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HOUSE BILL NO. 327

Offered January 13, 2010

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A BILL to amend and reenact §§ 56-585.1, 56-598, and 56-599 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 23 of Title 56 a section numbered 56-596.1, relating to the establishment of an electric energy efficiency standard; recovery of costs of energy efficiency programs; and integrated resource planning by investor-owned electric utilities.

Patron—Plum

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.1, 56-598, and 56-599 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 23 of Title 56 a section numbered 56-596.1 as follows:

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

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

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. The first such review shall utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive 12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings

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utilizing the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs*; however, the costs of a peak-shaving program approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member shall not be recoverable under this subdivision if they have been or are being recovered under subdivision 4*. 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 *(i) the accelerated amortization of electric utility equipment to be replaced, such as in the replacement of undepreciated metering equipment with advanced metering infrastructure, or the remaining book value of equipment removed from service, and (ii)* 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*; however, if the Commission determines it would be just, reasonable, and in the public interest, the Commission shall include the enhanced rate of return on common equity prescribed in subdivision 6 in a rate adjustment clause approved hereunder on capital invested in any energy efficiency program that reduces the need for generation. In the event the Commission includes such enhanced return on an energy efficiency program in such rate adjustment clause, the program shall be treated as an energy efficiency program described in subdivision 6 for the purposes 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 utility, shall allow for the recovery of revenue reductions related to energy efficiency programs. The Commission shall only allow such recovery to the extent that the Commission determines such revenue has not been recovered through margins from incremental off-system sales as defined in § 56-249.6 that are directly attributable to energy efficiency programs.

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

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

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

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

6. To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load

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

Type of Generation Facility	Basis Points	First Portion of Service Life
Nuclear-powered	200	Between 12 and 25 years
Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
Renewable powered	200	Between 5 and 15 years
Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years
Energy efficiency program	*200*	*Between 3 and 10 years*

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

For purposes of this subdivision, "general rate of return" means the fair combined rate of return on common equity as it is determined by the Commission from time to time for such utility pursuant to

subdivision 2. In any proceeding under this subdivision conducted prior to the conclusion of the first biennial review for such utility, the Commission shall determine a general rate of return for such utility in the same manner as it would in a biennial review proceeding.

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

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

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

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

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

such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates; or

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

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

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

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

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

10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to clauses (i) and (iii) of subdivision 8, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any other entity with which such utility may be affiliated. In particular, and without limitation, the Commission shall determine the federal and state income tax costs for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the

utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

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

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

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

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

§ 56-596.1. Energy efficiency standard.

A. As used in this section, unless the context requires otherwise:

"Energy efficiency program" means an energy efficiency program as defined in § 56-576 that is implemented after July 1, 2010.

"Utility" means an investor-owned electric utility.

B. The Commonwealth shall have a stated goal of reducing the consumption of electric energy within the Commonwealth, through energy conservation and efficiency actions taken by government, electric utilities, and retail customers, by 2026 to a level that is 19 percent less than the quantity of electricity that would be reasonably projected to be consumed in the Commonwealth in 2026 in the absence of such actions.

C. Of the reductions in consumption required to reduce the consumption of electric energy within the Commonwealth by 2026 to a level that is 19 percent less than the quantity of electricity that would be reasonably projected to be consumed in the Commonwealth in 2026, not less than (i) five-nineteenths shall be attained through energy performance improvements resulting from enhancements to the Uniform Statewide Building Code and appliance efficiency standards; (ii) one-nineteenth shall be attained through improved energy performance of publicly-owned buildings; (iii) two-nineteenths shall be attained through energy performance improvements in the industrial sector; and (iv) one-nineteenth shall be attained through combined heat and power. The Department of Mines, Minerals and Energy annually shall post reports on the agency's Internet website that detail progress in attaining the goals established by this subsection.

D. The Commission shall establish for each utility by February 1, 2011:

1. A projection of the quantity of electricity that will be consumed by the electric utility's retail customers in the Commonwealth in the aggregate in calendar year 2026, which projection shall be based on actual consumption by such customers in 2009 as increased based on a projected average annual growth rate between 2009 and 2026 that the Commission finds appropriate for the utility based on existing usage patterns and trends;

2. A reduced consumption goal for 2026, which goal shall be established by multiplying the projection of consumption by all of the electric utility's retail customers in 2026, established pursuant to subdivision 1, by 10 percent; however, nothing in this subdivision shall be construed to establish an upper limit on the amount of cost-effective energy efficiency programs that utilities may implement, nor the designated capacity of cost-effective energy efficiency programs for which the utilities may be given an enhanced rate of return under this chapter;

3. An annual incremental savings goal, expressed as a percentage of annual consumption by the electric utility's retail customers for each year from 2011 to 2026 that in the aggregate, taking into account the average useful life of energy efficiency programs, would achieve the reduced consumption goal for 2026 established pursuant to subdivision 2. Such annual incremental goals shall provide for a ramp-up period during the first four years of the program, to provide time to plan, design, and establish cost-effective energy efficiency programs;

4. A reduced industrial consumption goal for 2026, which goal shall be established by multiplying the projection of consumption by the electric utility's retail industrial customers in 2026, established pursuant to subdivision 1, by two percent; and

5. A combined heat and power goal for 2026, which goal shall be established by multiplying the projection of consumption by the electric utility's retail customers in 2026, established pursuant to subdivision 1, by one percent.

E. By calendar year 2026, each utility shall (i) implement a portfolio of cost-effective energy efficiency programs designed to reduce the consumption of electric energy by its retail customers in the Commonwealth by the amount of its reduced consumption goal for 2026, determined as provided in subdivision D 2; and (ii) cooperate with any retail or governmental customer seeking to establish combined heat and power to allow that customer to connect to the grid for the purpose of establishing back-up generation. During the period of 2011 through 2026, each utility shall implement a portfolio of cost-effective energy efficiency programs designed to achieve the annual reductions in the consumption of electric energy by its retail customers in the Commonwealth required to meet the annual incremental savings goals established as set forth in subdivision D 3.

F. As part of the biennial integrated resource planning process provided for in § 56-597 the Commission shall establish an annual baseline for each utility for 2011 and each year thereafter through 2026. The Commission shall set the annual baseline for each utility for a year at a level, expressed in kilowatt hours, based on the average of the quantity of electricity that was consumed by the electric utility's retail customers in the Commonwealth in the aggregate in the three calendar years preceding the establishment of the annual baseline. However, the Commission may adjust the baseline for any year if it finds such an adjustment warranted by new economic growth in the utility's service territory or by the addition of load to serve plug-in electric vehicles.

G. Contemporaneously with the establishment of a utility's baseline for a year, to be completed during the biennial integrated resource planning process, the Commission shall calculate a benchmark amount of electricity that represents the amount by which the utility shall endeavor to reduce the consumption of electric energy by its retail customers through a portfolio of cost-effective energy efficiency programs each year. This benchmark reduction amount, expressed in megawatt hours, shall be established at a level equal to the year's baseline amount as multiplied by the annual incremental savings goal for the baseline year determined as provided in subdivision D 3. The Commission may adjust the benchmark amount for any year if, upon application by a utility, the Commission finds that an adjustment is warranted because the utility cannot reasonably be expected to design programs sufficient to achieve the benchmark amount through its portfolio of cost-effective energy efficiency programs as the result of regulatory, economic, or technological reasons beyond the reasonable control of the utility.

H. For each year from 2011 through 2026, each utility shall include a plan for a portfolio of cost-effective energy efficiency programs to the Commission as part of the biennial integrated resource planning process, designed to achieve the benchmark determined as provided in subdivision G.

I. The Commission shall determine whether the portfolio of energy efficiency programs is cost-effective after analyzing such program using any test the Commission reasonably deems appropriate. The Commission may determine the weight to be given to a test.

J. As part of the biennial integrated resources planning process, each utility shall also report to the Commission on its work with industrial customers to achieve the reduced industrial consumption goal for 2026, established as provided for in subdivision D 4 and its work with customers to achieve the combined heat and power goal established as provided for in subdivision D 5, and any barriers that have arisen to achieving those targets.

K. Upon petition by any large general service customer with a demand greater than five megawatts, the Commission shall make a determination as to whether such customer has reduced its consumption of electricity in any year by its proportionate share of an amount at least equal to the benchmark for that year established for such customer's utility in subdivision G. If such customer demonstrates that it has reduced its consumption of electricity by an amount at least equal to that required under this section, it shall receive a credit from their utility against their electricity charges for any portion of an increase in base rates attributable to the utility's recovery of costs associated with energy efficiency programs that the utility is permitted to recover pursuant to subdivision A 5 or A 6 of § 56-585.1. Any credits provided to such customer shall be recoverable from all customer classes as the Commission may direct.

L. Compliance with the benchmark amounts shall be demonstrated through measured and verified consumption reductions resulting from implementation of energy efficiency programs by the electric utility or through independent activities of large general service customers as described in subsection K.

M. If a utility has achieved compliance with the benchmark amounts established pursuant to subsection G, that fact shall be given due consideration by the Commission when determining whether such utility should receive an increase in its combined rate of return on common equity in the nature of a performance incentive as provided in A 2 d of § 56-585.1.

N. The Commission shall adopt such regulations as may be necessary to implement the provisions of this section.

§ 56-598. Contents of integrated resource plans.

A. An IRP should:

1. Integrate, over the planning period, the electric utility's forecast of demand for electric generation supply with recommended plans to meet that forecasted demand and assure adequate and sufficient reliability of service, including, but not limited to:

a. Generating electricity from generation facilities that it currently operates or intends to construct or purchase;

b. Purchasing electricity from affiliates and third parties; and

c. Reducing load growth and peak demand growth through cost-effective demand reduction programs;

2. Identify a portfolio of electric generation supply resources, including purchased and self-generated electric power, that:

a. Consistent with § 56-585.1, is most likely to provide the electric generation supply needed to meet the forecasted demand, net of any reductions from demand side programs, so that the utility will continue to provide reliable service at reasonable prices over the long term; and

b. Will consider low cost energy/capacity available from short-term or spot market transactions, consistent with a reasonable assessment of risk with respect to both price and generation supply availability over the term of the plan;

3. Reflect a diversity of electric generation supply and cost-effective demand reduction contracts and services so as to reduce the risks associated with an over-reliance on any particular fuel or type of generation demand and supply resources and be consistent with the Commonwealth's energy policies as set forth in § 67-102; and

4. Include such additional information as the Commission requests pertaining to how the electric utility intends to meets its obligation to provide electric generation service for use by its retail customers over the planning period.

B. An IRP, including any update thereto, shall include a description of the electric utility's energy conservation and efficiency programs implemented pursuant to § 56-596.1, including (i) the results of any programs that have been implemented and (ii) an analysis of the effectiveness of such programs in the utility's achievement of its benchmark amounts.

§ 56-599. Integrated resource plan required.

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

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

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

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

1. Entering into short-term and long-term electric power purchase contracts;

2. Owning and operating electric power generation facilities;

3. Building new generation facilities;

4. Relying on purchases from the short term or spot markets;

5. Making investments in demand-side resources, including energy efficiency and demand-side management services;

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

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

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

F. In any proceeding before the Commission in which an electric utility seeks a certificate of public convenience and necessity under Chapter 10.1 (§ 56-265.1 et seq.), or a permit or approval under § 56-46.1 or subsection D of § 56-580, the Commission shall consider whether the project or facility for which the certificate, permit, or approval is sought is consistent with an integrated resource plan that has been filed by the electric utility and that the Commission has determined, pursuant to subsection E, is reasonable and is in the public interest. Such consideration shall not (i) control the Commission's disposition of such application for a permit or approval or (ii) be deemed a basis for approving or denying a certificate, permit, or approval. Nothing in this chapter shall be construed to permit the Commission to disregard or limit the fundamental responsibilities of the utility to plan, develop, construct, and operate sufficient generation resources consistent with the public interest to provide a

reliable and adequate supply of electricity and to meet the utility's projected native load obligations.