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HOUSE BILL NO. 590

Offered January 11, 2012

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A BILL to amend and reenact §§ 56-585.1 and 56-585.2 of the Code of Virginia, relating to renewable energy projects; eligibility of out-of-state projects for certain incentives.

Patrons—Merricks and Marshall, D.W.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-585.1 and 56-585.2 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

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59 Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

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

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

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

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

119 "Initial Return" means the fair combined rate of return on common equity determined for such utility
120 by the Commission on the first occasion after July 1, 2009, under any provision of this subsection

pursuant to the provisions of subdivision 2 a.

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

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

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

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

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

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

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

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

b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs. 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 allow for the recovery of revenue reductions related to energy efficiency programs. The Commission shall only allow such recovery to the extent that the Commission determines such revenue

182 has not been recovered through margins from incremental off-system sales as defined in § 56-249.6 that
183 are directly attributable to energy efficiency programs.

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

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

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

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

228 6. To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load
229 obligations and to promote economic development, a utility may at any time, after the expiration or
230 termination of capped rates, petition the Commission for approval of a rate adjustment clause for
231 recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
232 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
233 described in § 15.2-6002, regardless of whether such facility is located within or without the utility's
234 service territory, (ii) one or more other generation facilities, or (iii) one or more major unit
235 modifications of generation facilities; however, such a petition concerning facilities described in clause
236 (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a
237 Phase I utility, or facilities described in clause (i) may also be filed before the expiration or termination
238 of capped rates. A utility that constructs any such facility shall have the right to recover the costs of the
239 facility, as accrued against income, through its rates, including projected construction work in progress,
240 and any associated allowance for funds used during construction, planning, development and
241 construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive
242 to undertake such projects, an enhanced rate of return on common equity calculated as specified below.
243 The costs of the facility, other than return on projected construction work in progress and allowance for

funds used during construction, shall not be recovered prior to the date the facility begins commercial operation. Such enhanced rate of return on common equity shall be applied to allowance for funds used during construction and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility. After the first portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the date the facility begins commercial operation, and such service life shall be deemed equal in years to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the basis points specified in the table below to the utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause. No change shall be made to any Performance Incentive previously adopted by the Commission in implementing any rate of return under this subdivision. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as determined pursuant to this subdivision, until such construction work in progress is included in rates. The construction of any facility described in clause (i) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:

Type of Generation Facility	Basis Points	First Portion of Service Life
Nuclear-powered	200	Between 12 and 25 years
Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
Renewable powered	200	Between 5 and 15 years
Coalbed methane gas powered	150	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.

As used in this subdivision, (a) a generation facility is "coalbed methane gas powered" if the facility is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.1-361.1, produced from wells located in the Commonwealth, and (b) "generation facility" does not include a renewable powered generation facility located outside of the Commonwealth, except for an offshore wind facility that is located in waters off the Commonwealth's Atlantic shoreline.

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

Notwithstanding any other provision of this subdivision, if the Commission finds during the biennial review conducted for a Phase II utility in 2018 that such utility has not filed applications for all necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been received, that the utility has not made reasonable and good faith efforts to construct one or

304 more such facilities that will provide such additional total capacity within a reasonable time after
305 obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a
306 prospective basis any enhanced rate of return on common equity previously applied to any such facility
307 to no less than the general rate of return for such utility and may apply no less than the utility's general
308 rate of return to any such facility for which the utility seeks approval in the future under this
309 subdivision.

310 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
311 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
312 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
313 Commission, that are proposed for recovery in such petition and that are related to clause (a) of
314 subdivision 5, or that are related to facilities and projects described in clause (i) of subdivision 6, shall
315 be deferred on the books and records of the utility until the Commission's final order in the matter, or
316 until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any
317 costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or
318 during the consideration thereof by the Commission, that are proposed for recovery in such petition and
319 that are related to facilities and projects described in clause (ii) of subdivision 6 that utilize nuclear
320 power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled
321 facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until
322 the Commission's final order in the matter, or until the implementation of any applicable approved rate
323 adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination
324 of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning
325 only upon the expiration or termination of capped rates, provided, however, that no provision of this act
326 shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory
327 Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P
328 61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or
329 6 shall be entered not more than three months, eight months, and nine months, respectively, after the
330 date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate
331 adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or
332 upon the expiration or termination of capped rates, whichever is later.

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

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

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

359 (iii) Such biennial review is the second consecutive biennial review in which the utility has, during
360 the test period or test periods under review, considered as a whole, earned more than 50 basis points
361 above a fair combined rate of return on both its generation and distribution services, as determined in
362 subdivision 2, without regard to any return on common equity or other matter determined with respect
363 to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9
364 and in addition to the actions authorized in clause (ii) of this subdivision, also order reductions to the
365 utility's rates it finds appropriate. However, the Commission may not order such rate reduction unless it

finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate reduction under the standards of this sentence, and the amount thereof.

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

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

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

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

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

B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications; 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

427 rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation,
428 transmission and distribution services to retail customers in the Commonwealth pursuant to the
429 provisions of Chapter 10 (§ 56-232 et seq.) ~~of this title~~, including specifically § 56-235.2.

430 D. Nothing in this section shall preclude the Commission from determining, during any proceeding
431 authorized or required by this section, the reasonableness or prudence of any cost incurred or projected
432 to be incurred, by a utility in connection with the subject of the proceeding. A determination of the
433 Commission regarding the reasonableness or prudence of any such cost shall be consistent with the
434 Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to
435 the provisions of Chapter 10 (§ 56-232 et seq.) ~~of this title~~. In determining the reasonableness or
436 prudence of a utility providing energy and capacity to its customers from renewable energy resources,
437 the Commission shall consider the extent to which such renewable energy resources, whether
438 utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in
439 §§ 67-101 and 67-102, and shall also consider whether the costs of such resources is likely to result in
440 unreasonable increases in rates paid by consumers.

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

443 § 56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard
444 program.

445 A. As used in this section:

446 "Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable
447 energy is (i) generated ~~or purchased from a facility located~~ in the Commonwealth or ~~in the~~
448 ~~interconnection region of the regional transmission entity of which the participating utility is a member,~~
449 ~~as it may change from time to time;~~ (ii) generated by a public utility providing electric service in the
450 Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is
451 ~~located in a control area adjacent to such interconnection region;~~ ~~if it is an offshore wind facility,~~
452 ~~located in waters off the Commonwealth's Atlantic shoreline or~~ (iii) (ii) represented by certificates issued
453 by an affiliate of ~~such a~~ regional transmission entity of which the participating utility is a member, or
454 any successor to such affiliate, and held or acquired by such utility, which validate the generation of
455 renewable energy by eligible sources in ~~such region the Commonwealth or such offshore area.~~
456 "Renewable energy" shall not include electricity generated from pumped storage, but shall include
457 run-of-river generation from a combined pumped-storage and run-of-river facility ~~located in the~~
458 ~~Commonwealth.~~

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

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

469 C. It is in the public interest for utilities to achieve the goals set forth in subsection D, such goals
470 being referred to herein as "RPS Goals". Accordingly, the Commission, in addition to providing
471 recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined
472 rate of return on common equity for each utility participating in such program by a single Performance
473 Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an
474 RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation
475 of a fair combined rate of return for the purposes of the immediately succeeding biennial review
476 conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the
477 utility continues to meet the RPS Goals established in this section through and including the third
478 succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall
479 be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of
480 return on common equity for the same time periods. However, if the utility receives any other
481 Performance Incentive increasing its fair combined rate of return on common equity by more than 50
482 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance
483 Incentive during the term of such other Performance Incentive. A utility shall receive double credit
484 toward meeting the renewable energy portfolio standard for energy derived from *a project in the*
485 *Commonwealth generating electricity from sunlight or from onshore wind, and triple credit toward*
486 *meeting the renewable energy portfolio standard for energy derived from a project located in waters off*
487 *the Commonwealth's Atlantic shoreline generating electricity from offshore wind.*

488 D. To qualify for the Performance Incentive established in subsection C, the total electric energy sold

by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy from renewable energy sources, as adjusted for any sales volumes lost through operation of the customer choice provisions of subdivision A 3 or A 4 of § 56-577:

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

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

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

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

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

E. A utility participating in such program shall have the right to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1. 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, excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.

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

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