

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 56-46.1, 56-585.1, and 67-101 of the Code of Virginia, relating to renewable energy generation and contracting; recognition of the Commonwealth Energy Policy.

[H 1912]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 56-46.1, 56-585.1, and 67-101 of the Code of Virginia are amended and reenacted as follows:

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the effect of the proposed facility on economic development within the Commonwealth, *including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102*, and (ii) shall consider any improvements in service reliability that may result from the construction of such facility.

B. No electrical transmission line of 138 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least thirty days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route including a digital geographic information system (GIS) map provided by the public utility showing the location of the proposed route. The Commission shall make GIS maps provided under this subsection available to the public on the Commission's website. Such notices shall be in addition to the advance notice to the chief administrative officer of the county or municipality required pursuant to § 15.2-2202. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned. In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. If the local

57 comprehensive plan of an affected county or municipality designates corridors or routes for electric
58 transmission lines and the line is proposed to be constructed outside such corridors or routes, in any
59 hearing the county or municipality may provide adequate evidence that the existing planned corridors or
60 routes designated in the plan can adequately serve the needs of the company. Additionally, the
61 Commission shall consider, upon the request of the governing body of any county or municipality in
62 which the line is proposed to be constructed, (i) the costs and economic benefits likely to result from
63 requiring the underground placement of the line and (ii) any potential impediments to timely
64 construction of the line.

65 C. If, prior to such approval, any interested party shall request a public hearing, the Commission
66 shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as
67 may be designated by the Commission. In any hearing the public service company shall provide
68 adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

69 If, prior to such approval, written requests therefor are received from twenty or more interested
70 parties, the Commission shall hold at least one hearing in the area which would be affected by
71 construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is
72 to be held in the area affected, the Commission shall direct that a copy of the transcripts of any
73 previous hearings held in the case be made available for public inspection at a convenient location in the
74 area for a reasonable time before such local hearing.

75 D. For purposes of this section, "interested parties" shall include the governing bodies of any
76 counties or municipalities through which the line is proposed to be built, and persons residing or owning
77 property in each such county or municipality and "environment" or "environmental" shall be deemed to
78 include in meaning "historic," as well as a consideration of the probable effects of the line on the health
79 and safety of the persons in the area concerned.

80 For purposes of this section, "qualifying facilities" means a cogeneration or small power production
81 facility which meets the criteria of 18 C.F.R. Part 292; "public utility" means a public utility as defined
82 in § 56-265.1; and "reasonably accommodate requests to wheel or transmit power" means:

83 1. That the applicant will make available to new electric generation facilities constructed after
84 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total
85 megawatts of the additional transmission capacity created by the proposed line, for the purpose of
86 wheeling to public utility purchasers the power generated by such qualifying facilities and other
87 nonutility facilities which are awarded a power purchase contract by a public utility purchaser in
88 compliance with applicable state law or regulations governing bidding or capacity acquisition programs
89 for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant
90 will extend only to those requests for wheeling service made within the twelve months following
91 certification by the State Corporation Commission of the transmission line and with effective dates for
92 commencement of such service within the twelve months following completion of the transmission line.

93 2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section,
94 will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L.
95 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line,
96 the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant
97 intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include
98 in its agreements for such wheeling service.

99 E. In the event that, at any time after the giving of the notice required in subsection B of this
100 section, it appears to the Commission that consideration of a route or routes significantly different from
101 the route described in the notice is desirable, the Commission shall cause notice of the new route or
102 routes to be published and mailed in accordance with subsection B of this section. The Commission
103 shall thereafter comply with the provisions of this section with respect to the new route or routes to the
104 full extent necessary to give interested parties in the newly affected areas the same protection afforded
105 interested parties affected by the route described in the original notice.

106 F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the
107 requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

108 G. The Commission shall enter into a memorandum of agreement with the Department of
109 Environmental Quality regarding the coordination of their reviews of the environmental impact of
110 electric generating plants and associated facilities.

111 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from
112 the Commission for any electric generating facility, electric transmission line, natural or manufactured
113 gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured
114 gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility
115 that is subject to issuance by any agency or board within the Secretariat of Natural Resources, may
116 request a pre-application planning and review process. In any such request to the Commission or the
117 Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which it

118 requests the pre-application planning and review process. The Commission, the Department of
 119 Environmental Quality, the Marine Resources Commission, the Department of Game and Inland
 120 Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and
 121 other appropriate agencies of the Commonwealth shall participate in the pre-application planning and
 122 review process. Participation in such process shall not limit the authority otherwise provided by law to
 123 the Commission or other agencies or boards of the Commonwealth. The Commission and other
 124 participating agencies of the Commonwealth may invite federal and local governmental entities charged
 125 by law with responsibility for issuing permits or approvals to participate in the pre-application planning
 126 and review process. Through the pre-application planning and review process, the applicant, the
 127 Commission, and other agencies and boards shall identify the potential impacts and approvals that may
 128 be required and shall develop a plan that will provide for an efficient and coordinated review of the
 129 proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be
 130 required based on the information available, (b) a specific plan and preliminary schedule for the
 131 different reviews, (c) a plan for coordinating those reviews and the related public comment process, and
 132 (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to
 133 facilitate this coordination. The plan shall be made readily available to the public and shall be
 134 maintained on a dedicated website to provide current information on the status of each component of the
 135 plan and each approval process including opportunities for public comment.

136 I. The provisions of this section shall not apply to the construction and operation of a small
 137 renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for
 138 which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5
 139 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.

140 § 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire.

141 A. During the first six months of 2009, the Commission shall, after notice and opportunity for
 142 hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation,
 143 distribution and transmission services of each investor-owned incumbent electric utility. Such
 144 proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title, except as
 145 modified herein. In such proceedings the Commission shall determine fair rates of return on common
 146 equity applicable to the generation and distribution services of the utility. In so doing, the Commission
 147 may use any methodology to determine such return it finds consistent with the public interest, but such
 148 return shall not be set lower than the average of the returns on common equity reported to the Securities
 149 and Exchange Commission for the three most recent annual periods for which such data are available by
 150 not less than a majority, selected by the Commission as specified in subdivision 2 b, of other
 151 investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return
 152 more than 300 basis points higher than such average. The peer group of the utility shall be determined
 153 in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined
 154 rate of return by up to 100 basis points based on the generating plant performance, customer service,
 155 and operating efficiency of a utility, as compared to nationally recognized standards determined by the
 156 Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine
 157 the rates that the utility may charge until such rates are adjusted. If the Commission finds that the
 158 utility's combined rate of return on common equity is more than 50 basis points below the combined
 159 rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to
 160 provide the opportunity to fully recover the costs of providing the utility's services and to earn not less
 161 than such combined rate of return. If the Commission finds that the utility's combined rate of return on
 162 common equity is more than 50 basis points above the combined rate of return as so determined, it shall
 163 be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the
 164 Commission may not order such rate reduction unless it finds that the resulting rates will provide the
 165 utility with the opportunity to fully recover its costs of providing its services and to earn not less than
 166 the fair rates of return on common equity applicable to the generation and distribution services; or (ii)
 167 direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above
 168 the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event
 169 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the
 170 Commission, following the effective date of the Commission's order and be allocated among customer
 171 classes such that the relationship between the specific customer class rates of return to the overall target
 172 rate of return will have the same relationship as the last approved allocation of revenues used to design
 173 base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall
 174 conduct biennial reviews of the rates, terms and conditions for the provision of generation, distribution
 175 and transmission services by each investor-owned incumbent electric utility, subject to the following
 176 provisions:

177 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
 178 and such reviews shall be conducted in a single, combined proceeding. The first such review shall

179 utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission
180 may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive
181 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive
182 12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings
183 utilizing the two successive 12-month test periods ending December 31 immediately preceding the year
184 in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an
185 investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case
186 settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a
187 Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

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

219 d. In any Current Proceeding, the Commission shall determine whether the Current Return has
220 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a
221 percentage, in the United States Average Consumer Price Index for all items, all urban consumers
222 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since
223 the date on which the Commission determined the Initial Return. If so, the Commission may conduct an
224 additional analysis of whether it is in the public interest to utilize such Current Return for the Current
225 Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall
226 be made without regard to any Performance Incentive adopted by the Commission, or any enhanced rate
227 of return on common equity awarded pursuant to the provisions of subdivision 6. Such additional
228 analysis shall include, but not be limited to, a consideration of overall economic conditions, the level of
229 interest rates and cost of capital with respect to business and industry, in general, as well as electric
230 utilities, the current level of inflation and the utility's cost of goods and services, the effect on the
231 utility's ability to provide adequate service and to attract capital if less than the Current Return were
232 utilized for the Current Proceeding then pending, and such other factors as the Commission may deem
233 relevant. If, as a result of such analysis, the Commission finds that use of the Current Return for the
234 Current Proceeding then pending would not be in the public interest, then the lower limit imposed by
235 subdivision 2 a on the return to be determined by the Commission for such utility shall be calculated,
236 for that Current Proceeding only, by increasing the Initial Return by a percentage at least equal to the
237 increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all
238 urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
239 Department of Labor, since the date on which the Commission determined the Initial Return. For

240 purposes of this subdivision:

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

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

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

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

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

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

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

263 3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2011,
 264 consisting of the schedules contained in the Commission's rules governing utility rate increase
 265 applications (~~20 VAC 5-200-30~~); however, if the Commission elects to stagger the dates of the biennial
 266 reviews of utilities as provided in subdivision 1, then Phase I utilities shall commence biennial filings in
 267 2011 and Phase II utilities shall commence biennial filings in 2012. Such filing shall encompass the two
 268 successive 12-month test periods ending December 31 immediately preceding the year in which such
 269 proceeding is conducted, and in every such case the filing for each year shall be identified separately
 270 and shall be segregated from any other year encompassed by the filing. If the Commission determines
 271 that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any
 272 rate adjustment clauses previously implemented pursuant to subdivision 4 or 5 or those related to
 273 facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with
 274 the utility's costs, revenues and investments until the amounts that are the subject of such rate
 275 adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's
 276 costs, revenues and investments only after it makes its initial determination with regard to necessary rate
 277 revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as
 278 herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments
 279 for the purposes of future biennial review proceedings.

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

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

295 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
 296 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
 297 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
 298 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that
 299 comply with the requirements of clause (vi) of subsection B of § 56-582;

300 b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving

301 programs. The Commission shall approve such a petition if it finds that the program is in the public
302 interest; provided that the Commission shall allow the recovery of such costs as it finds are reasonable;

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

312 None of the costs of new energy efficiency programs of an electric utility, including recovery of
313 revenue reductions, shall be assigned to any customer that has a verifiable history of having used more
314 than 10 megawatts of demand from a single meter of delivery. Nor shall any of the costs of new energy
315 efficiency programs of an electric utility, including recovery of revenue reductions, be incurred by any
316 large general service customer as defined herein that has notified the utility of non-participation in such
317 energy efficiency program or programs. A large general service customer is a customer that has a
318 verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery.
319 Non-participation in energy efficiency programs shall be allowed by the Commission if the large general
320 service customer has, at the customer's own expense, implemented energy efficiency programs that have
321 produced or will produce measured and verified results consistent with industry standards and other
322 regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009,
323 promulgate rules and regulations to accommodate the process under which such large general service
324 customers shall file notice for such an exemption and (i) establish the administrative procedures by
325 which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied
326 by an applicant in order to notify the utility. In promulgating such rules and regulations, the
327 Commission may also specify the timing as to when a utility shall accept and act on such notice, taking
328 into consideration the utility's integrated resource planning process as well as its administration of
329 energy efficiency programs that are approved for cost recovery by the Commission. The notice of
330 non-participation by a large general service customer, to be given by March 1 of a given year, shall be
331 for the duration of the service life of the customer's energy efficiency program. The Commission on its
332 own motion may initiate steps necessary to verify such non-participants' achievement of energy
333 efficiency if the Commission has a body of evidence that the non-participant has knowingly
334 misrepresented its energy efficiency achievement. A utility shall not charge such large general service
335 customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond
336 what is required to provide electric service and meter such service on the customer's premises if the
337 customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant
338 proceedings pursuant to this section, the Commission shall take into consideration the goals of economic
339 development, energy efficiency and environmental protection in the Commonwealth;

340 d. Projected and actual costs of participation in a renewable energy portfolio standard program
341 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
342 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
343 § 56-585.2; and

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

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

356 6. To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load
357 obligations and to promote economic development, a utility may at any time, after the expiration or
358 termination of capped rates, petition the Commission for approval of a rate adjustment clause for
359 recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
360 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
361 described in § 15.2-6002, regardless of whether such facility is located within or without the utility's

362 service territory, (ii) one or more other generation facilities, or (iii) one or more major unit
 363 modifications of generation facilities; however, such a petition concerning facilities described in clause
 364 (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a
 365 Phase I utility, or facilities described in clause (i) may also be filed before the expiration or termination
 366 of capped rates. A utility that constructs any such facility shall have the right to recover the costs of the
 367 facility, as accrued against income, through its rates, including projected construction work in progress,
 368 and any associated allowance for funds used during construction, planning, development and
 369 construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive
 370 to undertake such projects, an enhanced rate of return on common equity calculated as specified below.
 371 The costs of the facility, other than return on projected construction work in progress and allowance for
 372 funds used during construction, shall not be recovered prior to the date the facility begins commercial
 373 operation. Such enhanced rate of return on common equity shall be applied to allowance for funds used
 374 during construction and to construction work in progress during the construction phase of the facility
 375 and shall thereafter be applied to the entire facility during the first portion of the service life of the
 376 facility. The first portion of the service life shall be as specified in the table below; however, the
 377 Commission shall determine the duration of the first portion of the service life of any facility, within the
 378 range specified in the table below, which determination shall be consistent with the public interest and
 379 shall reflect the Commission's determinations regarding how critical the facility may be in meeting the
 380 energy needs of the citizens of the Commonwealth and the risks involved in the development of the
 381 facility. After the first portion of the service life of the facility is concluded, the utility's general rate of
 382 return shall be applied to such facility for the remainder of its service life. As used herein, the service
 383 life of the facility shall be deemed to begin on the date the facility begins commercial operation, and
 384 such service life shall be deemed equal in years to the life of that facility as used to calculate the
 385 utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by
 386 adding the basis points specified in the table below to the utility's general rate of return, and such
 387 enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause.
 388 No change shall be made to any Performance Incentive previously adopted by the Commission in
 389 implementing any rate of return under this subdivision. Allowance for funds used during construction
 390 shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of
 391 capital, including an enhanced rate of return on common equity as determined pursuant to this
 392 subdivision, until such construction work in progress is included in rates. The construction of any
 393 facility described in clause (i) is in the public interest, and in determining whether to approve such
 394 facility, the Commission shall liberally construe the provisions of this title. The basis points to be added
 395 to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the
 396 first portion of that facility's service life to which such enhanced rate of return shall be applied, shall
 397 vary by type of facility, as specified in the following table:

398 Type of Generation Facility	Basis Points	First Portion of Service Life
399 Nuclear-powered	200	Between 12 and 25 years
400 Carbon capture compatible, 401 clean-coal powered	200	Between 10 and 20 years
402 Renewable powered	200	Between 5 and 15 years
403 Conventional coal or combined- 404 cycle combustion turbine	100	Between 10 and 20 years

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

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

414 Notwithstanding any other provision of this subdivision, if the Commission finds during the biennial
 415 review conducted for a Phase II utility in 2018 that such utility has not filed applications for all
 416 necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled
 417 generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the
 418 utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals
 419 have been received, that the utility has not made reasonable and good faith efforts to construct one or
 420 more such facilities that will provide such additional total capacity within a reasonable time after
 421 obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a
 422 prospective basis any enhanced rate of return on common equity previously applied to any such facility

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

426 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
427 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
428 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
429 Commission, that are proposed for recovery in such petition and that are related to clause (a) of
430 subdivision 5, or that are related to facilities and projects described in clause (i) of subdivision 6, shall
431 be deferred on the books and records of the utility until the Commission's final order in the matter, or
432 until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any
433 costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or
434 during the consideration thereof by the Commission, that are proposed for recovery in such petition and
435 that are related to facilities and projects described in clause (ii) of subdivision 6 that utilize nuclear
436 power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled
437 facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until
438 the Commission's final order in the matter, or until the implementation of any applicable approved rate
439 adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination
440 of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning
441 only upon the expiration or termination of capped rates, provided, however, that no provision of this act
442 shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory
443 Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P
444 61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or
445 6 shall be entered not more than three months, eight months, and nine months, respectively, after the
446 date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate
447 adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or
448 upon the expiration or termination of capped rates, whichever is later.

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

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

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

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

484 distribution services, as determined in subdivision 2, without regard to any return on common equity or
 485 other matters determined with respect to facilities described in subdivision 6, using the most recently
 486 ended 12-month test period as the basis for determining the permissibility of any rate reduction under
 487 the standards of this sentence, and the amount thereof.

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

491 9. If, as a result of a biennial review required under this subsection and conducted with respect to
 492 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
 493 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
 494 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
 495 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
 496 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
 497 points above a fair combined rate of return on both its generation and distribution services, as
 498 determined in subdivision 2, without regard to any return on common equity or other matters determined
 499 with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such
 500 utility at the end of the most recently-ended 12-month test period exceeded the annual increases in the
 501 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
 502 by the Bureau of Labor Statistics of the United States Department of Labor, compounded annually,
 503 when compared to the total aggregate regulated rates of such utility as determined pursuant to the
 504 biennial review conducted for the base period, the Commission shall, unless it finds that such action is
 505 not in the public interest or that the provisions of clauses (ii) and (iii) of subdivision 8 are more
 506 consistent with the public interest, direct that any or all earnings for such test period or periods under
 507 review, considered as a whole that were more than 50 basis points above such fair combined rate of
 508 return shall be credited to customers' bills, in lieu of the provisions of clauses (ii) and (iii) of
 509 subdivision 8. Any such credits shall be amortized and allocated among customer classes in the manner
 510 provided by clause (ii) of subdivision 8. For purposes of this subdivision:

511 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
 512 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
 513 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
 514 period with respect to which credits have been applied to customers' bills under the provisions of this
 515 subdivision, whichever is later.

516 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except
 517 for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31,
 518 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
 519 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to clause (i) of
 520 subdivision 8; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate
 521 increase applications (~~20 VAC 5-200-30~~), as permitted by subsection B, occurring after July 1, 2009;
 522 and (v) base rates in effect as of July 1, 2009.

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

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

542 C. Except as otherwise provided in this section, the Commission shall exercise authority over the
 543 rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation,
 544 transmission and distribution services to retail customers in the Commonwealth pursuant to the

545 provisions of Chapter 10 (§ 56-232 et seq.) of this title, including specifically § 56-235.2.

546 D. Nothing in this section shall preclude the Commission from determining, during any proceeding
 547 authorized or required by this section, the reasonableness or prudence of any cost incurred or projected
 548 to be incurred, by a utility in connection with the subject of the proceeding. A determination of the
 549 Commission regarding the reasonableness or prudence of any such cost shall be consistent with the
 550 Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to
 551 the provisions of Chapter 10 (§ 56-232 et seq.) of this title. *In determining the reasonableness or*
 552 *prudence of a utility providing energy and capacity to its customers from renewable energy resources,*
 553 *the Commission shall consider the extent to which such renewable energy resources, whether*
 554 *utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in*
 555 *§§ 67-101 and 67-102, and shall also consider whether the costs of such resources is likely to result in*
 556 *unreasonable increases in rates paid by consumers.*

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

559 § 67-101. Energy objectives.

560 The Commonwealth recognizes each of the following objectives pertaining to energy issues will
 561 advance the health, welfare, and safety of the residents of the Commonwealth:

562 1. Ensuring the availability of reliable energy at costs that are reasonable and in quantities that will
 563 support the Commonwealth's economy;

564 2. Managing the rate of consumption of existing energy resources in relation to economic growth;

565 3. Establishing sufficient supply and delivery infrastructure to maintain reliable energy availability in
 566 the event of a disruption occurring to a portion of the Commonwealth's energy matrix;

567 4. Using energy resources more efficiently;

568 5. Facilitating conservation;

569 6. Optimizing intrastate and interstate use of energy supply and delivery to maximize energy
 570 availability, reliability, and price opportunities to the benefit of all user classes and the Commonwealth's
 571 economy as stated in subdivision 2 of § 67-100;

572 7. Increasing Virginia's reliance on sources of energy that, compared to traditional energy resources,
 573 are less polluting of the Commonwealth's air and waters;

574 8. Researching the efficacy, cost, and benefits of reducing, avoiding, or sequestering the emissions of
 575 greenhouse gases produced in connection with the generation of energy;

576 9. Removing impediments to the use of abundant low-cost energy resources located within and
 577 outside the Commonwealth and ensuring the economic viability of the producers, especially those in the
 578 Commonwealth, of such resources;

579 10. Developing energy resources and facilities in a manner that does not impose a disproportionate
 580 adverse impact on economically disadvantaged or minority communities;

581 11. Recognizing the need to foster those economically developable alternative sources of energy that
 582 can be provided at market prices as vital components of a diversified portfolio of energy resources; and

583 12. Increasing Virginia's reliance on and production of sustainably produced biofuels made from
 584 traditional agricultural crops and other feedstocks, such as winter cover crops, warm season grasses,
 585 fast-growing trees, algae or other suitable feedstocks grown in the Commonwealth that will create jobs
 586 and income, produce clean-burning fuels that will help to improve air quality, and provide the new
 587 markets for Virginia's silvicultural and agricultural products needed to preserve farm employment,
 588 conserve farmland and forestland, and increase implementation of silvicultural and agricultural best
 589 management practices to protect water quality.

590 ~~Nothing~~ *Except as provided in subsection D of § 56-585.1, nothing* in this section shall be deemed to
 591 abrogate or modify in any way the provisions of the Virginia Electric Utility Regulation Act (§ 56-576
 592 et seq.).