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SENATE BILL NO. 446

Offered January 9, 2008
Prefiled January 9, 2008

A BILL to amend and reenact §§ 56-249.6, 56-585.1, and 56-585.3 of the Code of Virginia; by adding in Title 56 a chapter numbered 24, consisting of sections numbered 56-597 through 56-607, by adding a section numbered 58.1-439.10:1, and by adding in Title 67 a chapter numbered 11, consisting of sections numbered 67-1100 and 67-1101; and to repeal § 56-585.2 of the Code of Virginia, relating to the establishment of mandatory state renewable energy and energy efficiency standards, a renewable energy worker training program; a Clean Energy Fund, and a production tax credit for wind and solar power, all relating to a clean energy future for the Commonwealth.

Patrons—Petersen, Edwards, Reynolds, Ticer and Whipple; Delegates: Barlow, Bouchard, Brink, Ebbin, Eisenberg, Englin, Lingamfelter, Marsden, Plum, Poisson, Scott, J.M., Toscano, Valentine and Vanderhye

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-249.6, 56-585.1, and 56-585.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 56 a chapter numbered 24, consisting of sections numbered 56-597 through 56-607, by adding a section numbered 58.1-439.10:1, and by adding in Title 67 a chapter numbered 11, consisting of sections numbered 67-1100 and 67-1101, 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 *and recoverable costs as defined in § 56-597*, 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.

B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that purchases fuel for the generation of electricity and that was, 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 remain in effect until the later of (i) July 1, 2007 or (ii) the establishment of tariff provisions under subsection C. Any such utility shall continue to report to the Commission annually its actual fuel costs, including the cost of purchased power.

C. Each electric utility described in subsection B shall submit annually to the Commission its estimate of fuel costs, including the cost of purchased power *and recoverable costs as defined in § 56-597*, for successive 12-month periods beginning on July 1, 2007, and each July 1 thereafter. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for such periods, adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the Commission shall order that the deferral portion, if any, of the total increase in fuel tariffs for all classes as determined by the Commission to be appropriate for the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred without interest and recovered from all classes of customers as follows: (i) in the 12-month period beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii) in the 12-month period beginning July 1, 2009, that part of the balance of the deferral portion of the increase in fuel tariffs, if any, that the Commission determines would increase the total rates of the residential class of customers of the utility by four

percent over the level of such total rates in existence on June 30, 2009, shall be recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire balance of the deferral portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral portion of the increase in fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the amount of such increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by more than four percent over the level of such total rates in existence on June 30, 2007.

D. In proceedings under subsections A and C:

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

2. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to maintain reliable sources of supply, economical generation mix, generating experience of comparable facilities, and minimization of the total cost of providing service. *The Commission shall also disallow recovery of any recoverable costs as defined in § 56-597 to the extent that any of such costs are otherwise recovered by the electric utility.*

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

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

A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title, except as modified herein. In such proceedings the Commission shall determine fair rates of return on common equity applicable to the generation and distribution services of the utility. In so doing, the Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher than such average. The peer group of the utility shall be determined in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points below the combined rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such combined rate of return. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than the fair rates of return on common equity applicable to the generation and distribution services; or (ii) direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order and be allocated among customer

classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall conduct biennial reviews of the rates, terms and conditions for the provision of generation, distribution and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. The first such review shall utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive 12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings utilizing the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

2. Subject to the provisions of subdivision 6, fair rates of return on common equity applicable separately to the generation and distribution services of such utility, and for the two such services combined, shall be determined by the Commission during each such biennial review, as follows:

a. The Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such biennial review, nor shall the Commission set such return more than 300 basis points higher than such average.

b. In selecting such majority of peer group investor-owned electric utilities, the Commission shall first remove from such group the two utilities within such group that have the lowest reported returns of the group, as well as the two utilities within such group that have the highest reported returns of the group, and the Commission shall then select a majority of the utilities remaining in such peer group. In its final order regarding such biennial review, the Commission shall identify the utilities in such peer group it selected for the calculation of such limitation. For purposes of this subdivision, an investor-owned electric utility shall be deemed part of such peer group if (i) its principal operations are conducted in the southeastern United States east of the Mississippi River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission and distribution services whose facilities and operations are subject to state public utility regulation in the state where its principal operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the most recent test period subject to such biennial review, and (iv) it is not an affiliate of the utility subject to such biennial review.

c. The Commission may increase or decrease such combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes, such action being referred to in this section as a Performance Incentive. If the Commission adopts such Performance Incentive, it shall remain in effect without change until the next biennial review for such utility is concluded and shall not be modified pursuant to any provision of the remainder of this subsection.

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

utilized for the Current Proceeding then pending, and such other factors as the Commission may deem relevant. If, as a result of such analysis, the Commission finds that use of the Current Return for the Current Proceeding then pending would not be in the public interest, then the lower limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission determined the Initial Return. For purposes of this subdivision:

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

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

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

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

f. The determination of such returns, including the determination of whether to adopt a Performance Incentive and the amount thereof, shall be made by the Commission on a stand-alone basis, and specifically without regard to any return on common equity or other matters determined with regard to facilities described in subdivision 6.

g. If the combined rate of return on common equity earned by both the generation and distribution services is no more than 50 basis points above or below the return as so determined, such combined return shall not be considered either excessive or insufficient, respectively.

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

3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2011, consisting of the schedules contained in the Commission's rules governing utility rate increase applications (20 VAC 5-200-30); however, if the Commission elects to stagger the dates of the biennial reviews of utilities as provided in subdivision 1, then Phase I utilities shall commence biennial filings in 2011 and Phase II utilities shall commence biennial filings in 2012. Such filing shall encompass the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted, and in every such case the filing for each year shall be identified separately and shall be segregated from any other year encompassed by the filing. If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented pursuant to subdivision 4 or 5 or those related to facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings. By the same date, each such utility shall also file its plan for its projected generation and transmission requirements to serve its native load for the next 10 years, including how the utility will obtain such resources, the capital requirements for providing such resources, and the anticipated sources of funding for such resources.

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

designed using the appropriate billing determinants in the retail rate schedules.

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

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

b. Projected and actual costs of providing incentives for the utility to design and operate fair and effective demand-management, conservation, energy efficiency, and load management programs. The Commission shall approve such a petition if it finds that the program is in the public interest and that the need for the incentives is demonstrated with reasonable certainty; provided that the Commission shall allow the recovery of such costs as it finds are reasonable; *and*

c. ~~Projected and actual costs of participation in a renewable energy portfolio standard program pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such a petition allowing the recovery of such costs as are provided for in a program approved pursuant to § 56-585.2; and~~

~~d.~~ Projected and actual costs of projects that the Commission finds to be necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations. If the Commission determines it would be just, reasonable, and in the public interest, the Commission may include the enhanced rate of return on common equity prescribed in subdivision 6 in a rate adjustment clause approved hereunder for a project whose purpose is to reduce the need for construction of new generation facilities by enabling the continued operation of existing generation facilities. In the event the Commission includes such enhanced return in such rate adjustment clause, the project that is the subject of such clause shall be treated as a facility described in subdivision 6 for the purposes of this section.

The Commission shall have the authority to determine the duration or amortization period for any adjustment clause approved under this subdivision.

6. To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, or (iii) one or more major unit modifications of generation facilities; however, such a petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a Phase I utility, or facilities described in clause (i) may also be filed before the expiration or termination of capped rates. A utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below. The costs of the facility, other than return on projected construction work in progress and allowance for funds used during construction, shall not be recovered prior to the date the facility begins commercial operation. Such enhanced rate of return on common equity shall be applied to allowance for funds used during construction and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility. After the first portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the date the facility begins commercial operation, and such service life shall be deemed equal in years to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the basis points specified in the table below to the utility's general rate of return, and such

enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause. No change shall be made to any Performance Incentive previously adopted by the Commission in implementing any rate of return under this subdivision. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as determined pursuant to this subdivision, until such construction work in progress is included in rates. The construction of any facility described in clause (i) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:

Type of Generation Facility	Basis Points	First Portion of Service Life
Nuclear-powered	200	Between 12 and 25 years
Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
Renewable powered	200	Between 5 and 15 years
Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

Generation facilities described in clause (ii) that utilize simple-cycle combustion turbines shall not receive an enhanced rate of return on common equity as described herein, but instead shall receive the utility's general rate of return during the construction phase of the facility and, thereafter, for the entire service life of the facility.

For purposes of this subdivision, "general rate of return" means the fair combined rate of return on common equity as it is determined by the Commission from time to time for such utility pursuant to subdivision 2. In any proceeding under this subdivision conducted prior to the conclusion of the first biennial review for such utility, the Commission shall determine a general rate of return for such utility in the same manner as it would in a biennial review proceeding.

Notwithstanding any other provision of this subdivision, if the Commission finds during the biennial review conducted for a Phase II utility in 2018 that such utility has not filed applications for all necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been received, that the utility has not made reasonable and good faith efforts to construct one or more such facilities that will provide such additional total capacity within a reasonable time after obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any enhanced rate of return on common equity previously applied to any such facility to no less than the general rate of return for such utility and may apply no less than the utility's general rate of return to any such facility for which the utility seeks approval in the future under this subdivision.

7. Any petition filed pursuant to subdivision 4, 5 or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to clause (a) of subdivision 5, or that are related to facilities and projects described in clause (i) of subdivision 6, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to facilities and projects described in clause (ii) of subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning only upon the expiration or termination of capped rates, provided, however, that no provision of this act shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate

adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

8. If the Commission determines as a result of such biennial review that:

(i) The utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return, using the most recently ended 12-month test period as the basis for determining the amount of the rate increase necessary. However, the Commission may not order such rate increase unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate increase under the standards of this sentence, and the amount thereof;

(ii) The utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9, direct that 60 percent of the amount of such earnings that were more than 50 basis points above such fair combined rate of return for the test period or periods under review, considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates; or

(iii) Such biennial review is the second consecutive biennial review in which the utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matter determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in clause (ii) of this subdivision, also order reductions to the utility's rates it finds appropriate. However, the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate reduction under the standards of this sentence, and the amount thereof.

The Commission's final order regarding such biennial review shall be entered not more than nine months after the end of the test period, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order.

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

return shall be credited to customers' bills, in lieu of the provisions of clauses (ii) and (iii) of subdivision 8. Any such credits shall be amortized and allocated among customer classes in the manner provided by clause (ii) of subdivision 8. For purposes of this subdivision:

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

"Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to clause (i) of subdivision 8; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase applications (20 VAC 5-200-30), as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July 1, 2009.

10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to clauses (i) and (iii) of subdivision 8, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any other entity with which such utility may be affiliated. In particular, and without limitation, the Commission shall determine the federal and state income tax costs for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications (20 VAC 5-200-30); however, in any such filing, a fair rate of return on common equity shall be determined pursuant to subdivision 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power costs as provided in § 56-249.6.

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

D. Nothing in this section shall preclude the Commission from determining, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

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

§ 56-585.3. Regulation of cooperative rates after rate caps.

After the expiration or termination of capped rates, the rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of this title shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.) of this title, as modified by the following provisions:

1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale power cost which occurred during the capped rate period, other than in a general rate proceeding.

2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for distribution services at any time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of 5 percent in such rates in any three year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The cooperative will promptly file any such revised rates with the Commission for informational purposes.

3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board

of directors, make any adjustment to its terms and conditions that does not affect the cooperative's revenues from the distribution or supply of electric energy. In addition, a cooperative may make such adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The cooperative will promptly file any such amended terms and conditions with the Commission for informational purposes.

4. A cooperative may, at any time after the expiration or termination of capped rates, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the costs described in subdivisions A 5 b and ~~d~~ *c* of § 56-585.1.

5. None of the adjustments described in subdivisions 2 through 4 will apply to the rates paid by any customer that takes service by means of dedicated distribution facilities and had noncoincident peak demand in excess of 90 megawatts in calendar year 2006.

Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust any terms and conditions of service or agreements regarding pole attachments or the use of the cooperative's poles or conduits.

CHAPTER 24.

RENEWABLE ENERGY AND ENERGY EFFICIENCY REQUIREMENTS.

§ 56-597. Definitions.

As used in this chapter:

"Closed-loop biomass" has the same meaning ascribed to it in § 45 (c) (2) of the Internal Revenue Code, as amended.

"Commission" means the State Corporation Commission.

"Cooperative" has the same meaning ascribed to it in § 56-576.

"Customer-generator" means an eligible customer-generator as defined in subsection B of § 56-594.

"Department" means the Department of Environmental Quality.

"Distributor" means an investor-owned electric utility.

"Electricity generated from renewable generation sources," when used in the context of renewable generation sources that do not generate electricity, such as residential geothermal heating systems and solar water heating systems for pools, means the reduction in electricity generation that results from the use of such renewable generation sources that do not generate electricity.

"Energy efficiency programs" means programs that reduce waste of electricity, or that reduce the amount of electricity consumed while producing the same or a similar outcome.

"Generator" means the owner of a renewable energy system.

"Geothermal sources" means technologies that produce electricity by extracting heat from geothermal reserves in the earth's crust.

"Hydropower systems" do not include pump storage facilities.

"Incremental hydropower" means new hydroelectric generating capacity, added to existing hydroelectric generation stations or added to existing dams and impoundments, that:

1. Improves or does not adversely change existing impacts to aquatic systems;

2. Provides an adequate instream flow for protection of existing instream beneficial uses, including wildlife and cultural and historic resources; and

3. Provides for safe and effective fish passage.

"Large biomass and biofuel systems with significant environmental impact" means the following sources of energy: (i) municipal solid waste sources; (ii) sources that generate electricity through the combustion of open-loop biomass; (iii) sources that generate electricity through the combustion of animal manure and animal bedding materials, such as poultry litter, that contain manure; and (iv) hydropower systems that do not constitute large renewable energy systems.

"Large renewable energy systems" means the following sources of energy: (i) wind power technology having a capacity greater than 500 kilowatts; (ii) hydropower systems having a capacity of no more than 500 kilowatts; (iii) hydropower systems that have a capacity greater than 500 kilowatts and that either do not use a dam or are low-impact hydropower; (iv) incremental hydropower systems having a capacity greater than 500 kilowatts but less than 30 megawatts per facility; (v) nonincremental hydropower systems that are developed coincident with the construction of a new dam that has as its primary purpose something other than power production; (vi) geothermal sources other than residential geothermal heating systems constituting small renewable energy systems; (vii) ocean energy sources; (viii) sources that generate electricity through the combustion of combustible gases recovered from landfills; (ix) sources that generate electricity through the combustion of closed-loop biomass; (x) sources that generate electricity through the combustion of combustible gases recovered from the anaerobic digestion of organic materials, including yard waste, such as grass clippings and leaves, food waste, animal waste, and sewage sludge; and (xi) active solar water heating systems for pools.

"Low-impact hydropower" means hydroelectric generating capacity that meets the certification

standards established by the Low Impact Hydropower Institute or American Rivers, Inc., or one of their successors.

"Municipal electricity supplier" means an electric utility owned or operated by a city, county, town, authority, or other political subdivision of the Commonwealth.

"Municipal solid waste sources" means existing waste-to-energy facilities that the Department has determined are in compliance with current environmental standards, including, but not limited to, all applicable requirements of the Clean Air Act (69 Stat. 322, 42 U.S.C. § 7401 et seq.) and associated permit restrictions, and all applicable requirements of the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act.

"Net energy metering" has the same meaning ascribed to it in § 56-594.

"Ocean energy sources" means technologies that produce electricity derived from ocean energy including wave or tidal action, currents, or thermal differences.

"Open-loop biomass" has the same meaning ascribed to it in § 45 (c) (3) of the Internal Revenue Code, as amended.

"Recoverable costs" means the incremental portion of the costs incurred by a distributor to comply with the requirements of this chapter that it acquire a sufficient number of renewable energy credits by self-generating or purchasing sufficient renewable energy credits, or that it make alternative compliance payments. With regard to self-generating renewable energy, recoverable costs shall include reasonable and prudently incurred costs of (i) constructing, operating, and maintaining facilities for the generation of renewable energy; (ii) constructing, operating, and maintaining lines and related facilities required to add such facilities to the transmission grid; and (iii) establishing and implementing verified energy efficiency programs. The incremental portion of such costs means the portion of such costs, if any, that exceeds the costs that would reasonably have been incurred by the distributor in meeting its obligations to provide generation to its retail customers in the absence of the requirements of this chapter, and which costs would not otherwise be recoverable by the distributor under § 56-249.6 in the absence of this chapter.

"Regional transmission organization" means an entity approved by the Federal Energy Regulatory Commission (FERC) that is created to operate and manage the electrical transmission grids of the member electric transmission utilities as required under FERC Order 2000, Docket No. RM99-2-000, FERC Chapter 31.089 (1999) or any successor organization approved by the FERC.

"Renewable energy" means electricity generated or derived from sources included in the definitions of small renewable energy systems, large renewable energy systems, and large biomass and biofuel systems with significant environmental impact, and from electric energy savings from energy efficiency programs.

"Renewable energy credit" means a tradable instrument that is used to establish, verify, and monitor compliance with the requirements of § 56-598. One renewable energy credit shall represent one megawatt hour of electricity generated from renewable generation sources or resulting from energy efficiency programs that comply with the requirements of the program administrator and of Commission regulations pursuant to § 56-600.

"Renewable energy system" means a facility or system that uses a source included in the definition of a small renewable energy system, large renewable energy system, or large biomass and biofuel system with significant environmental impact to generate electricity, and includes verified energy efficiency programs.

"Renewable generation sources" means sources included in the definition of a small renewable energy system, large renewable energy system, or large biomass and biofuel system with significant environmental impact.

"Reporting year" means the 12-month period from July 1 through June 30. A reporting year shall be numbered according to the calendar year in which it ends.

"Retail customer" has the same meaning ascribed to it in § 56-576.

"Small renewable energy systems" means the following sources of energy: (i) solar photovoltaic technology; (ii) wind power technology having a capacity of no more than 500 kilowatts; (iii) technology used to generate electricity that is fed back to the electric grid by an eligible customer-generator under the program established pursuant to § 56-594; (iv) solar water heating systems that are not used for heating pools; and (v) residential geothermal heating systems.

"Supplier" means any person who sells electric energy to retail customers, excluding any cooperative, municipal electricity supplier, or generator that produces electric energy exclusively for its own consumption or the consumption by an affiliate.

"True-up period" means the period each year from the end of the reporting year until August 31 of the calendar year in which the reporting year ends.

"Wind power" means electricity derived from wind facilities located and designed to minimize damage to Virginia's natural, cultural, and scenic resources.

§ 56-598. Requirements for use of renewable generation sources and energy efficiency programs;

cost recovery.

A. By July 1, 2020, and in subsequent reporting years, a minimum of 20% of the electric energy sold by each supplier to retail customers in the Commonwealth shall be generated from renewable generation energy sources, in accordance with the following schedules:

1. During each reporting year commencing on or after July 1, 2008, the minimum percentage of electric energy sold by each supplier to retail customers in the Commonwealth that is generated from small renewable energy systems shall be as follows:

a. For reporting year 2009, 0.01%.

b. For reporting year 2010, 0.025%.

c. For reporting year 2011, 0.05%.

d. For reporting year 2012, 0.075%.

e. For reporting year 2013, 0.1%.

f. For reporting year 2014, 0.125%.

g. For reporting year 2015, 0.15%.

h. For reporting year 2016, 0.175%.

i. For reporting year 2017, 0.2%.

j. For reporting year 2018, 0.233%.

k. For reporting year 2019, 0.266%.

l. For reporting year 2020 and subsequent reporting years, 0.3%.

2. During each reporting year commencing on or after July 1, 2008, the minimum percentage of electric energy sold by each supplier to retail customers in the Commonwealth that is generated from large renewable energy systems shall be as follows:

a. For reporting year 2009, 1%.

b. For reporting year 2010, 2%.

c. For reporting year 2011, 3%.

d. For reporting year 2012, 4%.

e. For reporting year 2013, 5%.

f. For reporting year 2014, 6%.

g. For reporting year 2015, 7.5%.

h. For reporting year 2016, 9%.

i. For reporting year 2017, 10.5%.

j. For reporting year 2018, 12%.

k. For reporting year 2019, 14%.

l. For reporting year 2020 and subsequent reporting years, 16.7%.

3. During each reporting year commencing on or after July 1, 2008, the minimum percentage of electric energy sold by each supplier to retail customers in the Commonwealth that is generated from large biomass and biofuel systems with significant environmental impact shall be as follows:

a. For reporting year 2009, 1.9%.

b. For reporting year 2010, 2%.

c. For reporting year 2011, 2.1%.

d. For reporting year 2012, 2.2%.

e. For reporting year 2013, 2.3%.

f. For reporting year 2014, 2.4%.

g. For reporting year 2015, 2.5%.

h. For reporting year 2016, 2.6%.

i. For reporting year 2017, 2.7%.

j. For reporting year 2018, 2.8%.

k. For reporting year 2019, 2.9%.

l. For reporting year 2020 and subsequent reporting years, 3.0%.

B. By July 1, 2020, and in subsequent reporting years, each supplier shall achieve reductions in the consumption of electric energy by its retail customers in the Commonwealth, through the implementation of energy efficiency programs, in an amount equal to not less than 10% of the amount of electric energy consumed by its retail customers in 2007, in accordance with the following schedule:

During each reporting year commencing on or after July 1, 2008, the minimum percentage of reductions in the consumption of electric energy that shall be achieved through the supplier's implementation of energy efficiency programs shall be as follows:

1. For reporting year 2009, 0.5%.

2. For reporting year 2010, 1%.

3. For reporting year 2011, 1.5%.

4. For reporting year 2012, 2%.

5. For reporting year 2013, 3%.

6. For reporting year 2014, 4%.
7. For reporting year 2015, 5%.
8. For reporting year 2016, 6%.
9. For reporting year 2017, 7%.
10. For reporting year 2018, 8%.
11. For reporting year 2019, 9%.
12. For reporting year 2020 and subsequent reporting years, 10%.

C. A distributor shall have the right to recover its recoverable costs as provided in § 56-249.6.

§ 56-599. Demonstrating compliance; reporting.

By September 1 of each year, commencing in 2009, each supplier shall file an annual report with the Commission demonstrating that the supplier has met the requirements of § 56-598 for the reporting year ending the preceding June 30 either by self-generating or purchasing sufficient renewable energy credits pursuant to § 56-600, (ii) making appropriate alternative compliance payments pursuant to § 56-602, or (iii) any combination of (i) and (ii).

§ 56-600. Renewable energy credits.

A. The Commission shall establish a renewable energy credits program and shall appoint a renewable energy credits program administrator as needed to implement this chapter.

B. Generators seeking to participate in the renewable energy credits program may apply to the Commission for qualification either directly or through designated agents.

C. The Commission shall establish a procedure to determine whether a generator that applies for renewable energy credits qualifies for such credits.

D. For all other renewable energy credit program functions, the Commission shall appoint an independent entity to provide such services. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the approval by the Commission of such a renewable energy credits service provider.

E. The administrator and service provider shall have those powers and duties assigned by Commission regulations. Such powers and duties shall include, but not be limited to, the following:

1. To create and administer a renewable energy credits certification, tracking, and reporting program. This program should include, at a minimum, processes to qualify renewable energy systems, including systems that use qualified renewable energy resources as co-fuels, and to determine when and how renewable energy credits shall be created, accounted for, transferred, and retired; and

2. To submit reports to the Commission at such times and in such manner as the Commission shall direct.

F. The Commission shall establish procedures for verifying the production of renewable energy, and savings of electric energy, by renewable energy systems for which credits are created that are certified as qualified.

G. A supplier that complies with the requirements of § 56-598 by self-generating or purchasing sufficient renewable energy credits shall submit documentation of such self-generation or purchases, or a combination thereof, to the program administrator.

H. Renewable energy credits of one category shall not be used to meet the requirements of this chapter in another category except as follows:

1. Credits for small renewable energy systems in excess of a supplier's requirements for compliance with the requirement for small renewable energy systems may, at the supplier's option, be used for compliance with the requirements for large renewable energy systems or compliance with the requirements for large biomass and biofuel systems with significant environmental impact.

2. Credits for large renewable energy systems in excess of a supplier's requirements for compliance with the requirements for large renewable energy systems may, at the supplier's option, be used for compliance with the requirements for large biomass and biofuel systems with significant environmental impact.

3. Energy efficiency credits in excess of a supplier's requirement under subsection B of § 56-598 may, at the supplier's option, be used first for compliance with the requirements for large biomass and biofuel systems with significant environmental impact until compliant, then for compliance with 50% of the requirements for large renewable energy systems until compliant, and then for compliance with 25% of requirements for small renewable energy systems.

I. A supplier electing to take advantage of any of the options described in the preceding subsection shall so indicate in its compliance report filed pursuant to § 56-599.

J. The renewable energy credits program shall include a true-up period during which suppliers may make alternative compliance payments or obtain the required number of renewable energy credits in the marketplace to make up for any shortfall of renewable energy credits they might otherwise experience.

K. A supplier may bank or place in reserve renewable energy credits produced in any reporting year for compliance in any future reporting year, subject to the limitations set forth in this subsection and provided that such supplier is in compliance for all previous reporting years. In addition, the supplier

shall demonstrate to the satisfaction of the Commission that such credits:

1. Were in excess of the renewable energy credits needed by the supplier for compliance in the reporting year in which they were generated and that such excess credits have not previously been used for compliance under this chapter; and

2. Have not otherwise been nor will be sold, retired, claimed, or represented as part of satisfying compliance with alternative or renewable energy portfolio standards in other states.

L. The Commission or its designee shall develop a registry of pertinent information regarding all available renewable energy credits and the number of renewable energy credits sold or transferred. The registry shall be available to the general public, but shall not include nor disclose any competitively sensitive information such as the names of parties to specific transactions, the number of renewable energy credits created, purchased, or owned by any specific party, or the price received or paid for renewable energy credits by any specific party, unless the party so named agrees to inclusion or disclosure, or both, of such information, except as the inclusion or disclosure, or both, of such information may be necessary to demonstrate compliance with other portions of this chapter or to compute the cost of service for cost-based rate tariffs.

M. Renewable energy credits shall be the property of the generator producing the electricity from which such credits are derived. Renewable energy credits are alienable separate from their associated electric energy, and a contract for the sale of electric energy shall not result in the transfer of ownership of the renewable energy credits unless such a transfer is explicitly agreed to in such contract. Renewable energy credits resulting from energy efficiency programs shall be the property of the supplier whose energy efficiency program produced the energy savings.

N. The Commission shall establish a procedure to determine how to recover the actual costs of administering the renewable energy credits program in a way that achieves a reasonable balance between equitable cost apportionment and cost efficiency.

O. The Commission shall promulgate regulations providing for the verification and tracking of energy efficiency programs implemented pursuant to this chapter, which shall include regulations to be used in determining the eligibility of such programs for renewable energy credits. All verified energy efficiency programs shall accrue renewable energy credits beginning on July 1, 2008.

P. The Commission shall, no later than January 1, 2009, develop a depreciation schedule for renewable energy credits created through energy efficiency programs and shall develop standards for tracking and verifying savings from energy efficiency programs. The Commission shall allow for a 60-day public comment period and shall issue final standards for the depreciation schedule within 30 days of the close of the public comment period.

§ 56-601. Virginia Sustainable Energy Fund established.

There is hereby established a special fund in the state treasury to be known as the Virginia Sustainable Energy Fund (the Fund), which shall be administered by the Commission. The Fund shall include all alternative compliance payments collected by the Commission pursuant to § 56-602 and such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be used solely for the payment of financial incentives, including but not limited to grants and low-interest loans, for projects that will increase the amount of electric energy generated from renewable energy resources and for energy efficiency programs in the Commonwealth. Alternative compliance payments collected pursuant to § 56-602 shall be spent in a manner intended to increase the future supply of renewable energy credits in the category for which the compliance payment was received. Unallocated moneys in the Fund in any year shall remain in the Fund and be available for allocation for grants under this section in ensuing fiscal years.

§ 56-602. Alternative compliance payment.

A. The alternative compliance payment to be paid:

1. To achieve compliance with the requirements of subdivision A 1 of § 56-598, regarding electricity generated from small renewable energy systems, shall be $0.30 for every kilowatt hour of electricity less than the required amount;

2. To achieve compliance with the requirements of subdivision A 2 of § 56-598, regarding electricity generated from large renewable energy systems, shall be $0.02 for every kilowatt hour of electricity less than the required amount;

3. To achieve compliance with the requirements of subdivision A 3 of § 56-598, regarding electricity generated from large biomass and biofuel systems with significant environmental impact, shall be $0.01 for every kilowatt hour of electricity less than the required amount; and

4. To achieve compliance with the requirements of subsection B of § 56-598, regarding reductions in the consumption of electric energy to be achieved through the implementation of energy efficiency programs, shall be $0.01 for every kilowatt hour of electricity less than the required amount.

B. Alternative compliance payments imposed pursuant to this section shall be paid into the Virginia Sustainable Energy Fund created pursuant to § 56-601.

C. If, after notice and hearing, the Commission determines that a supplier has failed to comply with the requirements of § 56-598, the Commission shall order the supplier to make the alternative compliance payment that is required to achieve compliance with the requirements of this chapter for the applicable reporting year. Any alternative compliance payment made by a supplier following or pursuant to an order of the Commission issued pursuant to this subsection shall not constitute an alternative compliance payment that is voluntarily paid by the supplier and shall not constitute a recoverable cost.

D. The Commission shall establish a process to provide for, at least annually, a review of the renewable energy credit market within the Commonwealth and the service territories of the regional transmission organizations that manage the transmission system in any part of the Commonwealth. The Commission shall use the results of this study to identify any changes to the alternative compliance payment program amounts needed to induce suppliers to self-generate or purchase renewable energy credits rather than submit alternative compliance payments. If the Commission finds that the alternative compliance payment program needs to be changed to have the intended effect, the Commission shall present these findings to the General Assembly with a recommendation for legislative enactment.

§ 56-603. Portfolio requirements in other states.

If a supplier sells electricity in any other jurisdiction and is subject to renewable energy portfolio requirements in that jurisdiction, it shall list any such requirement and shall indicate how it satisfied those renewable energy portfolio requirements in its annual report to the Commission demonstrating compliance with this chapter. To prevent double counting, suppliers shall not satisfy Virginia's renewable energy portfolio requirements using renewable energy or renewable energy credits used to satisfy another jurisdiction's portfolio requirements. Suppliers shall document that this energy was not used to satisfy another jurisdiction's renewable energy portfolio standards.

§ 56-604. Interagency responsibilities and authority.

A. The Commission will carry out the responsibilities delineated within this chapter. The Commission also shall, in cooperation with the Department, conduct an ongoing renewable energy resources planning assessment for the Commonwealth. This assessment shall, at a minimum, identify (i) current and operating qualifying renewable energy facilities; (ii) the potential to add future qualifying renewable energy generating capacity, including the potential for air or water permitting or other regulatory approval processes to affect the construction or operation, or both, of qualifying renewable energy facilities within the Commonwealth, or the availability of renewable energy credits generated by qualifying renewable energy facilities located within the Commonwealth; (iii) innovative rate-making approaches that could be pursued by the Commission to increase the use of energy efficiency and renewable energy; and (iv) the conditions of the renewable energy credits marketplace. In conducting the assessment, the Commission shall consult with the National Renewable Energy Laboratory. The assessment shall identify whether and how to maintain or increase the competitiveness of the renewable energy credits market within the Commonwealth.

B. The Commission, in cooperation with the Department, shall ensure that all qualified renewable generation sources meet all applicable state and federal environmental standards.

C. The Commission and the Department shall work cooperatively to monitor the performance of all aspects of this chapter and shall provide an annual report to the chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Commerce and Labor, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Commerce and Labor. The report shall include at a minimum:

1. The status of compliance with the provisions of this act by suppliers;

2. Current costs of renewable energy credits on a per-kilowatt-hour basis for all renewable energy technology types;

3. Costs associated with the renewable energy credits program under this chapter, including the number and amount of alternative compliance payments;

4. The status of the renewable energy credits marketplace within the Commonwealth; and

5. Recommendations for program improvements.

D. Nothing in this chapter shall alter in any way the authority of the Virginia Air Pollution Control Board.

§ 56-605. Qualifying geographic areas for renewable generation sources and energy efficiency programs.

Renewable energy credits used for compliance with this chapter shall be sourced from renewable generation sources inside the geographical boundaries of the Commonwealth or within the service territory of any regional transmission organization serving the load that creates the need for compliance. Renewable energy credits derived from energy efficiency programs shall be sourced from energy efficiency programs located within the Commonwealth.

§ 56-606. In-state renewable energy and energy efficiency manufacturing incentives.

A. Notwithstanding anything in this chapter to the contrary, an electric utility that generates

electricity from renewable energy sources by the operation of equipment, devices, or machinery that are, or contain components that have been, manufactured within the Commonwealth shall receive, with respect to the electricity generated from such equipment, devices, or machinery, double the amount of renewable energy credits to which it otherwise would be eligible pursuant to the program established under § 56-600.

B. The Secretary of Commerce and Trade shall establish a renewable energy manufacturing zone program pursuant to which the Commonwealth will offer and make available incentives to localities within the coalfield region of the Commonwealth, as described in § 15.2-6002, to encourage the establishment or expansion within such region of facilities for the manufacture of equipment, devices or machinery, or components thereof, that are used to generate electricity from renewable energy sources.

§ 56-607. Compliance review; report to General Assembly.

Upon commencement of reporting year 2013, the Commission shall undertake a review of compliance by suppliers with the requirements of this chapter. The review shall include the status of renewable energy technologies within the Commonwealth and the capacity to add additional renewable energy resources. The Commission shall use the results of this review to recommend to the General Assembly additional compliance goals beyond reporting year 2020. The Commission shall work with the Department in evaluating the future renewable energy resource potential.

§ 58.1-439.10:1. Commercial clean energy production tax credit.

A. For taxable years beginning on or after January 1, 2009, any taxpayer owning a commercial clean energy production facility shall be allowed a credit against the tax imposed by §§ 58.1-320 and 58.1-400 in the amount of (i) 0.06 cents per kWh of electricity that is generated using solar photovoltaic technology at the commercial clean energy production facility and sold to an electric utility in the Commonwealth and (ii) 0.03 cents per kWh of electricity that is generated using wind power at the commercial clean energy production facility and sold to an electric utility in the Commonwealth.

B. For purposes of this section, "commercial clean energy production facility" means a nonresidential facility located within the Commonwealth at which electricity is generated through the use of solar photovoltaic technology or wind power and that further complies with such criteria as are established by the State Corporation Commission in a proceeding conducted pursuant to subsection C.

C. The State Corporation Commission shall conduct a rulemaking proceeding, which shall be completed by December 1, 2008, to establish procedures for the administration of the energy production tax credit established by this section and to establish eligibility criteria for commercial solar photovoltaic and wind power facilities that are in the public interest.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

CHAPTER 11.
CLEAN ENERGY FUND.

§ 67-1100. Definitions.

"Commission means the State Corporation Commission.

"Fund" means the Clean Energy Fund established pursuant to § 67-1101.

§ 67-1101. Clean Energy Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Clean Energy Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Commission shall administer the Fund.

B. The Fund shall be used to facilitate the research, development, and implementation of energy efficiency and renewable energy technology across the Commonwealth.

C. Consistent with the requirements of subsection B, the Commission shall disburse the moneys in the Fund into existing solar and wind energy grant programs for residential use.

2. That the Secretary of Commerce and Trade shall develop a Green Jobs program. The program shall provide training for workers in new industries relating to the field of alternative energies, including the manufacture and operation of products used to generate electricity and other forms of energy from alternative sources. The program shall use existing state agencies providing workforce training, including but not limited to the Virginia Community College System and the Virginia Employment Commission. The program shall focus its efforts on workers located in regions of the Commonwealth that currently are most dependent upon employment in extraction-based industries. Implementation of the program shall commence not later than

January 1, 2009. The Secretary of Commerce and Trade shall report on the status of the implementation of the Green Jobs program, including its role in attracting alternative energy industries to establish operations in the Commonwealth, to the Governor and the chairs of the Senate Committee on Commerce and Labor and the House Committee on Commerce and Labor annually by September 1 of each year.

3. That § 56-585.2 of the Code of Virginia is repealed.