

1 HOUSE BILL NO. 1776

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on Commerce and Energy

4 on _____)

5 (Patron Prior to Substitute--Delegate O'Quinn)

6 A BILL to amend and reenact §§ 56-585.1 and 56-585.1:10 of the Code of Virginia and to repeal the
7 fourth enactment of Chapter 535 of the Acts of Assembly of 2019, relating to business park electric
8 infrastructure program.

9 **Be it enacted by the General Assembly of Virginia:**10 **1. That §§ 56-585.1 and 56-585.1:10 of the Code of Virginia are amended and reenacted as follows:**11 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or**
12 **expire.**

13 A. During the first six months of 2009, the Commission shall, after notice and opportunity for
14 hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation,
15 distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings
16 shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such
17 proceedings the Commission shall determine fair rates of return on common equity applicable to the
18 generation and distribution services of the utility. In so doing, the Commission may use any methodology
19 to determine such return it finds consistent with the public interest, but such return shall not be set lower
20 than the average of the returns on common equity reported to the Securities and Exchange Commission
21 for the three most recent annual periods for which such data are available by not less than a majority,
22 selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in
23 the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher
24 than such average. The peer group of the utility shall be determined in the manner prescribed in
25 subdivision 2 b. The Commission may increase or decrease such combined rate of return by up to 100
26 basis points based on the generating plant performance, customer service, and operating efficiency of a

27 utility, as compared to nationally recognized standards determined by the Commission to be appropriate
28 for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may
29 charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on
30 common equity is more than 50 basis points below the combined rate of return as so determined, it shall
31 be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover
32 the costs of providing the utility's services and to earn not less than such combined rate of return. If the
33 Commission finds that the utility's combined rate of return on common equity is more than 50 basis points
34 above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to
35 the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction
36 unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs
37 of providing its services and to earn not less than the fair rates of return on common equity applicable to
38 the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's
39 earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008
40 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12
41 months, as determined at the discretion of the Commission, following the effective date of the
42 Commission's order and be allocated among customer classes such that the relationship between the
43 specific customer class rates of return to the overall target rate of return will have the same relationship as
44 the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission,
45 after notice and opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the
46 provision of generation, distribution and transmission services by each investor-owned incumbent electric
47 utility, subject to the following provisions:

48 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
49 and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-
50 585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive
51 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for
52 a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-
53 month test periods ending December 31 immediately preceding the year in which such review proceeding

54 is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase
55 II Utility in 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and
56 ending December 31, 2020, with subsequent reviews on a triennial basis utilizing the three successive 12-
57 month test periods ending December 31 immediately preceding the year in which such review proceeding
58 is conducted. All such reviews occurring after December 31, 2017, shall be referred to as triennial reviews.
59 For purposes of this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as
60 of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its
61 application beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility
62 that was bound by such a settlement.

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

67 a. The Commission may use any methodology to determine such return it finds consistent with the
68 public interest, but for applications received by the Commission on or after January 1, 2020, such return
69 shall not be set lower than the average of either (i) the returns on common equity reported to the Securities
70 and Exchange Commission for the three most recent annual periods for which such data are available by
71 not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-
72 owned electric utilities in the peer group of the utility subject to such triennial review or (ii) the authorized
73 returns on common equity that are set by the applicable regulatory commissions for the same selected peer
74 group, nor shall the Commission set such return more than 150 basis points higher than such average.

75 b. In selecting such majority of peer group investor-owned electric utilities for applications
76 received by the Commission on or after January 1, 2020, the Commission shall first remove from such
77 group the two utilities within such group that have the lowest reported or authorized, as applicable, returns
78 of the group, as well as the two utilities within such group that have the highest reported or authorized, as
79 applicable, returns of the group, and the Commission shall then select a majority of the utilities remaining
80 in such peer group. In its final order regarding such triennial review, the Commission shall identify the

81 utilities in such peer group it selected for the calculation of such limitation. For purposes of this
82 subdivision, an investor-owned electric utility shall be deemed part of such peer group if (i) its principal
83 operations are conducted in the southeastern United States east of the Mississippi River in either the states
84 of West Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it
85 is a vertically-integrated electric utility providing generation, transmission and distribution services whose
86 facilities and operations are subject to state public utility regulation in the state where its principal
87 operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at
88 least Baa at the end of the most recent test period subject to such triennial review, and (iv) it is not an
89 affiliate of the utility subject to such triennial review.

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

93 d. In any Current Proceeding, the Commission shall determine whether the Current Return has
94 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a
95 percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-
96 U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the
97 date on which the Commission determined the Initial Return. If so, the Commission may conduct an
98 additional analysis of whether it is in the public interest to utilize such Current Return for the Current
99 Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall
100 be made without regard to any enhanced rate of return on common equity awarded pursuant to the
101 provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration
102 of overall economic conditions, the level of interest rates and cost of capital with respect to business and
103 industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of goods
104 and services, the effect on the utility's ability to provide adequate service and to attract capital if less than
105 the Current Return were utilized for the Current Proceeding then pending, and such other factors as the
106 Commission may deem relevant. If, as a result of such analysis, the Commission finds that use of the
107 Current Return for the Current Proceeding then pending would not be in the public interest, then the lower

108 limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall
109 be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least
110 equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for
111 all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
112 Department of Labor, since the date on which the Commission determined the Initial Return. For purposes
113 of this subdivision:

114 "Current Proceeding" means any proceeding conducted under any provisions of this subsection
115 that require or authorize the Commission to determine a fair combined rate of return on common equity
116 for a utility and that will be concluded after the date on which the Commission determined the Initial
117 Return for such utility.

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

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

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

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

129 g. If the combined rate of return on common equity earned by the generation and distribution
130 services is no more than 50 basis points above or below the return as so determined or, for any test period
131 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
132 Utility, such return is no more than 70 basis points above or below the return as so determined, such
133 combined return shall not be considered either excessive or insufficient, respectively. However, for any
134 test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for

135 a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return
136 as so determined, whether or not such combined return is within 70 basis points of the return as so
137 determined, the utility may petition the Commission for approval of an increase in rates in accordance
138 with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined
139 rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this
140 section. The provisions of this subdivision are subject to the provisions of subdivision 8.

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

144 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings
145 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021,
146 consisting of the schedules contained in the Commission's rules governing utility rate increase
147 applications. Such filing shall encompass the three successive 12-month test periods ending December 31
148 immediately preceding the year in which such proceeding is conducted, except that the filing for a Phase
149 II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31, 2020,
150 and in every such case the filing for each year shall be identified separately and shall be segregated from
151 any other year encompassed by the filing. If the Commission determines that rates should be revised or
152 credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously
153 implemented related to facilities utilizing simple-cycle combustion turbines described in subdivision 6,
154 shall be combined with the utility's costs, revenues and investments until the amounts that are the subject
155 of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the
156 utility's costs, revenues and investments only after it makes its initial determination with regard to
157 necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are
158 combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and
159 investments for the purposes of future triennial review proceedings. In a triennial filing under this
160 subdivision that does not result in an overall rate change a utility may propose an adjustment to one or
161 more tariffs that are revenue neutral to the utility.

162 4. (Expires December 31, 2023) The following costs incurred by the utility shall be deemed
163 reasonable and prudent: (i) costs for transmission services provided to the utility by the regional
164 transmission entity of which the utility is a member, as determined under applicable rates, terms and
165 conditions approved by the Federal Energy Regulatory Commission; (ii) costs charged to the utility that
166 are associated with demand response programs approved by the Federal Energy Regulatory Commission
167 and administered by the regional transmission entity of which the utility is a member; and (iii) costs
168 incurred by the utility to construct, operate, and maintain transmission lines and substations installed in
169 order to provide service to a business park. Upon petition of a utility at any time after the expiration or
170 termination of capped rates, but not more than once in any 12-month period, the Commission shall approve
171 a rate adjustment clause under which such costs, including, without limitation, costs for transmission
172 service; charges for new and existing transmission facilities, including costs incurred by the utility to
173 construct, operate, and maintain transmission lines and substations installed in order to provide service to
174 a business park; administrative charges; and ancillary service charges designed to recover transmission
175 costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs
176 shall be designed using the appropriate billing determinants in the retail rate schedules.

177 4. (Effective January 1, 2024) The following costs incurred by the utility shall be deemed
178 reasonable and prudent: (i) costs for transmission services provided to the utility by the regional
179 transmission entity of which the utility is a member, as determined under applicable rates, terms and
180 conditions approved by the Federal Energy Regulatory Commission, ~~and~~; (ii) costs charged to the utility
181 that are associated with demand response programs approved by the Federal Energy Regulatory
182 Commission and administered by the regional transmission entity of which the utility is a member; and
183 (iii) costs incurred by the utility to construct, operate, and maintain transmission lines and substations
184 installed in order to provide service to a business park. Upon petition of a utility at any time after the
185 expiration or termination of capped rates, but not more than once in any 12-month period, the Commission
186 shall approve a rate adjustment clause under which such costs, including, without limitation, costs for
187 transmission service, charges for new and existing transmission facilities, administrative charges, and
188 ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current

189 basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing
190 determinants in the retail rate schedules.

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

194 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
195 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring such
196 costs consistent with an order of the Commission entered under clause (vi) of subsection B of § 56-582.
197 The Commission shall approve such a petition allowing the recovery of such costs that comply with the
198 requirements of clause (vi) of subsection B of § 56-582;

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

203 c. Projected and actual costs for the utility to design, implement, and operate energy efficiency
204 programs or pilot programs. Any such petition shall include a proposed budget for the design,
205 implementation, and operation of the energy efficiency program, including anticipated savings from and
206 spending on each program, and the Commission shall grant a final order on such petitions within eight
207 months of initial filing. The Commission shall only approve such a petition if it finds that the program is
208 in the public interest. If the Commission determines that an energy efficiency program or portfolio of
209 programs is not in the public interest, its final order shall include all work product and analysis conducted
210 by the Commission's staff in relation to that program that has bearing upon the Commission's
211 determination. Such order shall adhere to existing protocols for extraordinarily sensitive information.

212 Energy efficiency pilot programs are in the public interest provided that the pilot program is (i) of
213 limited scope, cost, and duration and (ii) intended to determine whether a new or substantially revised
214 program would be cost-effective.

215 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses
216 for energy efficiency programs and pilot programs, which margin shall be equal to the general rate of
217 return on common equity determined as described in subdivision 2. Beginning January 1, 2022, and
218 thereafter, if the Commission determines that the utility meets in any year the annual energy efficiency
219 standards set forth in § 56-596.2, in the following year, the Commission shall award a margin on energy
220 efficiency program operating expenses in that year, to be recovered through a rate adjustment clause,
221 which margin shall be equal to the general rate of return on common equity determined as described in
222 subdivision 2. If the Commission does not approve energy efficiency programs that, in the aggregate, can
223 achieve the annual energy efficiency standards, the Commission shall award a margin on energy efficiency
224 operating expenses in that year for any programs the Commission has approved, to be recovered through
225 a rate adjustment clause under this subdivision, which margin shall equal the general rate of return on
226 common equity determined as described in subdivision 2. Any margin awarded pursuant to this
227 subdivision shall be applied as part of the utility's next rate adjustment clause true-up proceeding. The
228 Commission shall also award an additional 20 basis points for each additional incremental 0.1 percent in
229 annual savings in any year achieved by the utility's energy efficiency programs approved by the
230 Commission pursuant to this subdivision, beyond the annual requirements set forth in § 56-596.2, provided
231 that the total performance incentive awarded in any year shall not exceed 10 percent of that utility's total
232 energy efficiency program spending in that same year.

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

239 Notwithstanding any other provision of law, unless the Commission finds in its discretion and after
240 consideration of all in-state and regional transmission entity resources that there is a threat to the reliability
241 or security of electric service to the utility's customers, the Commission shall not approve construction of

242 any new utility-owned generating facilities that emit carbon dioxide as a by-product of combusting fuel
243 to generate electricity unless the utility has already met the energy savings goals identified in § 56-596.2
244 and the Commission finds that supply-side resources are more cost-effective than demand-side or energy
245 storage resources.

246 As used in this subdivision, "large general service customer" means a customer that has a verifiable
247 history of having used more than one megawatt of demand from a single site.

248 Large general service customers shall be exempt from requirements that they participate in energy
249 efficiency programs if the Commission finds that the large general service customer has, at the customer's
250 own expense, implemented energy efficiency programs that have produced or will produce measured and
251 verified results consistent with industry standards and other regulatory criteria stated in this section. The
252 Commission shall, no later than June 30, 2021, adopt rules or regulations (a) establishing the process for
253 large general service customers to apply for such an exemption, (b) establishing the administrative
254 procedures by which eligible customers will notify the utility, and (c) defining the standard criteria that
255 shall be satisfied by an applicant in order to notify the utility, including means of evaluation measurement
256 and verification and confidentiality requirements. At a minimum, such rules and regulations shall require
257 that each exempted large general service customer certify to the utility and Commission that its
258 implemented energy efficiency programs have delivered measured and verified savings within the prior
259 five years. In adopting such rules or regulations, the Commission shall also specify the timing as to when
260 a utility shall accept and act on such notice, taking into consideration the utility's integrated resource
261 planning process, as well as its administration of energy efficiency programs that are approved for cost
262 recovery by the Commission. Savings from large general service customers shall be accounted for in
263 utility reporting in the standards in § 56-596.2.

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

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

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

278 e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate
279 impacts to marine life caused by construction of offshore wind generating facilities, as described in § 56-
280 585.1:11, or to comply with state or federal environmental laws or regulations applicable to generation
281 facilities used to serve the utility's native load obligations, including the costs of allowances purchased
282 through a market-based trading program for carbon dioxide emissions. The Commission shall approve
283 such a petition if it finds that such costs are necessary to comply with such environmental laws or
284 regulations;

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

291 g. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate
292 programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled
293 individuals or (ii) organizations providing residential services to low-income, elderly, and disabled
294 individuals for the installation of, or access to, equipment to generate electric energy derived from

295 sunlight, provided the low-income, elderly, and disabled individuals, or organizations providing
296 residential services to low-income, elderly, and disabled individuals, first participate in incentive programs
297 for the installation of measures that reduce heating or cooling costs.

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

302 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet
303 the utility's projected native load obligations and to promote economic development, a utility may at any
304 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate
305 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-
306 fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the
307 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
308 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major
309 unit modifications of generation facilities, including the costs of any system or equipment upgrade, system
310 or equipment replacement, or other cost reasonably appropriate to extend the combined operating license
311 for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new
312 underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or
313 less located within the Commonwealth, (v) one or more pumped hydroelectricity generation and storage
314 facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source
315 and such facilities and associated resources are located in the coalfield region of the Commonwealth as
316 described in § 15.2-6002, regardless of whether such facility is located within or without the utility's
317 service territory, or (vi) one or more electric distribution grid transformation projects; however, subject to
318 the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often
319 than annually and, in such petition, shall not seek any annual incremental increase in the level of
320 investments associated with such a petition that exceeds five percent of such utility's distribution rate base,
321 as such rate base was determined for the most recently ended 12-month test period in the utility's latest

322 review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission
323 prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed
324 under clause (iv) or (vi), the level of investments approved for recovery in such proceedings shall be in
325 addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings
326 under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by a utility pursuant
327 to clause (iv) shall be limited to any remaining costs associated with conversions of overhead distribution
328 facilities to underground facilities that have been previously approved or are pending approval by the
329 Commission through a petition by the utility under this subdivision. Such a petition concerning facilities
330 described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and
331 will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration
332 or termination of capped rates. A utility that constructs or makes modifications to any such facility, or
333 purchases any facility consisting of at least one megawatt of generating capacity using energy derived
334 from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or
335 in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as
336 accrued against income, through its rates, including projected construction work in progress, and any
337 associated allowance for funds used during construction, planning, development and construction or
338 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new
339 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake
340 such projects, an enhanced rate of return on common equity calculated as specified below; however, in
341 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the
342 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the
343 operation and maintenance costs attributable to either the overhead distribution facilities being replaced
344 or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities
345 being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof
346 shall remain eligible for recovery from customers through the utility's base rates for distribution service.
347 A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt
348 of generating capacity using energy derived from sunlight and located in the Commonwealth and that

349 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose
350 a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A
351 utility seeking approval to construct or purchase a generating facility that emits carbon dioxide shall
352 demonstrate that it has already met the energy savings goals identified in § 56-596.2 and that the identified
353 need cannot be met more affordably through the deployment or utilization of demand-side resources or
354 energy storage resources and that it has considered and weighed alternative options, including third-party
355 market alternatives, in its selection process.

356 The costs of the facility, other than return on projected construction work in progress and
357 allowance for funds used during construction, shall not be recovered prior to the date a facility constructed
358 by the utility and described in clause (i), (ii), (iii) or (v) begins commercial operation, the date the utility
359 becomes the owner of a purchased generation facility consisting of at least one megawatt of generating
360 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or
361 services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground
362 facilities are classified by the utility as plant in service. In any application to construct a new generating
363 facility, the utility shall include, and the Commission shall consider, the social cost of carbon, as
364 determined by the Commission, as a benefit or cost, whichever is appropriate. The Commission shall
365 ensure that the development of new, or expansion of existing, energy resources or facilities does not have
366 a disproportionate adverse impact on historically economically disadvantaged communities. The
367 Commission may adopt any rules it deems necessary to determine the social cost of carbon and shall use
368 the best available science and technology, including the Technical Support Document: Technical Update
369 of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, published by
370 the Interagency Working Group on Social Cost of Greenhouse Gases from the United States Government
371 in August 2016, as guidance. The Commission shall include a system to adjust the costs established in this
372 section with inflation.

373 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
374 construction and to construction work in progress during the construction phase of the facility and shall
375 thereafter be applied to the entire facility during the first portion of the service life of the facility. The first

376 portion of the service life shall be as specified in the table below; however, the Commission shall
377 determine the duration of the first portion of the service life of any facility, within the range specified in
378 the table below, which determination shall be consistent with the public interest and shall reflect the
379 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
380 the citizens of the Commonwealth and the risks involved in the development of the facility. After the first
381 portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to
382 such facility for the remainder of its service life. As used herein, the service life of the facility shall be
383 deemed to begin on the date a facility constructed by the utility and described in clause (i), (ii), (iii) or (v)
384 begins commercial operation, the date the utility becomes the owner of a purchased generation facility
385 consisting of at least one megawatt of generating capacity using energy derived from sunlight and located
386 in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more
387 Virginia businesses, or the date new underground facilities or new electric distribution grid transformation
388 projects are classified by the utility as plant in service, and such service life shall be deemed equal in years
389 to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of
390 return on common equity shall be calculated by adding the basis points specified in the table below to the
391 utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the
392 subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated
393 for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an
394 enhanced rate of return on common equity as determined pursuant to this subdivision, until such
395 construction work in progress is included in rates. The construction of any facility described in clause (i)
396 or (v) is in the public interest, and in determining whether to approve such facility, the Commission shall
397 liberally construe the provisions of this title. The construction or purchase by a utility of one or more
398 generation facilities with at least one megawatt of generating capacity, and with an aggregate rated
399 capacity that does not exceed 16,100 megawatts, including rooftop solar installations with a capacity of
400 not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts, that use energy derived from
401 sunlight or from onshore wind and are located in the Commonwealth or off the Commonwealth's Atlantic
402 shoreline, regardless of whether any of such facilities are located within or without the utility's service

403 territory, is in the public interest, and in determining whether to approve such facility, the Commission
404 shall liberally construe the provisions of this title. A utility may enter into short-term or long-term power
405 purchase contracts for the power derived from sunlight generated by such generation facility prior to
406 purchasing the generation facility. The replacement of any subset of a utility's existing overhead
407 distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-
408 per-mile over a preceding 10-year period with new underground facilities in order to improve electric
409 service reliability is in the public interest. In determining whether to approve petitions for rate adjustment
410 clauses for such new underground facilities that meet this criteria, and in determining the level of costs to
411 be recovered thereunder, the Commission shall liberally construe the provisions of this title.

412 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local
413 and system-wide benefits and to be cost beneficial, and the costs associated with such new underground
414 facilities are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of
415 subsection C or D, shall be approved for recovery by the Commission pursuant to this subdivision,
416 provided that the total costs associated with the replacement of any subset of existing overhead distribution
417 tap lines proposed by the utility with new underground facilities, exclusive of financing costs, shall not
418 exceed an average cost per customer of \$20,000, with such customers, including those served directly by
419 or downline of the tap lines proposed for conversion, and, further, such total costs shall not exceed an
420 average cost per mile of tap lines converted, exclusive of financing costs, of \$750,000. A utility shall,
421 without regard for whether it has petitioned for any rate adjustment clause pursuant to clause (vi), petition
422 the Commission, not more than once annually, for approval of a plan for electric distribution grid
423 transformation projects. Any plan for electric distribution grid transformation projects shall include both
424 measures to facilitate integration of distributed energy resources and measures to enhance physical electric
425 distribution grid reliability and security. In ruling upon such a petition, the Commission shall consider
426 whether the utility's plan for such projects, and the projected costs associated therewith, are reasonable
427 and prudent. Such petition shall be considered on a stand-alone basis without regard to the other costs,
428 revenues, investments, or earnings of the utility; without regard to whether the costs associated with such
429 projects will be recovered through a rate adjustment clause under this subdivision or through the utility's

430 rates for generation and distribution services; and without regard to whether such costs will be the subject
 431 of a customer credit offset, as applicable, pursuant to subdivision 8 d. The Commission's final order
 432 regarding any such petition for approval of an electric distribution grid transformation plan shall be entered
 433 by the Commission not more than six months after the date of filing such petition. The Commission shall
 434 likewise enter its final order with respect to any petition by a utility for a certificate to construct and
 435 operate a generating facility or facilities utilizing energy derived from sunlight, pursuant to subsection D
 436 of § 56-580, within six months after the date of filing such petition. The basis points to be added to the
 437 utility's general rate of return to calculate the enhanced rate of return on common equity, and the first
 438 portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by
 439 type of facility, as specified in the following table:

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

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

445 Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between
 446 July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be

447 deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time
448 as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent
449 of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall
450 not be deferred for recovery through a rate adjustment clause under this subdivision; however, such
451 remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by
452 the Commission in the test periods under review in the utility's next review filed after July 1, 2014. Thirty
453 percent of all costs of a facility utilizing energy derived from offshore wind that the utility incurred
454 between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013,
455 may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at
456 such time as the Commission provides in an order approving such a rate adjustment clause. The remaining
457 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31,
458 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however,
459 such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined
460 by the Commission in the test periods under review in the utility's next review filed after July 1, 2014.

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

465 Notwithstanding any provision of Chapter 296 of the Acts of Assembly of 2018, construction,
466 purchasing, or leasing activities for a new utility-owned and utility-operated generating facility or facilities
467 utilizing energy derived from sunlight or from onshore wind with an aggregate capacity of 16,100
468 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an
469 aggregate capacity of 100 megawatts, together with a utility-owned and utility-operated generating facility
470 or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 3,000
471 megawatts, are in the public interest. Additionally, energy storage facilities with an aggregate capacity of
472 2,700 megawatts are in the public interest. To the extent that a utility elects to recover the costs of any
473 such new generation or energy storage facility or facilities through its rates for generation and distribution

474 services and does not petition and receive approval from the Commission for recovery of such costs
475 through a rate adjustment clause described in clause (ii), the Commission shall, upon the request of the
476 utility in a triennial review proceeding, provide for a customer credit reinvestment offset, as applicable,
477 pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent by the Commission
478 in a proceeding pursuant to subsection D of § 56-580 or in a triennial review proceeding.

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

487 Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines
488 nor new underground facilities shall receive an enhanced rate of return on common equity as described
489 herein, but instead shall receive the utility's general rate of return during the construction phase of the
490 facility and, thereafter, for the entire service life of the facility. No rate adjustment clause for new
491 underground facilities shall allocate costs to, or provide for the recovery of costs from, customers that are
492 served within the large power service rate class for a Phase I Utility and the large general service rate
493 classes for a Phase II Utility. New underground facilities are hereby declared to be ordinary extensions or
494 improvements in the usual course of business under the provisions of § 56-265.2.

495 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the
496 facility is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.2-1600,
497 produced from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired
498 by methane or other combustible gas produced by the anaerobic digestion or decomposition of
499 biodegradable materials in a solid waste management facility licensed by the Waste Management Board.
500 A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used in

501 collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from the
502 solid waste management facility where it is collected to the generation facility where it is combusted.

503 For purposes of this subdivision, "general rate of return" means the fair combined rate of return on
504 common equity as it is determined by the Commission for such utility pursuant to subdivision 2.

505 Notwithstanding any other provision of this subdivision, if the Commission finds during the
506 triennial review conducted for a Phase II Utility in 2021 that such utility has not filed applications for all
507 necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled
508 generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's
509 generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been
510 received, that the utility has not made reasonable and good faith efforts to construct one or more such
511 facilities that will provide such additional total capacity within a reasonable time after obtaining such
512 approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any
513 enhanced rate of return on common equity previously applied to any such facility to no less than the
514 general rate of return for such utility and may apply no less than the utility's general rate of return to any
515 such facility for which the utility seeks approval in the future under this subdivision.

516 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from
517 the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or
518 demonstration project involving a generation facility utilizing energy from offshore wind, and such utility
519 has not, as of July 1, 2023, commenced construction as defined for federal income tax purposes of an
520 offshore wind generation facility or facilities with a minimum aggregate capacity of 250 megawatts, then
521 the Commission, if it finds it in the public interest, may direct that the costs associated with any such rate
522 adjustment clause involving said test or demonstration project shall thereafter no longer be recovered
523 through a rate adjustment clause pursuant to subdivision 6 and shall instead be recovered through the
524 utility's rates for generation and distribution services, with no change in such rates for generation and
525 distribution services as a result of the combination of such costs with the other costs, revenues, and
526 investments included in the utility's rates for generation and distribution services. Any such costs shall

527 remain combined with the utility's other costs, revenues, and investments included in its rates for
528 generation and distribution services until such costs are fully recovered.

529 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on
530 a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
531 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
532 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that
533 are related to facilities and projects described in clause (i) of subdivision 6, or that are related to new
534 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records
535 of the utility until the Commission's final order in the matter, or until the implementation of any applicable
536 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any
537 costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during
538 the consideration thereof by the Commission, that are proposed for recovery in such petition and that are
539 related to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear
540 power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled
541 facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until
542 the Commission's final order in the matter, or until the implementation of any applicable approved rate
543 adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of
544 capped rates related to other matters described in subdivision 4, 5, or 6 shall be deferred beginning only
545 upon the expiration or termination of capped rates, provided, however, that no provision of this act shall
546 affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission
547 in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004).
548 A utility shall establish a regulatory asset for regulatory accounting and ratemaking purposes under which
549 it shall defer its operation and maintenance costs incurred in connection with (i) the refueling of any
550 nuclear-powered generating plant and (ii) other work at such plant normally performed during a refueling
551 outage. The utility shall amortize such deferred costs over the refueling cycle, but in no case more than 18
552 months, beginning with the month in which such plant resumes operation after such refueling. The
553 refueling cycle shall be the applicable period of time between planned refueling outages for such plant.

554 As of January 1, 2014, such amortized costs are a component of base rates, recoverable in base rates only
555 ratably over the refueling cycle rather than when such outages occur, and are the only nuclear refueling
556 costs recoverable in base rates. This provision shall apply to any nuclear-powered generating plant
557 refueling outage commencing after December 31, 2013, and the Commission shall treat the deferred and
558 amortized costs of such regulatory asset as part of the utility's costs for the purpose of proceedings
559 conducted (a) with respect to triennial filings under subdivision 3 made on and after July 1, 2014, and (b)
560 pursuant to § 56-245 or the Commission's rules governing utility rate increase applications as provided in
561 subsection B. This provision shall not be deemed to change or reset base rates.

562 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall
563 be entered not more than three months, eight months, and nine months, respectively, after the date of filing
564 of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment
565 clause be applied to customers' bills not more than 60 days after the date of the order, or upon the
566 expiration or termination of capped rates, whichever is later.

567 8. In any triennial review proceeding, for the purposes of reviewing earnings on the utility's rates
568 for generation and distribution services, the following utility generation and distribution costs not
569 proposed for recovery under any other subdivision of this subsection, as recorded per books by the utility
570 for financial reporting purposes and accrued against income, shall be attributed to the test periods under
571 review and deemed fully recovered in the period recorded: costs associated with asset impairments related
572 to early retirement determinations made by the utility for utility generation facilities fueled by coal, natural
573 gas, or oil or for automated meter reading electric distribution service meters; costs associated with
574 projects necessary to comply with state or federal environmental laws, regulations, or judicial or
575 administrative orders relating to coal combustion by-product management that the utility does not petition
576 to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated with severe
577 weather events; and costs associated with natural disasters. Such costs shall be deemed to have been
578 recovered from customers through rates for generation and distribution services in effect during the test
579 periods under review unless such costs, individually or in the aggregate, together with the utility's other
580 costs, revenues, and investments to be recovered through rates for generation and distribution services,

581 result in the utility's earned return on its generation and distribution services for the combined test periods
582 under review to fall more than 50 basis points below the fair combined rate of return authorized under
583 subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase
584 II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the
585 fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the
586 Commission shall, in such triennial review proceeding, authorize deferred recovery of such costs and
587 allow the utility to amortize and recover such deferred costs over future periods as determined by the
588 Commission. The aggregate amount of such deferred costs shall not exceed an amount that would, together
589 with the utility's other costs, revenues, and investments to be recovered through rates for generation and
590 distribution services, cause the utility's earned return on its generation and distribution services to exceed
591 the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods
592 under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
593 December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2
594 less 70 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the
595 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of
596 combined test period earnings of the utility in a triennial review, for normalization of nonrecurring test
597 period costs and annualized adjustments for future costs, in determining any appropriate increase or
598 decrease in the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

599 If the Commission determines as a result of such triennial review that:

600 a. Revenue reductions related to energy efficiency measures or programs approved and deployed
601 since the utility's previous triennial review have caused the utility, as verified by the Commission, during
602 the test period or periods under review, considered as a whole, to earn more than 50 basis points below a
603 fair combined rate of return on its generation and distribution services or, for any test period commencing
604 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more
605 than 70 basis points below a fair combined rate of return on its generation and distribution services, as
606 determined in subdivision 2, without regard to any return on common equity or other matters determined
607 with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's

608 rates for generation and distribution services necessary to recover such revenue reductions. If the
609 Commission finds, for reasons other than revenue reductions related to energy efficiency measures, that
610 the utility has, during the test period or periods under review, considered as a whole, earned more than 50
611 basis points below a fair combined rate of return on its generation and distribution services or, for any test
612 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
613 Phase I Utility, more than 70 basis points below a fair combined rate of return on its generation and
614 distribution services, as determined in subdivision 2, without regard to any return on common equity or
615 other matters determined with respect to facilities described in subdivision 6, the Commission shall order
616 increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing
617 the utility's services and to earn not less than such fair combined rate of return, using the most recently
618 ended 12-month test period as the basis for determining the amount of the rate increase necessary.
619 However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility,
620 the Commission may not order a rate increase, and in all triennial reviews of a Phase I or Phase II utility,
621 the Commission may not order such rate increase unless it finds that the resulting rates are necessary to
622 provide the utility with the opportunity to fully recover its costs of providing its services and to earn not
623 less than a fair combined rate of return on both its generation and distribution services, as determined in
624 subdivision 2, without regard to any return on common equity or other matters determined with respect to
625 facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for
626 determining the permissibility of any rate increase under the standards of this sentence, and the amount
627 thereof; and provided that, solely in connection with making its determination concerning the necessity
628 for such a rate increase or the amount thereof, the Commission shall, in any triennial review proceeding
629 conducted prior to July 1, 2028, exclude from this most recently ended 12-month test period any remaining
630 investment levels associated with a prior customer credit reinvestment offset pursuant to subdivision d.

631 b. The utility has, during the test period or test periods under review, considered as a whole, earned
632 more than 50 basis points above a fair combined rate of return on its generation and distribution services
633 or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December
634 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its

635 generation and distribution services, as determined in subdivision 2, without regard to any return on
636 common equity or other matters determined with respect to facilities described in subdivision 6, the
637 Commission shall, subject to the provisions of subdivisions 8 d and 9, direct that 60 percent of the amount
638 of such earnings that were more than 50 basis points, or, for any test period commencing after December
639 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that 70 percent of the
640 amount of such earnings that were more than 70 basis points, above such fair combined rate of return for
641 the test period or periods under review, considered as a whole, shall be credited to customers' bills. Any
642 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the
643 Commission, following the effective date of the Commission's order, and shall be allocated among
644 customer classes such that the relationship between the specific customer class rates of return to the overall
645 target rate of return will have the same relationship as the last approved allocation of revenues used to
646 design base rates; or

647 c. In any triennial review proceeding conducted after January 1, 2020, for a Phase I Utility or after
648 January 1, 2021, for a Phase II Utility in which the utility has, during the test period or test periods under
649 review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on
650 its generation and distribution services or, for any test period commencing after December 31, 2012, for
651 a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a
652 fair combined rate of return on its generation and distribution services, as determined in subdivision 2,
653 without regard to any return on common equity or other matter determined with respect to facilities
654 described in subdivision 6, and the combined aggregate level of capital investment that the Commission
655 has approved other than those capital investments that the Commission has approved for recovery pursuant
656 to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test periods under
657 review in that triennial review proceeding in new utility-owned generation facilities utilizing energy
658 derived from sunlight, or from wind, and in electric distribution grid transformation projects, as
659 determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of the earnings that are more
660 than 70 basis points above the utility's fair combined rate of return on its generation and distribution
661 services for the combined test periods under review in that triennial review proceeding, the Commission

662 shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in subdivision b,
663 also order reductions to the utility's rates it finds appropriate. However, in the first triennial review
664 proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the utility's rates
665 ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual revenues,
666 with any reduction allocated to the utility's rates for generation services, and in each triennial review of a
667 Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that the
668 resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services
669 and to earn not less than a fair combined rate of return on its generation and distribution services, as
670 determined in subdivision 2, without regard to any return on common equity or other matters determined
671 with respect to facilities described in subdivision 6, using the most recently ended 12-month test period
672 as the basis for determining the permissibility of any rate reduction under the standards of this sentence,
673 and the amount thereof; and

674 d. (Expires July 1, 2028) In any triennial review proceeding conducted after December 31, 2017,
675 upon the request of the utility, the Commission shall determine, prior to directing that 70 percent of
676 earnings that are more than 70 basis points above the utility's fair combined rate of return on its generation
677 and distribution services for the test period or periods under review be credited to customer bills pursuant
678 to subdivision 8 b, the aggregate level of prior capital investment that the Commission has approved other
679 than those capital investments that the Commission has approved for recovery pursuant to a rate
680 adjustment clause pursuant to subdivision 6 made by the utility during the test period or periods under
681 review in both (i) new utility-owned generation facilities utilizing energy derived from sunlight, or from
682 onshore or offshore wind, and (ii) electric distribution grid transformation projects, as determined by the
683 utility's plant in service and construction work in progress balances related to such investments as recorded
684 per books by the utility for financial reporting purposes as of the end of the most recent test period under
685 review. Any such combined capital investment amounts shall offset any customer bill credit amounts, on
686 a dollar for dollar basis, up to the aggregate level of invested or committed capital under clauses (i) and
687 (ii). The aggregate level of qualifying invested or committed capital under clauses (i) and (ii) is referred
688 to in this subdivision as the customer credit reinvestment offset, which offsets the customer bill credit

689 amount that the utility has invested or will invest in new solar or wind generation facilities or electric
690 distribution grid transformation projects for the benefit of customers, in amounts up to 100 percent of
691 earnings that are more than 70 basis points above the utility's fair rate of return on its generation and
692 distribution services, and thereby reduce or eliminate otherwise incremental rate adjustment clause
693 charges and increases to customer bills, which is deemed to be in the public interest. If 100 percent of the
694 amount of earnings that are more than 70 basis points above the utility's fair combined rate of return on
695 its generation and distribution services, as determined in subdivision 2, exceeds the aggregate level of
696 invested capital in new utility-owned generation facilities utilizing energy derived from sunlight, or from
697 wind, and electric distribution grid transformation projects, as provided in clauses (i) and (ii), during the
698 test period or periods under review, then 70 percent of the amount of such excess shall be credited to
699 customer bills as provided in subdivision 8 b in connection with the triennial review proceeding. The
700 portion of any costs associated with new utility-owned generation facilities utilizing energy derived from
701 sunlight, or from wind, or electric distribution grid transformation projects that is the subject of any
702 customer credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through
703 the utility's rates for generation and distribution services over the service life of such facilities and shall
704 not thereafter be included in the utility's costs, revenues, and investments in future triennial review
705 proceedings conducted pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause
706 petition pursuant to subdivision 6. The portion of any costs associated with new utility-owned generation
707 facilities utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation
708 projects that is not the subject of any customer credit reinvestment offset pursuant to this subdivision may
709 be recovered through the utility's rates for generation and distribution services over the service life of such
710 facilities and shall be included in the utility's costs, revenues, and investments in future triennial review
711 proceedings conducted pursuant to subdivision 2 until such costs are fully recovered, and if such costs are
712 recovered through the utility's rates for generation and distribution services, they shall not be the subject
713 of a rate adjustment clause petition pursuant to subdivision 6. Only the portion of such costs of new utility-
714 owned generation facilities utilizing energy derived from sunlight, or from wind, or electric distribution
715 grid transformation projects that has not been included in any customer credit reinvestment offset pursuant

716 to this subdivision, and not otherwise recovered through the utility's rates for generation and distribution
717 services, may be the subject of a rate adjustment clause petition by the utility pursuant to subdivision 6.

718 The Commission's final order regarding such triennial review shall be entered not more than eight
719 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more
720 than 60 days after the date of the order. The fair combined rate of return on common equity determined
721 pursuant to subdivision 2 in such triennial review shall apply, for purposes of reviewing the utility's
722 earnings on its rates for generation and distribution services, to the entire three successive 12-month test
723 periods ending December 31 immediately preceding the year of the utility's subsequent triennial review
724 filing under subdivision 3 and shall apply to applicable rate adjustment clauses under subdivisions 5 and
725 6 prospectively from the date the Commission's final order in the triennial review proceeding, utilizing
726 rate adjustment clause true-up protocols as the Commission in its discretion may determine.

727 9. If, as a result of a triennial review required under this subsection and conducted with respect to
728 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
729 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
730 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
731 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
732 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
733 points above a fair combined rate of return on its generation and distribution services or, for any test period
734 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
735 Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution
736 services, as determined in subdivision 2, without regard to any return on common equity or other matters
737 determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates
738 of such utility at the end of the most recently ended 12-month test period exceeded the annual increases
739 in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as
740 published by the Bureau of Labor Statistics of the United States Department of Labor, compounded
741 annually, when compared to the total aggregate regulated rates of such utility as determined pursuant to
742 the review conducted for the base period, the Commission shall, unless it finds that such action is not in

743 the public interest or that the provisions of subdivisions 8 b and c are more consistent with the public
744 interest, direct that any or all earnings for such test period or periods under review, considered as a whole
745 that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a
746 Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such
747 fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of subdivisions
748 8 b and c, provided that no credits shall be provided pursuant to this subdivision in connection with any
749 triennial review unless such bill credits would be payable pursuant to the provisions of subdivision 8 d,
750 and any credits under this subdivision shall be calculated net of any customer credit reinvestment offset
751 amounts under subdivision 8 d. Any such credits shall be amortized and allocated among customer classes
752 in the manner provided by subdivision 8 b. For purposes of this subdivision:

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

758 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6,
759 except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December
760 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
761 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8
762 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
763 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of
764 July 1, 2009.

765 10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of
766 any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital
767 structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are
768 the obligation of non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity
769 ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize

770 a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment
771 pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure, revenues,
772 expenses or investments of any other entity with which such utility may be affiliated. In particular, and
773 without limitation, the Commission shall determine the federal and state income tax costs for any such
774 utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state
775 income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed
776 a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated
777 according to the applicable federal income tax rate and shall exclude any consolidated tax liability or
778 benefit adjustments originating from any taxable income or loss of its affiliates.

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

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

788 D. The Commission may determine, during any proceeding authorized or required by this section,
789 the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection
790 with the subject of the proceeding. A determination of the Commission regarding the reasonableness or
791 prudence of any such cost shall be consistent with the Commission's authority to determine the
792 reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et
793 seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its
794 customers from renewable energy resources, the Commission shall consider the extent to which such
795 renewable energy resources, whether utility-owned or by contract, further the objectives of the

796 Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and shall also consider whether the costs
797 of such resources is likely to result in unreasonable increases in rates paid by customers.

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

804 F. The Commission shall promulgate such rules and regulations as may be necessary to implement
805 the provisions of this section.

806 **§ 56-585.1:10. (Expires December 31, 2023) Program for electric infrastructure serving**
807 **business parks.**

808 The Virginia Economic Development Partnership shall conduct a ~~pilot~~ program ~~within the~~
809 ~~certificated service territory of~~ with each investor-owned electric utility, other than a utility described in
810 subsection G of § 56-580 (Pilot Utility), or within a business park located in Planning District 19 Phase I
811 and Phase II Utility, as those terms are defined in subsection A of § 56-585, in each such utility's service
812 territory or transmission zone for the purpose of promoting economic development in areas of the
813 Commonwealth. The ~~pilot~~ program shall allow any ~~Pilot Utility~~ such utility to complete the construction
814 phase of a transmission line and any associated substation and other associated facilities to provide ~~the~~
815 electric transmission and distribution infrastructure to a business park, as defined in § 56-576, located
816 within the ~~Pilot Utility's certificated service territory or within Planning District 19~~ utility's transmission
817 zone where investments by a locality or an industrial development authority or a similar political
818 subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of the General Assembly
819 in the siting, environmental review, pre-engineering design, and transmission right-of-way acquisition
820 have been made prior to the public announcement of a prospective occupant of the business park. Each
821 ~~pilot~~ program shall be subject to the following terms, conditions, and restrictions:

822 1. The costs incurred by ~~the Pilot Utility~~ a Phase I or Phase II Utility after January 1, 2019, to
823 construct, operate, and maintain ~~transmission lines and associated substations installed~~ the business park
824 electric infrastructure in order to provide service to a business park participating in the ~~pilot~~ program
825 outlined by this section shall be recovered by the ~~Pilot Utility~~ utility pursuant to a rate adjustment clause
826 approved by the Commission in subdivision A 4 of § 56-585.1.

827 ~~2. Qualifying projects shall have revenue sharing agreements between two or more localities.~~

828 ~~3.~~ Each individual qualifying project shall be less than ~~seven~~ 10 miles in length.

829 ~~4.~~ 3. The role of the Virginia Economic Development Partnership in conducting the ~~pilot~~ program
830 outlined by this section is to certify that up to ~~three~~ two petitions per year for each ~~Pilot Utility Phase I~~
831 and Phase II utility address the eligibility criteria for participation in the ~~pilot~~ program set forth in § 56-
832 576 and in this section.

833 4. For construction of business park electric infrastructure, a utility shall either (i) obtain a
834 certificate from the Commission pursuant to subdivision A 1 of § 56-265.2, unless such infrastructure is
835 an ordinary extension or improvement in the usual course of business or (ii) obtain approval pursuant to
836 the requirements of § 15.2-2232 and any applicable zoning ordinances by the locality or localities in which
837 the business park electric infrastructure will be located. If the utility seeks a certificate pursuant to
838 subdivision A 1 of § 56-265.2, the Commission shall issue its decision on the expedited certificate
839 application no later than six months from the date of filing. The need for any business park electric
840 infrastructure shall be satisfied if the business park to be served is approved for the program by the Virginia
841 Economic Development Partnership.

842 **2. That the State Corporation Commission shall institute a rulemaking proceeding by September 1,**
843 **2023, to allow for the establishment of requirements for applications and expedited certificates and**
844 **the timeline for Department of Environmental Quality staff to review such applications that are**
845 **submitted for the construction of business park electric infrastructure pursuant to § 56-585.1:10 of**
846 **the Code of Virginia, as amended by this act.**

847 **3. That the fourth enactment of Chapter 535 of the Acts of Assembly of 2019 is repealed.**

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