, revenues and investments for the purposes of future biennial
347 review proceedings, and the combination of such rate adjustment clauses shall be specifically
348 subject to audit by the Commission in the utility's 2023 biennial review filing. In a filing under
349 this subdivision that does not result in an overall rate change a utility may propose an adjustment
350 to one or more tariffs that are revenue neutral to the utility.

351 4. (Expires December 31, 2023) The following costs incurred by the utility shall be deemed
352 reasonable and prudent: (i) costs for transmission services provided to the utility by the regional
353 transmission entity of which the utility is a member, as determined under applicable rates, terms
354 and conditions approved by the Federal Energy Regulatory Commission; (ii) costs charged to the
355 utility that are associated with demand response programs approved by the Federal Energy
356 Regulatory Commission and administered by the regional transmission entity of which the utility
357 is a member; and (iii) costs incurred by the utility to construct, operate, and maintain
358 transmission lines and substations installed in order to provide service to a business park. Upon
359 petition of a utility at any time after the expiration or termination of capped rates, but not more
360 than once in any 12-month period, the Commission shall approve a rate adjustment clause under
361 which such costs, including, without limitation, costs for transmission service; charges for new
362 and existing transmission facilities, including costs incurred by the utility to construct, operate,
363 and maintain transmission lines and substations installed in order to provide service to a business
364 park; administrative charges; and ancillary service charges designed to recover transmission
365 costs, shall be recovered on a timely and current basis from customers. Retail rates to recover
366 these costs shall be designed using the appropriate billing determinants in the retail rate
367 schedules.

368 4. (Effective January 1, 2024) The following costs incurred by the utility shall be deemed
369 reasonable and prudent: (i) costs for transmission services provided to the utility by the regional
370 transmission entity of which the utility is a member, as determined under applicable rates, terms
371 and conditions approved by the Federal Energy Regulatory Commission, and (ii) costs charged
372 to the utility that are associated with demand response programs approved by the Federal Energy
373 Regulatory Commission and administered by the regional transmission entity of which the utility
374 is a member. Upon petition of a utility at any time after the expiration or termination of capped
375 rates, but not more than once in any 12-month period, the Commission shall approve a rate
376 adjustment clause under which such costs, including, without limitation, costs for transmission
377 service, charges for new and existing transmission facilities, administrative charges, and
378 ancillary service charges designed to recover transmission costs, shall be recovered on a timely
379 and current basis from customers. Retail rates to recover these costs shall be designed using the
380 appropriate billing determinants in the retail rate schedules.

381 5. A utility may at any time, after the expiration or termination of capped rates, but not more
382 than once in any 12-month period, petition the Commission for approval of one or more rate
383 adjustment clauses for the timely and current recovery from customers of the following costs:

384 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between
385 July 1, 2004, and the expiration or termination of capped rates, if such utility is, as of July 1,
386 2007, deferring such costs consistent with an order of the Commission entered under clause (vi)
387 of subsection B of § 56-582. The Commission shall approve such a petition allowing the
388 recovery of such costs that comply with the requirements of clause (vi) of subsection B of § 56-
389 582;

390 b. Projected and actual costs for the utility to design and operate fair and effective peak-
391 shaving programs or pilot programs. The Commission shall approve such a petition if it finds
392 that the program is in the public interest, provided that the Commission shall allow the recovery
393 of such costs as it finds are reasonable;

394 c. Projected and actual costs for the utility to design, implement, and operate energy
395 efficiency programs or pilot programs. Any such petition shall include a proposed budget for the
396 design, implementation, and operation of the energy efficiency program, including anticipated
397 savings from and spending on each program, and the Commission shall grant a final order on
398 such petitions within eight months of initial filing. The Commission shall only approve such a
399 petition if it finds that the program is in the public interest. If the Commission determines that an
400 energy efficiency program or portfolio of programs is not in the public interest, its final order
401 shall include all work product and analysis conducted by the Commission's staff in relation to
402 that program that has bearing upon the Commission's determination. Such order shall adhere to
403 existing protocols for extraordinarily sensitive information.
404 Energy efficiency pilot programs are in the public interest provided that the pilot program is (i)
405 of limited scope, cost, and duration and (ii) intended to determine whether a new or substantially
406 revised program would be cost-effective.
407 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating
408 expenses for energy efficiency programs and pilot programs, which margin shall be equal to the
409 general rate of return on common equity determined as described in subdivision 2. Beginning

410 January 1, 2022, and thereafter, if the Commission determines that the utility meets in any year
411 the annual energy efficiency standards set forth in § 56-596.2, in the following year, the
412 Commission shall award a margin on energy efficiency program operating expenses in that year,
413 to be recovered through a rate adjustment clause, which margin shall be equal to the general rate
414 of return on common equity determined as described in subdivision 2. If the Commission does
415 not approve energy efficiency programs that, in the aggregate, can achieve the annual energy
416 efficiency standards, the Commission shall award a margin on energy efficiency operating
417 expenses in that year for any programs the Commission has approved, to be recovered through a
418 rate adjustment clause under this subdivision, which margin shall equal the general rate of return
419 on common equity determined as described in subdivision 2. Any margin awarded pursuant to
420 this subdivision shall be applied as part of the utility's next rate adjustment clause true-up
421 proceeding. The Commission shall also award an additional 20 basis points for each additional
422 incremental 0.1 percent in annual savings in any year achieved by the utility's energy efficiency
423 programs approved by the Commission pursuant to this subdivision, beyond the annual
424 requirements set forth in § 56-596.2, provided that the total performance incentive awarded in
425 any year shall not exceed 10 percent of that utility's total energy efficiency program spending in
426 that same year.

427 The Commission shall annually monitor and report to the General Assembly the performance of
428 all programs approved pursuant to this subdivision, including each utility's compliance with the
429 total annual savings required by § 56-596.2, as well as the annual and lifecycle net and gross
430 energy and capacity savings, related emissions reductions, and other quantifiable benefits of each
431 program; total customer bill savings that the programs produce; utility spending on each
432 program, including any associated administrative costs; and each utility's avoided costs and cost-
433 effectiveness results.

434 Notwithstanding any other provision of law, unless the Commission finds in its discretion and
435 after consideration of all in-state and regional transmission entity resources that there is a threat
436 to the reliability or security of electric service to the utility's customers, the Commission shall not
437 approve construction of any new utility-owned generating facilities that emit carbon dioxide as a
438 by-product of combusting fuel to generate electricity unless the utility has already met the energy
439 savings goals identified in § 56-596.2 and the Commission finds that supply-side resources are
440 more cost-effective than demand-side or energy storage resources.

441 As used in this subdivision, "large general service customer" means a customer that has a
442 verifiable history of having used more than one megawatt of demand from a single site.
443 Large general service customers shall be exempt from requirements that they participate in
444 energy efficiency programs if the Commission finds that the large general service customer has,
445 at the customer's own expense, implemented energy efficiency programs that have produced or
446 will produce measured and verified results consistent with industry standards and other
447 regulatory criteria stated in this section. The Commission shall, no later than June 30, 2021,
448 adopt rules or regulations (a) establishing the process for large general service customers to
449 apply for such an exemption, (b) establishing the administrative procedures by which eligible
450 customers will notify the utility, and (c) defining the standard criteria that shall be satisfied by an
451 applicant in order to notify the utility, including means of evaluation measurement and
452 verification and confidentiality requirements. At a minimum, such rules and regulations shall
453 require that each exempted large general service customer certify to the utility and Commission
454 that its implemented energy efficiency programs have delivered measured and verified savings
455 within the prior five years. In adopting such rules or regulations, the Commission shall also

456 specify the timing as to when a utility shall accept and act on such notice, taking into
457 consideration the utility's integrated resource planning process, as well as its administration of
458 energy efficiency programs that are approved for cost recovery by the Commission. Savings
459 from large general service customers shall be accounted for in utility reporting in the standards in
460 § 56-596.2.

461 The notice of nonparticipation by a large general service customer shall be for the duration of the
462 service life of the customer's energy efficiency measures. The Commission may on its own
463 motion initiate steps necessary to verify such nonparticipant's achievement of energy efficiency
464 if the Commission has a body of evidence that the nonparticipant has knowingly misrepresented
465 its energy efficiency achievement.

466 A utility shall not charge such large general service customer for the costs of installing energy
467 efficiency equipment beyond what is required to provide electric service and meter such service
468 on the customer's premises if the customer provides, at the customer's expense, equivalent energy
469 efficiency equipment. In all relevant proceedings pursuant to this section, the Commission shall
470 take into consideration the goals of economic development, energy efficiency and environmental
471 protection in the Commonwealth;

472 d. Projected and actual costs of compliance with renewable energy portfolio standard
473 requirements pursuant to § 56-585.5 that are not recoverable under subdivision 6. The
474 Commission shall approve such a petition allowing the recovery of such costs incurred as
475 required by § 56-585.5, provided that the Commission does not otherwise find such costs were
476 unreasonably or imprudently incurred;

477 e. Projected and actual costs of projects that the Commission finds to be necessary to
478 mitigate impacts to marine life caused by construction of offshore wind generating facilities, as
479 described in § 56-585.1:11, or to comply with state or federal environmental laws or regulations
480 applicable to generation facilities used to serve the utility's native load obligations, including the
481 costs of allowances purchased through a market-based trading program for carbon dioxide
482 emissions. The Commission shall approve such a petition if it finds that such costs are necessary
483 to comply with such environmental laws or regulations;

484 f. Projected and actual costs, not currently in rates, for the utility to design, implement, and
485 operate programs approved by the Commission that accelerate the vegetation management of
486 distribution rights-of-way. No costs shall be allocated to or recovered from customers that are
487 served within the large general service rate classes for a Phase II Utility or that are served at
488 subtransmission or transmission voltage, or take delivery at a substation served from
489 subtransmission or transmission voltage, for a Phase I Utility; and

490 g. Projected and actual costs, not currently in rates, for the utility to design, implement, and
491 operate programs approved by the Commission to provide incentives to (i) low-income, elderly,
492 and disabled individuals or (ii) organizations providing residential services to low-income,
493 elderly, and disabled individuals for the installation of, or access to, equipment to generate
494 electric energy derived from sunlight, provided the low-income, elderly, and disabled
495 individuals, or organizations providing residential services to low-income, elderly, and disabled
496 individuals, first participate in incentive programs for the installation of measures that reduce
497 heating or cooling costs.

498 Any rate adjustment clause approved under subdivision 5 c by the Commission shall remain in
499 effect until the utility exhausts the approved budget for the energy efficiency program. The
500 Commission shall have the authority to determine the duration or amortization period for any
501 other rate adjustment clause approved under this subdivision.

502 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to
503 meet the utility's projected native load obligations and to promote economic development, a
504 utility may at any time, after the expiration or termination of capped rates, petition the
505 Commission for approval of a rate adjustment clause for recovery on a timely and current basis
506 from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and
507 is located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of
508 whether such facility is located within or without the utility's service territory, (ii) one or more
509 other generation facilities, (iii) one or more major unit modifications of generation facilities,
510 including the costs of any system or equipment upgrade, system or equipment replacement, or
511 other cost reasonably appropriate to extend the combined operating license for or the operating
512 life of one or more generation facilities utilizing nuclear power, (iv) one or more new
513 underground facilities to replace one or more existing overhead distribution facilities of 69
514 kilovolts or less located within the Commonwealth, (v) one or more pumped hydroelectricity
515 generation and storage facilities that utilize on-site or off-site renewable energy resources as all
516 or a portion of their power source and such facilities and associated resources are located in the
517 coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such
518 facility is located within or without the utility's service territory, or (vi) one or more electric
519 distribution grid transformation projects; however, subject to the provisions of the following
520 sentence, the utility shall not file a petition under clause (iv) more often than annually and, in
521 such petition, shall not seek any annual incremental increase in the level of investments
522 associated with such a petition that exceeds five percent of such utility's distribution rate base, as
523 such rate base was determined for the most recently ended 12-month test period in the utility's
524 latest review proceeding conducted pursuant to subdivision 3 and concluded by final order of the
525 Commission prior to the date of filing of such petition under clause (iv). In all proceedings
526 regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery
527 in such proceedings shall be in addition to, and not in lieu of, levels of investments previously
528 approved for recovery in prior proceedings under clause (iv) or (vi), as applicable. As of
529 December 1, 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any
530 remaining costs associated with conversions of overhead distribution facilities to underground
531 facilities that have been previously approved or are pending approval by the Commission
532 through a petition by the utility under this subdivision. Such a petition concerning facilities
533 described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-
534 fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed
535 before the expiration or termination of capped rates. A utility that constructs or makes
536 modifications to any such facility, or purchases any facility consisting of at least one megawatt
537 of generating capacity using energy derived from sunlight and located in the Commonwealth and
538 that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses,
539 shall have the right to recover the costs of the facility, as accrued against income, through its
540 rates, including projected construction work in progress, and any associated allowance for funds
541 used during construction, planning, development and construction or acquisition costs, life-cycle
542 costs, costs related to assessing the feasibility of potential sites for new underground facilities,

543 and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects,
544 an enhanced rate of return on common equity calculated as specified below; however, in
545 determining the amounts recoverable under a rate adjustment clause for new underground
546 facilities, the Commission shall not consider, or increase or reduce such amounts recoverable
547 because of (a) the operation and maintenance costs attributable to either the overhead distribution
548 facilities being replaced or the new underground facilities or (b) any other costs attributable to
549 the overhead distribution facilities being replaced. Notwithstanding the preceding sentence, the
550 costs described in clauses (a) and (b) thereof shall remain eligible for recovery from customers
551 through the utility's base rates for distribution service. A utility filing a petition for approval to
552 construct or purchase a facility consisting of at least one megawatt of generating capacity using
553 energy derived from sunlight and located in the Commonwealth and that utilizes goods or
554 services sourced, in whole or in part, from one or more Virginia businesses may propose a rate
555 adjustment clause based on a market index in lieu of a cost of service model for such facility. A
556 utility seeking approval to construct or purchase a generating facility that emits carbon dioxide
557 shall demonstrate that it has already met the energy savings goals identified in § 56-596.2 and
558 that the identified need cannot be met more affordably through the deployment or utilization of
559 demand-side resources or energy storage resources and that it has considered and weighed
560 alternative options, including third-party market alternatives, in its selection process.
561 The costs of the facility, other than return on projected construction work in progress and
562 allowance for funds used during construction, shall not be recovered prior to the date a facility
563 constructed by the utility and described in clause (i), (ii), (iii) or (v) begins commercial
564 operation, the date the utility becomes the owner of a purchased generation facility consisting of
565 at least one megawatt of generating capacity using energy derived from sunlight and located in
566 the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or
567 more Virginia businesses, or the date new underground facilities are classified by the utility as
568 plant in service. In any application to construct a new generating facility, the utility shall include,
569 and the Commission shall consider, the social cost of carbon, as determined by the Commission,
570 as a benefit or cost, whichever is appropriate. The Commission shall ensure that the development
571 of new, or expansion of existing, energy resources or facilities does not have a disproportionate
572 adverse impact on historically economically disadvantaged communities. The Commission may
573 adopt any rules it deems necessary to determine the social cost of carbon and shall use the best
574 available science and technology, including the Technical Support Document: Technical Update
575 of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,
576 published by the Interagency Working Group on Social Cost of Greenhouse Gases from the
577 United States Government in August 2016, as guidance. The Commission shall include a system
578 to adjust the costs established in this section with inflation.
579 Such enhanced rate of return on common equity shall be applied to allowance for funds used
580 during construction and to construction work in progress during the construction phase of the
581 facility and shall thereafter be applied to the entire facility during the first portion of the service
582 life of the facility. The first portion of the service life shall be as specified in the table below;
583 however, the Commission shall determine the duration of the first portion of the service life of
584 any facility, within the range specified in the table below, which determination shall be
585 consistent with the public interest and shall reflect the Commission's determinations regarding
586 how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth
587 and the risks involved in the development of the facility. After the first portion of the service life
588 of the facility is concluded, the utility's general rate of return shall be applied to such facility for

589 the remainder of its service life. As used herein, the service life of the facility shall be deemed to
590 begin on the date a facility constructed by the utility and described in clause (i), (ii), (iii) or (v)
591 begins commercial operation, the date the utility becomes the owner of a purchased generation
592 facility consisting of at least one megawatt of generating capacity using energy derived from
593 sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole
594 or in part, from one or more Virginia businesses, or the date new underground facilities or new
595 electric distribution grid transformation projects are classified by the utility as plant in service,
596 and such service life shall be deemed equal in years to the life of that facility as used to calculate
597 the utility's depreciation expense. Such enhanced rate of return on common equity shall be
598 calculated by adding the basis points specified in the table below to the utility's general rate of
599 return, and such enhanced rate of return shall apply only to the facility that is the subject of such
600 rate adjustment clause. Allowance for funds used during construction shall be calculated for any
601 such facility utilizing the utility's actual capital structure and overall cost of capital, including an
602 enhanced rate of return on common equity as determined pursuant to this subdivision, until such
603 construction work in progress is included in rates. The construction of any facility described in
604 clause (i) or (v) is in the public interest, and in determining whether to approve such facility, the
605 Commission shall liberally construe the provisions of this title. The construction or purchase by a
606 utility of one or more generation facilities with at least one megawatt of generating capacity, and
607 with an aggregate rated capacity that does not exceed 16,100 megawatts, including rooftop solar
608 installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 100
609 megawatts, that use energy derived from sunlight or from onshore wind and are located in the
610 Commonwealth or off the Commonwealth's Atlantic shoreline, regardless of whether any of such
611 facilities are located within or without the utility's service territory, is in the public interest, and
612 in determining whether to approve such facility, the Commission shall liberally construe the
613 provisions of this title. A utility may enter into short-term or long-term power purchase contracts
614 for the power derived from sunlight generated by such generation facility prior to purchasing the
615 generation facility. The replacement of any subset of a utility's existing overhead distribution tap
616 lines that have, in the aggregate, an average of nine or more total unplanned outage events-per-
617 mile over a preceding 10-year period with new underground facilities in order to improve electric
618 service reliability is in the public interest. In determining whether to approve petitions for rate
619 adjustment clauses for such new underground facilities that meet this criteria, and in determining
620 the level of costs to be recovered thereunder, the Commission shall liberally construe the
621 provisions of this title.

622 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local
623 and system-wide benefits and to be cost beneficial, and the costs associated with such new
624 underground facilities are deemed to be reasonably and prudently incurred and, notwithstanding
625 the provisions of subsection C or D, shall be approved for recovery by the Commission pursuant
626 to this subdivision, provided that the total costs associated with the replacement of any subset of
627 existing overhead distribution tap lines proposed by the utility with new underground facilities,
628 exclusive of financing costs, shall not exceed an average cost per customer of \$20,000, with such
629 customers, including those served directly by or downline of the tap lines proposed for
630 conversion, and, further, such total costs shall not exceed an average cost per mile of tap lines
631 converted, exclusive of financing costs, of \$750,000. A utility shall, without regard for whether it
632 has petitioned for any rate adjustment clause pursuant to clause (vi), petition the Commission,
633 not more than once annually, for approval of a plan for electric distribution grid transformation
634 projects. Any plan for electric distribution grid transformation projects shall include both

635 measures to facilitate integration of distributed energy resources and measures to enhance
 636 physical electric distribution grid reliability and security. In ruling upon such a petition, the
 637 Commission shall consider whether the utility's plan for such projects, and the projected costs
 638 associated therewith, are reasonable and prudent. Such petition shall be considered on a stand-
 639 alone basis without regard to the other costs, revenues, investments, or earnings of the utility;
 640 without regard to whether the costs associated with such projects will be recovered through a rate
 641 adjustment clause under this subdivision or through the utility's rates for generation and
 642 distribution services; and without regard to whether such costs will be the subject of a customer
 643 credit offset, as applicable, pursuant to subdivision 8 d. The Commission's final order regarding
 644 any such petition for approval of an electric distribution grid transformation plan shall be entered
 645 by the Commission not more than six months after the date of filing such petition. The
 646 Commission shall likewise enter its final order with respect to any petition by a utility for a
 647 certificate to construct and operate a generating facility or facilities utilizing energy derived from
 648 sunlight, pursuant to subsection D of § 56-580, within six months after the date of filing such
 649 petition. The basis points to be added to the utility's general rate of return to calculate the
 650 enhanced rate of return on common equity, and the first portion of that facility's service life to
 651 which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in
 652 the following table:

653 a	Type of Generation Facility	Basis Points	First Portion of Service Life
654 b	Nuclear-powered	200	Between 12 and 25 years
655 c	Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
658 d	Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
661 e	Coalbed methane gas powered	150	Between 5 and 15 years
663 f	Landfill gas powered	200	Between 5 and 15 years
664 g	Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

667 Only those facilities as to which a rate adjustment clause under this subdivision has been
 668 previously approved by the Commission, or as to which a petition for approval of such rate
 669 adjustment clause was filed with the Commission, on or before January 1, 2013, shall be entitled
 670 to the enhanced rate of return on common equity as specified in the above table during the
 671 construction phase of the facility and the approved first portion of its service life.

672 Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred
 673 between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31,
 674 2013, may be deferred by the utility and recovered through a rate adjustment clause under this
 675 subdivision at such time as the Commission provides in an order approving such a rate
 676 adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred
 677 between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate
 678 adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall
 679 be recovered ratably through existing base rates as determined by the Commission in the test
 680 periods under review in the utility's next review filed after July 1, 2014. Thirty percent of all

681 costs of a facility utilizing energy derived from offshore wind that the utility incurred between
682 July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013,
683 may be deferred by the utility and recovered through a rate adjustment clause under this
684 subdivision at such time as the Commission provides in an order approving such a rate
685 adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred
686 between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate
687 adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall
688 be recovered ratably through existing base rates as determined by the Commission in the test
689 periods under review in the utility's next review filed after July 1, 2014.

690 In connection with planning to meet forecasted demand for electric generation supply and assure
691 the adequate and sufficient reliability of service, consistent with § 56-598, planning and
692 development activities for a new utility-owned and utility-operated generating facility or
693 facilities utilizing energy derived from sunlight or from onshore or offshore wind are in the
694 public interest.

695 Notwithstanding any provision of Chapter 296 of the Acts of Assembly of 2018, construction,
696 purchasing, or leasing activities for a new utility-owned and utility-operated generating facility
697 or facilities utilizing energy derived from sunlight or from onshore wind with an aggregate
698 capacity of 16,100 megawatts, including rooftop solar installations with a capacity of not less
699 than 50 kilowatts, and with an aggregate capacity of 100 megawatts, together with a utility-
700 owned and utility-operated generating facility or facilities utilizing energy derived from offshore
701 wind with an aggregate capacity of not more than 3,000 megawatts, are in the public interest.
702 Additionally, energy storage facilities with an aggregate capacity of 2,700 megawatts are in the
703 public interest. To the extent that a utility elects to recover the costs of any such new generation
704 or energy storage facility or facilities through its rates for generation and distribution services
705 and does not petition and receive approval from the Commission for recovery of such costs
706 through a rate adjustment clause described in clause (ii), the Commission shall, upon the request
707 of the utility in a triennial review proceeding, provide for a customer credit reinvestment offset,
708 as applicable, pursuant to subdivision 8 d with respect to all costs deemed reasonable and
709 prudent by the Commission in a proceeding pursuant to subsection D of § 56-580 or in a triennial
710 review proceeding.

711 Electric distribution grid transformation projects are in the public interest. To the extent that a
712 utility elects to recover the costs of such electric distribution grid transformation projects through
713 its rates for generation and distribution services, and does not petition and receive approval from
714 the Commission for recovery of such costs through a rate adjustment clause described in clause
715 (vi), the Commission shall, upon the request of the utility in a triennial review proceeding,
716 provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d with
717 respect to all costs deemed reasonable and prudent by the Commission in a proceeding for
718 approval of a plan for electric distribution grid transformation projects pursuant to subdivision 6
719 or in a triennial review proceeding.

720 Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines
721 nor new underground facilities shall receive an enhanced rate of return on common equity as
722 described herein, but instead shall receive the utility's general rate of return during the
723 construction phase of the facility and, thereafter, for the entire service life of the facility. No rate
724 adjustment clause for new underground facilities shall allocate costs to, or provide for the
725 recovery of costs from, customers that are served within the large power service rate class for a
726 Phase I Utility and the large general service rate classes for a Phase II Utility. New underground

727 facilities are hereby declared to be ordinary extensions or improvements in the usual course of
728 business under the provisions of § 56-265.2.

729 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the
730 facility is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.2-
731 1600, produced from wells located in the Commonwealth, and (2) "landfill gas powered" if the
732 facility is fired by methane or other combustible gas produced by the anaerobic digestion or
733 decomposition of biodegradable materials in a solid waste management facility licensed by the
734 Waste Management Board. A landfill gas powered facility includes, in addition to the generation
735 facility itself, the equipment used in collecting, drying, treating, and compressing the landfill gas
736 and in transmitting the landfill gas from the solid waste management facility where it is collected
737 to the generation facility where it is combusted.

738 For purposes of this subdivision, "general rate of return" means the fair combined rate of return
739 on common equity as it is determined by the Commission for such utility pursuant to subdivision
740 2. Notwithstanding any other provision of this subdivision, if the Commission finds during the
741 triennial review conducted for a Phase II Utility in 2021 that such utility has not filed
742 applications for all necessary federal and state regulatory approvals to construct one or more
743 nuclear-powered or coal-fueled generation facilities that would add a total capacity of at least
744 1500 megawatts to the amount of the utility's generating resources as such resources existed on
745 July 1, 2007, or that, if all such approvals have been received, that the utility has not made
746 reasonable and good faith efforts to construct one or more such facilities that will provide such
747 additional total capacity within a reasonable time after obtaining such approvals, then the
748 Commission, if it finds it in the public interest, may reduce on a prospective basis any enhanced
749 rate of return on common equity previously applied to any such facility to no less than the
750 general rate of return for such utility and may apply no less than the utility's general rate of
751 return to any such facility for which the utility seeks approval in the future under this
752 subdivision.

753 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval
754 from the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test
755 or demonstration project involving a generation facility utilizing energy from offshore wind, and
756 such utility has not, as of July 1, 2023, commenced construction as defined for federal income
757 tax purposes of an offshore wind generation facility or facilities with a minimum aggregate
758 capacity of 250 megawatts, then the Commission, if it finds it in the public interest, may direct
759 that the costs associated with any such rate adjustment clause involving said test or
760 demonstration project shall thereafter no longer be recovered through a rate adjustment clause
761 pursuant to subdivision 6 and shall instead be recovered through the utility's rates for generation
762 and distribution services, with no change in such rates for generation and distribution services as
763 a result of the combination of such costs with the other costs, revenues, and investments included
764 in the utility's rates for generation and distribution services. Any such costs shall remain
765 combined with the utility's other costs, revenues, and investments included in its rates for
766 generation and distribution services until such costs are fully recovered.

767 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the
768 Commission on a stand-alone basis without regard to the other costs, revenues, investments, or
769 earnings of the utility. Any costs incurred by a utility prior to the filing of such petition, or during
770 the consideration thereof by the Commission, that are proposed for recovery in such petition and
771 that are related to subdivision 5 a, or that are related to facilities and projects described in clause

772 (i) of subdivision 6, or that are related to new underground facilities described in clause (iv) of
773 subdivision 6, shall be deferred on the books and records of the utility until the Commission's
774 final order in the matter, or until the implementation of any applicable approved rate adjustment
775 clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs prudently
776 incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the
777 consideration thereof by the Commission, that are proposed for recovery in such petition and that
778 are related to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that
779 utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of subdivision
780 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the books
781 and records of the utility until the Commission's final order in the matter, or until the
782 implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs
783 prudently incurred after the expiration or termination of capped rates related to other matters
784 described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or
785 termination of capped rates, provided, however, that no provision of this act shall affect the
786 rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission in
787 PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012
788 (2004). A utility shall establish a regulatory asset for regulatory accounting and ratemaking
789 purposes under which it shall defer its operation and maintenance costs incurred in connection
790 with (i) the refueling of any nuclear-powered generating plant and (ii) other work at such plant
791 normally performed during a refueling outage. The utility shall amortize such deferred costs over
792 the refueling cycle, but in no case more than 18 months, beginning with the month in which such
793 plant resumes operation after such refueling. The refueling cycle shall be the applicable period of
794 time between planned refueling outages for such plant. As of January 1, 2014, such amortized
795 costs are a component of base rates, recoverable in base rates only ratably over the refueling
796 cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable
797 in base rates. This provision shall apply to any nuclear-powered generating plant refueling
798 outage commencing after December 31, 2013, and the Commission shall treat the deferred and
799 amortized costs of such regulatory asset as part of the utility's costs for the purpose of
800 proceedings conducted (a) with respect to triennial filings under subdivision 3 made on and after
801 July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate
802 increase applications as provided in subsection B. This provision shall not be deemed to change
803 or reset base rates.

804 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall
805 be entered not more than three months, eight months, and nine months, respectively, after the
806 date of filing of such petition. If such petition is approved, the order shall direct that the
807 applicable rate adjustment clause be applied to customers' bills not more than 60 days after the
808 date of the order, or upon the expiration or termination of capped rates, whichever is later. At
809 any time, the Commission may, in its discretion, upon the petition by a Phase I or Phase II
810 Utility, or upon its own initiated proceeding, direct the consolidation of any rate adjustment
811 clauses previously implemented pursuant to subdivisions 5 or 6 in the interest of judicial
812 economy, customer transparency or other factors the Commission determines to be appropriate.
813 Any rate adjustment clauses so consolidated shall continue to be considered by the Commission
814 without regard to the other cost, revenues, investments, or earnings of the utility pursuant to this
815 subdivision and subdivisions 5 and 6, but will be combined for cost recovery and review
816 purposes.

8. In any triennial or biennial review proceeding, for the purposes of reviewing earnings on the utility's rates for generation and distribution services, the following utility generation and distribution costs not proposed for recovery under any other subdivision of this subsection, as recorded per books by the utility for financial reporting purposes and accrued against income, shall be attributed to the test periods under review and deemed fully recovered in the period recorded: costs associated with asset impairments related to early retirement determinations made by the utility for utility generation facilities fueled by coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs associated with projects necessary to comply with state or federal environmental laws, regulations, or judicial or administrative orders relating to coal combustion by-product management that the utility does not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to have been recovered from customers through rates for generation and distribution services in effect during the test periods under review unless such costs, individually or in the aggregate, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, result in the utility's earned return on its generation and distribution services for the combined test periods under review to fall more than 50 basis points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the Commission shall, in such ~~triennial~~ review proceeding, authorize deferred recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that would, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, cause the utility's earned return on its generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of combined test period earnings of the utility in a triennial or biennial review, for normalization of nonrecurring test period costs and annualized adjustments for future costs, in determining any appropriate increase or decrease in the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

If the Commission determines as a result of ~~such triennial~~ any review initiated prior to July 1, 2023 that:

a. Revenue reductions related to energy efficiency measures or programs approved and deployed since the utility's previous triennial review have caused the utility, as verified by the Commission, during the test period or periods under review, considered as a whole, to earn more than 50 basis points below a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without

862 regard to any return on common equity or other matters determined with respect to facilities
863 described in subdivision 6, the Commission shall order increases to the utility's rates for
864 generation and distribution services necessary to recover such revenue reductions. If the
865 Commission finds, for reasons other than revenue reductions related to energy efficiency
866 measures, that the utility has, during the test period or periods under review, considered as a
867 whole, earned more than 50 basis points below a fair combined rate of return on its generation
868 and distribution services or, for any test period commencing after December 31, 2012, for a
869 Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points
870 below a fair combined rate of return on its generation and distribution services, as determined in
871 subdivision 2, without regard to any return on common equity or other matters determined with
872 respect to facilities described in subdivision 6, the Commission shall order increases to the
873 utility's rates necessary to provide the opportunity to fully recover the costs of providing the
874 utility's services and to earn not less than such fair combined rate of return, using the most
875 recently ended 12- month test period as the basis for determining the amount of the rate increase
876 necessary.

877 However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase II
878 Utility, the Commission may not order a rate increase, and in all triennial reviews of a Phase I or
879 Phase II utility, the Commission may not order such rate increase unless it finds that the resulting
880 rates are necessary to provide the utility with the opportunity to fully recover its costs of
881 providing its services and to earn not less than a fair combined rate of return on both its
882 generation and distribution services, as determined in subdivision 2, without regard to any return
883 on common equity or other matters determined with respect to facilities described in subdivision
884 6, using the most recently ended 12-month test period as the basis for determining the
885 permissibility of any rate increase under the standards of this sentence, and the amount thereof;
886 and provided that, solely in connection with making its determination concerning the necessity
887 for such a rate increase or the amount thereof, the Commission shall, in any triennial review
888 proceeding conducted prior to July 1, 2028, exclude from this most recently ended 12-month test
889 period any remaining investment levels associated with a prior customer credit reinvestment
890 offset pursuant to subdivision d.

891 b. The utility has, during the test period or test periods under review, considered as a whole,
892 earned more than 50 basis points above a fair combined rate of return on its generation and
893 distribution services or, for any test period commencing after December 31, 2012, for a Phase II
894 Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair
895 combined rate of return on its generation and distribution services, as determined in subdivision
896 2, without regard to any return on common equity or other matters determined with respect to
897 facilities described in subdivision 6, the Commission shall, subject to the provisions of
898 subdivisions 8 d and 9, direct that 60 percent of the amount of such earnings that were more than
899 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II
900 Utility and after December 31, 2013, for a Phase I Utility, that 70 percent of the amount of such
901 earnings that were more than 70 basis points, above such fair combined rate of return for the test
902 period or periods under review, considered as a whole, shall be credited to customers' bills. Any
903 such credits shall be amortized over a period of six to 12 months, as determined at the discretion
904 of the Commission, following the effective date of the Commission's order, and shall be
905 allocated among customer classes such that the relationship between the specific customer class

906 rates of return to the overall target rate of return will have the same relationship as the last
907 approved allocation of revenues used to design base rates; or

908 c. ~~In any triennial review proceeding conducted after January 1, 2020, for a Phase I Utility~~
909 ~~or after January 1, 2021, for a Phase II Utility in which the~~The utility has, during the test period
910 or test periods under review, considered as a whole, earned more than 50 basis points above a
911 fair combined rate of return on its generation and distribution services or, for any test period
912 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
913 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation
914 and distribution services, as determined in subdivision 2, without regard to any return on
915 common equity or other matter determined with respect to facilities described in subdivision 6,
916 and the combined aggregate level of capital investment that the Commission has approved other
917 than those capital investments that the Commission has approved for recovery pursuant to a rate
918 adjustment clause pursuant to subdivision 6 made by the utility during the test periods under
919 review in that triennial review proceeding in new utility-owned generation facilities utilizing
920 energy derived from sunlight, or from wind, and in electric distribution grid transformation
921 projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of the
922 earnings that are more than 70 basis points above the utility's fair combined rate of return on its
923 generation and distribution services for the combined test periods under review in that triennial
924 review proceeding, the Commission shall, subject to the provisions of subdivision 9 and in
925 addition to the actions authorized in subdivision b, also order reductions to the utility's rates it
926 finds appropriate. However, in the first triennial review proceeding conducted after January 1,
927 2021, for a Phase II Utility, any reduction to the utility's rates ordered by the Commission
928 pursuant to this subdivision shall not exceed \$50 million in annual revenues, with any reduction
929 allocated to the utility's rates for generation services, and in each triennial review of a Phase I or
930 Phase II Utility, the Commission may not order such rate reduction unless it finds that the
931 resulting rates will provide the utility with the opportunity to fully recover its costs of providing
932 its services and to earn not less than a fair combined rate of return on its generation and
933 distribution services, as determined in subdivision 2, without regard to any return on common
934 equity or other matters determined with respect to facilities described in subdivision 6, using the
935 most recently ended 12-month test period as the basis for determining the permissibility of any
936 rate reduction under the standards of this sentence, and the amount thereof; and

937 d. (Expires July 1, 2028) In any ~~triennial~~ review proceeding conducted after December 31,
938 2017, upon the request of the utility, the Commission shall determine, prior to directing that 70
939 percent of earnings that are more than 70 basis points above the utility's fair combined rate of
940 return on its generation and distribution services for the test period or periods under review be
941 credited to customer bills pursuant to subdivision 8 b, the aggregate level of prior capital
942 investment that the Commission has approved other than those capital investments that the
943 Commission has approved for recovery pursuant to a rate adjustment clause pursuant to
944 subdivision 6 made by the utility during the test period or periods under review in both (i) new
945 utility-owned generation facilities utilizing energy derived from sunlight, or from onshore or
946 offshore wind, and (ii) electric distribution grid transformation projects, as determined by the
947 utility's plant in service and construction work in progress balances related to such investments
948 as recorded per books by the utility for financial reporting purposes as of the end of the most
949 recent test period under review. Any such combined capital investment amounts shall offset any

950 customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or
951 committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or
952 committed capital under clauses (i) and (ii) is referred to in this subdivision as the customer
953 credit reinvestment offset, which offsets the customer bill credit amount that the utility has
954 invested or will invest in new solar or wind generation facilities or electric distribution grid
955 transformation projects for the benefit of customers, in amounts up to 100 percent of earnings
956 that are more than 70 basis points above the utility's fair rate of return on its generation and
957 distribution services, and thereby reduce or eliminate otherwise incremental rate adjustment
958 clause charges and increases to customer bills, which is deemed to be in the public interest. If
959 100 percent of the amount of earnings that are more than 70 basis points above the utility's fair
960 combined rate of return on its generation and distribution services, as determined in subdivision
961 2, exceeds the aggregate level of invested capital in new utility-owned generation facilities
962 utilizing energy derived from sunlight, or from wind, and electric distribution grid transformation
963 projects, as provided in clauses (i) and (ii), during the test period or periods under review, then
964 70 percent of the amount of such excess shall be credited to customer bills as provided in
965 subdivision 8 b in connection with the triennial review proceeding. The portion of any costs
966 associated with new utility-owned generation facilities utilizing energy derived from sunlight, or
967 from wind, or electric distribution grid transformation projects that is the subject of any customer
968 credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through
969 the utility's rates for generation and distribution services over the service life of such facilities
970 and shall not thereafter be included in the utility's costs, revenues, and investments in future
971 triennial review proceedings conducted pursuant to subdivision 2 and shall not be the subject of a
972 rate adjustment clause petition pursuant to subdivision 6. The portion of any costs associated
973 with new utility-owned generation facilities utilizing energy derived from sunlight, or from wind,
974 or electric distribution grid transformation projects that is not the subject of any customer credit
975 reinvestment offset pursuant to this subdivision may be recovered through the utility's rates for
976 generation and distribution services over the service life of such facilities and shall be included
977 in the utility's costs, revenues, and investments in future triennial review proceedings conducted
978 pursuant to subdivision 2 until such costs are fully recovered, and if such costs are recovered
979 through the utility's rates for generation and distribution services, they shall not be the subject of
980 a rate adjustment clause petition pursuant to subdivision 6. Only the portion of such costs of new
981 utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or
982 electric distribution grid transformation projects that has not been included in any customer
983 credit reinvestment offset pursuant to this subdivision, and not otherwise recovered through the
984 utility's rates for generation and distribution services, may be the subject of a rate adjustment
985 clause petition by the utility pursuant to subdivision 6.

986 The Commission's final order regarding ~~such triennial~~any review pursuant to subdivision 1 shall
987 be entered not more than eight months after the date of filing, and any revisions in rates or
988 credits so ordered shall take effect not more than 60 days after the date of the order. The fair
989 combined rate of return on common equity determined pursuant to subdivision 2 in such ~~triennial~~
990 review shall apply, for purposes of reviewing the utility's earnings on its rates for generation and
991 distribution services, to the entire two or three, as applicable, successive 12-month test periods
992 ending December 31 immediately preceding the year of the utility's subsequent ~~triennial~~ review
993 filing under subdivision 3 and shall apply to applicable rate adjustment clauses under
994 subdivisions 5 and 6 prospectively from the date the Commission's final order in the ~~triennial~~

995 review proceeding, utilizing rate adjustment clause true-up protocols as the Commission in its
996 discretion may determine.

997 9. In any biennial review initiated on or after July 1, 2023:

998 a. If the Commission determines that the utility has, during the test period or test periods
999 under review, considered as a whole, earned more than 70 basis points above the fair combined
1000 rate of return on its generation and distribution services previously authorized by the
1001 Commission, as determined in subdivision 2, without regard to any return on common equity or
1002 other matters determined with respect to facilities described in subdivision 6 which have not
1003 been combined with the utility's costs, revenues and investments for generation and distribution
1004 services, the Commission shall, subject to the provisions of subdivisions 8 d and 9 c, direct that
1005 70 percent of the amount of such earnings that were more than 70 basis points above such fair
1006 combined rate of return for the test period or periods under review, considered as a whole, be
1007 credited to customers' bills. Any such credits shall be amortized over a period of six to 12
1008 months, as determined at the discretion of the Commission, following the effective date of the
1009 Commission's order, and shall be allocated among customer classes such that the relationship
1010 between the specific customer class rates of return to the overall target rate of return will have
1011 the same relationship as the last approved allocation of revenues used to design base rates.

1012 b. Notwithstanding any provision of subdivisions 8 a or c, the Commission shall order
1013 prospective increases or reductions to the utility's rates for generation or distribution services as
1014 it determines, in its discretion, to be appropriate in order to ensure that the utility's rates for
1015 generation and distribution services are (1) just and reasonable, and (2) provide the utility the
1016 opportunity to fully recover its costs of providing such services over the rate period ending on
1017 December 31 prior to the year of the utility's succeeding biennial review and to earn not less
1018 than a fair combined rate of return on its generation and distribution services, as determined in
1019 subdivision 2, without regard to any return on common equity or other matters determined with
1020 respect to facilities described in subdivision 6 which have not been combined with the utility's
1021 costs, revenues and investments for generation and distribution services, using the most recently
1022 ended 12-month test period, along with normalization of nonrecurring test period costs and
1023 annualized adjustments for future costs as the basis for determining the appropriateness of any
1024 rate adjustment. The Commission may, to the extent it finds such action aligns with the utility's
1025 projected cost of service, direct that any such increase or reduction in the utility's rates for
1026 generation or distribution services be implemented on a staggered basis at the commencement
1027 and mid-point of the succeeding rate period.

1028 c. The availability of customer credit reinvestment offsets pursuant to subdivision 8 d shall
1029 be limited in its application to those biennial reviews commenced prior to December 31, 2023.

1030 10. If, as a result of a triennial review required under this subsection and conducted with
1031 respect to any test period or periods under review ending later than December 31, 2010 (or, if the
1032 Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1,
1033 under review ending later than December 31, 2010, for a Phase I Utility, or December 31, 2011,
1034 for a Phase II Utility), the Commission finds, with respect to such test period or periods
1035 considered as a whole, that (i) any utility has, during the test period or periods under review,

1036 considered as a whole, earned more than 50 basis points above a fair combined rate of return on
1037 its generation and distribution services or, for any test period commencing after December 31,
1038 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
1039 basis points above a fair combined rate of return on its generation and distribution services, as
1040 determined in subdivision 2, without regard to any return on common equity or other matters
1041 determined with respect to facilities described in subdivision 6, and (ii) the total aggregate
1042 regulated rates of such utility at the end of the most recently ended 12-month test period
1043 exceeded the annual increases in the United States Average Consumer Price Index for all items,
1044 all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
1045 Department of Labor, compounded annually, when compared to the total aggregate regulated
1046 rates of such utility as determined pursuant to the review conducted for the base period, the
1047 Commission shall, unless it finds that such action is not in the public interest or that the
1048 provisions of subdivisions 8 b and c are more consistent with the public interest, direct that any
1049 or all earnings for such test period or periods under review, considered as a whole that were more
1050 than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II
1051 Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such
1052 fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of
1053 subdivisions 8 b and c, provided that no credits shall be provided pursuant to this subdivision in
1054 connection with any triennial review unless such bill credits would be payable pursuant to the
1055 provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of
1056 any customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be
1057 amortized and allocated among customer classes in the manner provided by subdivision 8 b. For
1058 purposes of this subdivision:

1059 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has
1060 elected to stagger its biennial reviews of utilities as provided in subdivision 1, the test period
1061 ending December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility),
1062 or (ii) the most recent test period with respect to which credits have been applied to customers'
1063 bills under the provisions of this subdivision, whichever is later.

1064 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6,
1065 except for any increases in fuel tariffs deferred by the Commission for recovery in periods after
1066 December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6;(ii)
1067 rate adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's
1068 rates pursuant to subdivision 8 a; (iv) revisions to the utility's rates pursuant to the Commission's
1069 rules governing utility rate increase applications, as permitted by subsection B, occurring after
1070 July 1, 2009; and (v) base rates in effect as of July 1, 2009.

1071 11. For purposes of this section, the Commission shall regulate the rates, terms and
1072 conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-
1073 test period capital structure and cost of capital of such utility, excluding any debt associated with
1074 securitized bonds that are the obligation of non-Virginia jurisdictional customers, unless the
1075 Commission finds that the debt to equity ratio of such capital structure is unreasonable for such
1076 utility, in which case the Commission may utilize a debt to equity ratio that it finds to be
1077 reasonable for such utility in determining any rate adjustment pursuant to subdivisions 8 a and c,
1078 and without regard to the cost of capital, capital structure, revenues, expenses or investments of
1079 any other entity with which such utility may be affiliated. In particular, and without limitation,
1080 the Commission shall determine the federal and state income tax costs for any such utility that is

1081 part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state
1082 income tax costs shall be calculated according to the applicable statutory rate, as if the utility had
1083 not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs
1084 shall be calculated according to the applicable federal income tax rate and shall exclude any
1085 consolidated tax liability or benefit adjustments originating from any taxable income or loss of
1086 its affiliates.

1087 In order to ensure cost-effective financing for any project constructed by a Phase II Utility
1088 pursuant to § 56-585.1:11, such utility shall maintain, throughout the duration of the project's
1089 construction period, and subject to audit by the Commission, its common equity capitalization to
1090 total capitalization ratio at a level at least equal to the average of such ratio for all utilities in the
1091 applicable Phase II Utility's peer group of investor-owned utilities, as defined in § 56-585.1 A 2
1092 b, and as authorized by such utilities' applicable regulatory commission in their most recent
1093 governing rate proceeding.

1094 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from
1095 applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility
1096 rate increase applications; however, in any such filing, a fair rate of return on common equity
1097 shall be determined pursuant to subdivision A 2. Nothing in this section shall preclude such
1098 utility's recovery of fuel and purchased power costs as provided in § 56-249.6.

1099 C. Except as otherwise provided in this section, the Commission shall exercise authority
1100 over the rates, terms and conditions of investor-owned incumbent electric utilities for the
1101 provision of generation, transmission and distribution services to retail customers in the
1102 Commonwealth pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including
1103 specifically § 56-235.2.

1104 D. The Commission may determine, during any proceeding authorized or required by this
1105 section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a
1106 utility in connection with the subject of the proceeding. A determination of the Commission
1107 regarding the reasonableness or prudence of any such cost shall be consistent with the
1108 Commission's authority to determine the reasonableness or prudence of costs in proceedings
1109 pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining the reasonableness or
1110 prudence of a utility providing energy and capacity to its customers from renewable energy
1111 resources, the Commission shall consider the extent to which such renewable energy resources,
1112 whether utility-owned or by contract, further the objectives of the Commonwealth Clean Energy
1113 Policy set forth in § 45.2-1706.1, and shall also consider whether the costs of such resources is
1114 likely to result in unreasonable increases in rates paid by customers.

1115 E. Notwithstanding any other provision of law, the Commission shall determine the
1116 amortization period for recovery of any appropriate costs due to the early retirement of any
1117 electric generation facilities owned or operated by any Phase I Utility or Phase II Utility. In
1118 making such determination, the Commission shall (i) perform an independent analysis of the
1119 remaining undepreciated capital costs; (ii) establish a recovery period that best serves ratepayers;
1120 and (iii) allow for the recovery of any carrying costs that the Commission deems appropriate.

1121 F. Except for early retirement determinations identified by the utility in an integrated
1122 resource plan filed with the State Corporation Commission pursuant to § 56-599 by July 1, 2023,
1123 an investor-owned incumbent electric utility shall not permanently retire an electric power
1124 generation facility from service after July 1, 2023 without first obtaining the approval of the
1125 State Corporation Commission, upon petition from such investor-owned incumbent electric
1126 utility, and a finding by the State Corporation Commission that the retirement determination,
1127 after consideration of the impact of the proposed retirement on reliability or security of electric
1128 service to customers, is reasonable and prudent. The Commission shall include in its report to
1129 the Commission on Electric Utility Regulation and the Governor pursuant to § 56-596 any
1130 information concerning the impacts of generation unit retirement determinations by a Phase I or
1131 Phase II Utility, utilizing information from the respective utility’s integrated resource plan.

1132 G. The Commission shall promulgate such rules and regulations as may be necessary to
1133 implement the provisions of this section.

1134 2007, cc. 888, 933;2008, c. 476;2009, c. 824;2011, cc. 236, 367, 371, 380, 382;2012, c.
1135 435;2013, c. 2;2014, cc. 212, 541, 548, 550;2015, cc. 37, 599;2016, c. 3;2017, cc. 246, 564, 583,
1136 820;2018, cc. 296, 795;2019, cc. 535, 741, 773;2020, cc. 662, 799, 801, 1108, 1190, 1193,
1137 1194;2021, Sp. Sess. I, c. 327.

1138 The chapters of the acts of assembly referenced in the historical citation at the end of this
1139 section(s) may not constitute a comprehensive list of such chapters and may exclude chapters
1140 whose provisions have expired.