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HOUSE BILL NO. 2514

Offered January 21, 2011

A *BILL to amend and reenact § 56-585.1 of the Code of Virginia, relating to the regulation of electric utilities.*

Patrons—Merricks, Carrico, Crockett-Stark, Kilgore, Marshall, D.W. and Morefield

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.1 of the Code of Virginia is amended and reenacted as follows:

§ 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. The Commission may increase or decrease such combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points below the combined rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such combined rate of return. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than the fair rates of return on common equity applicable to the generation and distribution services; or (ii) direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order and be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall conduct biennial reviews of the rates, terms, and conditions for the provision of generation, distribution, and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

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

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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 *for a Phase II Utility* 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~~ under this section, the Commission shall strive to maintain costs of retail electric energy that are cost competitive with costs of retail electric energy provided by the other peer group investor-owned electric utilities.

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

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

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

3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2011, consisting of the schedules contained in the Commission's rules governing utility rate increase applications (~~20 VAC 5-200-30~~); however, if the Commission elects to stagger the dates of the biennial reviews of utilities as provided in subdivision 1, then Phase I utilities shall commence biennial filings in 2011 and Phase II utilities shall commence biennial filings in 2012. Such filing shall encompass the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted, and in every such case the filing for each year shall be identified separately and shall be segregated from any other year encompassed by the filing.

If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented pursuant to subdivision 4 or 5 or those related to facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings.

4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by the Federal Energy 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~~ *Phase II Utility* at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, ~~and as provided in subdivision 5 with respect to a petition of a Phase I Utility~~, 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~~ *Phase I Utility* may in one combined proceeding per year, and a *Phase II Utility* may at any time, ~~after the expiration or termination of capped rates~~, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the following costs:

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

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

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs, including a margin to be recovered on operating expenses, which margin for the purposes of this section shall be equal to the general rate of return on common equity determined as described in subdivision A 2 of ~~this section~~. The Commission shall only approve such a petition if it finds that the program is in the public interest. As part of such cost recovery, the Commission, if requested by the

182 utility, shall allow for the recovery of revenue reductions related to energy efficiency programs. The
183 Commission shall only allow such recovery to the extent that the Commission determines such revenue
184 has not been recovered through margins from incremental off-system sales as defined in § 56-249.6 that
185 are directly attributable to energy efficiency programs.

186 None of the costs of new energy efficiency programs of an electric utility, including recovery of
187 revenue reductions, shall be assigned to any customer that has a verifiable history of having used more
188 than 10 megawatts of demand from a single meter of delivery. Nor shall any of the costs of new energy
189 efficiency programs of an electric utility, including recovery of revenue reductions, be incurred by any
190 large general service customer as defined herein that has notified the utility of non-participation in such
191 energy efficiency program or programs. A large general service customer is a customer that has a
192 verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery.
193 Non-participation in energy efficiency programs shall be allowed by the Commission if the large general
194 service customer has, at the customer's own expense, implemented energy efficiency programs that have
195 produced or will produce measured and verified results consistent with industry standards and other
196 regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009,
197 promulgate rules and regulations to accommodate the process under which such large general service
198 customers shall file notice for such an exemption and (i) establish the administrative procedures by
199 which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied
200 by an applicant in order to notify the utility. In promulgating such rules and regulations, the
201 Commission may also specify the timing as to when a utility shall accept and act on such notice, taking
202 into consideration the utility's integrated resource planning process as well as its administration of
203 energy efficiency programs that are approved for cost recovery by the Commission. The notice of
204 non-participation by a large general service customer, to be given by March 1 of a given year, shall be
205 for the duration of the service life of the customer's energy efficiency program. The Commission on its
206 own motion may initiate steps necessary to verify such non-participants' achievement of energy
207 efficiency if the Commission has a body of evidence that the non-participant has knowingly
208 misrepresented its energy efficiency achievement. A utility shall not charge such large general service
209 customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond
210 what is required to provide electric service and meter such service on the customer's premises if the
211 customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant
212 proceedings pursuant to this section, the Commission shall take into consideration the goals of economic
213 development, energy efficiency and environmental protection in the Commonwealth;

214 d. Projected and actual costs of participation in a renewable energy portfolio standard program
215 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
216 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
217 § 56-585.2; and

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

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

230 *Notwithstanding any provision of this section to the contrary, in order that the retail customers of a*
231 *Phase I Utility are not subjected to more than one change in rates in any calendar year, except for any*
232 *revisions to rates authorized by § 56-242, 56-245, or 56-249.6, petitions for approval of rate adjustment*
233 *clauses under this subdivision and subdivisions 4 and 6 shall be combined into single annual*
234 *proceedings. The Commission shall consider all rate adjustment clause petitions filed under this section*
235 *by a Phase I Utility as part of a single combined proceeding consolidating all rate adjustment clause*
236 *proceedings and the biennial review if the rate adjustment clause petition is filed during the 12 months*
237 *preceding the filing of the Phase I Utility's biennial review, or in a single, combined proceeding*
238 *consolidating all rate adjustment clause proceedings, if the rate adjustment clause petition is filed*
239 *during the 12 months following the filing of the Phase I Utility's biennial review. A rate adjustment*
240 *clause proceeding for any year shall be filed by March 31. In each such rate adjustment clause*
241 *proceeding for a Phase I Utility, the Commission shall (i) provide for the recovery of approved costs,*
242 *including any allowed enhanced rate of return on common equity, through a rate rider that provides for*
243 *such recovery through current or future rates over the duration or amortization period of the rate*

adjustment clause; (ii) determine the duration or amortization period for the rate adjustment clause; (iii) take into account the utility's base rate earnings for the 12-month test period ending December 31 immediately preceding the year in which the proceeding is conducted in order to ensure that the amount of any rate rider does not authorize the Phase I Utility to charge rates that in the aggregate would provide revenues that allow the utility to earn in excess of the authorized rate of return established (a) in the utility's most recent biennial review if the proceeding is not conducted in a year when it has a biennial review or (b) in the biennial review if the proceeding is conducted in a year when it has a biennial review; (iv) provide for future adjustment of the amount of any such rider in any biennial review or rate adjustment clause proceeding in order to account for any changes in costs and earnings, so as to minimize over-collections and under-collections and to prevent excess earnings; (v) be authorized to reduce the amount of any rate rider if the Commission determines that the Phase I Utility's base rate earnings exceed the amount required to earn the authorized return, if doing so would not reduce the utility's earned rate of return to a level that is less than the authorized rate of return; and (vi) be authorized, in future proceedings, to reduce a rate rider if the rider generates excess revenues.

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~~ Phase II Utility may at any time, ~~after the expiration or termination of capped rates and a Phase I Utility may in the combined annual rate adjustment clause proceeding as provided in subdivision 5,~~ petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, or (iii) one or more major unit modifications of generation facilities; ~~however, such a petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a Phase I utility, or facilities described in clause (i) may also be filed before the expiration or termination of capped rates.~~ A utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below. The costs of the facility, other than return on projected construction work in progress and allowance for funds used during construction, shall not be recovered prior to the date the facility begins commercial operation. Such enhanced rate of return on common equity shall be applied to allowance for funds used during construction and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility. After the first portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the date the facility begins commercial operation, and such service life shall be deemed equal in years to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the basis points specified in the table below to the utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause. No change shall be made to any Performance Incentive previously adopted by the Commission in implementing any rate of return under this subdivision. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as determined pursuant to this subdivision, until such construction work in progress is included in rates. The construction of any facility described in clause (i) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:

Type of Generation Facility	Basis Points	First Portion of Service Life
Nuclear-powered	200	Between 12 and 25 years
Carbon capture compatible,		

305	clean-coal powered	200	Between 10 and 20 years
306	Renewable powered	200	Between 5 and 15 years
307	Conventional coal or combined-		
308	cycle combustion turbine	100	Between 10 and 20 years

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

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

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

330 7. Any petition filed pursuant to subdivision 4, 5, or 6 by a Phase I Utility shall be considered by
 331 the Commission after taking into consideration the other costs, revenues, investments, or earnings of the
 332 utility as provided in subdivision 5. Any petition filed pursuant to subdivision 4, 5, or 6 by a Phase II
 333 Utility shall be considered by the Commission on a stand-alone basis without regard to the other costs,
 334 revenues, investments, or earnings of the utility. Any costs incurred by a utility prior to the filing of
 335 such a rate adjustment clause petition, or during the consideration thereof by the Commission, that are
 336 proposed for recovery in such petition and that are related to ~~clause (a) of~~ subdivision 5 a, or that are
 337 related to facilities and projects described in clause (i) of subdivision 6, shall be deferred on the books
 338 and records of the utility until the Commission's final order in the matter, or until the implementation of
 339 any applicable approved rate adjustment clauses, whichever is later. Any costs prudently incurred on or
 340 after July 1, 2007, by a utility prior to the filing of such petition, or during the consideration thereof by
 341 the Commission, that are proposed for recovery in such petition and that are related to facilities and
 342 projects described in clause (ii) of subdivision 6 that utilize nuclear power, or coal-fueled facilities and
 343 projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be built by a Phase I
 344 Utility, shall be deferred on the books and records of the utility until the Commission's final order in the
 345 matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is
 346 later. Any costs prudently incurred after the expiration or termination of capped rates related to other
 347 matters described in ~~subdivisions~~ subdivision 4, 5, or 6 shall be deferred beginning only upon the
 348 expiration or termination of capped rates, provided, however, that no provision of this act shall affect
 349 the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission in
 350 PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004).

351 The Commission's final order regarding any petition filed by a Phase II Utility pursuant to
 352 subdivision 4, 5 or 6 shall be entered not more than three months, eight months, and nine months,
 353 respectively, after the date of filing of such petition. If such petition is approved, the order shall direct
 354 that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the
 355 date of the order, or upon the expiration or termination of capped rates, whichever is later. The
 356 Commission's final order regarding any rate adjustment clause proceeding for a Phase I Utility shall be
 357 entered (i) if issued for a year in which a biennial review is conducted for the utility, concurrently with
 358 the Commission's final order in the utility's biennial review as provided in subdivision 8 or (ii) if the
 359 petition is filed other than for a year in which a biennial review is conducted for the utility, by a date
 360 that allows any revision in rates so ordered to take effect not later than May 1 of the year following the
 361 year in which the biennial review commenced.

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

363 (i) a. The utility has, during the test period or periods under review, considered as a whole, earned
 364 more than 50 basis points below a fair combined rate of return on both its generation and distribution
 365 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) *b.* 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) *c.* 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 b,~~ 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 a~~ biennial review *for a Phase I Utility* shall be entered ~~not more than nine months after the end of the test period, and any revisions by a date that allows any revision in rates or credits so ordered shall take effect not more than 60 days after the date of the order not later than May 1 of the year following the year in which the biennial review commenced. The Commission's final order regarding a biennial review for a Phase II Utility 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 subdivisions 8 b and c~~ 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~~

427 ~~(iii) of subdivision~~ *subdivisions 8 b and c*. Any such credits shall be amortized and allocated among
428 customer classes in the manner provided by ~~clause (ii) of subdivision 8 b~~. For purposes of this
429 subdivision:

430 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
431 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
432 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
433 period with respect to which credits have been applied to customers' bills under the provisions of this
434 subdivision, whichever is later.

435 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except
436 for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31,
437 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
438 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to ~~clause (i) of~~
439 subdivision 8 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility
440 rate increase applications ~~(20 VAC 5-200-30)~~, as permitted by subsection B, occurring after July 1,
441 2009; and (v) base rates in effect as of July 1, 2009.

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

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

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

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

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