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HOUSE BILL NO. 1059

Offered January 8, 2014

A *BILL to amend and reenact § 56-585.1 of the Code of Virginia, relating to electric utility regulation; recovery of certain generation facility costs.*

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

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

§ 56-585.1. Generation, distribution, and transmission rates 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.), 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, consistent with its precedent for incumbent electric utilities prior to the
85 enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease the utility's
86 combined rate of return based on the Commission's consideration of the utility's performance.

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

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

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

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

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

120 f. The determination of such returns shall be made by the Commission on a stand-alone basis, and

121 specifically without regard to any return on common equity or other matters determined with regard to
122 facilities described in subdivision 6.

123 g. If the combined rate of return on common equity earned by the generation and distribution
124 services is no more than 50 basis points above or below the return as so determined or, for any test
125 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
126 Phase I Utility, such return is no more than 70 basis points above or below the return as so determined,
127 such combined return shall not be considered either excessive or insufficient, respectively. However, for
128 any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31,
129 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned
130 below the return as so determined, whether or not such combined return is within 70 basis points of the
131 return as so determined, the utility may petition the Commission for approval of an increase in rates in
132 accordance with the provisions of ~~clause (i) of~~ subdivision A 8 a as if it had earned more than 70 basis
133 points below a fair combined rate of return, and such proceeding shall otherwise be conducted in
134 accordance with the provisions of this section.

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

138 3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2011,
139 consisting of the schedules contained in the Commission's rules governing utility rate increase
140 applications; however, if the Commission elects to stagger the dates of the biennial reviews of utilities
141 as provided in subdivision 1, then Phase I utilities shall commence biennial filings in 2011 and Phase II
142 utilities shall commence biennial filings in 2012. Such filing shall encompass the two successive
143 12-month test periods ending December 31 immediately preceding the year in which such proceeding is
144 conducted, and in every such case the filing for each year shall be identified separately and shall be
145 segregated from any other year encompassed by the filing. If the Commission determines that rates
146 should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate
147 adjustment clauses previously implemented pursuant to subdivision 5 or those related to facilities
148 utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the
149 utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment
150 clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues
151 and investments only after it makes its initial determination with regard to necessary rate revisions or
152 credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein
153 specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the
154 purposes of future biennial review proceedings. A Phase I utility shall delay for one year the filing of its
155 biennial review from March 31, 2013, to March 31, 2014, and shall not defer on its books for future
156 recovery any costs incurred during calendar year 2011, other than as provided in subdivision A 7 of this
157 section or § 56-249.6, and its subsequent biennial filing shall be made by March 31, 2016, and every
158 two years thereafter.

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

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

174 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
175 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
176 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
177 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that
178 comply with the requirements of clause (vi) of subsection B of § 56-582;

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

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

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

219 d. Projected and actual costs of participation in a renewable energy portfolio standard program
220 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
221 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
222 § 56-585.2; and

223 e. Projected and actual costs of projects that the Commission finds to be necessary to comply with
224 state or federal environmental laws or regulations applicable to generation facilities used to serve the
225 utility's native load obligations. The Commission shall approve such a petition if it finds that such costs
226 are necessary to comply with such environmental laws or regulations.

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

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

244 A utility seeking approval to construct a generating facility shall demonstrate that it has considered and
 245 weighed alternative options, including third-party market alternatives, in its selection process. The costs
 246 of the facility, other than return on projected construction work in progress and allowance for funds
 247 used during construction, shall not be recovered prior to the date the facility begins commercial
 248 operation. Such enhanced rate of return on common equity shall be applied to allowance for funds used
 249 during construction and to construction work in progress during the construction phase of the facility
 250 and shall thereafter be applied to the entire facility during the first portion of the service life of the
 251 facility. The first portion of the service life shall be as specified in the table below; however, the
 252 Commission shall determine the duration of the first portion of the service life of any facility, within the
 253 range specified in the table below, which determination shall be consistent with the public interest and
 254 shall reflect the Commission's determinations regarding how critical the facility may be in meeting the
 255 energy needs of the citizens of the Commonwealth and the risks involved in the development of the
 256 facility. After the first portion of the service life of the facility is concluded, the utility's general rate of
 257 return shall be applied to such facility for the remainder of its service life. As used herein, the service
 258 life of the facility shall be deemed to begin on the date the facility begins commercial operation, and
 259 such service life shall be deemed equal in years to the life of that facility as used to calculate the
 260 utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by
 261 adding the basis points specified in the table below to the utility's general rate of return, and such
 262 enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause.
 263 Allowance for funds used during construction shall be calculated for any such facility utilizing the
 264 utility's actual capital structure and overall cost of capital, including an enhanced rate of return on
 265 common equity as determined pursuant to this subdivision, until such construction work in progress is
 266 included in rates. The construction of any facility described in clause (i) is in the public interest, and in
 267 determining whether to approve such facility, the Commission shall liberally construe the provisions of
 268 this title. The basis points to be added to the utility's general rate of return to calculate the enhanced rate
 269 of return on common equity, and the first portion of that facility's service life to which such enhanced
 270 rate of return shall be applied, shall vary by type of facility, as specified in the following table:

271	Type of Generation Facility	Basis Points	First Portion of Service Life
272			
273	Nuclear-powered	200	Between 12 and 25 years
274			
275	Carbon capture compatible,	200	Between 10 and 20 years
276	clean-coal powered		
277			
278	Renewable powered, other than	200	Between 5 and 15 years
279	landfill gas powered		
280			
281	Coalbed methane gas powered	150	Between 5 and 15 years
282			
283	Landfill gas powered	200	Between 5 and 15 years
284			
285	Conventional coal or	100	Between 10 and 20 years
286	combined-cycle combustion		
287	turbine		

288 For generating facilities other than those utilizing nuclear power or those utilizing energy derived
 289 from offshore wind, as of July 1, 2013, only those facilities as to which a rate adjustment clause under
 290 this subdivision has been previously approved by the Commission, or as to which a petition for approval
 291 of such rate adjustment clause was filed with the Commission, on or before January 1, 2013, shall be
 292 entitled to the enhanced rate of return on common equity as specified in the above table during the
 293 construction phase of the facility and the approved first portion of its service life.

294 For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy
 295 derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such
 296 facilities shall continue to be eligible for an enhanced rate of return on common equity during the
 297 construction phase of the facility and the approved first portion of its service life of between 12 and 25
 298 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in
 299 the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1,
 300 2013, the enhanced return for such facilities shall be 100 basis points, which shall be added to the
 301 utility's general rate of return as determined under subdivision 2. *Thirty percent of the costs of such a*
 302 *facility utilizing nuclear power or energy derived from offshore wind that the utility incurred between*
 303 *July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be*

304 *deferred by the utility and recovered through a rate adjustment clause under this subdivision at such*
305 *time as the Commission provides in an order approving such a rate adjustment clause. The remaining*
306 *70 percent of the costs of such a facility that the utility incurred between July 1, 2007, and December*
307 *31, 2013, shall not be deferred or recovered through a rate adjustment clause under this subdivision*
308 *and may be recovered only through existing base rates in the test periods under review in the utility's*
309 *next biennial review filed after July 1, 2014.*

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

314 As used in this subdivision, a generation facility is (a) "coalbed methane gas powered" if the facility
315 is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.1-361.1, produced
316 from wells located in the Commonwealth, and (b) "landfill gas powered" if the facility is fired by
317 methane or other combustible gas produced by the anaerobic digestion or decomposition of
318 biodegradable materials in a solid waste management facility licensed by the Waste Management Board.
319 A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used
320 in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from
321 the solid waste management facility where it is collected to the generation facility where it is
322 combusted.

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

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

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

359 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be
360 entered not more than three months, eight months, and nine months, respectively, after the date of filing
361 of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment
362 clause be applied to customers' bills not more than 60 days after the date of the order, or upon the
363 expiration or termination of capped rates, whichever is later.

364 8. In any biennial review proceeding, the following utility generation and distribution costs not
365 proposed for recovery under any other subdivision of this subsection, as recorded per books by the

366 utility for financial reporting purposes and accrued against income, shall be attributed to the test periods
 367 under review: costs associated with asset impairments related to early retirement determinations made by
 368 the utility prior to December 31, 2012, for utility generation plant; costs associated with severe weather
 369 events; and costs associated with natural disasters. Such costs shall be deemed to have been recovered
 370 from customers through rates for generation and distribution services in effect during the test periods
 371 under review unless such costs, individually or in the aggregate, together with the utility's other costs,
 372 revenues, and investments to be recovered through rates for generation and distribution services, result in
 373 the utility's earned return on its generation and distribution services for the combined test periods under
 374 review to fall more than 50 basis points below the fair combined rate of return authorized under
 375 subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase
 376 II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the
 377 fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the
 378 Commission shall, in such biennial review proceeding, authorize deferred recovery of such costs and
 379 allow the utility to amortize and recover such deferred costs over future periods as determined by the
 380 Commission. The aggregate amount of such deferred costs shall not exceed an amount that would,
 381 together with the utility's other costs, revenues, and investments to be recovered through rates for
 382 generation and distribution services, cause the utility's earned return on its generation and distribution
 383 services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the
 384 combined test periods under review or, for any test period commencing after December 31, 2012, for a
 385 Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return
 386 authorized under subdivision 2 less 70 basis points. Nothing in this section shall limit the Commission's
 387 authority, pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2,
 388 following the review of combined test period earnings of the utility in a biennial review, for
 389 normalization of nonrecurring test period costs and annualized adjustments for future costs, in
 390 determining any appropriate increase or decrease in the utility's rates for generation and distribution
 391 services pursuant to ~~clause (i) subdivision 8 a or (iii) c.~~

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

393 ~~(i) a.~~ The utility has, during the test period or periods under review, considered as a whole, earned
 394 more than 50 basis points below a fair combined rate of return on its generation and distribution
 395 services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
 396 December 31, 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of
 397 return on its generation and distribution services, as determined in subdivision 2, without regard to any
 398 return on common equity or other matters determined with respect to facilities described in subdivision
 399 6, the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully
 400 recover the costs of providing the utility's services and to earn not less than such fair combined rate of
 401 return, using the most recently ended 12-month test period as the basis for determining the amount of
 402 the rate increase necessary. However, the Commission may not order such rate increase unless it finds
 403 that the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs
 404 of providing its services and to earn not less than a fair combined rate of return on both its generation
 405 and distribution services, as determined in subdivision 2, without regard to any return on common equity
 406 or other matters determined with respect to facilities described in subdivision 6, using the most recently
 407 ended 12-month test period as the basis for determining the permissibility of any rate increase under the
 408 standards of this sentence, and the amount thereof;

409 ~~(ii) b.~~ The utility has, during the test period or test periods under review, considered as a whole,
 410 earned more than 50 basis points above a fair combined rate of return on its generation and distribution
 411 services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
 412 December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of
 413 return on its generation and distribution services, as determined in subdivision 2, without regard to any
 414 return on common equity or other matters determined with respect to facilities described in subdivision
 415 6, the Commission shall, subject to the provisions of subdivision 9, direct that 60 percent of the amount
 416 of such earnings that were more than 50 basis points, or, for any test period commencing after
 417 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that 70
 418 percent of the amount of such earnings that were more than 70 basis points, above such fair combined
 419 rate of return for the test period or periods under review, considered as a whole, shall be credited to
 420 customers' bills. Any such credits shall be amortized over a period of six to 12 months, as determined at
 421 the discretion of the Commission, following the effective date of the Commission's order, and shall be
 422 allocated among customer classes such that the relationship between the specific customer class rates of
 423 return to the overall target rate of return will have the same relationship as the last approved allocation
 424 of revenues used to design base rates; or

425 ~~(iii) c.~~ Such biennial review is the second consecutive biennial review in which the utility has,
 426 during the test period or test periods under review, considered as a whole, earned more than 50 basis

427 points above a fair combined rate of return on its generation and distribution services or, for any test
428 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
429 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
430 distribution services, as determined in subdivision 2, without regard to any return on common equity or
431 other matter determined with respect to facilities described in subdivision 6, the Commission shall,
432 subject to the provisions of subdivision 9 and in addition to the actions authorized in ~~clause (ii) of this~~
433 ~~subdivision b~~, also order reductions to the utility's rates it finds appropriate. However, the Commission
434 may not order such rate reduction unless it finds that the resulting rates will provide the utility with the
435 opportunity to fully recover its costs of providing its services and to earn not less than a fair combined
436 rate of return on its generation and distribution services, as determined in subdivision 2, without regard
437 to any return on common equity or other matters determined with respect to facilities described in
438 subdivision 6, using the most recently ended 12-month test period as the basis for determining the
439 permissibility of any rate reduction under the standards of this sentence, and the amount thereof.

440 The Commission's final order regarding such biennial review shall be entered not more than eight
441 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more
442 than 60 days after the date of the order. The fair combined rate of return on common equity determined
443 pursuant to subdivision 2 in such biennial review shall apply, for purposes of reviewing the utility's
444 earnings on its rates for generation and distribution services, to the entire two successive 12-month test
445 periods ending December 31 immediately preceding the year of the utility's subsequent biennial review
446 filing under subdivision 3.

447 9. If, as a result of a biennial review required under this subsection and conducted with respect to
448 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
449 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
450 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
451 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
452 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
453 points above a fair combined rate of return on its generation and distribution services or, for any test
454 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
455 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
456 distribution services, as determined in subdivision 2, without regard to any return on common equity or
457 other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate
458 regulated rates of such utility at the end of the most recently-ended 12-month test period exceeded the
459 annual increases in the United States Average Consumer Price Index for all items, all urban consumers
460 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor,
461 compounded annually, when compared to the total aggregate regulated rates of such utility as
462 determined pursuant to the biennial review conducted for the base period, the Commission shall, unless
463 it finds that such action is not in the public interest or that the provisions of ~~clauses (ii) and (iii) of~~
464 ~~subdivision subdivisions 8 b and c~~ are more consistent with the public interest, direct that any or all
465 earnings for such test period or periods under review, considered as a whole that were more than 50
466 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and
467 after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such fair combined rate
468 of return shall be credited to customers' bills, in lieu of the provisions of ~~clauses (ii) and (iii) of~~
469 ~~subdivision subdivisions 8 b and c~~. Any such credits shall be amortized and allocated among customer
470 classes in the manner provided by ~~clause (ii) of~~ subdivision 8 b. For purposes of this subdivision:

471 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
472 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
473 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
474 period with respect to which credits have been applied to customers' bills under the provisions of this
475 subdivision, whichever is later.

476 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except
477 for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31,
478 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
479 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to ~~clause (i) of~~
480 ~~subdivision 8 a~~; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility
481 rate increase applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates
482 in effect as of July 1, 2009.

483 10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any
484 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital
485 structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of
486 such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt
487 to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant
488 to ~~clauses (i) and (iii) of subdivision subdivisions 8 a and c~~, and without regard to the cost of capital,

489 capital structure, revenues, expenses or investments of any other entity with which such utility may be
490 affiliated. In particular, and without limitation, the Commission shall determine the federal and state
491 income tax costs for any such utility that is part of a publicly traded, consolidated group as follows: (i)
492 such utility's apportioned state income tax costs shall be calculated according to the applicable statutory
493 rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal
494 income tax costs shall be calculated according to the applicable federal income tax rate and shall
495 exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss
496 of its affiliates.

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

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

506 D. ~~Nothing~~ *Except as otherwise provided* in this section shall preclude, the Commission ~~from~~
507 ~~determining~~ *may determine*, during any proceeding authorized or required by this section, the
508 reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection
509 with the subject of the proceeding. A determination of the Commission regarding the reasonableness or
510 prudence of any such cost shall be consistent with the Commission's authority to determine the
511 reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232
512 et seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its
513 customers from renewable energy resources, the Commission shall consider the extent to which such
514 renewable energy resources, whether utility-owned or by contract, further the objectives of the
515 Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and shall also consider whether the
516 costs of such resources is likely to result in unreasonable increases in rates paid by consumers.

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