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SENATE BILL NO. 74

Offered January 13, 2010

Prefiled January 5, 2010

A BILL to amend and reenact §§ 56-234.2, 56-235.2, 56-249.6, 56-577, 56-585.1, and 56-585.2 of the Code of Virginia, relating to the regulation of electric utilities.

Patrons—Reynolds and Puckett; Delegates: Armstrong and Crockett-Stark

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-234.2, 56-235.2, 56-249.6, 56-577, 56-585.1, and 56-585.2 of the Code of Virginia are amended and reenacted as follows:

§ 56-234.2. Review of rates.

The Commission shall review the rates of any public utility on an annual basis when, in the opinion of the Commission, such annual review is in the public interest, provided that the rates of a public utility subject to § 56-585.1 shall be reviewed in accordance with ~~subsection A of that section.~~

§ 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and conclusions to be set forth; alternative forms of regulation for electric companies.

A. Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, ~~including subject to~~ such normalization for nonrecurring costs and annualized adjustments for ~~known future increases in~~ costs as the Commission ~~finds reasonably can be predicted to occur during the rate year may deem reasonable~~, and a fair return on the public utility's rate base used to serve those jurisdictional customers; ~~which return shall be calculated in accordance with § 56-585.1 for utilities subject to such section;~~ (1a) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation, or for advertisements which solely promote the public interest, conservation or more efficient use of energy; and (2) the public utility has demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs, ~~but shall not consider any adjustments or expenses that are speculative or cannot be predicted with reasonable certainty.~~ In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

For ratemaking purposes, the Commission shall determine the federal and state income tax costs for investor-owned water, gas, or electric 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. The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

C. After notice and public hearing, the Commission shall issue guidelines for special rates adopted pursuant to subsection A that will ensure that other customers are not caused to bear increased rates as a result of such special rates.

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

A. 1. Each electric utility that purchases fuel for the generation of electricity or purchases power and that was not, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed

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SB74

59 by the Commission. Upon investigation of such estimates and hearings in accordance with law, the
60 Commission shall direct each company to place in effect tariff provisions designed to recover the fuel
61 costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or
62 under-recovery of fuel costs previously incurred.

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

66 3. Beginning July 1, 2009, for all utilities described in subdivision A 1 and subsection B, if the
67 Commission approves any increase in fuel factor charges pursuant to this section that would increase the
68 total rates of the residential class of customers of any such utility by more than 20 percent, the
69 Commission, within six months following the effective date of such increase, shall review fuel costs,
70 and if the Commission finds that the utility is, or is likely to be, in an over-recovery position with
71 respect to fuel costs for the 12-month period for which the increase in fuel factor charges was approved
72 by more than five percent, it may reduce the utility's fuel cost tariffs to correct the over-recovery.

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

79 C. Each electric utility described in subsection B shall submit annually to the Commission its
80 estimate of fuel costs, including the cost of purchased power, for successive 12-month periods beginning
81 on July 1, 2007, and each July 1 thereafter. Upon investigation of such estimates and hearings in
82 accordance with law, the Commission shall direct each such utility to place in effect tariff provisions
83 designed to recover the fuel costs determined by the Commission to be appropriate for such periods,
84 adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such
85 adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for
86 any period prior to July 1, 2007, and (ii) the Commission shall order that the deferral portion, if any, of
87 the total increase in fuel tariffs for all classes as determined by the Commission to be appropriate for
88 the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred
89 without interest and recovered from all classes of customers as follows: (i) in the 12-month period
90 beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the
91 Commission determines would increase the total rates of the residential class of customers of the utility
92 by four percent over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii)
93 in the 12-month period beginning July 1, 2009, that part of the balance of the deferral portion of the
94 increase in fuel tariffs, if any, that the Commission determines would increase the total rates of the
95 residential class of customers of the utility by four percent over the level of such total rates in existence
96 on June 30, 2009, shall be recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire
97 balance of the deferral portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral
98 portion of the increase in fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the
99 amount of such increase in fuel tariffs that the Commission determines would increase the total rates of
100 the residential class of customers of the utility by more than four percent over the level of such total
101 rates in existence on June 30, 2007.

102 D. In proceedings under subsections A and C:

103 1. Energy revenues associated with off-system sales of power shall be credited against fuel factor
104 expenses in an amount equal to the total incremental fuel factor costs incurred in the production and
105 delivery of such sales such manner and in such amount as the Commission finds is in the public
106 interest. In addition, 75 percent such portion of the total annual margins from off-system sales that the
107 Commission finds is in the public interest shall be credited against fuel factor expenses; however, the
108 Commission, upon application and after notice and opportunity for hearing, may require that a smaller
109 percentage of such margins be so credited if it finds by clear and convincing evidence that such
110 requirement is in the public interest. The remaining margins from off-system sales shall not be
111 considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1. In the event
112 such margins result in a net loss to the electric utility, ~~(i) no the Commission may elect, if doing so is~~
113 ~~found to be in the public interest, (i) not to apply such charges shall be applied to fuel factor expenses~~
114 ~~and or (ii) not to consider any such net losses shall not be considered in the biennial reviews of electric~~
115 ~~utilities conducted pursuant to § 56-585.1 in rate case proceedings.~~ For purposes of this subsection,
116 "margins from off-system sales" shall mean the total revenues received from off-system sales
117 transactions less the total incremental costs incurred; and

118 2. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the
119 result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of
120 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.

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.

F. The Commission may, however, dispense with the procedures set forth above for any electric utility if it finds, after notice and hearing, that the electric utility's fuel costs can be reasonably recovered through the rates and charges investigated and established in accordance with other sections of this chapter.

§ 56-577. Commission authority; exemptions; pilot programs.

A. Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:

1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

2. The generation of electric energy shall be subject to regulation as specified in this chapter.

3. From January 1, 2004, until the expiration or termination of capped rates, all retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth. After the expiration or termination of capped rates, and subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:

a. If such customer does not purchase electric energy from licensed suppliers after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years' advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which point the customer may purchase electric energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such customer shall be allowed to individually purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the Commission finds that neither such customer's incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility. Any customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant to subdivision C 1.

d. The costs of serving a customer that has received an exemption from the five-year notice

182 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the
183 actual expenses of procuring such electric energy from the market, (ii) additional administrative and
184 transaction costs associated with procuring such energy, including, but not limited to, costs of
185 transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined
186 pursuant to the provisions of subdivision A 2 of § 56-585.1 by the Commission pursuant to either
187 subsection A or B of § 56-585.1, as applicable. The methodology established by the Commission for
188 determining such costs shall ensure that neither utilities nor other retail customers are adversely affected
189 in a manner contrary to the public interest.

190 4. After the expiration or termination of capped rates, two or more individual nonresidential retail
191 customers of electric energy within the Commonwealth, whose individual demand during the most recent
192 calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate
193 or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to
194 become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail
195 electric energy within the Commonwealth under the conditions specified in subdivision 3. The
196 Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

197 a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not
198 choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary
199 to the public interest by granting such petition. In making such determination, the Commission shall take
200 into consideration, without limitation, the impact and effect of any and all other previously approved
201 petitions of like type with respect to such incumbent electric utility; and

202 b. Approval of such petition is consistent with the public interest.

203 If such petition is approved, all customers whose load has been aggregated or combined shall
204 thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a single,
205 individual customer for the purposes of said subdivision. In addition, the Commission shall impose
206 reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they
207 continue, as a group, to meet the demand limitations of subdivision 3. If the Commission finds, after
208 notice and opportunity for hearing, that such group of customers no longer meets the above demand
209 limitations, the Commission may revoke its previous approval of the petition, or take such other actions
210 as may be consistent with the public interest.

211 5. After the expiration or termination of capped rates, individual retail customers of electric energy
212 within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy
213 provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail
214 electric energy within the Commonwealth, except for any incumbent electric utility other than the
215 incumbent electric utility serving the exclusive service territory in which such a customer is located, if
216 the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for
217 electric energy provided 100 percent from renewable energy.

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

220 C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if
221 so, for what minimum periods, customers who request service from an incumbent electric utility
222 pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service
223 from other suppliers of electric energy, shall be required to use such service from such incumbent
224 electric utility or default service provider, as determined to be in the public interest by the Commission.

225 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the
226 management and control of an incumbent electric utility's transmission assets to a regional transmission
227 entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility
228 (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods
229 prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such
230 minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such
231 utility or default providers after a period of obtaining electric energy from another supplier. Such costs
232 shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional
233 administrative and transaction costs associated with procuring such energy, including, but not limited to,
234 costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The
235 methodology of ascertaining such costs shall be determined and approved by the Commission after
236 notice and opportunity for hearing and after review of any plan filed by such utility to procure electric
237 energy to serve such customers. The methodology established by the Commission for determining such
238 costs shall be consistent with the goals of (a) promoting the development of effective competition and
239 economic development within the Commonwealth as provided in subsection A of § 56-596, and (b)
240 ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy
241 from alternate suppliers are adversely affected.

242 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585,
243 however, any such customers exempted from any applicable minimum stay periods as provided in

subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any distributor required to provide default service under subsection B of § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any minimum stay period then applicable while obtaining retail electric energy at capped rates.

4. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this subsection, which rules and regulations shall include provisions specifying the commencement date of such minimum stay exemption program.

§ 56-585.1. Generation, distribution, and transmission rates.

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~~ *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 subsection, 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.* 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 *in a proceeding pursuant to subsection B.* 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 a) 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 b) 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. 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 rate proceeding conducted pursuant to subsection B. In addition to other considerations, in setting the return on equity within the range allowed by this subsection, 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. Proceedings conducted pursuant to this subsection shall be 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 filing by a utility shall make a biennial filing by March 31 of every other year, beginning in 2011, consisting of pursuant to this subsection shall include the schedules contained in the Commission's rules governing utility rate increase applications (20 VAC 5-200-30 5-201-10); 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 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, in its proceeding under this subsection, 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:

428 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
429 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
430 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
431 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that
432 comply with the requirements of clause (vi) of subsection B of § 56-582;

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

436 c. Projected and actual costs for the utility to design, implement, and operate energy efficiency
437 programs, including a margin to be recovered on operating expenses, which margin for the purposes of
438 this section shall be equal to the general rate of return on common equity determined as described in
439 ~~subdivision A 2 of this section pursuant to this subsection.~~ The Commission shall only approve such a
440 petition if it finds that the program is in the public interest. As part of such cost recovery, the
441 Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to
442 energy efficiency programs. The Commission shall only allow such recovery to the extent that the
443 Commission determines such revenue has not been recovered through margins from incremental
444 off-system sales as defined in § 56-249.6 that are directly attributable to energy efficiency programs.

445 None of the costs of new energy efficiency programs of an electric utility, including recovery of
446 revenue reductions, shall be assigned to any customer that has a verifiable history of having used more
447 than 10 megawatts of demand from a single meter of delivery. Nor shall any of the costs of new energy
448 efficiency programs of an electric utility, including recovery of revenue reductions, be incurred by any
449 large general service customer as defined herein that has notified the utility of non-participation in such
450 energy efficiency program or programs. A large general service customer is a customer that has a
451 verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery.
452 Non-participation in energy efficiency programs shall be allowed by the Commission if the large general
453 service customer has, at the customer's own expense, implemented energy efficiency programs that have
454 produced or will produce measured and verified results consistent with industry standards and other
455 regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009,
456 promulgate rules and regulations to accommodate the process under which such large general service
457 customers shall file notice for such an exemption and (i) establish the administrative procedures by
458 which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied
459 by an applicant in order to notify the utility. In promulgating such rules and regulations, the
460 Commission may also specify the timing as to when a utility shall accept and act on such notice, taking
461 into consideration the utility's integrated resource planning process as well as its administration of
462 energy efficiency programs that are approved for cost recovery by the Commission. The notice of
463 non-participation by a large general service customer, to be given by March 1 of a given year, shall be
464 for the duration of the service life of the customer's energy efficiency program. The Commission on its
465 own motion may initiate steps necessary to verify such non-participants' achievement of energy
466 efficiency if the Commission has a body of evidence that the non-participant has knowingly
467 misrepresented its energy efficiency achievement. A utility shall not charge such large general service
468 customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond
469 what is required to provide electric service and meter such service on the customer's premises if the
470 customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant
471 proceedings pursuant to this section, the Commission shall take into consideration the goals of economic
472 development, energy efficiency and environmental protection in the Commonwealth;

473 d. Projected and actual costs of participation in a renewable energy portfolio standard program
474 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
475 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
476 § 56-585.2; and

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

488 The Commission shall have the authority to determine the duration or amortization period for any
489 ~~adjustment clause~~ *petition* 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, *in its proceeding under this subsection*, 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 petition. 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 *this subsection*. 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 a rate case conducted pursuant to subsection B in 2018, for a Phase II utility in 2018 which 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, 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~~ such rate of return as the Commission finds is in the public interest 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 in a proceeding 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 increase, whichever is later. Any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition commencement of a proceeding under this subsection, 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 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, 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 increase, whichever is later. Any costs prudently incurred after the expiration or termination of capped rates that are proposed for recovery in a proceeding under this subsection and are 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 in a proceeding under this subsection 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 increase 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 *in a proceeding under this section subsection* 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. On or after January 1, 2011, the Commission or any party, including the utility or the Attorney General, may initiate a proceeding to have the Commission determine rates, terms and conditions for the provision of generation, distribution and transmission services for each investor-owned incumbent electric utility that are just, reasonable, and nondiscriminatory. Such proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title and shall provide fair rates of return on common equity. In a proceeding conducted pursuant to this subsection:

1. The Commission may use any methodology to determine rates of return on common equity that the Commission finds consistent with the public interest;

2. The utility shall file the schedules contained in the Commission's rules governing utility rate increase applications (20 VAC 5-201-10) and such other information as the Commission may deem necessary and appropriate for a holistic review of all rates, terms and conditions for the provision of generation, distribution and transmission services by each utility;

3. The Commission shall analyze the rates of the utility's regulated services on a stand-alone basis utilizing an appropriate capital structure for the utility's regulated electric generation, transmission, and distribution operations and a fair and reasonable cost of capital for the utility;

4. If an incumbent utility is a wholly owned subsidiary of a holding company, the Commission shall base its rate determinations on a hypothetical capital structure for the utility that strikes a reasonable and appropriate balance between maintenance of the financial health of the utility and minimizing the costs of capital included in rates; and

5. The Commission shall be authorized to permit a utility to recover, in addition to other costs recoverable in a rate proceeding under provisions of Chapter 10 (§ 56-232 et seq.) of this title, the utility's actual costs, to the extent not otherwise recoverable in a proceeding pursuant to subsection A, if the Commission finds such recovery is just, reasonable, and in the public interest, of (i) designing and operating peak-shaving programs as described in subdivision A 5 b; (ii) designing, implementing, and operating energy efficiency programs as described in subdivision A 5 c; (iii) participating in a renewable energy portfolio standard program pursuant to § 56-585.2; and (iv) completing projects necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligation. A utility's recovery of such costs shall be determined in connection with a holistic review of all rates, terms and conditions for the provision of generation, distribution and transmission services by each utility, and shall not be recovered through separate adjustment clauses or recovery mechanisms.

C. 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 5-201-10); 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.

CD. 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.

DE. 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.

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

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

A. As used in this section:

"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable energy is (i) generated or purchased in the Commonwealth or in the interconnection region of the

regional transmission entity of which the participating utility is a member, as it may change from time to time; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in a control area adjacent to such interconnection region; or (iii) represented by certificates issued by an affiliate of such regional transmission entity, or any successor to such affiliate, and held or acquired by such utility, which validate the generation of renewable energy by eligible sources in such region. "Renewable energy" shall not include electricity generated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.

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

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

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

D. To qualify for the Performance Incentive ~~established an increase in the utility's rate of return on common equity as described in subsection C~~, the total electric energy sold by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy from renewable energy sources, as adjusted for any sales volumes lost through operation of the customer choice provisions of subdivision A 3 or A 4 of § 56-577:

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

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

RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total 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, inclusive, 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 (i) with respect to a proceeding under subsection A of § 56-585.1, that the utility is entitled to recover under 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 or (ii) with respect to a proceeding under subsection B of § 56-585.1, that the Commission finds are just, reasonable, and in the public interest. 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 an RPS program approved in a proceeding under subsection A of § 56-581.1 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).