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HOUSE BILL NO. 856  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Labor and Commerce  
on \_\_\_\_\_)  
(Patron Prior to Substitute--Delegate Williams)

A BILL to amend and reenact §§ 56-249.6, 56-585.1, and 56-585.8 of the Code of Virginia, relating to electric utilities; rate increases during certain months.

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

**1. That §§ 56-249.6, 56-585.1, and 56-585.8 of the Code of Virginia are amended and reenacted as follows:**

**§ 56-249.6. Recovery of fuel and purchased power costs.**

A. 1. Each electric utility that purchases fuel for the generation of electricity or purchases power and that was not, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed by the Commission. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each company to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or under-recovery of fuel costs previously incurred.

2. The Commission shall continuously review fuel costs and if it finds that any utility described in subdivision A 1 is in an over-recovery position by more than five percent, or likely to be so, it may reduce the fuel cost tariffs to correct the over-recovery.

3. Beginning July 1, 2009, for all utilities described in subdivision A 1 and subsection B, if the Commission approves any increase in fuel factor charges pursuant to this section that would increase the total rates of the residential class of customers of any such utility by more than 20 percent, the Commission, within six months following the effective date of such increase, shall review fuel costs, and

27 if the Commission finds that the utility is, or is likely to be, in an over-recovery position with respect to  
28 fuel costs for the 12-month period for which the increase in fuel factor charges was approved by more  
29 than five percent, it may reduce the utility's fuel cost tariffs to correct the over-recovery.

30 B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that  
31 purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case  
32 settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall  
33 remain in effect until the later of (i) July 1, 2007 or (ii) the establishment of tariff provisions under  
34 subsection C. Any such utility shall continue to report to the Commission annually its actual fuel costs,  
35 including the cost of purchased power.

36 C. Each electric utility described in subsection B shall submit annually to the Commission its  
37 estimate of fuel costs, including the cost of purchased power, for successive 12-month periods beginning  
38 on July 1, 2007, and each July 1 thereafter. Upon investigation of such estimates and hearings in  
39 accordance with law, the Commission shall direct each such utility to place in effect tariff provisions  
40 designed to recover the fuel costs determined by the Commission to be appropriate for such periods,  
41 adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such  
42 adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for  
43 any period prior to July 1, 2007, and (ii) the Commission shall order that the deferral portion, if any, of  
44 the total increase in fuel tariffs for all classes as determined by the Commission to be appropriate for the  
45 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred  
46 without interest and recovered from all classes of customers as follows: (i) in the 12-month period  
47 beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the Commission  
48 determines would increase the total rates of the residential class of customers of the utility by four percent  
49 over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii) in the 12-month  
50 period beginning July 1, 2009, that part of the balance of the deferral portion of the increase in fuel tariffs,  
51 if any, that the Commission determines would increase the total rates of the residential class of customers  
52 of the utility by four percent over the level of such total rates in existence on June 30, 2009, shall be  
53 recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire balance of the deferral

54 portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral portion of the increase in  
55 fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the amount of such increase in  
56 fuel tariffs that the Commission determines would increase the total rates of the residential class of  
57 customers of the utility by more than four percent over the level of such total rates in existence on June  
58 30, 2007.

59 D. A Phase I Utility shall not be required to file a case for fuel cost recovery in 2024. Commencing  
60 in 2025, annual filings shall be made by January 15 with interim rates effective March 1 of each year.

61 E. In proceedings under subsections A and C:

62 1. Energy revenues associated with off-system sales of power shall be credited against fuel factor  
63 expenses in an amount equal to the total incremental fuel factor costs incurred in the production and  
64 delivery of such sales. In addition, 75 percent of the total annual margins from off-system sales shall be  
65 credited against fuel factor expenses; however, the Commission, upon application and after notice and  
66 opportunity for hearing, may require that a smaller percentage of such margins be so credited if it finds  
67 by clear and convincing evidence that such requirement is in the public interest. The remaining margins  
68 from off-system sales shall not be considered in the biennial reviews of electric utilities conducted  
69 pursuant to § 56-585.1. In the event such margins result in a net loss to the electric utility, (i) no charges  
70 shall be applied to fuel factor expenses and (ii) any such net losses shall not be considered in the biennial  
71 reviews of electric utilities conducted pursuant to § 56-585.1. For purposes of this subsection, "margins  
72 from off-system sales" shall mean the total revenues received from off-system sales transactions less the  
73 total incremental costs incurred; and

74 2. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be  
75 the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of  
76 the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to  
77 maintain reliable sources of supply, economical generation mix, generating experience of comparable  
78 facilities, and minimization of the total cost of providing service.

79 In any proceeding for the recovery of fuel costs under this subdivision in which the costs a utility  
80 seeks to recover include costs incurred under a natural gas capacity contract for a term of more than 10

81 years that procures more than 250,000 dekatherms per day that has not previously been subject to a review  
82 under this subdivision, the Commission shall require the utility to prove by a preponderance of the  
83 evidence that the utility has (i) determined that the utility cannot meet its service obligations, giving due  
84 regard, in the Commission's sole discretion, to reliability of service and the need to maintain reliable  
85 sources of supply, without an additional fuel resource; (ii) reasonably identified and determined the date  
86 and amount of the new fuel resource it needs; (iii) objectively studied available alternative fuel resource  
87 options, as verified by the Commission, including options other than a new natural gas capacity contract  
88 or contracts to meet the identified and determined need; and (iv) determined that the natural gas capacity  
89 contract or contracts are the lowest-cost available option, taking into consideration fixed and variable costs  
90 and a reasonable projection of utilization. Absent the Commission's finding that the utility has proven by  
91 a preponderance of the evidence that the utility had complied with the requirements of clauses (i), (ii),  
92 (iii), and (iv), the Commission shall deny the utility's recovery of such costs. Nothing in this subdivision  
93 shall limit the Commission's discretion to review and make a determination as to the reasonableness of  
94 the recovery by a utility of costs, including costs incurred under a natural gas capacity contract, that were  
95 previously subject to a review under this subdivision.

96 ~~E-F.~~ The Commission is authorized to promulgate, in accordance with the provisions of this  
97 section, all rules and regulations necessary to allow the recovery by electric utilities of all of their prudently  
98 incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and  
99 promptly as possible, with no over-recovery or under-recovery, except as provided in subsection C, in a  
100 manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.

101 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or**  
102 **expire.**

103 A. During the first six months of 2009, the Commission shall, after notice and opportunity for  
104 hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation,  
105 distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings  
106 shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such  
107 proceedings the Commission shall determine fair rates of return on common equity applicable to the

108 generation and distribution services of the utility. In so doing, the Commission may use any methodology  
109 to determine such return it finds consistent with the public interest, but such return shall not be set lower  
110 than the average of the returns on common equity reported to the Securities and Exchange Commission  
111 for the three most recent annual periods for which such data are available by not less than a majority,  
112 selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in  
113 the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher  
114 than such average. The peer group of the utility shall be determined in the manner prescribed in  
115 subdivision 2 b. The Commission may increase or decrease such combined rate of return by up to 100  
116 basis points based on the generating plant performance, customer service, and operating efficiency of a  
117 utility, as compared to nationally recognized standards determined by the Commission to be appropriate  
118 for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may  
119 charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on  
120 common equity is more than 50 basis points below the combined rate of return as so determined, it shall  
121 be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover  
122 the costs of providing the utility's services and to earn not less than such combined rate of return. If the  
123 Commission finds that the utility's combined rate of return on common equity is more than 50 basis points  
124 above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to  
125 the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction  
126 unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs  
127 of providing its services and to earn not less than the fair rates of return on common equity applicable to  
128 the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's  
129 earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008  
130 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12  
131 months, as determined at the discretion of the Commission, following the effective date of the  
132 Commission's order and be allocated among customer classes such that the relationship between the  
133 specific customer class rates of return to the overall target rate of return will have the same relationship as  
134 the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission,

135 after notice and opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the  
136 provision of generation, distribution and transmission services by each investor-owned incumbent electric  
137 utility, subject to the following provisions:

138 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,  
139 and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-  
140 585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive  
141 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for  
142 a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-  
143 month test periods ending December 31 immediately preceding the year in which such review proceeding  
144 is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase  
145 II Utility in 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and  
146 ending December 31, 2020, with subsequent reviews on a biennial basis commencing in 2023, with such  
147 proceedings utilizing the two successive 12-month test periods ending December 31 immediately  
148 preceding the year in which such review proceeding is conducted. For purposes of this section, a Phase I  
149 Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate  
150 case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and  
151 a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

156 a. The Commission may use any methodology to determine such return it finds consistent with the  
157 public interest. However, for a Phase I Utility, for applications received by the Commission on or after  
158 January 1, 2020, such return shall not be set lower than the average of either (i) the returns on common  
159 equity reported to the Securities and Exchange Commission for the three most recent annual periods for  
160 which such data are available by not less than a majority, selected by the Commission as specified in  
161 subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such

162 triennial review or (ii) the authorized returns on common equity that are set by the applicable regulatory  
163 commissions for the same selected peer group, nor shall the Commission set such return more than 150  
164 basis points higher than such average.

165           b. For a Phase I Utility, in selecting such majority of peer group investor-owned electric utilities  
166 for applications received by the Commission on or after January 1, 2020, the Commission shall first  
167 remove from such group the two utilities within such group that have the lowest reported or authorized,  
168 as applicable, returns of the group, as well as the two utilities within such group that have the highest  
169 reported or authorized, as applicable, returns of the group, and the Commission shall then select a majority  
170 of the utilities remaining in such peer group. In its final order regarding such triennial review, the  
171 Commission shall identify the utilities in such peer group it selected for the calculation of such limitation.  
172 With respect to a Phase I Utility, for purposes of this subdivision 2, an investor-owned electric utility shall  
173 be deemed part of such peer group if (i) its principal operations are conducted in the southeastern United  
174 States east of the Mississippi River in either the states of West Virginia or Kentucky or in those states  
175 south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility providing  
176 generation, transmission, and distribution services whose facilities and operations are subject to state  
177 public utility regulation in the state where its principal operations are conducted, (iii) it had a long-term  
178 bond rating assigned by Moody's Investors Service of at least Baa at the end of the most recent test period  
179 subject to such review, and (iv) it is not an affiliate of the utility subject to such review or a utility whose  
180 fair rate of return on common equity is determined by the Commission.

181           c. The Commission may increase or decrease the utility's combined rate of return for generation  
182 and distribution services by up to 50 basis points based on factors that may include reliability, generating  
183 plant performance, customer service, and operating efficiency of a utility. Any such adjustment to the  
184 combined rate of return for generation and distribution services shall include consideration of nationally  
185 recognized standards determined by the Commission to be appropriate for such purposes.

186           d. In any Current Proceeding, the Commission shall determine whether the Current Return has  
187 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a  
188 percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-

189 U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the  
190 date on which the Commission determined the Initial Return. If so, the Commission may conduct an  
191 additional analysis of whether it is in the public interest to utilize such Current Return for the Current  
192 Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall  
193 be made without regard to any enhanced rate of return on common equity awarded pursuant to the  
194 provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration  
195 of overall economic conditions, the level of interest rates and cost of capital with respect to business and  
196 industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of goods  
197 and services, the effect on the utility's ability to provide adequate service and to attract capital if less than  
198 the Current Return were utilized for the Current Proceeding then pending, and such other factors as the  
199 Commission may deem relevant. If, as a result of such analysis, the Commission finds that use of the  
200 Current Return for the Current Proceeding then pending would not be in the public interest, then the lower  
201 limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall  
202 be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least  
203 equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for  
204 all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States  
205 Department of Labor, since the date on which the Commission determined the Initial Return. For purposes  
206 of this subdivision:

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

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

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



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

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

222 g. If the combined rate of return on common equity earned by the generation and distribution  
223 services is no more than 50 basis points above or below the return as so determined or, for any test period  
224 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I  
225 Utility, such return is no more than 70 basis points above or below the return as so determined, such  
226 combined return shall not be considered either excessive or insufficient, respectively. However, for any  
227 test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for  
228 a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return  
229 as so determined, whether or not such combined return is within 70 basis points of the return as so  
230 determined, the utility may petition the Commission for approval of an increase in rates in accordance  
231 with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined  
232 rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this  
233 section. The provisions of this subdivision are subject to the provisions of subdivision 8.

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

237 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings  
238 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021 and  
239 terminating thereafter. Such filing shall encompass the three successive 12-month test periods ending  
240 December 31 immediately preceding the year in which such proceeding is conducted, except that the filing  
241 for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December  
242 31, 2020. After 2021, each Phase II Utility shall make a biennial filing by March 31 of every second year,

243 except that the 2023 filing for a Phase II Utility shall be made on or after July 1, 2023. All biennial filings  
244 shall encompass the two successive 12-month test periods ending December 31 immediately preceding  
245 the year in which such review proceeding is conducted. All such filings shall consist of the schedules  
246 contained in the Commission's rules governing utility rate increase applications, and in every such case  
247 the filing for each year shall be identified separately and shall be segregated from any other year  
248 encompassed by the filing. In a filing under this subdivision that does not result in an overall rate change,  
249 a utility may propose an adjustment to one or more tariffs that are revenue neutral to the utility.

250           If the Commission determines that rates should be revised or credits be applied to customers' bills  
251 pursuant to subdivision 8 or 10, any rate adjustment clauses previously implemented related to facilities  
252 utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's  
253 costs, revenues, and investments until the amounts that are the subject of such rate adjustment clauses are  
254 fully recovered. The Commission shall combine such clauses with the utility's costs, revenues, and  
255 investments only after it makes its initial determination with regard to necessary rate revisions or credits  
256 to customers' bills, and the amounts thereof, but after such clauses are combined as specified in this  
257 paragraph, they shall thereafter be considered part of the utility's costs, revenues, and investments for the  
258 purposes of future review proceedings.

259           As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously  
260 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,  
261 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues,  
262 and investments for generation and distribution services. After such rate adjustment clauses are combined  
263 as specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,  
264 revenues, and investments for the purposes of future biennial review proceedings, and the combination of  
265 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023  
266 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination  
267 shall not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution  
268 services in its 2023 biennial proceeding.

269 4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for  
270 transmission services provided to the utility by the regional transmission entity of which the utility is a  
271 member, as determined under applicable rates, terms and conditions approved by the Federal Energy  
272 Regulatory Commission; (ii) costs charged to the utility that are associated with demand response  
273 programs approved by the Federal Energy Regulatory Commission and administered by the regional  
274 transmission entity of which the utility is a member; and (iii) costs incurred by the utility to construct,  
275 operate, and maintain transmission lines and substations installed in order to provide service to a business  
276 park. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more  
277 than once in any 12-month period, the Commission shall approve a rate adjustment clause under which  
278 such costs, including, without limitation, costs for transmission service; charges for new and existing  
279 transmission facilities, including costs incurred by the utility to construct, operate, and maintain  
280 transmission lines and substations installed in order to provide service to a business park; administrative  
281 charges; and ancillary service charges designed to recover transmission costs, shall be recovered on a  
282 timely and current basis from customers. Retail rates to recover these costs shall be designed using the  
283 appropriate billing determinants in the retail rate schedules.

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

287 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,  
288 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring such  
289 costs consistent with an order of the Commission entered under clause (vi) of subsection B of § 56-582.  
290 The Commission shall approve such a petition allowing the recovery of such costs that comply with the  
291 requirements of clause (vi) of subsection B of § 56-582;

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

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

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

308 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses  
309 for energy efficiency programs and pilot programs, which margin shall be equal to the general rate of  
310 return on common equity determined as described in subdivision 2. Beginning January 1, 2022, and  
311 thereafter, if the Commission determines that the utility meets in any year the annual energy efficiency  
312 standards set forth in § 56-596.2, in the following year, the Commission shall award a margin on energy  
313 efficiency program operating expenses in that year, to be recovered through a rate adjustment clause,  
314 which margin shall be equal to the general rate of return on common equity determined as described in  
315 subdivision 2. If the Commission does not approve energy efficiency programs that, in the aggregate, can  
316 achieve the annual energy efficiency standards, the Commission shall award a margin on energy efficiency  
317 operating expenses in that year for any programs the Commission has approved, to be recovered through  
318 a rate adjustment clause under this subdivision, which margin shall equal the general rate of return on  
319 common equity determined as described in subdivision 2. Any margin awarded pursuant to this  
320 subdivision shall be applied as part of the utility's next rate adjustment clause true-up proceeding. The  
321 Commission shall also award an additional 20 basis points for each additional incremental 0.1 percent in  
322 annual savings in any year achieved by the utility's energy efficiency programs approved by the

323 Commission pursuant to this subdivision, beyond the annual requirements set forth in § 56-596.2, provided  
324 that the total performance incentive awarded in any year shall not exceed 10 percent of that utility's total  
325 energy efficiency program spending in that same year.

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

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

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

341 Large general service customers shall be exempt from requirements that they participate in energy  
342 efficiency programs if the Commission finds that the large general service customer has, at the customer's  
343 own expense, implemented energy efficiency programs that have produced or will produce measured and  
344 verified results consistent with industry standards and other regulatory criteria stated in this section. The  
345 Commission shall, no later than June 30, 2021, adopt rules or regulations (a) establishing the process for  
346 large general service customers to apply for such an exemption, (b) establishing the administrative  
347 procedures by which eligible customers will notify the utility, and (c) defining the standard criteria that  
348 shall be satisfied by an applicant in order to notify the utility, including means of evaluation measurement  
349 and verification and confidentiality requirements. At a minimum, such rules and regulations shall require

350 that each exempted large general service customer certify to the utility and Commission that its  
351 implemented energy efficiency programs have delivered measured and verified savings within the prior  
352 five years. In adopting such rules or regulations, the Commission shall also specify the timing as to when  
353 a utility shall accept and act on such notice, taking into consideration the utility's integrated resource  
354 planning process, as well as its administration of energy efficiency programs that are approved for cost  
355 recovery by the Commission. Savings from large general service customers shall be accounted for in  
356 utility reporting in the standards in § 56-596.2.

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

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

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

371         e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate  
372 impacts to marine life caused by construction of offshore wind generating facilities, as described in § 56-  
373 585.1:11, or to comply with state or federal environmental laws or regulations applicable to generation  
374 facilities used to serve the utility's native load obligations, including the costs of allowances purchased  
375 through a market-based trading program for carbon dioxide emissions. The Commission shall approve

376 such a petition if it finds that such costs are necessary to comply with such environmental laws or  
377 regulations;

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

384 g. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate  
385 programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled  
386 individuals or (ii) organizations providing residential services to low-income, elderly, and disabled  
387 individuals for the installation of, or access to, equipment to generate electric energy derived from  
388 sunlight, provided the low-income, elderly, and disabled individuals, or organizations providing  
389 residential services to low-income, elderly, and disabled individuals, first participate in incentive programs  
390 for the installation of measures that reduce heating or cooling costs.

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

395 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet  
396 the utility's projected native load obligations and to promote economic development, a utility may at any  
397 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate  
398 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-  
399 fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the  
400 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or  
401 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major  
402 unit modifications of generation facilities, including the costs of any system or equipment upgrade, system

403 or equipment replacement, or other cost reasonably appropriate to extend the combined operating license  
404 for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new  
405 underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or  
406 less located within the Commonwealth, (v) one or more pumped hydroelectricity generation and storage  
407 facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source  
408 and such facilities and associated resources are located in the coalfield region of the Commonwealth as  
409 described in § 15.2-6002, regardless of whether such facility is located within or without the utility's  
410 service territory, or (vi) one or more electric distribution grid transformation projects; however, subject to  
411 the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often  
412 than annually and, in such petition, shall not seek any annual incremental increase in the level of  
413 investments associated with such a petition that exceeds five percent of such utility's distribution rate base,  
414 as such rate base was determined for the most recently ended 12-month test period in the utility's latest  
415 review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission  
416 prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed  
417 under clause (iv) or (vi), the level of investments approved for recovery in such proceedings shall be in  
418 addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings  
419 under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by a utility pursuant  
420 to clause (iv) shall be limited to any remaining costs associated with conversions of overhead distribution  
421 facilities to underground facilities that have been previously approved or are pending approval by the  
422 Commission through a petition by the utility under this subdivision. Such a petition concerning facilities  
423 described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and  
424 will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration  
425 or termination of capped rates. A utility that constructs or makes modifications to any such facility, or  
426 purchases any facility consisting of at least one megawatt of generating capacity using energy derived  
427 from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or  
428 in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as  
429 accrued against income, through its rates, including projected construction work in progress, and any



430 associated allowance for funds used during construction, planning, development and construction or  
431 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new  
432 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake  
433 such projects, an enhanced rate of return on common equity calculated as specified below; however, in  
434 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the  
435 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the  
436 operation and maintenance costs attributable to either the overhead distribution facilities being replaced  
437 or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities  
438 being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof  
439 shall remain eligible for recovery from customers through the utility's base rates for distribution service.  
440 A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt  
441 of generating capacity using energy derived from sunlight and located in the Commonwealth and that  
442 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose  
443 a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A  
444 utility seeking approval to construct or purchase a generating facility that emits carbon dioxide shall  
445 demonstrate that it has already met the energy savings goals identified in § 56-596.2 and that the identified  
446 need cannot be met more affordably through the deployment or utilization of demand-side resources or  
447 energy storage resources and that it has considered and weighed alternative options, including third-party  
448 market alternatives, in its selection process.

449         The costs of the facility, other than return on projected construction work in progress and  
450 allowance for funds used during construction, shall not be recovered prior to the date a facility constructed  
451 by the utility and described in clause (i), (ii), (iii), or (v) begins commercial operation, the date the utility  
452 becomes the owner of a purchased generation facility consisting of at least one megawatt of generating  
453 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or  
454 services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground  
455 facilities are classified by the utility as plant in service. In any application to construct a new generating  
456 facility, the utility shall include, and the Commission shall consider, the social cost of carbon, as

457 determined by the Commission, as a benefit or cost, whichever is appropriate. The Commission shall  
458 ensure that the development of new, or expansion of existing, energy resources or facilities does not have  
459 a disproportionate adverse impact on historically economically disadvantaged communities. The  
460 Commission may adopt any rules it deems necessary to determine the social cost of carbon and shall use  
461 the best available science and technology, including the Technical Support Document: Technical Update  
462 of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, published by  
463 the Interagency Working Group on Social Cost of Greenhouse Gases from the United States Government  
464 in August 2016, as guidance. The Commission shall include a system to adjust the costs established in this  
465 section with inflation.

466         Such enhanced rate of return on common equity shall be applied to allowance for funds used during  
467 construction and to construction work in progress during the construction phase of the facility and shall  
468 thereafter be applied to the entire facility during the first portion of the service life of the facility. The first  
469 portion of the service life shall be as specified in the table below; however, the Commission shall  
470 determine the duration of the first portion of the service life of any facility, within the range specified in  
471 the table below, which determination shall be consistent with the public interest and shall reflect the  
472 Commission's determinations regarding how critical the facility may be in meeting the energy needs of  
473 the citizens of the Commonwealth and the risks involved in the development of the facility. After the first  
474 portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to  
475 such facility for the remainder of its service life. As used herein, the service life of the facility shall be  
476 deemed to begin on the date a facility constructed by the utility and described in clause (i), (ii), (iii), or (v)  
477 begins commercial operation, the date the utility becomes the owner of a purchased generation facility  
478 consisting of at least one megawatt of generating capacity using energy derived from sunlight and located  
479 in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more  
480 Virginia businesses, or the date new underground facilities or new electric distribution grid transformation  
481 projects are classified by the utility as plant in service, and such service life shall be deemed equal in years  
482 to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of  
483 return on common equity shall be calculated by adding the basis points specified in the table below to the

484 utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the  
485 subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated  
486 for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an  
487 enhanced rate of return on common equity as determined pursuant to this subdivision, until such  
488 construction work in progress is included in rates. The construction of any facility described in clause (i)  
489 or (v) is in the public interest, and in determining whether to approve such facility, the Commission shall  
490 liberally construe the provisions of this title. The construction or purchase by a utility of one or more  
491 generation facilities with at least one megawatt of generating capacity, and with an aggregate rated  
492 capacity that does not exceed 16,100 megawatts, including rooftop solar installations with a capacity of  
493 not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts, that use energy derived from  
494 sunlight or from onshore wind and are located in the Commonwealth or off the Commonwealth's Atlantic  
495 shoreline, regardless of whether any of such facilities are located within or without the utility's service  
496 territory, is in the public interest, and in determining whether to approve such facility, the Commission  
497 shall liberally construe the provisions of this title. A utility may enter into short-term or long-term power  
498 purchase contracts for the power derived from sunlight generated by such generation facility prior to  
499 purchasing the generation facility. The replacement of any subset of a utility's existing overhead  
500 distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-  
501 per-mile over a preceding 10-year period with new underground facilities in order to improve electric  
502 service reliability is in the public interest. In determining whether to approve petitions for rate adjustment  
503 clauses for such new underground facilities that meet this criteria, and in determining the level of costs to  
504 be recovered thereunder, the Commission shall liberally construe the provisions of this title.

505         The conversion of any such facilities on or after September 1, 2016, is deemed to provide local  
506 and system-wide benefits and to be cost beneficial, and the costs associated with such new underground  
507 facilities are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of  
508 subsection C or D, shall be approved for recovery by the Commission pursuant to this subdivision,  
509 provided that the total costs associated with the replacement of any subset of existing overhead distribution  
510 tap lines proposed by the utility with new underground facilities, exclusive of financing costs, shall not

511 exceed an average cost per customer of \$20,000, with such customers, including those served directly by  
 512 or downline of the tap lines proposed for conversion, and, further, such total costs shall not exceed an  
 513 average cost per mile of tap lines converted, exclusive of financing costs, of \$750,000. A utility shall,  
 514 without regard for whether it has petitioned for any rate adjustment clause pursuant to clause (vi), petition  
 515 the Commission, not more than once annually, for approval of a plan for electric distribution grid  
 516 transformation projects. Any plan for electric distribution grid transformation projects shall include both  
 517 measures to facilitate integration of distributed energy resources and measures to enhance physical electric  
 518 distribution grid reliability and security. In ruling upon such a petition, the Commission shall consider  
 519 whether the utility's plan for such projects, and the projected costs associated therewith, are reasonable  
 520 and prudent. Such petition shall be considered on a stand-alone basis without regard to the other costs,  
 521 revenues, investments, or earnings of the utility; without regard to whether the costs associated with such  
 522 projects will be recovered through a rate adjustment clause under this subdivision or through the utility's  
 523 rates for generation and distribution services; and without regard to whether such costs will be the subject  
 524 of a customer credit offset, as applicable, pursuant to subdivision 8 d. The Commission's final order  
 525 regarding any such petition for approval of an electric distribution grid transformation plan shall be entered  
 526 by the Commission not more than six months after the date of filing such petition. The Commission shall  
 527 likewise enter its final order with respect to any petition by a utility for a certificate to construct and  
 528 operate a generating facility or facilities utilizing energy derived from sunlight, pursuant to subsection D  
 529 of § 56-580, within six months after the date of filing such petition. The basis points to be added to the  
 530 utility's general rate of return to calculate the enhanced rate of return on common equity, and the first  
 531 portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by  
 532 type of facility, as specified in the following table:

a Type of Generation Facility	Basis Points	First Portion of Service Life
b Nuclear-powered	200	Between 12 and 25 years
c Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years

d	Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
e	Coalbed methane gas powered	150	Between 5 and 15 years
f	Landfill gas powered	200	Between 5 and 15 years
g	Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

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

538           Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between  
539 July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be  
540 deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time  
541 as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent  
542 of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall  
543 not be deferred for recovery through a rate adjustment clause under this subdivision; however, such  
544 remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by  
545 the Commission in the test periods under review in the utility's next review filed after July 1, 2014. Thirty  
546 percent of all costs of a facility utilizing energy derived from offshore wind that the utility incurred  
547 between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013,  
548 may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at  
549 such time as the Commission provides in an order approving such a rate adjustment clause. The remaining  
550 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31,  
551 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however,  
552 such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined  
553 by the Commission in the test periods under review in the utility's next review filed after July 1, 2014.

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

558 Notwithstanding any provision of Chapter 296 of the Acts of Assembly of 2018, construction,  
559 purchasing, or leasing activities for a new utility-owned and utility-operated generating facility or facilities  
560 utilizing energy derived from sunlight or from onshore wind with an aggregate capacity of 16,100  
561 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an  
562 aggregate capacity of 100 megawatts, together with a utility-owned and utility-operated generating facility  
563 or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 3,000  
564 megawatts, are in the public interest. Additionally, energy storage facilities with an aggregate capacity of  
565 2,700 megawatts are in the public interest. To the extent that a utility elects to recover the costs of any  
566 such new generation or energy storage facility or facilities through its rates for generation and distribution  
567 services and does not petition and receive approval from the Commission for recovery of such costs  
568 through a rate adjustment clause described in clause (ii), the Commission shall, upon the request of the  
569 utility in a review proceeding, provide for a customer credit reinvestment offset, as applicable, pursuant  
570 to subdivision 8 d with respect to all costs deemed reasonable and prudent by the Commission in a  
571 proceeding pursuant to subsection D of § 56-580 or in a review proceeding.

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

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

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

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

598           Notwithstanding any other provision of this subdivision, if the Commission finds during the  
599 triennial review conducted for a Phase II Utility in 2021 that such utility has not filed applications for all  
600 necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled  
601 generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's  
602 generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been  
603 received, that the utility has not made reasonable and good faith efforts to construct one or more such  
604 facilities that will provide such additional total capacity within a reasonable time after obtaining such  
605 approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any  
606 enhanced rate of return on common equity previously applied to any such facility to no less than the

607 general rate of return for such utility and may apply no less than the utility's general rate of return to any  
608 such facility for which the utility seeks approval in the future under this subdivision.

609 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from  
610 the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or  
611 demonstration project involving a generation facility utilizing energy from offshore wind, and such utility  
612 has not, as of July 1, 2023, commenced construction as defined for federal income tax purposes of an  
613 offshore wind generation facility or facilities with a minimum aggregate capacity of 250 megawatts, then  
614 the Commission, if it finds it in the public interest, may direct that the costs associated with any such rate  
615 adjustment clause involving said test or demonstration project shall thereafter no longer be recovered  
616 through a rate adjustment clause pursuant to subdivision 6 and shall instead be recovered through the  
617 utility's rates for generation and distribution services, with no change in such rates for generation and  
618 distribution services as a result of the combination of such costs with the other costs, revenues, and  
619 investments included in the utility's rates for generation and distribution services. Any such costs shall  
620 remain combined with the utility's other costs, revenues, and investments included in its rates for  
621 generation and distribution services until such costs are fully recovered.

622 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on  
623 a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any  
624 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the  
625 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that  
626 are related to facilities and projects described in clause (i) of subdivision 6, or that are related to new  
627 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records  
628 of the utility until the Commission's final order in the matter, or until the implementation of any applicable  
629 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any  
630 costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during  
631 the consideration thereof by the Commission, that are proposed for recovery in such petition and that are  
632 related to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear  
633 power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled



634 facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until  
635 the Commission's final order in the matter, or until the implementation of any applicable approved rate  
636 adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of  
637 capped rates related to other matters described in subdivision 4, 5, or 6 shall be deferred beginning only  
638 upon the expiration or termination of capped rates, provided, however, that no provision of this act shall  
639 affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission  
640 in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004).  
641 A utility shall establish a regulatory asset for regulatory accounting and ratemaking purposes under which  
642 it shall defer its operation and maintenance costs incurred in connection with (i) the refueling of any  
643 nuclear-powered generating plant and (ii) other work at such plant normally performed during a refueling  
644 outage. The utility shall amortize such deferred costs over the refueling cycle, but in no case more than 18  
645 months, beginning with the month in which such plant resumes operation after such refueling. The  
646 refueling cycle shall be the applicable period of time between planned refueling outages for such plant.  
647 As of January 1, 2014, such amortized costs are a component of base rates, recoverable in base rates only  
648 ratably over the refueling cycle rather than when such outages occur, and are the only nuclear refueling  
649 costs recoverable in base rates. This provision shall apply to any nuclear-powered generating plant  
650 refueling outage commencing after December 31, 2013, and the Commission shall treat the deferred and  
651 amortized costs of such regulatory asset as part of the utility's costs for the purpose of proceedings  
652 conducted (a) with respect to filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant  
653 to § 56-245 or the Commission's rules governing utility rate increase applications as provided in subsection  
654 B. This provision shall not be deemed to change or reset base rates.

655         The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall  
656 be entered not more than three months, eight months, and nine months, respectively, after the date of filing  
657 of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment  
658 clause be applied to customers' bills not more than 60 days after the date of the order, or upon the  
659 expiration or termination of capped rates, whichever is later, provided that for a Phase I Utility such rate  
660 adjustment shall not occur during the months of November through February. Orders issued between

661 September 1 and December 31 shall direct that the applicable rate adjustment clause be applied to  
662 customers' bills beginning on March 1. At any time, the Commission may, in its discretion, for a Phase I  
663 Utility, upon petition by such a utility or upon its own initiated proceeding, direct the consolidation of any  
664 one or more subsets of rate adjustment clauses previously implemented pursuant to subdivision 5 or 6 in  
665 the interest of judicial economy, customer transparency, or other factors the Commission determines to  
666 be appropriate. Any subset of rate adjustment clauses so consolidated shall continue to be considered by  
667 the Commission without regard to the other costs, revenues, investments, or earnings of the utility and  
668 remain as a cost recovery mechanism independent from the utility's rates for generation and distribution  
669 services pursuant to § 56-585.8 and subdivisions 5 and 6, but will be combined as a single rate adjustment  
670 clause for cost recovery and review purposes. Any rate adjustment clause or subset of rate adjustment  
671 clauses so consolidated shall be named in a manner, as determined by the Commission, that reasonably  
672 informs customers as to the nature of the costs recovered by the consolidated rate adjustment clause. At  
673 any time, the Commission may, in its discretion, for a Phase II Utility, upon petition by such a utility or  
674 upon its own initiated proceeding, direct the consolidation of any one or more subsets of rate adjustment  
675 clauses previously implemented pursuant to subdivision 5 or 6 in the interest of judicial economy,  
676 customer transparency, or other factors the Commission determines to be appropriate. Any subset of rate  
677 adjustment clauses so consolidated shall continue to be considered by the Commission without regard to  
678 the other costs, revenues, investments, or earnings of the utility and remain as a cost recovery mechanism  
679 independent from the utility's rates for generation and distribution services pursuant to this subdivision  
680 and subdivisions 5 and 6, but will be combined as a single rate adjustment clause for cost recovery and  
681 review purposes. Any rate adjustment clause or subset of rate adjustment clauses so consolidated shall be  
682 named in a manner, as determined by the Commission, that reasonably informs customers as to the nature  
683 of the costs recovered by the consolidated rate adjustment clause.

684 8. For a Phase I Utility in any triennial review proceeding filed on or before June 30, 2023 or for  
685 a Phase II Utility in any biennial review proceeding, for the purposes of reviewing earnings on the utility's  
686 rates for generation and distribution services, the following utility generation and distribution costs not  
687 proposed for recovery under any other subdivision of this subsection, as recorded per books by the utility

688 for financial reporting purposes and accrued against income, shall be attributed to the test periods under  
689 review and deemed fully recovered in the period recorded: costs associated with asset impairments related  
690 to early retirement determinations made by the utility for utility generation facilities fueled by coal, natural  
691 gas, or oil or for automated meter reading electric distribution service meters; costs associated with  
692 projects necessary to comply with state or federal environmental laws, regulations, or judicial or  
693 administrative orders relating to coal combustion by-product management that the utility does not petition  
694 to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated with severe  
695 weather events; and costs associated with natural disasters. Such costs shall be deemed to have been  
696 recovered from customers through rates for generation and distribution services in effect during the test  
697 periods under review unless such costs, individually or in the aggregate, together with the utility's other  
698 costs, revenues, and investments to be recovered through rates for generation and distribution services,  
699 result in the utility's earned return on its generation and distribution services for the combined test periods  
700 under review to fall more than 50 basis points below the fair combined rate of return authorized under  
701 subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase  
702 II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the  
703 fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the  
704 Commission shall, in such review proceeding, authorize deferred recovery of such costs and allow the  
705 utility to amortize and recover such deferred costs over future periods as determined by the Commission.  
706 The aggregate amount of such deferred costs shall not exceed an amount that would, together with the  
707 utility's other costs, revenues, and investments to be recovered through rates for generation and  
708 distribution services, cause the utility's earned return on its generation and distribution services to exceed  
709 the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods  
710 under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after  
711 December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2  
712 less 70 basis points. Notwithstanding the prior sentence, the aggregate amount of actual and reasonable  
713 costs associated with severe weather events eligible for such deferral shall not exceed an amount that  
714 would, together with the utility's other costs, revenues, and investments to be recovered through rates for

715 generation and distribution services, cause the utility's earned return on its generation and distribution  
716 services to exceed the fair rate of return authorized for the combined test periods under review. For the  
717 purposes of determining any amount of costs that are associated with severe weather events, the  
718 Commission shall consider nationally recognized standards such as those published by the Institute of  
719 Electrical and Electronics Engineers (IEEE). Nothing in this section shall limit the Commission's  
720 authority, pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2,  
721 following the review of combined test period earnings of the utility in a review, for normalization of  
722 nonrecurring test period costs and annualized adjustments for future costs, in determining any appropriate  
723 increase or decrease in the utility's rates for generation and distribution services pursuant to subdivision 8  
724 a or 8 c.

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

726 a. Revenue reductions related to energy efficiency measures or programs approved and deployed  
727 since the utility's previous triennial review have caused the utility, as verified by the Commission, during  
728 the test period or periods under review, considered as a whole, to earn more than 50 basis points below a  
729 fair combined rate of return on its generation and distribution services or, for any test period commencing  
730 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more  
731 than 70 basis points below a fair combined rate of return on its generation and distribution services, as  
732 determined in subdivision 2, without regard to any return on common equity or other matters determined  
733 with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's  
734 rates for generation and distribution services necessary to recover such revenue reductions. If the  
735 Commission finds, for reasons other than revenue reductions related to energy efficiency measures, that  
736 the utility has, during the test period or periods under review, considered as a whole, earned more than 50  
737 basis points below a fair combined rate of return on its generation and distribution services or, for any test  
738 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a  
739 Phase I Utility, more than 70 basis points below a fair combined rate of return on its generation and  
740 distribution services, as determined in subdivision 2, without regard to any return on common equity or  
741 other matters determined with respect to facilities described in subdivision 6, the Commission shall order

742 increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing  
743 the utility's services and to earn not less than such fair combined rate of return, using the most recently  
744 ended 12-month test period as the basis for determining the amount of the rate increase necessary.  
745 However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility,  
746 the Commission may not order a rate increase, and in all triennial reviews of a Phase I or Phase II utility,  
747 the Commission may not order such rate increase unless it finds that the resulting rates are necessary to  
748 provide the utility with the opportunity to fully recover its costs of providing its services and to earn not  
749 less than a fair combined rate of return on both its generation and distribution services, as determined in  
750 subdivision 2, without regard to any return on common equity or other matters determined with respect to  
751 facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for  
752 determining the permissibility of any rate increase under the standards of this sentence, and the amount  
753 thereof; and provided that, solely in connection with making its determination concerning the necessity  
754 for such a rate increase or the amount thereof, the Commission shall, in any triennial review proceeding  
755 conducted prior to July 1, 2028, exclude from this most recently ended 12-month test period any remaining  
756 investment levels associated with a prior customer credit reinvestment offset pursuant to subdivision d.

757         b. The utility has, during the test period or test periods under review, considered as a whole, earned  
758 more than 50 basis points above a fair combined rate of return on its generation and distribution services  
759 or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December  
760 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its  
761 generation and distribution services, as determined in subdivision 2, without regard to any return on  
762 common equity or other matters determined with respect to facilities described in subdivision 6, the  
763 Commission shall, subject to the provisions of subdivisions 8 d and 9, direct that 60 percent of the amount  
764 of such earnings that were more than 50 basis points, or, for any test period commencing after December  
765 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that 70 percent of the  
766 amount of such earnings that were more than 70 basis points, above such fair combined rate of return for  
767 the test period or periods under review, considered as a whole, shall be credited to customers' bills. Any  
768 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the

769 Commission, following the effective date of the Commission's order, and shall be allocated among  
770 customer classes such that the relationship between the specific customer class rates of return to the overall  
771 target rate of return will have the same relationship as the last approved allocation of revenues used to  
772 design base rates; or

773           c. The utility has, during the test period or test periods under review, considered as a whole, earned  
774 more than 50 basis points above a fair combined rate of return on its generation and distribution services  
775 or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December  
776 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its  
777 generation and distribution services, as determined in subdivision 2, without regard to any return on  
778 common equity or other matter determined with respect to facilities described in subdivision 6, and the  
779 combined aggregate level of capital investment that the Commission has approved other than those capital  
780 investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant  
781 to subdivision 6 made by the utility during the test periods under review in that triennial review proceeding  
782 in new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, and in  
783 electric distribution grid transformation projects, as determined pursuant to subdivision 8 d, does not equal  
784 or exceed 100 percent of the earnings that are more than 70 basis points above the utility's fair combined  
785 rate of return on its generation and distribution services for the combined test periods under review in that  
786 triennial review proceeding, the Commission shall, subject to the provisions of subdivision 10 and in  
787 addition to the actions authorized in subdivision b, also order reductions to the utility's rates it finds  
788 appropriate. However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase  
789 II Utility, any reduction to the utility's rates ordered by the Commission pursuant to this subdivision shall  
790 not exceed \$50 million in annual revenues, with any reduction allocated to the utility's rates for generation  
791 services, and in each triennial review of a Phase I or Phase II Utility, the Commission may not order such  
792 rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully  
793 recover its costs of providing its services and to earn not less than a fair combined rate of return on its  
794 generation and distribution services, as determined in subdivision 2, without regard to any return on  
795 common equity or other matters determined with respect to facilities described in subdivision 6, using the

796 most recently ended 12-month test period as the basis for determining the permissibility of any rate  
797 reduction under the standards of this sentence, and the amount thereof; and

798 d. (Expires July 1, 2028) In any review proceeding conducted after December 31, 2017, upon the  
799 request of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that  
800 are more than 70 basis points above the utility's fair combined rate of return on its generation and  
801 distribution services for the test period or periods under review be credited to customer bills pursuant to  
802 subdivision 8 b, the aggregate level of prior capital investment that the Commission has approved other  
803 than those capital investments that the Commission has approved for recovery pursuant to a rate  
804 adjustment clause pursuant to subdivision 6 made by the utility during the test period or periods under  
805 review in both (i) new utility-owned generation facilities utilizing energy derived from sunlight, or from  
806 onshore or offshore wind, and (ii) electric distribution grid transformation projects, as determined by the  
807 utility's plant in service and construction work in progress balances related to such investments as recorded  
808 per books by the utility for financial reporting purposes as of the end of the most recent test period under  
809 review. Any such combined capital investment amounts shall offset any customer bill credit amounts, on  
810 a dollar for dollar basis, up to the aggregate level of invested or committed capital under clauses (i) and  
811 (ii). The aggregate level of qualifying invested or committed capital under clauses (i) and (ii) is referred  
812 to in this subdivision as the customer credit reinvestment offset, which offsets the customer bill credit  
813 amount that the utility has invested or will invest in new solar or wind generation facilities or electric  
814 distribution grid transformation projects for the benefit of customers, in amounts up to 100 percent of  
815 earnings that are more than 70 basis points above the utility's fair rate of return on its generation and  
816 distribution services, and thereby reduce or eliminate otherwise incremental rate adjustment clause  
817 charges and increases to customer bills, which is deemed to be in the public interest. If 100 percent of the  
818 amount of earnings that are more than 70 basis points above the utility's fair combined rate of return on  
819 its generation and distribution services, as determined in subdivision 2, exceeds the aggregate level of  
820 invested capital in new utility-owned generation facilities utilizing energy derived from sunlight, or from  
821 wind, and electric distribution grid transformation projects, as provided in clauses (i) and (ii), during the  
822 test period or periods under review, then 70 percent of the amount of such excess shall be credited to

823 customer bills as provided in subdivision 8 b in connection with the review proceeding. The portion of  
824 any costs associated with new utility-owned generation facilities utilizing energy derived from sunlight,  
825 or from wind, or electric distribution grid transformation projects that is the subject of any customer credit  
826 reinvestment offset pursuant to this subdivision shall not thereafter be recovered through the utility's rates  
827 for generation and distribution services over the service life of such facilities and shall not thereafter be  
828 included in the utility's costs, revenues, and investments in future review proceedings conducted pursuant  
829 to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to subdivision 6.  
830 The portion of any costs associated with new utility-owned generation facilities utilizing energy derived  
831 from sunlight, or from wind, or electric distribution grid transformation projects that is not the subject of  
832 any customer credit reinvestment offset pursuant to this subdivision may be recovered through the utility's  
833 rates for generation and distribution services over the service life of such facilities and shall be included  
834 in the utility's costs, revenues, and investments in future review proceedings conducted pursuant to  
835 subdivision 2 until such costs are fully recovered, and if such costs are recovered through the utility's rates  
836 for generation and distribution services, they shall not be the subject of a rate adjustment clause petition  
837 pursuant to subdivision 6. Only the portion of such costs of new utility-owned generation facilities  
838 utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation projects  
839 that has not been included in any customer credit reinvestment offset pursuant to this subdivision, and not  
840 otherwise recovered through the utility's rates for generation and distribution services, may be the subject  
841 of a rate adjustment clause petition by the utility pursuant to subdivision 6.

842 e. In any biennial review of a Phase II Utility, the Commission's final order regarding such review  
843 shall be entered not more than eight months after the date of filing, and any revisions in rates or credits so  
844 ordered shall take effect not more than 60 days after the date of the order. The fair combined rate of return  
845 on common equity determined pursuant to subdivision 2 in such review shall apply, for purposes of  
846 reviewing the utility's earnings on its rates for generation and distribution services, to the entire two or  
847 three, as applicable, successive 12-month test periods ending December 31 immediately preceding the  
848 year of the utility's subsequent review filing under subdivision 3 and shall apply to applicable rate  
849 adjustment clauses under subdivisions 5 and 6 prospectively from the date the Commission's final order



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

852 9. a. In any biennial review for a Phase II Utility filed on or prior to December 31, 2023, if the  
853 Commission determines that the utility has during the test period or test periods under review, considered  
854 as a whole, earned more than 70 basis points above a fair combined rate of return on its generation and  
855 distribution services previously authorized by the Commission, as determined in subdivision 2, without  
856 regard to any return on common equity or other matters determined with respect to facilities described in  
857 subdivision 6, which have not been combined with the utility's costs, revenues, and investments for  
858 generation and distribution services, the Commission shall direct that 85 percent of the amount of such  
859 earnings that were more than 70 basis points above such fair combined rate of return for the test period or  
860 periods under review, considered as a whole, be credited to customers' bills. Any such credits shall be  
861 amortized over a period of six to 12 months, as determined at the discretion of the Commission, following  
862 the effective date of the Commission's order, and shall be allocated among customer classes such that the  
863 relationship between the specific customer class rates of return to the overall target rate of return will have  
864 the same relationship as the last approved allocation of revenues used to design base rates.

865 b. In any biennial review for a Phase II Utility filed on or after January 1, 2024, if the Commission  
866 determines that the utility has during the test period or test periods under review, considered as a whole,  
867 earned above its fair combined rate of return on its generation and distribution services previously  
868 authorized by the Commission, as determined in subdivision 2, without regard to any return on common  
869 equity or other matters determined with respect to facilities described in subdivision 6, which have not  
870 been combined with the utility's costs, revenues, and investments for generation and distribution services,  
871 the Commission shall direct that 85 percent of the amount of such earnings above such fair combined rate  
872 of return for the test period or periods under review, considered as a whole, be credited to customers' bills.  
873 Further, if the Commission determines that during the test period or test periods under review, considered  
874 as a whole, a Phase II Utility earned more than 150 basis points above a fair combined rate of return on  
875 its generation and distribution services previously authorized by the Commission, without regard to any  
876 return on common equity or other matters determined with respect to facilities described in subdivision 6,

877 which have not been combined with the utility's costs, revenues, and investments for generation and  
878 distribution services, the Commission shall direct that all such earnings that were more than 150 basis  
879 points above such fair combined rate of return for the test period or periods under review, considered as a  
880 whole, be credited to customers' bills. Any such credits shall be amortized over a period of six to 12  
881 months, as determined at the discretion of the Commission, following the effective date of the  
882 Commission's order, and shall be allocated among customer classes such that the relationship between the  
883 specific customer class rates of return to the overall target rate of return will have the same relationship as  
884 the last approved allocation of revenues used to design base rates.

885 10. If, as a result of a triennial review required under this subsection and conducted with respect  
886 to any test period or periods under review ending later than December 31, 2010 (or, if the Commission  
887 has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending  
888 later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the  
889 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility  
890 has, during the test period or periods under review, considered as a whole, earned more than 50 basis  
891 points above a fair combined rate of return on its generation and distribution services or, for any test period  
892 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I  
893 Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution  
894 services, as determined in subdivision 2, without regard to any return on common equity or other matters  
895 determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates  
896 of such utility at the end of the most recently ended 12-month test period exceeded the annual increases  
897 in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as  
898 published by the Bureau of Labor Statistics of the United States Department of Labor, compounded  
899 annually, when compared to the total aggregate regulated rates of such utility as determined pursuant to  
900 the review conducted for the base period, the Commission shall, unless it finds that such action is not in  
901 the public interest or that the provisions of subdivisions 8 b and c are more consistent with the public  
902 interest, direct that any or all earnings for such test period or periods under review, considered as a whole  
903 that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a

904 Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such  
905 fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of subdivisions  
906 8 b and c, provided that no credits shall be provided pursuant to this subdivision in connection with any  
907 triennial review unless such bill credits would be payable pursuant to the provisions of subdivision 8 d,  
908 and any credits under this subdivision shall be calculated net of any customer credit reinvestment offset  
909 amounts under subdivision 8 d. Any such credits shall be amortized and allocated among customer classes  
910 in the manner provided by subdivision 8 b. For purposes of this subdivision:

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

916 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6,  
917 except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December  
918 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses  
919 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8  
920 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase  
921 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of  
922 July 1, 2009.

923 11. For purposes of this section, the Commission shall regulate the rates, terms and conditions of  
924 any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital  
925 structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are  
926 the obligation of non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity  
927 ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize  
928 a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment  
929 pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure, revenues,  
930 expenses or investments of any other entity with which such utility may be affiliated. In particular, and

931 without limitation, the Commission shall determine the federal and state income tax costs for any such  
932 utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state  
933 income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed  
934 a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated  
935 according to the applicable federal income tax rate and shall exclude any consolidated tax liability or  
936 benefit adjustments originating from any taxable income or loss of its affiliates.

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

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

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

956 E. Notwithstanding any other provision of law, the Commission shall determine the amortization  
957 period for recovery of any appropriate costs due to the early retirement of any electric generation facilities

958 owned or operated by any Phase I Utility or Phase II Utility. In making such determination, the  
959 Commission shall (i) perform an independent analysis of the remaining undepreciated capital costs; (ii)  
960 establish a recovery period that best serves ratepayers; and (iii) allow for the recovery of any carrying  
961 costs that the Commission deems appropriate.

962 F. The Commission shall include in its report required by subsection B of § 56-596 any information  
963 concerning the reliability impacts of generation unit additions and retirement determinations by a Phase I  
964 or Phase II Utility along with the potential impact on the purchase of power from generation assets outside  
965 the Virginia jurisdiction used to serve the utility's native load, utilizing information from the respective  
966 utility's integrated resource plan or information from the respective utility's plan filed pursuant to  
967 subsection D of § 56-585.5.

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

970 **§ 56-585.8. Biennial rate reviews.**

971 A. For the purposes of this section:

972 "Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

973 "Utility" means a Phase I Utility.

974 B. With the first review commencing on March 31, 2024, and biennially thereafter, the  
975 Commission shall conduct rate reviews of the rates, terms, and conditions for the provision of generation  
976 and distribution services by a Phase I Utility that participated in triennial review proceedings in 2020 and  
977 2023, and such Phase I Utility shall no longer be subject to triennial review proceedings pursuant to § 56-  
978 585.1.

979 C. In each biennial review, the Commission shall conduct a proceeding to review all rates, terms,  
980 and conditions for generation and distribution services with such proceeding utilizing the two successive  
981 12-month test periods ending December 31 immediately preceding the year in which such proceeding is  
982 conducted. Such biennial review shall be conducted in a single, combined proceeding, except for review  
983 of the following costs, which the utility shall continue to recover and the Commission shall continue to

984 review separately, pursuant to the applicable statutory provisions: costs that are recovered pursuant to (i)  
985 § 56-249.6, (ii) subdivisions A 4, 5, and 6 of § 56-585.1, and (iii) § 56-585.6.

986 D. Each biennial rate review proceeding shall commence on or before ~~March 31~~ April 30 of the  
987 biennial review year with the filing of a petition by each Phase I Utility subject to the provisions of this  
988 section. The Commission, after providing notice and an opportunity for hearing, shall grant a final order  
989 on such petition no later than ~~November 20~~ December 31. Any revisions in rates ordered by the  
990 Commission pursuant to the rate review shall take effect no later than ~~January 1~~ March 1 of the subsequent  
991 year.

992 E. In each biennial review proceeding, the Commission shall set the fair rate of return on common  
993 equity applicable to the generation and distribution services of the utility for the two such services  
994 combined and for any rate adjustment clauses approved under subdivision A 5 or 6 of § 56-585.1. The  
995 Commission may use any methodology it finds consistent with the public interest to determine the Phase  
996 I Utility's fair rate of return on common equity. The Commission may increase or decrease the combined  
997 rate of return for generation and distribution services by up to 50 basis points based on factors that may  
998 include reliability, generating plant performance, customer service, and operating efficiency of a utility.  
999 Any such adjustment to the combined rate of return for generation and distribution services shall include  
1000 consideration of nationally recognized standards determined by the Commission to be appropriate for such  
1001 purposes.

1002 F. In any biennial review for a Phase I Utility, if the Commission determines in its sole discretion  
1003 that the utility's existing rates for generation and distribution services will, on a going-forward basis, either  
1004 produce (i) revenues in excess of the utility's authorized rate of return or (ii) revenues below the utility's  
1005 authorized rate of return, then the Commission shall order any reductions or increases, as applicable and  
1006 necessary, to such rates for generation and distribution services that it deems appropriate to ensure the  
1007 resulting rates for generation and distribution services (a) are just and reasonable and (b) provide the utility  
1008 an opportunity to recover its costs of providing services over the rate period ending on December 31 of  
1009 the year of the utility's succeeding review and earn a fair rate of return authorized pursuant to this section.  
1010 Such determination shall be limited to the Phase I Utility's rates for generation and distribution services

1011 and shall not consider the costs or revenues recovered in any rate adjustment clause authorized pursuant  
1012 to this chapter.

1013 G. In any biennial review of rates for generation and distribution services, if the combined rate of  
1014 return on common equity earned is no more than 100 basis points above or below the fair combined rate  
1015 of return, as determined by the Commission, for the test period under review, then such combined return  
1016 shall not be considered either excessive or insufficient, respectively.

1017 1. If in any biennial review, the Commission finds that, during the test period under review,  
1018 considered as a whole, the utility has earned more than 100 basis points above the authorized fair combined  
1019 rate of return on its generation or distribution services, the Commission shall direct that 100 percent of the  
1020 amount of such earnings that were more than 100 basis points above such fair combined rate of return for  
1021 the test period under review, considered as a whole, be credited to customers' bills. Any such credits shall  
1022 be applied to customers' bills, as determined at the discretion of the Commission, following the effective  
1023 date of the Commission's order, and shall be allocated among customer classes such that the relationship  
1024 between the specific customer class rates of return to the overall target rate of return will have the same  
1025 relationship as the last approved allocation of revenues used to design base rates; or

1026 2. The Commission shall authorize deferred recovery for reasonable (i) actual costs associated with  
1027 severe weather events and (ii) actual costs associated with natural disasters, not currently in rates, and the  
1028 Commission shall allow the utility to amortize and recover such deferred costs over future periods as  
1029 determined by the Commission. The amount of any such deferral shall not exceed an amount that would,  
1030 together with the utility's other costs, revenues, and investments recovered through rates for generation  
1031 and distribution services for the test period under review, cause the utility's earned return on its generation  
1032 and distribution services to exceed 100 basis points above the fair combined rate of return applicable to  
1033 the test period under review. For the purposes of determining any amount of costs that are associated with  
1034 severe weather events, the Commission shall consider nationally recognized standards such as those  
1035 published by the Institute of Electrical and Electronics Engineers (IEEE).

1036 Any amount of a utility's earnings directed by the Commission to be credited to customers' bills  
1037 pursuant to this subsection shall not be considered for the purpose of determining the utility's earnings in  
1038 any subsequent biennial review.

1039 H. In any proceeding under this title, including each biennial review, to determine the prior two  
1040 years' excess or deficiency for the purposes of subsection F, the Commission shall use an average rate  
1041 base using the actual starting and end-of-test period capital structure of the utility, excluding any debt  
1042 associated with any securitized bonds and without regard to the cost of capital, capital structure, or  
1043 investments of any other entities with which the utility is affiliated. To determine a revenue requirement  
1044 in any proceeding under this title, the Commission shall use the utility's actual end-of-test period capital  
1045 structure and cost of capital without regard to the cost of capital, capital structure, or investments of any  
1046 other entities with which the utility is affiliated, including debt associated with any securitized bonds,  
1047 unless the Commission makes a finding, based on evidence in the record, that the debt to equity ratio of  
1048 the actual end-of-test period capital structure of such utility is unreasonable, in which case the Commission  
1049 may utilize a debt to equity ratio that it finds to be reasonable.

1050 In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the  
1051 Commission shall determine federal and state income tax costs as follows: (i) the utility's apportioned  
1052 state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not  
1053 filed a consolidated return with its affiliates, and (ii) the utility's federal income tax costs shall be  
1054 calculated according to the applicable federal income tax rate and shall exclude any consolidated tax  
1055 liability or benefit adjustments originating from any taxable income or loss of its affiliates.

1056 I. The Commission is authorized to determine during any biennial review the reasonableness or  
1057 prudence of any cost subject to the rate review incurred or projected to be incurred by the utility, and a  
1058 Phase I Utility shall recover such costs that the Commission finds to be reasonable and prudent.

1059 J. In any biennial review conducted pursuant to this section, a Phase I Utility or any other party  
1060 may propose changes to its terms and conditions and the Commission may approve, reject, or amend any  
1061 changes and may propose any special rates, contracts, or incentives pursuant to § 56-235.2.



**1062** K. Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ 56-585.5 and 56-  
**1063** 596.2.

**1064** L. To the extent that the provisions of this section are inconsistent with the provisions of § 56-  
**1065** 585.1, the provisions of this section shall control.

**1066** #