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SENATE BILL NO. 882

Offered January 12, 2011

Prefiled January 10, 2011

A BILL to amend and reenact §§ 15.2-1901, 56-231.24, 56-234.2, 56-235.2, 56-238, 56-249.6, 56-576, 56-578, 56-579, 56-580, 56-581, 56-585.1, 56-585.2, 56-585.3, 56-590, 56-592, 56-593, 56-594, and 58.1-400.3 of the Code of Virginia and to repeal §§ 56-577, 56-582, 56-584, 56-585, 56-586, 56-587, 56-588, and 56-589 of the Code of Virginia, relating to the regulation of electric utilities.

Patrons—Reynolds and Puckett; Delegate: Armstrong

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1901, 56-231.24, 56-234.2, 56-235.2, 56-238, 56-249.6, 56-576, 56-578, 56-579, 56-580, 56-581, 56-585.1, 56-585.2, 56-585.3, 56-590, 56-592, 56-593, 56-594, and 58.1-400.3 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1901. Condemnation authority.

A. In addition to the authority granted to localities pursuant to any applicable charter provision or other provision of law, whenever a locality is authorized to acquire real or personal property or property interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in subsection B.

B. A locality may acquire property or property interests outside its boundaries by exercise of the power of eminent domain only if such authority is expressly conferred by general law or special act. However, cities and towns shall have the right to acquire property outside their boundaries for the purposes set forth in § 15.2-2109 by exercise of the power of eminent domain. ~~The exercise of such condemnation authority by a city or town shall not be construed to exempt the municipality from the provisions of subsection F of § 56-580.~~

§ 56-231.24. Power to dispose of property.

No cooperative may sell, lease or dispose of all or substantially all of its property (other than property which, in the judgment of the board, is neither necessary nor useful in operating and maintaining the cooperative's system and which in any one year shall not exceed fifty percent in value of the value of all the property of the cooperative, or merchandise), unless authorized to do so by the votes of at least a two-thirds majority of its members; however, a cooperative (i) may mortgage, finance (including, without limitation, pursuant to a sale and leaseback or lease and leaseback transaction), or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; (ii) may sell or transfer its assets to another cooperative upon the vote of a majority of its members at any regular or special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or transfer; *or* (iii) may sell or transfer distribution system facilities to a city or town at any time following the annexation of additional territory pursuant to § 56-265.4:2 by a vote of at least two-thirds of its board of directors~~; or (iv) may sell, lease or dispose of its property to an affiliate pursuant to a plan approved by the Commission in accordance with subsection B of § 56-590 by a vote of at least two-thirds of the members of the Board~~.

§ 56-234.2. Review of rates.

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

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

A. Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, ~~including~~ *subject to* such normalization for nonrecurring costs and annualized adjustments for *known* future *changes in* costs as the Commission ~~finds reasonably can be predicted to occur during the rate year~~ *may deem reasonable*, and a fair return on the public utility's rate base used to serve those jurisdictional customers, which return shall be calculated in accordance with § 56-585.1 for utilities subject to such section; (1a) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation, or for advertisements which solely promote the public interest, conservation or

more efficient use of energy; and (2) the public utility has demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs*, but shall not consider any adjustments or expenses that are speculative or cannot be predicted with reasonable certainty*. In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

~~For ratemaking purposes, the Commission shall determine the federal and state income tax costs for investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.~~

B. The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

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

§ 56-238. Suspension of proposed rates, etc.; investigation; effectiveness of rates pending investigation and subject to bond; fixing reasonable rates, etc.

A. The Commission, either upon complaint or on its own motion~~, may~~*:*

1. May suspend the enforcement of any or all of the proposed rates, tolls, charges, rules or regulations of any public utility except an investor-owned electric public utility for a period not exceeding 150 days from the date of filing~~, and the Commission shall~~*; and*

2. Shall suspend the enforcement of all of the proposed rates, tolls, charges, rules or regulations of an investor-owned electric public utility until the Commission's final order in the proceeding, ~~during which~~ *except as provided in subdivision A 6 of § 56-585.1*.

B. During times *that the proposed rates, tolls, charges, rules or regulations are suspended,* the Commission shall investigate the reasonableness or justice of the proposed rates, tolls, charges, rules and regulations and thereupon fix and order substituted therefor such rates, tolls, charges, rules and regulations as shall be just and reasonable.

C. The Commission's final order in such a proceeding involving an investor-owned electric public utility ~~that is filed after January 1, 2010,~~ shall be entered not more than nine months after the date ~~of~~ *the* filing *is complete, except as provided in subdivision A 6 of § 56-585.1,* at which time the suspension period shall expire, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order.

D. Notice of the suspension of any proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the 30 days' notice to the Commission and the public heretofore provided for.

E. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund, with interest at a rate set by the Commission, the portion of such increased rates, tolls or charges by its decision found not justified. The Commission shall prescribe all necessary rules and regulations to effectuate the purposes of this section ~~on or before September 1, 1980~~.

F. This section shall not apply to proceedings conducted pursuant to § 56-245 or 56-249.6.

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

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

Commission shall direct each company to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or under-recovery of fuel costs previously incurred.

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

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

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

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

D. In proceedings under subsections A and C:

1. Energy revenues associated with off-system sales of power shall be credited against fuel factor expenses in an amount equal to the total incremental fuel factor costs incurred in the production and delivery of such sales. ~~In addition, 75 percent of the total annual margins from off-system sales shall be credited against fuel factor expenses; however, the Commission, upon application and after notice and opportunity for hearing, may require that a smaller percentage of such margins be so credited if it finds by clear and convincing evidence that such requirement is in the public interest. The remaining margins from off-system sales shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1. In the event such margins result in a net loss to the electric utility, (i) no charges shall be applied to fuel factor expenses and (ii) any such net losses shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1.~~ For purposes of this subsection, "margins from off-system sales" shall mean the total revenues received from off-system sales transactions less the total incremental costs incurred. *The Commission may, to the extent deemed appropriate, offset against fuel costs and purchased power costs to be recovered hereunder the margins from off-system sales*; and

2. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to maintain reliable sources of supply, economical generation mix, generating experience of comparable

facilities, and minimization of the total cost of providing service.

E. The Commission is authorized to promulgate, in accordance with the provisions of this section, all rules and regulations necessary to allow the recovery by electric utilities of all of their prudently incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and promptly as possible, with no over-recovery or under-recovery, except as provided in subsection C, in a manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.

§ 56-576. Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

~~"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.~~

"Combined heat and power" means a method of using waste heat from electrical generation to offset traditional processes, space heating, air conditioning, or refrigeration.

~~"Commission" means the State Corporation Commission.~~

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) of this title.

~~"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but shall not include default service providers.~~

~~"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.~~

"Curtailment" means inducing retail customers to reduce load during times of peak demand so as to ease the burden on the electrical grid.

~~"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.~~

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Distribute," "distributing," or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

~~"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.~~

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility~~,~~ *or* cooperative electric utility~~, or electric utility owned or operated by a municipality~~.

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity implemented after the expiration of capped rates. Energy efficiency programs include equipment, physical, or program change designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs that result in improvements in lighting design, heating, ventilation, and air conditioning systems, appliances, building envelopes, and industrial and commercial processes; and (ii) measures, such as but not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems. Energy efficiency programs include demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity. Utilities shall be authorized to install and operate such advanced metering technology and equipment on a customer's premises; however, nothing in this chapter establishes a requirement that an energy efficiency program be implemented on a customer's premises and be connected to a customer's wiring on the customer's side of the inter-connection without the customer's

expressed consent.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.

~~"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.~~

~~"Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.~~

"Independent system operator" means a person that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Measured and verified" means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

"Municipality" means a city, county, town, authority, or other political subdivision of the Commonwealth.

"Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas or nuclear power. Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

"Retail customer" means any person that purchases retail electric energy for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth.

"Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

"Revenue reductions related to energy efficiency programs" means reductions in the collection of total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a utility, that occur due to measured and verified decreased consumption of electricity caused by energy efficiency programs approved by the Commission and implemented by the utility, less the amount by which such non-fuel reductions in total revenues have been mitigated through other program-related factors, including reductions in variable operating expenses.

~~"Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate.~~

~~"Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a retail customer.~~

"Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy through the Commonwealth's interconnected transmission ~~grid from a generator to either a distributor or a retail customer~~.

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy.

§ 56-578. Nondiscriminatory access to transmission and distribution system.

A. All ~~distributors~~ *electric utilities* shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to those facilities of the ~~distributor~~ *electric utility* that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service.

B. Except as otherwise provided in this chapter, every ~~distributor~~ *electric utility* shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory ~~to suppliers of electric energy, including distributed generation, as the Commission may determine~~. ~~The distribution services provided to each supplier of electric energy shall be comparable in quality to those provided by the distribution utility to itself or to any affiliate.~~

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards

acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

D. The Commission shall consider developing expedited permitting processes for small generation facilities of fifty megawatts or less. The Commission shall also consider developing a standardized permitting process and interconnection arrangements for those power systems less than 500 kilowatts which have demonstrated approval from a nationally recognized testing laboratory acceptable to the Commission.

E. ~~Upon the separation and deregulation of the generation function and services of incumbent electric utilities, the~~ *The* Commission shall retain jurisdiction over utilities' electric transmission function and services, to the extent not preempted by federal law. Nothing in this section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 with respect to the construction of electric transmission facilities.

§ 56-579. Regional transmission entities.

A. ~~As set forth in § 56-577, each incumbent~~ *Each* electric utility owning, operating, controlling, or having an entitlement to transmission capacity ~~shall join or establish~~ *may be a member of or participate in* a regional transmission entity, which hereafter may be referred to as "RTE," ~~to which such utility shall transfer the management and control of its transmission assets, subject to the following:~~

~~1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth prior to July 1, 2004, and without~~ *upon* obtaining, following notice and hearing, the prior approval of the Commission, ~~as hereinafter provided. However, each incumbent electric utility shall file an application for approval pursuant to this section by July 1, 2003, and shall transfer management and control of its transmission assets to a regional transmission entity by January 1, 2005, subject to Commission approval~~ as provided in this section.

~~2~~ *B.* The Commission shall develop rules and regulations under which any ~~such incumbent~~ electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth~~,~~ may transfer all or part of such control, ownership or responsibility to an RTE, upon such terms and conditions that the Commission determines will:

~~a~~ *1.* Promote~~:~~

~~(1)~~ Practices*(i) practices* for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto~~;~~ and

~~(2)~~ Policies *(ii) policies* for the pricing and access for service over such systems that are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;

~~b~~ *2.* Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

~~c~~ *3.* Be effectuated on terms that fairly compensate the transferor; *and*

~~d~~ *4.* Generally promote the public interest, and are consistent with (i) ensuring that consumers' needs for economic and reliable transmission are met and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth, including those that do not own, operate, control or have an entitlement to transmission capacity.

~~B~~ *C.* The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of regional transmission entity structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an ~~incumbent~~ electric utility to a regional transmission entity.

~~C~~ *D.* The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning regional transmission entities furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission. Such participation may include such intervention as is permitted state utility regulators under Federal Energy Regulatory Commission rules and procedures.

~~D~~ *E.* Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.) ~~of this title~~;

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 ~~of this title~~; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth ~~by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § 56-587~~.

~~E~~ *F.* For purposes of this section, transmission capacity shall not include capacity that is primarily operated in a distribution function, as determined by the Commission, taking into consideration any

binding federal precedents.

~~F~~ *G*. Any request to the Commission for approval of such transfer of ownership or control of or responsibility for transmission facilities shall include a study of the comparative costs and benefits thereof, which study shall analyze the economic effects of the transfer on consumers, including the effects of transmission congestion costs. The Commission may approve such a transfer if it finds, after notice and hearing, that the transfer satisfies the conditions contained in this section.

~~G~~ *H*. The Commission shall report annually to the Commission on Electric Utility Regulation its assessment of the practices and policies of the RTE. Such report shall set forth actions taken by the Commission regarding requests for the approval of any transfer of ownership or control of transmission facilities to an RTE, including a description of the economic effects of such proposed transfers on consumers.

§ 56-580. Commission authority to regulate generation, transmission, and distribution of electric energy; permitting generation facilities.

A. ~~Subject to the provisions of § 56-585.1, the~~ *The* Commission shall ~~continue to~~ regulate pursuant to this title the *generation and* distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall ~~continue to~~ regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by ~~transmitters and distributors~~ *electric utilities* of their *generation,* transmission, and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of ~~incumbent~~ electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, or transmission services~~, to the extent necessary to prevent impairment of competition~~. Nothing in this chapter shall prevent an ~~incumbent~~ electric utility from offering metering options to its customers.

D. The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity~~, if a petition for such permit is filed after July 1, 2007, and~~ if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1, unless exempt as a small renewable energy project for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. The Commission shall complete any proceeding under this section, or under any provision of the Utility Facilities Act (§ 56-265.1 et seq.), involving an application for a certificate, permit, or approval required for the construction or operation by a public utility of a small renewable energy project as defined in § 10.1-1197.5, within nine months following the utility's submission of a complete application therefore. Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

E. Nothing in this section shall impair the distribution service territorial rights of ~~incumbent~~ electric utilities, and ~~incumbent~~ electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. ~~Subject to the provisions of § 56-585.1, the~~ *The* Commission shall ~~continue to~~ exercise its ~~existing~~ authority over the provision of electric

generation, transmission, and distribution services to retail customers in the Commonwealth *as provided in this title,* including, but not limited to, ~~the authority contained in~~ Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) ~~of this title~~.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403. ~~Nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality or that authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail customer is outside the geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.~~

G. The applicability of all provisions of this chapter except § 56-594 *shall not apply* to any investor-owned ~~incumbent~~ electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties ~~shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier~~. ~~During any such suspension period, the~~ *Such* utility's rates shall be ~~(i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii)~~ determined ~~thereafter~~ by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) ~~of this title~~.

~~H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.~~

§ 56-581. Regulation of rates subject to Commission's jurisdiction.

A. ~~After the expiration or termination of capped rates except as provided in § 56-585.1~~ *Beginning January 1, 2009,* the Commission shall regulate the rates of investor-owned ~~incumbent~~ electric utilities for the transmission of electric energy, to the extent not prohibited by federal law, ~~and for~~, the generation of electric energy, and the distribution of electric energy to retail customers pursuant to § 56-585.1.

B. Beginning ~~July~~ *January* 1, ~~1999~~ *2009*, ~~and thereafter, no cooperative that was a member of a power supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be made to such cooperative's rates as a consequence thereof~~ *the Commission shall regulate the rates of cooperatives for the transmission of electric energy, to the extent not prohibited by federal law, the generation of electric energy, and the distribution of electric energy to retail customers pursuant to § 56-585.3.*

C. ~~Except for the provision of default services under § 56-585 or emergency services in § 56-586, nothing~~ *Nothing* in this chapter shall authorize the Commission to regulate the rates or charges for electric service to the Commonwealth and its municipalities.

§ 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~~,~~. *Such proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. Proceedings under this section shall be* subject to the following provisions:

1. Rates, terms and conditions for ~~each service~~ *generation, distribution, and transmission services* shall be reviewed ~~separately~~ on ~~an unbundled~~ *a bundled* basis~~, and such reviews shall be conducted~~ in a single, combined *biennial review* proceeding. ~~The~~ *Each such utility shall make a biennial filing by March 31 of every other year. Unless the Commission finds that it is in the public interest to adjust the schedule for biennial filings in order to have the reviews for each Phase I Utility and Phase II Utility conducted in the same year: (i) biennial review proceedings shall commence in 2011 for each Phase I Utility and in 2012 for each Phase II Utility; (ii) the* first such review *for a Phase I Utility* 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~~ *; and (iii) the first such review for a Phase II Utility shall utilize* the two successive 12-month test periods ending December 31, 2011~~, for a Phase II Utility, with subsequent~~. *Subsequent biennial review* proceedings ~~utilizing~~ *shall utilize* the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted. *Filings shall consist of the schedules contained in the Commission's rules governing utility rate increase applications and shall encompass the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted. 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.* 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,~~ *A* fair ~~rates~~ *rate* of return on common equity applicable ~~separately~~ to the *transmission,* 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~~ *determining a utility's fair rate of return on common equity,* 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.~~ *compare the risks of the utility relative to the corresponding risks of any proxy utilities or utility holding companies used for the purpose of estimating the costs of common equity. Such risks may include a comparison of the regulatory system applicable to the subject utility to the systems applicable to the proxy companies in other states in order to determine whether the rates of return that comparable utilities are authorized to earn in other states reflect comparable risks borne by the utility under the state's regulatory system, including the extent to which fuel and purchased power costs and investments in certain facilities are recoverable through separate proceedings;*

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~~ *d.* 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~~.~~ *operating in the Commonwealth or in other states, which utilities are determined by the Commission to be comparable with the utility;*

~~f~~ *e.* 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~~ *after considering* any return on common equity ~~or~~ *and* other matters determined with regard to facilities described in subdivision ~~6.~~ *4 f;*

~~g~~ *f.* If the ~~combined~~ rate of return on common equity earned by ~~both the generation and distribution services~~ *the utility* is no more than 50 basis points above or below the return as so determined, such ~~combined~~ return ~~shall not~~ *may* be considered ~~either excessive or insufficient, respectively.~~ *by the Commission to be within an authorized reasonable range; and*

~~h~~ *g.* 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 *transmission-related* costs incurred by the utility shall be ~~deemed reasonable and prudent~~ *recoverable through the utility's base rates*: (i) *reasonable and prudent* costs for transmission services*, including, without limitation, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs* 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) *reasonable and prudent* costs ~~charged to the utility that are associated with~~ *in implementing* 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.~~ *As used in this section, a utility's base rates means the rates that provide for the recovery of the utility's costs of generation, transmission, and distribution services and the return on equity authorized by the Commission, but does not include revenue recovered by the utility pursuant to § 56-249.6 or any rate rider approved for rate adjustment clauses pursuant to subdivision 4.*

~~5~~ *4.* 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*, in one combined proceeding per year,* 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 *former* § 56-582 incurred between July 1, 2004, and ~~the expiration or termination of capped rates~~ *January 1, 2009*, 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 *former* § 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 *former* § 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 utility, ~~shall~~ *may* allow for the recovery of ~~revenue reductions~~ *lost net margins from lost sales* related to energy efficiency programs. The Commission ~~shall only~~ *may* allow such recovery to the extent that the Commission determines such ~~revenue has~~ *lost net margins have* 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~~ *4 f*. The Commission shall ~~approve such a petition allowing~~ *allow* 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~~ *4 f* 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~~ *4 f* 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.~~*; and*

~~6~~ *f*. 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~~; 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,~~. *In addition, the Commission may authorize* an enhanced rate of return on common equity *for the facility,* 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~~ *Any enhanced rate of return on common equity authorized by the Commission pursuant to this subdivision for a facility may not exceed 200 basis points, and, if awarded, may apply for a period established by the Commission of between five and 25 years. The Commission shall determine whether to authorize an enhanced rate of return, and the amount and duration of any enhanced rate of return so authorized, in order to reflect any increased risk to the utility caused by the construction of the facility that is not otherwise reflected in the utility's authorized rate of return on equity. The approved enhanced rate of return on common equity shall be added 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. The Commission, if it is determined to be in the public interest, may allow an* enhanced rate of return on common equity ~~shall~~ *to* 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 *for which an enhanced rate of return has been established by the Commission pursuant to this subdivision 4 f.* ~~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~~ *period for which an authorized enhanced rate of return for a* 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 *pursuant to subdivision 1 c* in implementing any rate of return under this subdivision *4 f*. 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~~ *and may include*an enhanced rate of return on common equity as determined pursuant to this subdivision *4 f,* until such construction work in progress is included in rates. The construction of any facility described in clause (i) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. ~~The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:~~

~~Type of Generation Facility Basis Points First Portion of Service Life~~

~~Nuclear-powered 200 Between 12 and 25 years~~

~~Carbon capture compatible, clean-coal powered 200 Between 10 and 20 years~~

~~Renewable powered 200 Between 5 and 15 years~~

~~Conventional coal or combined-cycle combustion turbine 100 Between 10 and 20 years~~

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

For purposes of this subdivision *4 f,* "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 *f,* if the Commission finds during the biennial review conducted for a Phase II utility in ~~2018~~ *2017* 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 *4 f.*

In order that a utility's retail customers are not subjected to more than one change in rates in any calendar year, except for any revisions to rates authorized by § 56-242, 56-245, or 56-249.6, petitions for rate adjustment clauses under this subdivision 4 shall be combined into single annual proceedings. The Commission shall consider all rate adjustment clause petitions authorized by this subdivision 4 that are filed (a) as part of a single, combined proceeding consolidating all rate adjustment clause proceedings and the biennial review, if the rate adjustment clause petition is filed during the 12 months preceding the filing of the utility's biennial review; or (b) in a single, combined proceeding consolidating all rate adjustment clause proceedings, if the rate adjustment clause petition is filed during the 12 months following the filing of the utility's biennial review.

In each proceeding approving a rate adjustment clause, the Commission shall provide for the establishment of separate accounts for the recovery of approved costs, including any allowed enhanced rate of return on common equity, through a rate adjustment clause that provides for the collection, through current or future utility rates and over the life of the adjustment clause, of the amortized portion of such costs that are determined during the utility's biennial reviews. The Commission shall determine the duration or amortization period for any rate adjustment clause approved under this subdivision 4. The Commission shall also provide for a true-up as part of each biennial review in order that, over the duration of the clause, the utility will recover all of the appropriate costs covered by the clause, including any allowed enhanced return on common equity. The Commission shall adjust the rider rate over the life of the clause, taking into account any changes in costs and excess base rate earnings as provided for in this section, so as to minimize over-collections and under-collections to the extent practicable. If the initial approval of the rate adjustment clause is part of a biennial review, the Commission shall establish a separate rate rider including a rate that provides for the funding of the rate adjustment clause for the next two years, subject to any reduction as a result of excess earnings as provided in this subsection. If the initial approval of the rate adjustment clause is not part of a biennial review, the utility shall provide the necessary information to allow the Commission to determine whether there are any excess earnings for base rates based on the year prior to the filing of the application, and if the Commission determines that there are base rate earnings in excess of the authorized return, the Commission may reduce the rider rate amount by the amount of the excess base rate earnings. In a proceeding in which a rate adjustment clause is approved that is not part of a biennial review, if the excess earnings are sufficient to offset the total rate amount needed until rates established by the next biennial review would be effective, the Commission need not set up a separate rate rider for the clause. In determining the necessary amount of any rate rider during a biennial review, if there is a shortfall for a rate adjustment clause, the Commission shall credit to the account any base rate earnings during the biennial period under review in excess of the authorized return for the period under review up to the amount of the shortfall. If there are one or more such new rate adjustment clauses or there are previously approved rate adjustment clauses that have a shortfall, the Commission shall apportion the excess earnings among the adjustment clauses as it determines is appropriate. The Commission shall not direct that any portion of base rate earnings be credited to any adjustment clauses if such action will reduce the utility's earned rate of return during the biennial period under review to a level that is less than the fair rate of return on common equity determined pursuant to subdivision 2 for the biennium. If the revenues from a rate rider or overearnings from base rates are not sufficient to satisfy the amount required pursuant to the terms of the rate adjustment clause, the shortfall shall be deferred to future periods and shall be collectible through the rate rider as approved by the Commission as part of a biennial review and true-up. If there are excess revenues collected through a rate rider for a rate adjustment clause, the excess shall be applied to reduce the rate rider for such clause for the next biennial review period as part of the true-up. The Commission shall not approve a rate rider in connection with a rate adjustment clause if it would authorize the utility to charge rates that in the aggregate would provide revenues that exceed the aggregate actual costs incurred by the utility in serving customers within the jurisdiction of the Commission. After such amounts recoverable through rate adjustment clauses are combined, they thereafter shall be considered part of the utility's base rates, as defined in subdivision 3, for the purposes of future biennial review proceedings unless the Commission determines that a separate accounting therefor is appropriate.

~~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~~ *a rate adjustment clause* 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~~ *4 a*, or that are related to facilities and projects described in clause (i) of subdivision ~~6~~ *f*, 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~~ *f* that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of subdivision ~~6~~ *f* 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~~ *January 1, 2009* related to other matters described in ~~subdivisions~~ *this subdivision* ~~4,~~ ~~5~~ ~~or~~ ~~6~~ shall be deferred beginning ~~only~~ ~~upon~~ ~~the~~ ~~expiration~~ ~~or~~ ~~termination~~ ~~of~~ ~~capped~~ ~~rates~~ *January 1, 2009*, 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 *this* 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~~ *(1) concurrently with the Commission's final order in the utility's biennial review if issued in a year in which a biennial review is conducted for the utility or (2) not more than nine months after the filing of all such petitions in such year are complete if the petition is filed other than in a year in which a biennial review is conducted for the utility*. ~~If~~ ~~such~~ ~~petition~~ ~~is~~ ~~approved,~~ ~~the~~ ~~order~~ ~~shall~~ ~~direct~~ ~~that~~ ~~the~~ ~~applicable~~ *Any* rate adjustment clause *authorized by this subdivision 4 shall* 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~~ *5*. If the Commission determines as a result of ~~such~~ *a* biennial review that:

~~(i)~~ *a.* 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 *transmission,* 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 *base* 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~~; *or*

~~(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 *transmission,* 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~~, *after deducting the amount of such excess earnings that are credited to one or more rate adjustment clauses,* 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 *to customer's bills* shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates~~;~~ ~~or~~

~~(iii) Such biennial review is the second consecutive biennial review in which the utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matter determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9~~

and in addition to the actions authorized in clause (ii) of this subdivision, also order reductions to the utility's rates it finds appropriate. However, the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate reduction under the standards of this sentence, and the amount thereof. *The Commission shall not direct that any portion of such base rate earnings be credited to rate adjustment clauses if such action will reduce the utility's rate of return to a level that is less than the fair rate of return on common equity determined pursuant to subdivision 2 for the biennium.*

6. The Commission shall set a utility's rates in a biennial review at a level that provides the utility with the opportunity to fully recover its costs of providing its services, including amounts required for rate adjustment clauses approved pursuant to subdivision 4, and to earn not less than a fair rate of return on its services as determined in subdivision 2. 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 *utility's filing is complete; however, the Commission may extend such period by an additional period not to exceed nine months. If the Commission extends the period beyond the initial nine months, the utility may place a proposed rate increase in effect, subject to refund, at the end of the nine months after the filing is complete. Any* revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order.

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

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

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

10 *7*. 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 *upon considering* 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~~ *a temporary* 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.

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

A. As used in this section:

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

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

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

C. It is in the public interest for utilities to achieve the goals set forth in subsection D, such goals being referred to herein as "RPS Goals". Accordingly, the Commission, in addition to providing recovery of incremental RPS program costs pursuant to subsection E, shall ~~increase the fair combined~~ *authorize an increased* rate of return on common equity for each *renewable energy generation facility of a* utility participating in such program by ~~a single Performance Incentive, as defined in subdivision A 2 of § 56-585.1, of~~ 50 basis points whenever the utility attains an RPS Goal established in subsection D, *which increase in the rate of return on common equity for the utility's renewable energy generation facilities is referred to as the "Renewable Incentive."* ~~Such Performance~~ *A Renewable* Incentive shall first be used in the calculation of a ~~fair combined~~ rate of return *for such a facility* for the purposes of the immediately succeeding biennial review conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the utility continues to meet the RPS Goals established in this section *and the facility continues to be owned and operated by the utility* through and including the third succeeding biennial review conducted thereafter. ~~Any such Performance Incentive, if implemented, shall be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of return on common equity for the same time periods. However, if the utility receives any other Performance Incentive increasing its fair combined rate of return on common equity by more than 50~~

~~basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance Incentive during the term of such other Performance Incentive.~~ A utility shall receive double credit toward meeting the renewable energy portfolio standard *goals* for energy derived from sunlight or from onshore wind, and triple credit toward meeting the renewable energy portfolio standard *goals* for energy derived from offshore wind.

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

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

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

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

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

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

E. A utility participating in such program shall have the right, *subject to Commission approval,* to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses as provided in ~~subdivisions~~ *subdivision* A ~~5~~ *4* ~~and A 6~~ of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A ~~6~~ *4 f* of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A ~~6~~ *4 f* of § 56-585.1. All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible. A utility participating in such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007, that is operated by a person that is served within a utility's large industrial rate class and that is served at primary or transmission voltage. A participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B. A participating utility may sell renewable energy certificates produced at its own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates and the net difference in price between the renewable energy certificates shall be credited to customers. Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS ~~goals~~ *Goals,* excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS ~~goals~~ *Goals,* without limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris;

brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.

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

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

§ 56-585.3. Regulation of cooperative rates after rate caps.

A. After the expiration or termination of capped rates, the rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of this title shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.) of this title, as modified by the following provisions:

1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale power cost which occurred during the capped rate period, other than in a general rate proceeding;

2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for distribution services at any time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of 5 percent in such rates in any three year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The cooperative will promptly file any such revised rates with the Commission for informational purposes;

3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board of directors, make any adjustment to its terms and conditions that does not affect the cooperative's revenues from the distribution or supply of electric energy. In addition, a cooperative may make such adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The cooperative will promptly file any such amended terms and conditions with the Commission for informational purposes;

4. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, make any adjustment to its rates reasonably calculated to collect any or all of the fixed costs of owning and operating its electric distribution system, including without limitation, such costs as are identified as customer-related costs in a cost of service study, through a new or modified fixed monthly charge, rather than through volumetric charges associated with the use of electric energy; however, such adjustments shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of the revenues produced by its then current rates. The cooperative may elect, but is not required, to implement such adjustments through incremental changes over the course of up to three years. The cooperative shall file promptly revised tariffs reflecting any such adjustments with the Commission for informational purposes; and

5. A cooperative may, at any time after ~~the expiration or termination of capped rates~~ *January 1, 2009,* petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the costs described in subdivisions A ~~5~~ *4* b and e of § 56-585.1.

B. None of the adjustments described in subdivisions A 2 through A 5 will apply to the rates paid by any customer that takes service by means of dedicated distribution facilities and had noncoincident peak demand in excess of 90 megawatts in calendar year 2006.

C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust any terms and conditions of service or agreements regarding pole attachments or the use of the cooperative's poles or conduits.

§ 56-590. Divestiture, functional separation and other corporate relationships.

~~A.~~ The Commission shall not require any ~~incumbent~~ electric utility to divest itself of any generation, transmission, or distribution assets, *or to separate its generation, transmission, and distribution functions,* pursuant to any provision of this chapter.

~~B. 1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be completed by January 1, 2002.~~

~~2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates, or through such~~

other means as may be acceptable to the Commission.

3. Consistent with this chapter, the Commission may impose conditions, as the public interest requires, upon its approval of any incumbent electric utility's plan for functional separation, including requirements that (i) the incumbent electric utility's generation assets or, at the election of the incumbent electric utility and if approved by the Commission pursuant to subdivision 4 of this subsection, their equivalent are made available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period the distributor serves as a default provider as provided for in § 56-585; (ii) the incumbent electric utility receive Commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period the distributor serves as a default provider; and (iii) any such generation asset sold, transferred, or otherwise disposed of by the incumbent electric utility with Commission approval shall not be further sold, transferred, or otherwise disposed of during the capped rate period and, if applicable, during any period the distributor serves as default provider, without additional Commission approval.

4. If an incumbent electric utility proposes that the equivalent to its generation assets be made available pursuant to subdivision 3 of this subsection, the Commission shall determine the adequacy of such proposal and shall approve or reject such proposal based on the public interest.

5. In exercising its authority under the provisions of this section and under § 56-90, the Commission shall have no authority to regulate, on a cost-of-service basis or other basis, the price at which generation assets or their equivalent are made available for default service purposes. Such restriction on the Commission's authority to regulate, on a cost-of-service basis or other basis, prices for default service shall not affect the ability of a distributor to offer to provide, and of the Commission to approve if appropriate the provision of, such services on a cost plus basis or any other basis. The Commission's authority to regulate the price of default service shall be consistent with the pricing provisions applicable to a distributor pursuant to § 56-585. In addition, the Commission shall, in exercising its responsibilities under this section and under § 56-90, consider, among other factors, the potential effects of any such transfer on: (i) rates and reliability of capped rate service under § 56-582, and of default service under § 56-585, and (ii) the development of a competitive market in the Commonwealth for retail generation services. However, the Commission may not deny approval of a transfer proposed by an incumbent electric utility, pursuant to subdivisions 2 and 4 of subsection B, due to an inability to determine, at the time of consideration of the transfer, default service prices under § 56-585.

C. The Commission shall, to the extent necessary to promote effective competition in the Commonwealth, promulgate rules and regulations to carry out the provisions of this section, which rules and regulations shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;

2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;

3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and

4. Establishing codes of conduct detailing permissible relations between functionally separate units.

D. Neither a covered entity nor an affiliate thereof may be a party to a covered transaction without the prior approval of the Commission. Any such person proposing to be a party to such transaction shall file an application with the Commission. The Commission shall approve or disapprove such transaction within sixty days after the filing of a completed application; however, the sixty-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within such initial or extended period. The Commission shall approve such application if it finds, after notice and opportunity for hearing, that the transaction will comply with the requirements of subsection E, and may, as a part of its approval, establish such conditions or limitations on such transaction as it finds necessary to ensure compliance with subsection E.

E. A transaction described in subsection D shall not:

1. Substantially lessen competition among the actual or prospective providers of noncompetitive electric service or of a service which is, or is likely to become, a competitive electric service; or

2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

F. Except as provided in subdivision B 5, nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements of subsection D that is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the requirements of Chapter 5 of this title.

§ 56-592. Consumer education and marketing practices.

A. The Commission shall develop an electric energy consumer education program designed to provide the following information to retail customers:

1. Information regarding energy conservation, energy efficiency, demand-side management, demand

response, and renewable energy;

2. Information concerning demand-side management and demand response programs offered in the Commonwealth to retail customers;

3. Information regarding the matters described in subdivisions 1 and 2 that are specifically designed for the industrial, commercial, residential, and government sectors; and

4. Such other information as the Commission may deem necessary and appropriate in the public interest.

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Commission on Electric Utility Regulation as frequently as may be required by such Commission concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;

2. Materials and media required to effectuate any such program;

3. State agency and nongovernmental entity participation;

4. Program duration;

5. Funding requirements and mechanisms for any such program; and

6. Such other findings and recommendations the Commission deems appropriate in the public interest.

C. The Commission shall develop regulations governing marketing practices by public service companies~~,~~ ~~licensed suppliers,~~ ~~aggregators or any other providers of services made competitive by this chapter~~, including regulations to prevent ~~unauthorized switching of suppliers,~~ unauthorized charges~~,~~ and improper solicitation activities. ~~The Commission shall also establish standards for marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter, which information shall include standards concerning:~~

~~1. Pricing and other key contract terms and conditions;~~

~~2. To the extent feasible, fuel mix and emissions data on at least an annualized basis;~~

~~3. Customer's rights of cancellation following execution of any contract;~~

~~4. Toll-free telephone number for customer assistance; and~~

~~5. Such other and further marketing information as the Commission may deem necessary and appropriate in the public interest.~~

D. ~~The Commission shall also establish standards for billing information to be furnished by public service companies, suppliers, aggregators or any other providers of services made competitive by this chapter. Such billing information standards shall require that billing formation:~~

~~1. Distinguishes between charges for regulated services and unregulated services;~~

~~2. Is presented in a format that complies with standards to be established by the Commission;~~

~~3. Discloses, to the extent feasible, fuel mix and emissions data on at least an annualized basis; and~~

~~4. Includes such other billing information as the Commission deems necessary and appropriate in the public interest.~~

~~E.~~ The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against public service companies~~,~~ ~~licensed suppliers, aggregators and other providers of any services made competitive under this chapter~~. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

~~F~~*E*. The Commission shall establish reasonable limits on customer security deposits required by public service companies~~,~~ ~~suppliers, aggregators or any other persons providing competitive services pursuant to this chapter~~.

§ 56-593. Retail customers' private right of action; marketing practices.

A. No entity subject to this chapter shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing electric service.

B. 1. Any person who suffers loss (i) as the result of marketing practices, including telemarketing practices, engaged in by any public service company~~,~~ ~~licensed supplier, aggregator or any other provider of any service made competitive under this chapter, and~~ in violation of subsection C of § 56-592, including any rule or regulation adopted by the Commission pursuant thereto, or (ii) as the result of any violation of subsection A, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater.

2. Upon referral from the Commission, the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court for relief of violations within the scope of (i) subsection C of § 56-592, including any rule or

regulation adopted by the Commission pursuant thereto or (ii) subsection A.

C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person, or any governmental agency initiating such action, also may be awarded reasonable attorney's fees and court costs.

D. Any action pursuant to this section shall be commenced within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission initiates proceedings, or any other governmental agency files suit for the purpose of enforcing subsection A of this section or the provisions of subsection C of § 56-592, the time during which such proceeding or governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under this section shall be brought.

E. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of subsection A of this section or subsection C of § 56-592, provided, that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

F. In any case arising under this section, no liability shall be imposed upon any ~~licensed supplier, aggregator or any other provider of any service made competitive under this chapter, who~~ *public service company that* shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subsection A of this section or subsection C of § 56-592 was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection C to individuals aggrieved as a result of an unintentional violation of subsection A of this section or subsection C of § 56-592.

§ 56-594. Net energy metering provisions.

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

B. For the purpose of this section:

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

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

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

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

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the customer-generator against discrimination by virtue of its status as a customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators served on demand charge-based

time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator over the net metering period exceeds the electricity consumed by the customer-generator, the customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the customer-generator, the ~~supplier~~ *electric utility* that serves the eligible customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the ~~supplier~~ *electric utility* to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator owns the renewable energy certificates associated with its electrical generating facility, however, at the time that the eligible customer-generator enters into a power purchase agreement with its ~~supplier~~ *electric utility*, the customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its ~~supplier~~ *electric utility* and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator and the ~~supplier~~ *electric utility* from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible customer-generator does not exercise its option to sell its renewable energy certificates to its ~~supplier~~ *electric utility* at Commission-approved prices at the time that the eligible customer-generator enters into a power purchase agreement with its ~~supplier~~ *electric utility*. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the ~~supplier~~ *electric utility* has a Commission-approved RPS plan. If not, then all costs shall be recoverable through the ~~supplier's~~ *electric utility's* fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators in the state reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall require the ~~supplier~~ *electric utility* to pay the eligible customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

§ 58.1-400.3. Minimum tax on certain electric suppliers.

A. 1. An electric supplier, except for those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax imposed by this section, instead of the corporate income tax imposed by § 58.1-400 if applicable, net of any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this subsection. An electric supplier that is organized as a limited liability, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts for the calendar year that ends during the taxable year minus the state's portion of the electric utility consumption tax billed to consumers.

B. 1. An electric supplier that is organized as a cooperative and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax, instead of the tax on modified net income imposed by § 58.1-400.2, if the tax imposed by § 58.1-400.2, net of any credits that may be used to offset such tax, is less than the minimum tax imposed by this subsection.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts from sales to nonmembers for the calendar year that ends during the taxable year minus the consumption tax collected from nonmembers.

C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be based on the gross receipts for the calendar year that ends during the taxable period or, if none, the most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

D. The State Corporation Commission shall calculate and certify to the Department for each tax year as defined in § 58.1-2600 the name, address, and minimum tax for each electric supplier. The Commission shall mail or otherwise deliver a copy of the certification to each affected electric supplier.

E. When an electric supplier subject to the tax imposed by this section is one of several affiliated

corporations that file a consolidated or combined income tax return, the portion of the affiliated corporations' tax liability that is attributable to the electric supplier shall be computed as follows:

1. Each corporation included in the consolidated or combined return shall recompute its corporate income tax liability, net of any income tax credits, as if it were filing a separate return. The separate income tax liability of the electric supplier shall then be compared to the affiliated corporations' tax liability, net of any income tax credits, indicated on the consolidated or combined return. For purposes of this section, the lesser amount shall be deemed to be the corporate income tax imposed by § 58.1-400 and attributable to the electric supplier.

2. a. If such corporate income tax amount is less than the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall be subject to the minimum tax in lieu of the corporate income tax imposed by § 58.1-400.

b. If such corporate income tax amount exceeds the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall not owe the minimum tax.

F. The requirements imposed under Article 20 (§ 58.1-500 et seq.) of Chapter 3 of this title regarding the filing of a declaration of estimated income taxes and the payment of such estimated taxes, shall be applicable to electric suppliers regardless of whether such taxpayer expects to be subject to the minimum tax imposed herein or to the corporate income tax imposed by § 58.1-400.

For purposes of determining the applicability of the exceptions under which the addition to the tax for the underpayment of any installment of estimated taxes shall not be imposed, it shall be irrelevant whether the tax shown on the return for the preceding taxable year is the corporate income tax or the minimum tax.

G. To the extent that a taxpayer is subject to the minimum tax imposed under this section, there shall be allowed a credit against the separate, combined, or consolidated corporate income tax for the total amount of minimum tax paid by the electric supplier in all previous years that is in excess of the tax imposed by § 58.1-400 on the electric supplier for such years.

H. 1. To the extent an electric supplier or its parent company has remitted estimated income tax payments in excess of its corporate income tax liability for the taxable years beginning on or after January 1, 2001, but before January 1, 2004, such overpayments shall only be utilized to offset any corporate income tax liabilities incurred pursuant to § 58.1-400 for taxable years beginning on and after January 1, 2004, and shall not be claimed as a refund of overpaid taxes, except as provided in subdivision 2 of this subsection. For the purposes of this subsection, estimated income tax payments shall include any overpayments from a prior taxable year carried forward as an estimated payment to be credited towards a future tax liability.

2. If an electric supplier has had a corporate income tax liability of greater than $0 for each taxable year beginning on or after January 1, 2001, but before January 1, 2003, then such electric supplier may claim a refund of any estimated income tax payments in excess of their taxable year 2003 corporate income tax liability.

I. Every electric supplier which owes the minimum tax imposed by this section shall remit such tax payment to the Department of Taxation.

J. ~~Notwithstanding any of the foregoing provisions, an electric supplier may not adjust capped rates pursuant to § 56-582 of the Code of Virginia on any portion of the minimum tax due to the Commonwealth.~~

~~K.~~ The following words and terms, for purposes of this section, shall have the following meanings:

"Consumption tax" means the state's portion of the electric utility consumption tax billed pursuant to Chapter 29 (§ 58.1-2900 et seq.) of this title, for which the electric supplier is defined as the "service provider" pursuant to § 58.1-2901 less any amounts billed on behalf of utilities owned and operated by municipalities.

"Electric supplier" means an incumbent electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the State Corporation Commission.

"Gross receipts" has the same meaning as defined in § 58.1-2600 less receipts from sales to federal, state and local governments for their own use.

"Nonmember" has the same meaning as defined in § 58.1-400.2.

2. That any rate adjustment clauses approved by the State Corporation Commission, prior to the effective date of this act, in a proceeding instituted pursuant to subdivision A 5 or A 6 of § 56-585.1 of the Code of Virginia as it existed prior to the effective date of this act, shall continue in effect on the terms and conditions set forth in the of the order approving them, subject to the following: (i) revenue collected by an investor-owned electric utility pursuant to a rate adjustment clause shall be considered by the State Corporation Commission in determining the utility's total revenue and rate of return on equity in any ratemaking proceeding under Title 56; (ii) the utility shall continue to be authorized to collect any enhanced rate of return on equity above the approved general rate of return on equity or margin on operating expenses that was approved by

the State Corporation Commission in any such proceeding, which authorization shall not prevent the Commission from adjusting the utility's general rate of return on equity in any subsequent biennial review conducted under § 56-585.1; (iii) the duration of any enhanced rate of return on common equity for a generation facility that was approved by the State Corporation Commission pursuant to subdivision A 6 of § 56-585.1 shall not be shortened by subsequent order of the Commission; and (iv) any such rate adjustment clause shall continue to be accounted for separately for its approved duration.

3. That §§ 56-577, 56-582, 56-584, 56-585, 56-586, 56-587, 56-588, and 56-589 of the Code of Virginia are repealed.