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HOUSE BILL NO. 2105

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 56-585.1, 56-585.2, 56-594, and 56-599 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-234.2:1, relating to the regulation of electric utilities in the Commonwealth.

Patrons—McClellan and Bulova

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.1, 56-585.2, 56-594, and 56-599 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-234.2:1 as follows:

§ 56-234.2:1. Electric utilities to offer real-time rates.

A. The Commission shall adopt regulations pursuant to its rules of practice and procedure that require each public utility providing electric service in the Commonwealth to offer electric service to customers in each customer class under a tariff that utilizes rates that vary in real time in accordance with changes in the utility's costs of providing electricity throughout each day. Such real-time variable rates shall be offered in a manner that permits customers taking service under such tariff to receive information signals that allow the customers to shift or curtail their usage in response to variations in rates that correspond to changes in the utility's cost of generating or purchasing electric power, as such costs vary as a result of such factors as changes in system demand levels and generation and transmission constraints. Such tariff shall be in addition to any other tariff currently offered by the utility.

B. The Commission shall ensure that any such rate or charge (i) is in the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, (iii) will not jeopardize the continuation of reliable electric service, and (iv) does not penalize customers taking service under such tariff for a permissible use of utility services.

C. Within 90 days following the effective date of the regulations adopted pursuant to subsection A, each public utility providing electric service in the Commonwealth shall submit a plan setting forth how the utility will comply with the regulations. Such regulations may require utilities to offer service under such tariff initially as a pilot program in limited areas or to a limited number of customers. The Commission shall, after notice and the opportunity for hearing, determine whether a utility's plan complies with the regulations. If the utility's plan complies with the regulations, the utility shall offer electric service at such rates and upon such terms and conditions to eligible customers. Eligible customers shall have the option to purchase electric service under such tariff, but shall not be precluded from receiving electric service under any other approved rate, toll, charge, or schedule.

§ 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

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59 provide the opportunity to fully recover the costs of providing the utility's services and to earn not less
60 than such combined rate of return. If the Commission finds that the utility's combined rate of return on
61 common equity is more than 50 basis points above the combined rate of return as so determined, it shall
62 be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the
63 Commission may not order such rate reduction unless it finds that the resulting rates will provide the
64 utility with the opportunity to fully recover its costs of providing its services and to earn not less than
65 the fair rates of return on common equity applicable to the generation and distribution services; or (ii)
66 direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above
67 the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event
68 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the
69 Commission, following the effective date of the Commission's order and be allocated among customer
70 classes such that the relationship between the specific customer class rates of return to the overall target
71 rate of return will have the same relationship as the last approved allocation of revenues used to design
72 base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall
73 conduct biennial reviews of the rates, terms and conditions for the provision of generation, distribution
74 and transmission services by each investor-owned incumbent electric utility, subject to the following
75 provisions:

76 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
77 and such reviews shall be conducted in a single, combined proceeding. The first such review shall
78 utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission
79 may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive
80 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive
81 12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings
82 utilizing the two successive 12-month test periods ending December 31 immediately preceding the year
83 in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an
84 investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case
85 settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a
86 Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

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

118 d. In any Current Proceeding, the Commission shall determine whether the Current Return has
119 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a
120 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.

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

182 Regulatory Commission and (ii) costs charged to the utility that are associated with demand response
183 programs approved by the Federal Energy Regulatory Commission and administered by the regional
184 transmission entity of which the utility is a member. Upon petition of a utility at any time after the
185 expiration or termination of capped rates, but not more than once in any 12-month period, the
186 Commission shall approve a rate adjustment clause under which such costs, including, without
187 limitation, costs for transmission service, charges for new and existing transmission facilities,
188 administrative charges, and ancillary service charges designed to recover transmission costs, shall be
189 recovered on a timely and current basis from customers. Retail rates to recover these costs shall be
190 designed using the appropriate billing determinants in the retail rate schedules.

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

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

199 b. Projected and actual costs of *designing and operating, and providing incentives for the utility to*
200 *design and operate, fair and effective demand-management, conservation, energy efficiency, and load*
201 *management programs; however, the costs of a demand response program approved by the Federal*
202 *Energy Regulatory Commission and administered by the regional transmission entity of which the utility*
203 *is a member shall not be recoverable under this subdivision if they are recoverable under subdivision 4.*
204 The Commission shall approve such a petition if it finds that the program is in the public interest and
205 that the need for the incentives is demonstrated with reasonable certainty; provided that the Commission
206 shall allow the recovery of such costs as it finds are reasonable. *If the Commission determines it would*
207 *be just, reasonable, and in the public interest, the Commission may include the enhanced rate of return*
208 *on common equity prescribed in subdivision 6 in a rate adjustment clause approved hereunder on*
209 *capital invested in any energy efficiency program that reduces the need for generation. As used in this*
210 *section, "energy efficiency program" includes the acquisition, testing, and deployment of advanced*
211 *metering infrastructure, and "advanced metering infrastructure" includes (i) advanced electric meters*
212 *that are capable of measuring and recording usage data hourly or at other specified intervals and that*
213 *provide for communication between the customer and the electric utility and (ii) associated hardware*
214 *and software used to measure, collect, and analyze energy usage from such meters. In the event the*
215 *Commission includes such enhanced return on an energy efficiency program in such rate adjustment*
216 *clause, the program shall be treated as an energy efficiency program described in subdivision 6 for the*
217 *purposes of this section;*

218 c. Projected and actual costs of participation in a renewable energy portfolio standard program
219 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
220 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
221 § 56-585.2; and

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

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

234 6. To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load
235 obligations, and to promote economic development, a utility may at any time, after the expiration or
236 termination of capped rates, petition the Commission for approval of a rate adjustment clause for
237 recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
238 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
239 described in § 15.2-6002, regardless of whether such facility is located within or without the utility's
240 service territory, (ii) one or more other generation facilities, ~~or~~ (iii) one or more major unit
241 modifications of generation facilities, *or (iv) investments in energy efficiency programs;* however, such a
242 petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in
243 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, *or makes such a program investment*, shall have the right to recover the costs of the facility *or investment*, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, *deployment*, 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. *Investments of capital in an energy efficiency program shall not be recovered prior to the date the program is implemented.* 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, *or energy efficiency program investment*, during the first portion of the service life of the facility *or program investment*. 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 *or program investment*, 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 *or program investment* may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility *or the implementation of the program*. After the first portion of the service life of the facility *or program investment* is concluded, the utility's general rate of return shall be applied to such facility *or program investment* 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, *or in the case of an investment in an energy efficiency program, when the program's implementation commences*, and such service life shall be deemed equal in years to the life of that facility *or program investment* 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 *or program investment* 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 *or program investment's* service life to which such enhanced rate of return shall be applied, shall vary by type of facility *or program investment*, 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
<i>Energy efficiency program</i>	200	<i>Between 3 and 7 years</i>

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

305 more such facilities that will provide such additional total capacity within a reasonable time after
306 obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a
307 prospective basis any enhanced rate of return on common equity previously applied to any such facility
308 to no less than the general rate of return for such utility and may apply no less than the utility's general
309 rate of return to any such facility for which the utility seeks approval in the future under this
310 subdivision.

311 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
312 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
313 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
314 Commission, that are proposed for recovery in such petition and that are related to clause (a) of
315 subdivision 5, or that are related to facilities and projects described in clause (i) of subdivision 6, shall
316 be deferred on the books and records of the utility until the Commission's final order in the matter, or
317 until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any
318 costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or
319 during the consideration thereof by the Commission, that are proposed for recovery in such petition and
320 that are related to facilities and projects described in clause (ii) of subdivision 6 that utilize nuclear
321 power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled
322 facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until
323 the Commission's final order in the matter, or until the implementation of any applicable approved rate
324 adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination
325 of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning
326 only upon the expiration or termination of capped rates, provided, however, that no provision of this act
327 shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory
328 Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P
329 61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or
330 6 shall be entered not more than three months, eight months, and nine months, respectively, after the
331 date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate
332 adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or
333 upon the expiration or termination of capped rates, whichever is later.

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

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

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

361 (iii) Such biennial review is the second consecutive biennial review in which the utility has, during
362 the test period or test periods under review, considered as a whole, earned more than 50 basis points
363 above a fair combined rate of return on both its generation and distribution services, as determined in
364 subdivision 2, without regard to any return on common equity or other matter determined with respect
365 to facilities *or program investments* described in subdivision 6, the Commission shall, subject to the
366 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 *or program investments* 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 *or program investments* 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

428 recovery of fuel and purchased power costs as provided in § 56-249.6.

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

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

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

441 § 56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard
442 program.

443 A. As used in this section:

444 "Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable
445 energy is (i) generated or purchased in the Commonwealth or in the interconnection region of the
446 regional transmission entity of which the participating utility is a member, as it may change from time
447 to time; (ii) generated by a public utility providing electric service in the Commonwealth from a facility
448 in which the public utility owns at least a 49 percent interest and that is located in a control area
449 adjacent to such interconnection region; or (iii) represented by certificates issued by an affiliate of such
450 regional transmission entity, or any successor to such affiliate, and held or acquired by such utility,
451 which validate the generation of renewable energy by eligible sources in such region. "Renewable
452 energy" shall not include electricity generated from pumped storage, but shall include run-of-river
453 generation from a combined pumped-storage and run-of-river facility.

454 "Total electric energy sold in the base year" means total electric energy sold to Virginia jurisdictional
455 retail customers by a participating utility in calendar year 2007, excluding an amount equivalent to the
456 average of the annual percentages of the electric energy that was supplied to such customers from
457 nuclear generating plants for the calendar years 2004 through 2006.

458 B. Any investor-owned incumbent electric utility may apply to the Commission for approval to
459 participate in a renewable energy portfolio standard program, as defined in this section. The Commission
460 shall approve such application if the applicant demonstrates that it has a reasonable expectation of
461 achieving 12 percent of its base year electric energy sales from renewable energy sources during
462 calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources
463 during calendar year 2025, as provided in subsection D.

464 C. It is in the public interest for utilities to achieve the goals set forth in subsection D, such goals
465 being referred to herein as "RPS Goals". Accordingly, the Commission, in addition to providing
466 recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined
467 rate of return on common equity for each utility participating in such program by a single Performance
468 Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an
469 RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation
470 of a fair combined rate of return for the purposes of the immediately succeeding biennial review
471 conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the
472 utility continues to meet the RPS Goals established in this section through and including the third
473 succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall
474 be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of
475 return on common equity for the same time periods. However, if the utility receives any other
476 Performance Incentive increasing its fair combined rate of return on common equity by more than 50
477 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance
478 Incentive during the term of such other Performance Incentive. A utility shall receive double credit
479 toward meeting the renewable energy portfolio standard for energy derived from sunlight or from wind.

480 D. To qualify for the Performance Incentive established in subsection C, the total electric energy sold
481 by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy from
482 renewable energy sources, as adjusted for any sales volumes lost through operation of the customer
483 choice provisions of subdivision A 3 or A 4 of § 56-577:

484 RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

485 RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total
486 electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold in
487 the base year.

488 RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total
489 electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold

in the base year.

RPS Goal IV: For calendar years 2023 and 2024, an average of 12 percent of total electric energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the base year.

A utility may apply renewable energy sales achieved or renewable energy certificates acquired during the periods covered by any such RPS Goal that are in excess of the sales requirement for that RPS Goal to the sales requirements for any future RPS Goal.

E. A utility participating in such program shall have the right to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1. All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible. A utility participating in such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007, that is operated by a person that is served within a utility's large industrial rate class and that is served at primary or transmission voltage. A participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B. Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.

G. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section including a requirement that participants verify whether the RPS goals are met in accordance with this section.

H. Each investor-owned incumbent electric utility shall report to the Commission annually by November 1 on (i) its efforts, if any, to meet the RPS Goals, (ii) its overall generation of renewable energy, and (iii) advances in renewable generation technology that affect activities described in clauses (i) and (ii).

§ 56-594. Net energy metering provisions.

A. The Commission shall establish by regulation a program, to begin no later than July 1, 2000, which affords eligible customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or operators of distribution or transmission facilities; (iii) ~~providers of default electric service providers~~; (iv) eligible customer-generators; or (v) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest.

B. For the purpose of this section:

"Electric service provider" means an investor-owned electric utility or a cooperative.

551 "Eligible customer-generator" means a customer that owns and operates, or contracts with other
552 persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than
553 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers; (ii) uses as its
554 total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises
555 and is connected to the customer's wiring on the customer's side of its interconnection with the
556 distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and
557 distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity
558 requirements.

559 "Net energy metering" means measuring the difference, over the net metering period, between (i)
560 electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity
561 generated and fed back to the electric grid by the eligible customer-generator.

562 "Net metering period" means the 12-month period following the date of final interconnection of the
563 eligible customer-generator's system with an electric service provider, and each 12-month period
564 thereafter.

565 C. The Commission's regulations shall ensure that the metering equipment installed for net metering
566 shall be capable of measuring the flow of electricity in two directions, and shall allocate fairly the cost
567 of such equipment and any necessary interconnection. An eligible customer-generator's electrical
568 generating system shall meet all applicable safety and performance standards established by the National
569 Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories
570 such as Underwriters Laboratories. Beyond the requirements set forth in this section, an eligible
571 customer-generator whose electrical generating system meets those standards and rules shall bear the
572 reasonable cost, if any, as determined by the Commission, to (i) install additional controls, (ii) perform
573 or pay for additional tests, or (iii) purchase additional liability insurance.

574 D. The Commission shall establish minimum requirements for contracts to be entered into by the
575 parties to net metering arrangements. Such requirements shall protect the customer-generator against
576 discrimination by virtue of its status as a customer-generator.

577 E. If electricity generated by an eligible customer-generator over the net metering period exceeds the
578 electricity consumed by the customer-generator, the customer-generator shall be compensated for the
579 excess electricity if the entity contracting to receive such electric energy and the customer-generator
580 enter into a power purchase agreement for such excess electricity. If the eligible customer-generator
581 receives generation service from a ~~default~~ *an electric* service provider, the ~~default~~ *electric* service
582 provider, upon the written request of the customer-generator, shall enter into a power purchase
583 agreement with the requesting eligible customer-generator that is consistent with the minimum
584 requirements for contracts established by the Commission pursuant to subsection D. The power purchase
585 agreement shall obligate the ~~default~~ *electric* service provider to purchase such excess electricity at the
586 rate that is provided for such purchases in a net metering standard contract or tariff approved by the
587 Commission, unless the parties agree to a higher rate; *however, the customer-generator shall be*
588 *compensated at an amount that is at least equal to the rate charged by the electric service provider for*
589 *electric energy provided 100 percent from renewable energy under an approved tariff as provided in*
590 *subdivision A 5 of § 56-577. The net metering standard contract or tariff shall be available to eligible*
591 *customer-generators on a first-come, first-served basis in each electric distribution company's Virginia*
592 *service area until the rated generating capacity owned and operated by eligible customer-generators in*
593 *the state reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast*
594 *for the previous year, and shall require the default service provider to pay the eligible*
595 *customer-generator for such excess electricity in a timely manner at a rate to be established by the*
596 *Commission.*

597 § 56-599. Integrated resource plan required.

598 A. Not later than December 31, 2008, the Commission shall order each electric utility to develop an
599 integrated resource plan. The order may establish guidelines for developing an IRP.

600 B. By September 1, 2009, each electric utility shall file an initial integrated resource plan with the
601 Commission, which plan shall comply with the provisions of the order of the Commission issued
602 pursuant to subsection A.

603 C. Each electric utility shall file an updated integrated resource plan at least every two years
604 thereafter, which plan shall comply with the provisions of any relevant order of the Commission
605 establishing guidelines for the format and contents of updated and revised integrated resource plans.

606 D. In preparing an integrated resource plan, each electric utility shall systematically evaluate, and
607 may propose:

- 608 1. Entering into short-term and long-term electric power purchase contracts;
- 609 2. Owning and operating electric power generation facilities;
- 610 3. Building new generation facilities;
- 611 4. Relying on purchases from the short term or spot markets;
- 612 5. Making investments in demand-side resources, including energy efficiency and demand-side

management services;

6. Taking such other actions, as the Commission may approve, to diversify its generation supply portfolio and ensure that the electric utility is able to implement an approved plan; and

7. The methods by which the electric utility proposes to acquire the supply and demand resources identified in its proposed integrated resource plan.

E. The Commission shall analyze and review an integrated resource plan and, after giving notice and opportunity to be heard, the Commission shall make a determination as to whether an IRP is reasonable and is in the public interest.

F. In any proceeding before the Commission in which an electric utility seeks a certificate of public convenience and necessity under Chapter 10.1 (§ 56-265.1 et seq.), or a permit or approval under § 56-46.1 or subsection D of § 56-580, the Commission shall determine whether the project or facility for which the certificate, permit, or approval is sought is consistent with an integrated resource plan filed by the electric utility that the Commission has determined, pursuant to subsection E, is reasonable and is in the public interest.

2. That each investor-owned incumbent electric utility that received approval from the State Corporation Commission of its application to participate in the renewable energy portfolio standard program pursuant to § 56-585.2 of the Code of Virginia prior to July 1, 2009, shall update its application no later than July 1, 2011, to address its plan for meeting the RPS Goal IV, as set out in subsection D of § 56-585.2, for sales in calendar year 2025 of 15 percent of total electric energy sold in the base year. The temporal scope of any Commission proceeding relative to an updated application filed pursuant to this enactment shall be limited to calendar years 2023, 2024, and 2025.