

HOUSE BILL NO. 1777

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on \_\_\_\_\_)

(Patron Prior to Substitute-Delegate O'Quinn)

A BILL to amend and reenact §§ 56-585.1 and 56-597 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-585.8, relating to Phase I Utilities; annual rate true-up reviews.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-585.1 and 56-597 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-585.8 as follows:**

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

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

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

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

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

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

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

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

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

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

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

108 Current Return for the Current Proceeding then pending would not be in the public interest, then the lower  
109 limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall  
110 be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least  
111 equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for  
112 all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States  
113 Department of Labor, since the date on which the Commission determined the Initial Return. For purposes  
114 of this subdivision:

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

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

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

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

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

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

135 test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for  
136 a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return  
137 as so determined, whether or not such combined return is within 70 basis points of the return as so  
138 determined, the utility may petition the Commission for approval of an increase in rates in accordance  
139 with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined  
140 rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this  
141 section. The provisions of this subdivision are subject to the provisions of subdivision 8.

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

145 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings  
146 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021,  
147 consisting of the schedules contained in the Commission's rules governing utility rate increase  
148 applications. Such filing shall encompass the three successive 12-month test periods ending December 31  
149 immediately preceding the year in which such proceeding is conducted, except that the filing for a Phase  
150 II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31, 2020,  
151 and in every such case the filing for each year shall be identified separately and shall be segregated from  
152 any other year encompassed by the filing. If the Commission determines that rates should be revised or  
153 credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously  
154 implemented related to facilities utilizing simple-cycle combustion turbines described in subdivision 6,  
155 shall be combined with the utility's costs, revenues and investments until the amounts that are the subject  
156 of such rate adjustment clauses are fully recovered, except as provided in § 56-585.8. The Commission  
157 shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial  
158 determination with regard to necessary rate revisions or credits to customers' bills, and the amounts  
159 thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of  
160 the utility's costs, revenues, and investments for the purposes of future triennial review proceedings. In a

161 triennial filing under this subdivision that does not result in an overall rate change a utility may propose  
162 an adjustment to one or more tariffs that are revenue neutral to the utility.

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

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

188 shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall  
189 be designed using the appropriate billing determinants in the retail rate schedules.

190 5. A ~~utility~~ Phase II Utility or electric cooperative may at any time, after the expiration or  
191 termination of capped rates, but not more than once in any 12-month period, petition the Commission for  
192 approval of one or more rate adjustment clauses for the timely and current recovery from customers of the  
193 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~~ Phase II  
304 Utility may at any time, after the expiration or termination of capped rates, petition the Commission for  
305 approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs  
306 of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of  
307 the 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~~ Phase II  
327 Utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of  
328 overhead distribution facilities to underground facilities that have been previously approved or are pending  
329 approval by the Commission through a petition by the utility under this subdivision. Such a petition  
330 concerning facilities described in clause (ii) that utilize nuclear power, ~~facilities described in clause (ii)~~  
331 ~~that are coal fueled and will be built by a Phase I Utility~~, or facilities described in clause (i) may also be  
332 filed before the expiration or termination of capped rates. A ~~utility~~ Phase II Utility that constructs or makes  
333 modifications to any such facility, or purchases any facility consisting of at least one megawatt of  
334 generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes  
335 goods or services sourced, in whole or in part, from one or more Virginia businesses, shall have the right  
336 to recover the costs of the facility, as accrued against income, through its rates, including projected  
337 construction work in progress, and any associated allowance for funds used during construction, planning,  
338 development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility  
339 of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as  
340 an incentive to undertake such projects, an enhanced rate of return on common equity calculated as  
341 specified below; however, in determining the amounts recoverable under a rate adjustment clause for new  
342 underground facilities, the Commission shall not consider, or increase or reduce such amounts recoverable  
343 because of (a) the operation and maintenance costs attributable to either the overhead distribution facilities  
344 being replaced or the new underground facilities or (b) any other costs attributable to the overhead  
345 distribution facilities being replaced. Notwithstanding the preceding sentence, the costs described in  
346 clauses (a) and (b) thereof shall remain eligible for recovery from customers through the utility's base rates  
347 for distribution service. A ~~utility~~ Phase II Utility filing a petition for approval to construct or purchase a  
348 facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and

349 located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or  
350 more Virginia businesses may propose a rate adjustment clause based on a market index in lieu of a cost  
351 of service model for such facility. A utility seeking approval to construct or purchase a generating facility  
352 that emits carbon dioxide shall demonstrate that it has already met the energy savings goals identified in  
353 § 56-596.2 and that the identified need cannot be met more affordably through the deployment or  
354 utilization of demand-side resources or energy storage resources and that it has considered and weighed  
355 alternative options, including third-party 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~~ Phase II Utility and described in clause (i), (ii), (iii) or (v) begins commercial operation, the  
359 date the utility becomes the owner of a purchased generation facility consisting of at least one megawatt  
360 of generating capacity using energy derived from sunlight and located in the Commonwealth and that  
361 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date  
362 new underground facilities are classified by the utility as plant in service. In any application to construct  
363 a new generating facility, the utility shall include, and the Commission shall consider, the social cost of  
364 carbon, as determined by the Commission, as a benefit or cost, whichever is appropriate. The Commission  
365 shall ensure that the development of new, or expansion of existing, energy resources or facilities does not  
366 have 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<br>Points | First Portion of Service<br>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<br>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~~ a Phase II Utility and recovered through a rate adjustment clause under this

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

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

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

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

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

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

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

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

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

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

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

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

530 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on  
531 a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility,  
532 except as provided in § 56-585.8. Any costs incurred by a utility prior to the filing of such petition, or  
533 during the consideration thereof by the Commission, that are proposed for recovery in such petition and  
534 that are related to subdivision 5 a, or that are related to facilities and projects described in clause (i) of  
535 subdivision 6, or that are related to new underground facilities described in clause (iv) of subdivision 6,  
536 shall be deferred on the books and records of the utility until the Commission's final order in the matter,  
537 or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Except  
538 as otherwise provided in subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility  
539 prior to the filing of such petition, or during the consideration thereof by the Commission, that are  
540 proposed for recovery in such petition and that are related to facilities and projects described in clause (ii)  
541 or clause (iii) of subdivision 6 that utilize nuclear power, ~~or coal fueled facilities and projects described~~  
542 ~~in clause (ii) of subdivision 6 if such coal fueled facilities will be built by a Phase I Utility~~, shall be  
543 deferred on the books and records of the utility until the Commission's final order in the matter, or until  
544 the implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs  
545 prudently incurred after the expiration or termination of capped rates related to other matters described in  
546 subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped rates,  
547 provided, however, that no provision of this act shall affect the rights of any parties with respect to the  
548 rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia Electric  
549 and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset for  
550 regulatory accounting and ratemaking purposes under which it shall defer its operation and maintenance  
551 costs incurred in connection with (i) the refueling of any nuclear-powered generating plant and (ii) other  
552 work at such plant normally performed during a refueling outage. The utility shall amortize such deferred  
553 costs over the refueling cycle, but in no case more than 18 months, beginning with the month in which  
554 such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of

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

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

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

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

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

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

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

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



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

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

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

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

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

717 grid transformation projects that has not been included in any customer credit reinvestment offset pursuant  
718 to this subdivision, and not otherwise recovered through the utility's rates for generation and distribution  
719 services, may be the subject of a rate adjustment clause petition by the utility pursuant to subdivision 6.

720 The Commission's final order regarding such triennial review shall be entered not more than eight  
721 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more  
722 than 60 days after the date of the order. The fair combined rate of return on common equity determined  
723 pursuant to subdivision 2 in such triennial review shall apply, for purposes of reviewing the utility's  
724 earnings on its rates for generation and distribution services, to the entire three successive 12-month test  
725 periods ending December 31 immediately preceding the year of the utility's subsequent triennial review  
726 filing under subdivision 3 and shall apply to applicable rate adjustment clauses under subdivisions 5 and  
727 6 prospectively from the date the Commission's final order in the triennial review proceeding, utilizing  
728 rate adjustment clause true-up protocols as provided in § 56-585.8 for Phase I Utilities and as the  
729 Commission in its discretion may determine.

730 9. If, as a result of a triennial review required under this subsection and conducted with respect to  
731 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has  
732 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later  
733 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the  
734 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility  
735 has, during the test period or periods under review, considered as a whole, earned more than 50 basis  
736 points above a fair combined rate of return on its generation and distribution services or, for any test period  
737 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I  
738 Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution  
739 services, as determined in subdivision 2, without regard to any return on common equity or other matters  
740 determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates  
741 of such utility at the end of the most recently ended 12-month test period exceeded the annual increases  
742 in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as  
743 published by the Bureau of Labor Statistics of the United States Department of Labor, compounded

744 annually, when compared to the total aggregate regulated rates of such utility as determined pursuant to  
745 the review conducted for the base period, the Commission shall, unless it finds that such action is not in  
746 the public interest or that the provisions of subdivisions 8 b and c are more consistent with the public  
747 interest, direct that any or all earnings for such test period or periods under review, considered as a whole  
748 that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a  
749 Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such  
750 fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of subdivisions  
751 8 b and c, provided that no credits shall be provided pursuant to this subdivision in connection with any  
752 triennial review unless such bill credits would be payable pursuant to the provisions of subdivision 8 d,  
753 and any credits under this subdivision shall be calculated net of any customer credit reinvestment offset  
754 amounts under subdivision 8 d. Any such credits shall be amortized and allocated among customer classes  
755 in the manner provided by subdivision 8 b. For purposes of this subdivision:

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

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

768 10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of  
769 any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital  
770 structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are

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

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

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

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

798 renewable energy resources, whether utility-owned or by contract, further the objectives of the  
799 Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and shall also consider whether the costs  
800 of such resources is likely to result in unreasonable increases in rates paid by customers.

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

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

809 **§ 56-585.8. Annual rate true-up reviews.**

810 A. Commencing on March 31, 2025, and annually thereafter, the Commission shall conduct annual  
811 rate true-up reviews (ART reviews) of the rates, terms, and conditions for the provision of generation and  
812 distribution services by a Phase I Utility, as defined in subdivision A 1 of § 56-585.1, that participated in  
813 triennial review proceedings in 2020 and 2023, and such Phase I Utility shall no longer be subject to  
814 triennial review proceedings pursuant to § 56-585.1.

815 B. In each ART review, the Commission shall review all rates, terms, and conditions for generation  
816 and distribution services, and such review shall be conducted in a single, combined proceeding, except for  
817 review of the following costs, which the utility shall continue to recover and the Commission shall  
818 continue to review separately, pursuant to the applicable statutory provisions: costs that are recovered  
819 pursuant to (i) § 56-249.6, (ii) subdivision A 4 of § 56-585.1, and (iii) § 56-585.6.

820 In each ART review, the Commission shall include all costs that the utility has previously  
821 recovered pursuant to rate adjustment clauses provided under subdivisions A 5 and 6 of § 56-585.1. Upon  
822 conclusion of the first ART review, all rate adjustment clauses that are in effect in 2024, except for those  
823 listed in clauses (i), (ii), and (iii), shall be combined with the rates, terms, and conditions for generation  
824 and distribution services by the utility.

825 C. A Phase I Utility subject to the provisions this section shall not be eligible to seek approval  
826 from the Commission for rate adjustment clauses provided under subdivisions A 5 and 6 of § 56-585.1.

827 D. Each ART proceeding shall commence on or before March 31, and annually thereafter, with  
828 the filing of a petition by each Phase I Utility subject to the provisions of this section. The Commission,  
829 after providing notice and an opportunity for hearing, shall grant a final order on such petition no later  
830 than November 20. Any revisions in rates ordered by the Commission pursuant to the ART review shall  
831 take effect no later than January 1 of the subsequent year.

832 E. As part of its final order for an ART review proceeding, the Commission shall determine:

833 1. The costs, including the allowed return as determined in its most recent return on common equity  
834 determination, that the utility has incurred in the previous calendar year to provide generation and  
835 distribution services to its customers, and whether those costs were prudently incurred;

836 2. The revenues that the utility has received in exchange for its generation and distribution services;

837 3. The difference, if any, between subdivisions 1 and 2;

838 4. The resulting amount of deficiency, if costs that the Commission finds were reasonable and  
839 prudent exceed revenue, or excess, if revenue exceeds costs, to be factored into the subsequent calendar  
840 year's revenue requirement;

841 5. The forecasted costs, including the allowed return as determined in subsection F, that the utility  
842 expects to incur in the subsequent calendar year to provide generation and distribution services to its  
843 customers, which costs remain subject to a prudency review in the subsequent ART review proceeding;  
844 and

845 6. The revenue requirement that the utility will implement in the subsequent calendar year, which  
846 shall be comprised of the prior year's deficiency or excess, as determined in subdivision 4, and the  
847 subsequent year's forecasted revenue requirement.

848 F. In the first and third ART review proceedings conducted pursuant to this section, and biennially  
849 thereafter in ART review proceedings, to determine the prior year's excess or deficiency, the Commission  
850 shall set the fair rate of return on common equity applicable to the generation and distribution services of  
851 the utility for the subsequent calendar year.



852 1. The Commission may use any methodology it finds consistent with the public interest to  
853 determine such fair rate of return on common equity; however, for applications received by the  
854 Commission on or after January 1, 2025, such rate of return shall not be set lower than the average of  
855 either of the following:

856 a. The returns on common equity reported to the Securities and Exchange Commission for the  
857 three most recent annual periods for which such data is available by not less than a majority of other  
858 investor-owned electric utilities in the peer group of the utility subject to such ART review, as selected by  
859 the Commission pursuant to subdivision 2; or

860 b. The authorized returns on common equity that are set by the applicable regulatory commissions  
861 for the same selected peer group, provided that the Commission shall not set such return more than 150  
862 basis points higher than the average of such authorized returns.

863 2. In selecting a majority of peer group investor-owned electric utilities for applications received  
864 by the Commission on or after January 1, 2025, the Commission shall first remove from such group (i)  
865 the two utilities within such group that have the lowest reported or authorized, as applicable, returns of  
866 the group and (ii) the two utilities within such group that have the highest reported or authorized, as  
867 applicable, returns of the group. The Commission shall then select a majority of the utilities remaining in  
868 such peer group. In its final order regarding such ART review proceeding, the Commission shall identify  
869 the utilities in such peer group it selected for the calculation of the limitation described in subdivision 1.  
870 For the purposes of this subsection, an investor-owned utility shall be deemed part of such peer group if  
871 (i) its principal operations are conducted in the southeastern United States east of the Mississippi River in  
872 either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state of  
873 Tennessee; (ii) it is a vertically-integrated electric utility providing generation, transmission, and  
874 distribution services and its facilities and operations are subject to state public utility regulation in the state  
875 where its principal operations are conducted; (iii) it had a long-term bond rating assigned by Moody's  
876 Investors Service of at least Baa at the end of the most recent test period subject to such ART review; and  
877 (iv) it is not an affiliate of the Phase I Utility subject to such ART review.

878 G. In each ART review, to determine the prior year's excess or deficiency, the Commission shall  
879 use an average rate base using the actual starting and end-of-test period capital structure, excluding any  
880 debt associated with any securitized bonds that are the obligation of non-Virginia jurisdictional customers.  
881 To determine the subsequent calendar year's revenue requirement, the Commission shall use the utility's  
882 actual end-of-test period capital structure and cost of capital without regard to the cost of capital, capital  
883 structure, or investments of any other entities with which the utility is affiliated, unless the Commission  
884 makes a finding, based on evidence in the record, that the debt to equity ratio of the actual end-of-test  
885 period capital structure of such utility is unreasonable, in which case the Commission may utilize a debt  
886 to equity ratio that it finds to be reasonable.

887 In an ART review for a Phase I Utility that is part of a publicly-traded, consolidated group, the  
888 Commission shall determine federal and state income tax costs as follows: (i) the utility's apportioned  
889 state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not  
890 filed a consolidated return with its affiliates, and (ii) the utility's federal income tax costs shall be  
891 calculated according to the applicable federal income tax rate and shall exclude any consolidated tax  
892 liability or benefit adjustments originating from any taxable income or loss of its affiliates.

893 H. The Commission is authorized to determine during any ART review the reasonableness or  
894 prudence of any cost subject to the ART review incurred or projected to be incurred by the utility, and a  
895 Phase I Utility shall recover through its rates such costs that the Commission finds to be reasonable and  
896 prudent.

897 I. In any ART review conducted pursuant to this section, a Phase I Utility or any other party may  
898 propose changes to its terms and conditions and the Commission may approve, reject, or amend any  
899 changes and may propose any special rates, contracts, or incentives pursuant to § 56-235.2.

900 J. Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ 56-585.5 and 56-  
901 596.2, except that any costs proposed by a Phase I Utility after January 1, 2025, for compliance with §§  
902 56-585.5 and 56-596.2 that would have been recovered under a rate adjustment clause as authorized under  
903 § 56-585.1 shall be recoverable only through an ART review proceeding.

904 **§ 56-597. Definitions.**

905 As used in this chapter:

906 "Affiliate" means a person that controls, is controlled by, or is under common control with an  
907 electric utility.

908 "Electric utility" means any investor-owned public utility that provides electric energy for use by  
909 retail customers, except investor-owned utilities subject to the provisions of § 56-585.8.

910 "Integrated resource plan" or "IRP" means a document developed by an electric utility that  
911 provides a forecast of its load obligations and a plan to meet those obligations by supply side and demand  
912 side resources over the ensuing 15 years to promote reasonable prices, reliable service, energy  
913 independence, and environmental responsibility.

914 "Retail customer" means any person that purchases retail electric energy for its own consumption  
915 at one or more metering points or non-metered points of delivery located in the Commonwealth.

916 #