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HOUSE BILL NO. 1493

Offered January 18, 2018

A BILL to amend and reenact §§ 56-576 and 56-585.1 of the Code of Virginia, relating to electric utility regulation; recovery of costs of coal combustion by-product management.

Patron—O'Quinn

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-576 and 56-585.1 of the Code of Virginia are amended and reenacted as follows:

§ 56-576. Definitions.

As used in this chapter:

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

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

"Coal combustion by-product management" means the construction of, improvements to, or maintenance of surface impoundment or landfill facilities; excavation; removal for storage, disposal, or beneficial use on or off site; capping; construction or installation of remedial containment or control technologies; groundwater corrective action; or other activities reasonably necessary in order to comply with state or federal environmental laws, regulations, or judicial or administrative orders applicable to incumbent electric utilities with respect to the management or disposition of coal combustion by-products or coal combustion residuals as defined in applicable state or federal laws or regulations.

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

"Commission" means the State Corporation Commission.

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

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

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

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

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

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

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

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

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

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity implemented after the expiration of capped rates. Energy

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59 efficiency programs include equipment, physical, or program change designed to produce measured and
60 verified reductions in the amount of electricity required to perform the same function and produce the
61 same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs
62 that result in improvements in lighting design, heating, ventilation, and air conditioning systems,
63 appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not
64 limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use
65 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,
66 and distribution systems; and (iii) customer engagement programs that result in measurable and
67 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs
68 include demand response, combined heat and power and waste heat recovery, curtailment, or other
69 programs that are designed to reduce electricity consumption so long as they reduce the total amount of
70 electricity that is required for the same process or activity. Utilities shall be authorized to install and
71 operate such advanced metering technology and equipment on a customer's premises; however, nothing
72 in this chapter establishes a requirement that an energy efficiency program be implemented on a
73 customer's premises and be connected to a customer's wiring on the customer's side of the
74 inter-connection without the customer's expressed consent.

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

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

78 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
79 1999, supplied electric energy to retail customers located in an exclusive service territory established by
80 the Commission.

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

84 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy
85 efficiency program if, among other factors, the net present value of the benefits exceeds the net present
86 value of the costs as determined by the Commission upon consideration of the following four tests: (i)
87 the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator
88 Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall
89 include an analysis of all four tests, and a program or portfolio of programs shall not be rejected based
90 solely on the results of a single test. In addition, an energy efficiency program may be deemed to be "in
91 the public interest" if the program provides measurable and verifiable energy savings to low-income
92 customers or elderly customers.

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

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

102 "New underground facilities" means facilities to provide underground distribution service. "New
103 underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-mounted
104 devices, connections at customer meters, and transition terminations from existing overhead distribution
105 sources.

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

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

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

116 "Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined
117 heat and power generation facility that is (a) constructed, or renovated and improved, after January 1,
118 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined
119 heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the
120 Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or

renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water or air for residential, commercial, institutional, or industrial purposes.

"Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial, institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per megawatt hour.

"Renovated and improved facility" means a facility the components of which have been upgraded to enhance its operating efficiency.

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

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

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

"Solar energy system" means a system of components that produces heat or electricity, or both, from sunlight.

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

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

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

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

§ 56-585.1. 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

182 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the
183 Commission, following the effective date of the Commission's order and be allocated among customer
184 classes such that the relationship between the specific customer class rates of return to the overall target
185 rate of return will have the same relationship as the last approved allocation of revenues used to design
186 base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall
187 conduct biennial reviews of the rates, terms and conditions for the provision of generation, distribution
188 and transmission services by each investor-owned incumbent electric utility, subject to the following
189 provisions:

190 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
191 and such reviews shall be conducted in a single, combined proceeding. The first such review shall
192 utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission
193 may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive
194 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive
195 12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings
196 utilizing the two successive 12-month test periods ending December 31 immediately preceding the year
197 in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an
198 investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case
199 settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a
200 Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

225 c. The Commission may, consistent with its precedent for incumbent electric utilities prior to the
226 enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease the utility's
227 combined rate of return based on the Commission's consideration of the utility's performance.

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

such utility shall be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission determined the Initial Return. For purposes of this subdivision:

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

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

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

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

f. The determination of such returns 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 the generation and distribution services is no more than 50 basis points above or below the return as so determined or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, such return is no more than 70 basis points above or below the return as so determined, such combined return shall not be considered either excessive or insufficient, respectively. However, for any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return as so determined, whether or not such combined return is within 70 basis points of the return as so determined, the utility may petition the Commission for approval of an increase in rates in accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this section.

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 each Phase I Utility shall commence biennial filings in 2011 and each Phase II Utility 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 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. A Phase I Utility shall delay for one year the filing of its biennial review from March 31, 2013, to March 31, 2014, and shall not defer on its books for future recovery any costs incurred during calendar year 2011, other than as provided in subdivision 7 or § 56-249.6, and its subsequent biennial filing shall be made by March 31, 2016, and every two years thereafter.

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 2. The Commission shall only approve such a petition if it finds that the program is in the public interest. As part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to energy efficiency programs. The Commission shall only allow such recovery to the extent that the Commission determines such revenue has not been recovered through margins from incremental off-system sales as defined in § 56-249.6 that are directly attributable to energy efficiency programs.

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

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

e. Projected and actual costs of projects that the Commission finds to be necessary to comply with state or federal environmental laws, regulations, or judicial or administrative orders applicable to generation facilities, including associated sites for management and disposition of coal combustion

by-products or coal combustion residuals, currently or formerly used to serve the utility's native load obligations, including any costs associated with coal combustion by-product management. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations, or judicial or administrative orders; and

f. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate programs approved by the Commission that accelerate the vegetation management of distribution rights-of-way. No costs shall be allocated to or recovered from customers that are served within the large general service rate classes for a Phase II Utility or that are served at subtransmission or transmission voltage, or take delivery at a substation served from subtransmission or transmission voltage, for a Phase I Utility.

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

6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major unit modifications of generation facilities, including the costs of any system or equipment upgrade, system or equipment replacement, or other cost reasonably appropriate to extend the combined operating license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, or (v) one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source and such facilities and associated resources are located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory; however, subject to the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental increase in the level of investments associated with such a petition that exceeds five percent of such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month test period in the utility's latest biennial review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed under clause (iv), the level of investments approved for recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings under clause (iv). Such a petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration or termination of capped rates. A utility that constructs or makes modifications to any such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below; however, in determining the amounts recoverable under a rate adjustment clause for new underground facilities, the Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance costs attributable to either the overhead distribution facilities being replaced or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval to construct or purchase a generating facility described in clause (i) or (ii) shall demonstrate that it has considered and weighed alternative options, including third-party market alternatives, in its selection process. The costs of the facility, other than return on projected

428 construction work in progress and allowance for funds used during construction, shall not be recovered
 429 prior to the date a facility constructed by the utility and described in clause (i), (ii), or (iii) begins
 430 commercial operation, the date the utility becomes the owner of a purchased generation facility
 431 consisting of at least one megawatt of generating capacity using energy derived from sunlight and
 432 located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one
 433 or more Virginia businesses, or the date new underground facilities are classified by the utility as plant
 434 in service. Such enhanced rate of return on common equity shall be applied to allowance for funds used
 435 during construction and to construction work in progress during the construction phase of the facility
 436 and shall thereafter be applied to the entire facility during the first portion of the service life of the
 437 facility. The first portion of the service life shall be as specified in the table below; however, the
 438 Commission shall determine the duration of the first portion of the service life of any facility, within the
 439 range specified in the table below, which determination shall be consistent with the public interest and
 440 shall reflect the Commission's determinations regarding how critical the facility may be in meeting the
 441 energy needs of the citizens of the Commonwealth and the risks involved in the development of the
 442 facility. After the first portion of the service life of the facility is concluded, the utility's general rate of
 443 return shall be applied to such facility for the remainder of its service life. As used herein, the service
 444 life of the facility shall be deemed to begin on the date a facility constructed by the utility and described
 445 in clause (i), (ii), or (iii) begins commercial operation, the date the utility becomes the owner of a
 446 purchased generation facility consisting of at least one megawatt of generating capacity using energy
 447 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in
 448 whole or in part, from one or more Virginia businesses, or the date new underground facilities are
 449 classified by the utility as plant in service, and such service life shall be deemed equal in years to the
 450 life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of return
 451 on common equity shall be calculated by adding the basis points specified in the table below to the
 452 utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the
 453 subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated
 454 for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an
 455 enhanced rate of return on common equity as determined pursuant to this subdivision, until such
 456 construction work in progress is included in rates. The construction of any facility described in clause (i)
 457 or (v) is in the public interest, and in determining whether to approve such facility, the Commission
 458 shall liberally construe the provisions of this title. The construction or purchase by a utility of one or
 459 more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated
 460 capacity that does not exceed 500 megawatts, that use energy derived from sunlight and are located in
 461 the Commonwealth, regardless of whether any of such facilities are located within or without the utility's
 462 service territory, is in the public interest, and in determining whether to approve such facility, the
 463 Commission shall liberally construe the provisions of this title. A utility may enter into short-term or
 464 long-term power purchase contracts for the power derived from sunlight generated by such generation
 465 facility prior to purchasing the generation facility. The replacement of any subset of a utility's existing
 466 overhead distribution tap lines that have, in the aggregate, an average of nine or more total unplanned
 467 outage events-per-mile over a preceding 10-year period with new underground facilities in order to
 468 improve electric service reliability is in the public interest. In determining whether to approve petitions
 469 for rate adjustment clauses for such new underground facilities that meet this criteria, and in determining
 470 the level of costs to be recovered thereunder, the Commission shall liberally construe the provisions of
 471 this title. There shall be a rebuttable presumption that the conversion of such facilities will provide local
 472 and system-wide benefits, that such new underground facilities are cost beneficial, and that the costs
 473 associated with such new underground facilities are reasonably and prudently incurred. The basis points
 474 to be added to the utility's general rate of return to calculate the enhanced rate of return on common
 475 equity, and the first portion of that facility's service life to which such enhanced rate of return shall be
 476 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, other than landfill gas powered	200	Between 5 and 15 years
Coalbed methane gas powered	150	Between 5 and 15 years
Landfill gas powered	200	Between 5 and 15 years
Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

484 For generating facilities other than those utilizing nuclear power constructed pursuant to clause (ii) or
 485 those utilizing energy derived from offshore wind, as of July 1, 2013, only those facilities as to which a
 486 rate adjustment clause under this subdivision has been previously approved by the Commission, or as to
 487 which a petition for approval of such rate adjustment clause was filed with the Commission, on or
 488 before January 1, 2013, shall be entitled to the enhanced rate of return on common equity as specified
 489 in the above table during the construction phase of the facility and the approved first portion of its

service life.

For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such facilities shall continue to be eligible for an enhanced rate of return on common equity during the construction phase of the facility and the approved first portion of its service life of between 12 and 25 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1, 2013, the enhanced return for such facilities constructed pursuant to clause (ii) shall be 100 basis points, which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next biennial review filed after July 1, 2014. Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next biennial review filed after July 1, 2014.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § 56-598, planning and development activities for a new nuclear generation facility or facilities are in the public interest.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § 56-598, planning and development activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from sunlight with an aggregate capacity of 500 megawatts, or from offshore wind, are in the public interest.

Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines nor new underground facilities shall 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. No rate adjustment clause for new underground facilities shall allocate costs to, or provide for the recovery of costs from, customers that are served within the large power service rate class for a Phase I Utility and the large general service rate classes for a Phase II Utility. New underground facilities are hereby declared to be ordinary extensions or improvements in the usual course of business under the provisions of § 56-265.2.

As used in this subdivision, a generation facility is (1) "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 (2) "landfill gas powered" if the facility is fired by methane or other combustible gas produced by the anaerobic digestion or decomposition of biodegradable materials in a solid waste management facility licensed by the Waste Management Board. A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from the solid waste management facility where it is collected to the generation facility where it is combusted.

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

551 have been received, that the utility has not made reasonable and good faith efforts to construct one or
552 more such facilities that will provide such additional total capacity within a reasonable time after
553 obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a
554 prospective basis any enhanced rate of return on common equity previously applied to any such facility
555 to no less than the general rate of return for such utility and may apply no less than the utility's general
556 rate of return to any such facility for which the utility seeks approval in the future under this
557 subdivision.

558 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
559 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
560 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
561 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or
562 that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to
563 new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and
564 records of the utility until the Commission's final order in the matter, or until the implementation of any
565 applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in
566 subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of
567 such petition, or during the consideration thereof by the Commission, that are proposed for recovery in
568 such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of
569 subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of
570 subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the
571 books and records of the utility until the Commission's final order in the matter, or until the
572 implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs
573 prudently incurred after the expiration or termination of capped rates related to other matters described
574 in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped
575 rates, provided, however, that no provision of this act shall affect the rights of any parties with respect
576 to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia
577 Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset
578 for regulatory accounting and ratemaking purposes under which it shall defer its operation and
579 maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
580 and (ii) other work at such plant normally performed during a refueling outage. The utility shall
581 amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning
582 with the month in which such plant resumes operation after such refueling. The refueling cycle shall be
583 the applicable period of time between planned refueling outages for such plant. As of January 1, 2014,
584 such amortized costs are a component of base rates, recoverable in base rates only ratably over the
585 refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable
586 in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage
587 commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs
588 of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with
589 respect to biennial filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant to
590 § 56-245 or the Commission's rules governing utility rate increase applications as provided in subsection
591 B. This provision shall not be deemed to change or reset base rates.

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

597 8. In any biennial review proceeding, the following utility generation and distribution costs not
598 proposed for recovery under any other subdivision of this subsection, as recorded per books by the
599 utility for financial reporting purposes and accrued against income, shall be attributed to the test periods
600 under review: costs associated with asset impairments related to early retirement determinations made by
601 the utility prior to December 31, 2012, for utility generation plant; costs associated with severe weather
602 events; and costs associated with natural disasters. Such costs shall be deemed to have been recovered
603 from customers through rates for generation and distribution services in effect during the test periods
604 under review unless such costs, individually or in the aggregate, together with the utility's other costs,
605 revenues, and investments to be recovered through rates for generation and distribution services, result in
606 the utility's earned return on its generation and distribution services for the combined test periods under
607 review to fall more than 50 basis points below the fair combined rate of return authorized under
608 subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase
609 II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the
610 fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the
611 Commission shall, in such biennial review proceeding, authorize deferred recovery of such costs and
612 allow the utility to amortize and recover such deferred costs over future periods as determined by the

Commission. The aggregate amount of such deferred costs shall not exceed an amount that would, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, cause the utility's earned return on its generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of combined test period earnings of the utility in a biennial review, for normalization of nonrecurring test period costs and annualized adjustments for future costs, in determining any appropriate increase or decrease in the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

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

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

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

c. Such biennial review is the second consecutive biennial review in which the utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matter determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on 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

674 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more
675 than 60 days after the date of the order. The fair combined rate of return on common equity determined
676 pursuant to subdivision 2 in such biennial review shall apply, for purposes of reviewing the utility's
677 earnings on its rates for generation and distribution services, to the entire two successive 12-month test
678 periods ending December 31 immediately preceding the year of the utility's subsequent biennial review
679 filing under subdivision 3.

680 9. If, as a result of a biennial review required under this subsection and conducted with respect to
681 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
682 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
683 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
684 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
685 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
686 points above a fair combined rate of return on its generation and distribution services or, for any test
687 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
688 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
689 distribution services, as determined in subdivision 2, without regard to any return on common equity or
690 other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate
691 regulated rates of such utility at the end of the most recently-ended 12-month test period exceeded the
692 annual increases in the United States Average Consumer Price Index for all items, all urban consumers
693 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor,
694 compounded annually, when compared to the total aggregate regulated rates of such utility as
695 determined pursuant to the biennial review conducted for the base period, the Commission shall, unless
696 it finds that such action is not in the public interest or that the provisions of subdivisions 8 b and c are
697 more consistent with the public interest, direct that any or all earnings for such test period or periods
698 under review, considered as a whole that were more than 50 basis points, or, for any test period
699 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
700 Utility, more than 70 basis points, above such fair combined rate of return shall be credited to
701 customers' bills, in lieu of the provisions of subdivisions 8 b and c. Any such credits shall be amortized
702 and allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this
703 subdivision:

704 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
705 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
706 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
707 period with respect to which credits have been applied to customers' bills under the provisions of this
708 subdivision, whichever is later.

709 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except
710 for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31,
711 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
712 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8
713 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
714 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as
715 of July 1, 2009.

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

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

734 C. Except as otherwise provided in this section, the Commission shall exercise authority over the
735 rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation,

transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

D. The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources, the Commission shall consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and shall also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by consumers.

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