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SB966

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SENATE BILL NO. 966

Offered January 19, 2018

A BILL to amend and reenact §§ 56-265.1, 56-576, 56-585.1, and 56-585.1:1 of the Code of Virginia, relating to electric utility regulation; grid modernization; energy efficiency programs; schedule for rate review proceedings; Transitional Rate Period; energy storage facilities; electric distribution grid transformation projects, wind and solar generation facilities; coal combustion by-product management; pilot programs; undergrounding electrical transmission lines; fuel factor; bill credits; rate adjustment clauses for major unit conversions; rate reductions attributable to changes in federal tax law.

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.1, 56-576, 56-585.1, and 56-585.1:1 of the Code of Virginia are amended and reenacted as follows:

§ 56-265.1. Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4.

(b) "Public utility" means any company which that owns or operates facilities within the Commonwealth of Virginia for the generation, transmission, storage or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; however, As used in this definition, a facility for the storage of electric energy for sale includes one or more pumped hydroelectricity generation and storage facilities located in the coalfield region of Virginia as described in § 15.2-6002. However, the term "public utility" shall does not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural

59 gas to public schools in the following localities may be made without regard to the number of schools
60 involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of
61 Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

62 (5) Any company which is not a public service corporation and which provides compressed natural
63 gas service at retail for the public.

64 (6) Any company selling landfill gas from a solid waste management facility permitted by the
65 Department of Environmental Quality to a public utility certificated by the Commission to provide gas
66 distribution service to the public in the area in which the solid waste management facility is located. If
67 such company submits to the public utility a written offer for sale of such gas and the public utility
68 does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company
69 may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within
70 three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been
71 liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

72 (7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et
73 seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or
74 industrial customer from a solid waste management facility permitted by the Department of
75 Environmental Quality and operated by that same authority, if such an authority limits off-premises sale,
76 transmission or delivery service of landfill gas to no more than one purchaser. The authority may
77 contract with other persons for the construction and operation of facilities necessary or convenient to the
78 sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely
79 by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located
80 within the certificated service territory of a natural gas public utility, the public utility may file for
81 Commission approval a proposed tariff to reflect any anticipated or known changes in service to the
82 purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the
83 landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities;
84 provided, however, that such tariff may impose such requirements as are reasonably calculated to
85 recover the cost of such service and to protect and ensure the safety and integrity of the public utility's
86 facilities.

87 (8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or
88 both, that is derived from a solid waste management facility permitted by the Department of
89 Environmental Quality and sold or delivered from any such facility to not more than three commercial
90 or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as
91 authorized by this section. If a purchaser of the landfill gas is located within the certificated service
92 territory of a natural gas public utility or within an area in which a municipal corporation provides gas
93 distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such
94 company shall submit to such public utility or municipal corporation a written offer for sale of that gas
95 prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility
96 or municipal corporation does not agree within 60 days following the date of the offer to purchase such
97 landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill
98 gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or
99 county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated
100 or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No
101 such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on
102 similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may
103 impose such requirements as are reasonably calculated to recover any cost of such service and to protect
104 and ensure the safety and integrity of the public utility's facilities.

105 (9) A company that is not organized as a public service company pursuant to subsection D of
106 § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company
107 excluded by this subdivision from the definition of "public utility" for the purposes of this chapter
108 nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and
109 enforcement.

110 (10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for
111 the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i)
112 "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural
113 operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii)
114 "agricultural waste" means biomass waste materials capable of decomposition that are produced from the
115 raising of plants and animals during agricultural operations, including animal manures, bedding, plant
116 stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology,
117 including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat
118 that is used to generate electricity on-site.

119 (11) A company, other than an entity organized as a public service company, that provides
120 non-utility gas service as provided in § 56-265.4:6.

121 (12) *A company, other than an entity organized as a public service company, that provides storage*
 122 *of electric energy that is not for sale to the public.*

123 (c) "Commission" means the State Corporation Commission.

124 (d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

125 **§ 56-576. Definitions.**

126 As used in this chapter:

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

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

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

143 "Commission" means the State Corporation Commission.

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

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

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

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

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

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

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

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

161 *"Electric distribution grid transformation project" means a project associated with electric*
 162 *distribution infrastructure, including related data analytics equipment, that is designed to accommodate*
 163 *or facilitate the integration of utility-owned or customer-owned renewable electric generation resources*
 164 *with the utility's electric distribution grid or to otherwise enhance electric distribution grid reliability,*
 165 *electric distribution grid security, customer service or energy efficiency and conservation, including*
 166 *advanced metering infrastructure, intelligent grid devices for real time system and asset information,*
 167 *automated control systems for electric distribution circuits and substations, communications networks for*
 168 *service meters, intelligent grid devices and other distribution equipment, distribution system hardening*
 169 *projects for circuits and substations designed to reduce service outages or service restoration times,*
 170 *physical security measures at key distribution substations, cyber security measures, energy storage*
 171 *systems and microgrids that support circuit-level grid stability, power quality, reliability or resiliency or*
 172 *provide temporary backup energy supply, electrical facilities and infrastructure necessary to support*
 173 *electric vehicle charging systems, LED street light conversions, and new customer information platforms*
 174 *designed to provide improved customer access, greater service options and expanded access to energy*
 175 *usage information.*

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

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

181 Energy efficiency programs include equipment, physical, or program change designed to produce

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

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

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

200 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
201 1999, supplied electric energy to retail customers located in an exclusive service territory established by
202 the Commission.

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

206 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy
207 efficiency program if, ~~among other factors,~~ the net present value of the benefits exceeds the net present
208 value of the costs as determined by *not less than any three* ~~the Commission upon consideration~~ of the
209 following four *benefit cost* tests: (i) the Total Resource Cost Test; (ii) the Utility Cost Test (also referred
210 to as the Program Administrator Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure
211 Test. ~~Such determination shall include an analysis of all four tests, and a program or portfolio of~~
212 ~~programs shall not be rejected based solely on the results of a single test.~~ In addition, an energy
213 efficiency program may be deemed to be "in the public interest" if the program provides measurable and
214 verifiable energy savings to low-income customers or elderly customers.

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

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

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

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

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

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

238 "Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined
239 heat and power generation facility that is (a) constructed, or renovated and improved, after January 1,
240 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined
241 heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the
242 Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or
243 renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water

244 or air for residential, commercial, institutional, or industrial purposes.

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

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

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

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

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

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

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

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

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

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

274 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or**
 275 **expire.**

276 A. During the first six months of 2009, the Commission shall, after notice and opportunity for
 277 hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation,
 278 distribution and transmission services of each investor-owned incumbent electric utility. Such
 279 proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified
 280 herein. In such proceedings the Commission shall determine fair rates of return on common equity
 281 applicable to the generation and distribution services of the utility. In so doing, the Commission may use
 282 any methodology to determine such return it finds consistent with the public interest, but such return
 283 shall not be set lower than the average of the returns on common equity reported to the Securities and
 284 Exchange Commission for the three most recent annual periods for which such data are available by not
 285 less than a majority, selected by the Commission as specified in subdivision 2 b, of other
 286 investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return
 287 more than 300 basis points higher than such average. The peer group of the utility shall be determined
 288 in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined
 289 rate of return by up to 100 basis points based on the generating plant performance, customer service,
 290 and operating efficiency of a utility, as compared to nationally recognized standards determined by the
 291 Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine
 292 the rates that the utility may charge until such rates are adjusted. If the Commission finds that the
 293 utility's combined rate of return on common equity is more than 50 basis points below the combined
 294 rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to
 295 provide the opportunity to fully recover the costs of providing the utility's services and to earn not less
 296 than such combined rate of return. If the Commission finds that the utility's combined rate of return on
 297 common equity is more than 50 basis points above the combined rate of return as so determined, it shall
 298 be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the
 299 Commission may not order such rate reduction unless it finds that the resulting rates will provide the
 300 utility with the opportunity to fully recover its costs of providing its services and to earn not less than
 301 the fair rates of return on common equity applicable to the generation and distribution services; or (ii) to
 302 direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above
 303 the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event
 304 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the

305 Commission, following the effective date of the Commission's order and be allocated among customer
306 classes such that the relationship between the specific customer class rates of return to the overall target
307 rate of return will have the same relationship as the last approved allocation of revenues used to design
308 base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall
309 conduct ~~biennial~~ reviews of the rates, terms and conditions for the provision of generation, distribution
310 and transmission services by each investor-owned incumbent electric utility, subject to the following
311 provisions:

312 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
313 and such reviews shall be conducted in a single, combined proceeding. ~~The first such review shall~~
314 ~~utilize Pursuant to subdivision A of § 56-585.1:1, the Commission shall conduct a review for a Phase I~~
315 ~~Utility in 2020, utilizing the two successive 12-month test periods beginning January 1, 2018, and~~
316 ~~ending December 31, 2010 2019. However, the Commission may, in its discretion, elect to stagger its~~
317 ~~biennial reviews of utilities by utilizing the two successive 12-month test periods ending December 31,~~
318 ~~2010, for a Phase I Utility, and utilizing the two successive 12-month test periods ending December 31,~~
319 ~~2011, Thereafter, reviews for a Phase II I Utility, will be on a triennial basis with subsequent~~
320 ~~proceedings utilizing the two three successive 12-month test periods ending December 31 immediately~~
321 ~~preceding the year in which such review proceeding is conducted. Pursuant to Subdivision A of~~
322 ~~§ 56-585.1:1, the Commission shall conduct a review for a Phase II Utility in 2021, utilizing the three~~
323 ~~successive 12-month test periods beginning January 1, 2018, and ending December 31, 2020, with~~
324 ~~subsequent reviews on a triennial basis utilizing the three successive 12-month test periods ending~~
325 ~~December 31 immediately preceding the year in which such review proceeding is conducted. All such~~
326 ~~reviews occurring after December 31, 2017, shall be referred to as triennial reviews.~~ For purposes of
327 this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1,
328 1999, not bound by a rate case settlement adopted by the Commission that extended in its application
329 beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was
330 bound by such a settlement.

331 2. Subject to the provisions of subdivision 6, ~~the fair rates rate~~ of return on common equity
332 applicable separately to the generation and distribution services of such utility, and for the two such
333 services combined, ~~and for any rate adjustment clauses approved under subdivision 5 or 6~~, shall be
334 determined by the Commission during each such ~~biennial triennial~~ review, as follows:

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

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

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

359 d. In any Current Proceeding, the Commission shall determine whether the Current Return has
360 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a
361 percentage, in the United States Average Consumer Price Index for all items, all urban consumers
362 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since
363 the date on which the Commission determined the Initial Return. If so, the Commission may conduct an
364 additional analysis of whether it is in the public interest to utilize such Current Return for the Current
365 Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall
366 be made without regard to any enhanced rate of return on common equity awarded pursuant to the

367 provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration
 368 of overall economic conditions, the level of interest rates and cost of capital with respect to business and
 369 industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of
 370 goods and services, the effect on the utility's ability to provide adequate service and to attract capital if
 371 less than the Current Return were utilized for the Current Proceeding then pending, and such other
 372 factors as the Commission may deem relevant. If, as a result of such analysis, the Commission finds that
 373 use of the Current Return for the Current Proceeding then pending would not be in the public interest,
 374 then the lower limit imposed by subdivision 2 a on the return to be determined by the Commission for
 375 such utility shall be calculated, for that Current Proceeding only, by increasing the Initial Return by a
 376 percentage at least equal to the increase, expressed as a percentage, in the United States Average
 377 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
 378 Statistics of the United States Department of Labor, since the date on which the Commission determined
 379 the Initial Return. For purposes of this subdivision:

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

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

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

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

392 f. The determination of such returns shall be made by the Commission on a stand-alone basis, and
 393 specifically without regard to any return on common equity or other matters determined with regard to
 394 facilities described in subdivision 6.

395 g. If the combined rate of return on common equity earned by the generation and distribution
 396 services is no more than 50 basis points above or below the return as so determined or, for any test
 397 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
 398 Phase I Utility, such return is no more than 70 basis points above or below the return as so determined,
 399 such combined return shall not be considered either excessive or insufficient, respectively. However, for
 400 any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31,
 401 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned
 402 below the return as so determined, whether or not such combined return is within 70 basis points of the
 403 return as so determined, the utility may petition the Commission for approval of an increase in rates in
 404 accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a
 405 fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the
 406 provisions of this section.

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

410 3. Each such utility shall make a ~~biennial~~ *triennial* filing by March 31 of every ~~other~~ *third* year,
 411 ~~beginning in 2011, with such filings commencing for a Phase I Utility in 2020, and such filings~~
 412 ~~commencing for a Phase II Utility in 2021,~~ consisting of the schedules contained in the Commission's
 413 rules governing utility rate increase applications; ~~however, if the Commission elects to stagger the dates~~
 414 ~~of the biennial reviews of utilities as provided in subdivision 1, then each Phase I Utility shall~~
 415 ~~commence biennial filings in 2011 and each Phase II Utility shall commence biennial filings in 2012..~~
 416 Such filing shall encompass the ~~two~~ *three* successive 12-month test periods ending December 31
 417 immediately preceding the year in which such proceeding is conducted, *except that the filing for a*
 418 *Phase I Utility in 2020 shall encompass the two successive 12-month test periods ending December 31,*
 419 *2019, and in every such case the filing for each year shall be identified separately and shall be*
 420 *segregated from any other year encompassed by the filing. If the Commission determines that rates*
 421 *should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate*
 422 *adjustment clauses previously implemented pursuant to subdivision 5 ,or those related to facilities*
 423 *utilizing simple- cycle combustion turbines described in subdivision 6, shall be combined with the*
 424 *utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment*
 425 *clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues*
 426 *and investments only after it makes its initial determination with regard to necessary rate revisions or*
 427 *credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein*

428 specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the
429 purposes of future ~~biennial~~ *triennial* review proceedings. A Phase I Utility shall ~~delay for one year the~~
430 ~~filing of its biennial review from March 31, 2013, to March 31, 2014, and shall not defer on its books~~
431 ~~for future recovery any costs incurred during calendar year 2011, other than as provided in subdivision 7~~
432 ~~or § 56-249.6, and its subsequent biennial filing shall be made by March 31, 2016, and every two years~~
433 ~~thereafter.~~

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

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

449 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
450 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
451 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
452 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that
453 comply with the requirements of clause (vi) of subsection B of § 56-582;

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

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

466 None of the costs of new energy efficiency programs of an electric utility, including recovery of
467 revenue reductions, shall be assigned to any customer that has a verifiable history of having used more
468 than 10 megawatts of demand from a single meter of delivery. Nor shall any of the costs of new energy
469 efficiency programs of an electric utility, including recovery of revenue reductions, be incurred by any
470 large general service customer as defined herein that has notified the utility of non-participation in such
471 energy efficiency program or programs. A large general service customer is a customer that has a
472 verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery.
473 Non-participation in energy efficiency programs shall be allowed by the Commission if the large general
474 service customer has, at the customer's own expense, implemented energy efficiency programs that have
475 produced or will produce measured and verified results consistent with industry standards and other
476 regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009,
477 promulgate rules and regulations to accommodate the process under which such large general service
478 customers shall file notice for such an exemption and (i) establish the administrative procedures by
479 which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied
480 by an applicant in order to notify the utility. In promulgating such rules and regulations, the
481 Commission may also specify the timing as to when a utility shall accept and act on such notice, taking
482 into consideration the utility's integrated resource planning process as well as its administration of
483 energy efficiency programs that are approved for cost recovery by the Commission. The notice of
484 non-participation by a large general service customer, to be given by March 1 of a given year, shall be
485 for the duration of the service life of the customer's energy efficiency program. The Commission on its
486 own motion may initiate steps necessary to verify such non-participants' achievement of energy
487 efficiency if the Commission has a body of evidence that the non-participant has knowingly
488 misrepresented its energy efficiency achievement. A utility shall not charge such large general service
489 customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond

490 what is required to provide electric service and meter such service on the customer's premises if the
 491 customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant
 492 proceedings pursuant to this section, the Commission shall take into consideration the goals of economic
 493 development, energy efficiency and environmental protection in the Commonwealth;

494 d. Projected and actual costs of participation in a renewable energy portfolio standard program
 495 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
 496 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
 497 § 56-585.2;

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

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

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

510 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
 511 utility's projected native load obligations and to promote economic development, a utility may at any
 512 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate
 513 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a
 514 coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the
 515 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
 516 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major
 517 unit modifications of generation facilities, including the costs of any system or equipment upgrade,
 518 system or equipment replacement, or other cost reasonably appropriate to extend the combined operating
 519 license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or
 520 more new underground facilities to replace one or more existing overhead distribution facilities of 69
 521 kilovolts or less located within the Commonwealth, ~~or~~ (v) one or more pumped hydroelectricity
 522 generation and storage facilities that utilize on-site or off-site renewable energy resources as all or a
 523 portion of their power source and such facilities and associated resources are located in the coalfield
 524 region of the Commonwealth as described in § 15.2-6002, regardless of whether such facility is located
 525 within or without the utility's service territory, *or (vi) one or more electric distribution grid*
 526 *transformation projects*; however, subject to the provisions of the following sentence, the utility shall not
 527 file a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual
 528 incremental increase in the level of investments associated with such a petition that exceeds five percent
 529 of such utility's distribution rate base, as such rate base was determined for the most recently ended
 530 12-month test period in the utility's latest ~~biennial~~ review proceeding conducted pursuant to subdivision
 531 3 and concluded by final order of the Commission prior to the date of filing of such petition under
 532 clause (iv). In all proceedings regarding petitions filed under clause (iv) *or (vi)*, the level of investments
 533 approved for recovery in such proceedings shall be in addition to, and not in lieu of, levels of
 534 investments previously approved for recovery in prior proceedings under clause (iv) ~~or (vi)~~, *as*
 535 *applicable*. Such a petition concerning facilities described in clause (ii) that utilize nuclear power,
 536 facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities
 537 described in clause (i) may also be filed before the expiration or termination of capped rates. A utility
 538 that constructs or makes modifications to any such facility, or purchases any facility consisting of at
 539 least one megawatt of generating capacity using energy derived from sunlight and located in the
 540 Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more
 541 Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income,
 542 through its rates, including projected construction work in progress, and any associated allowance for
 543 funds used during construction, planning, development and construction or acquisition costs, life-cycle
 544 costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs
 545 of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate
 546 of return on common equity calculated as specified below; however, in determining the amounts
 547 recoverable under a rate adjustment clause for new underground facilities, the Commission shall not
 548 consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance
 549 costs attributable to either the overhead distribution facilities being replaced or the new underground
 550 facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.

551 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
552 eligible for recovery from customers through the utility's base rates for distribution service. A utility
553 filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of
554 generating capacity using energy derived from sunlight and located in the Commonwealth and that
555 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may
556 propose a rate adjustment clause based on a market index in lieu of a cost of service model for such
557 facility. A utility seeking approval to construct or purchase a generating facility described in clause (i)
558 or (ii) shall demonstrate that it has considered and weighed alternative options, including third-party
559 market alternatives, in its selection process. The costs of the facility, other than return on projected
560 construction work in progress and allowance for funds used during construction, shall not be recovered
561 prior to the date a facility constructed by the utility and described in clause (i), (ii), ~~or~~ (iii) *or* (v) begins
562 commercial operation, the date the utility becomes the owner of a purchased generation facility
563 consisting of at least one megawatt of generating capacity using energy derived from sunlight and
564 located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one
565 or more Virginia businesses, or the date new underground facilities are classified by the utility as plant
566 in service. Such enhanced rate of return on common equity shall be applied to allowance for funds used
567 during construction and to construction work in progress during the construction phase of the facility
568 and shall thereafter be applied to the entire facility during the first portion of the service life of the
569 facility. The first portion of the service life shall be as specified in the table below; however, the
570 Commission shall determine the duration of the first portion of the service life of any facility, within the
571 range specified in the table below, which determination shall be consistent with the public interest and
572 shall reflect the Commission's determinations regarding how critical the facility may be in meeting the
573 energy needs of the citizens of the Commonwealth and the risks involved in the development of the
574 facility. After the first portion of the service life of the facility is concluded, the utility's general rate of
575 return shall be applied to such facility for the remainder of its service life. As used herein, the service
576 life of the facility shall be deemed to begin on the date a facility constructed by the utility and described
577 in clause (i), (ii), ~~or~~ (iii) *or* (v) begins commercial operation, the date the utility becomes the owner of a
578 purchased generation facility consisting of at least one megawatt of generating capacity using energy
579 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in
580 whole or in part, from one or more Virginia businesses, or the date new underground facilities *or new*
581 *electric distribution grid transformation projects* are classified by the utility as plant in service, and such
582 service life shall be deemed equal in years to the life of that facility as used to calculate the utility's
583 depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the
584 basis points specified in the table below to the utility's general rate of return, and such enhanced rate of
585 return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for
586 funds used during construction shall be calculated for any such facility utilizing the utility's actual
587 capital structure and overall cost of capital, including an enhanced rate of return on common equity as
588 determined pursuant to this subdivision, until such construction work in progress is included in rates.
589 The construction of any facility described in clause (i) or (v) is in the public interest, and in determining
590 whether to approve such facility, the Commission shall liberally construe the provisions of this title. The
591 construction or purchase by a utility of one or more generation facilities with at least one megawatt of
592 generating capacity, and with an aggregate rated capacity that does not exceed 500 megawatts, that use
593 energy derived from sunlight and are located in the Commonwealth, regardless of whether any of such
594 facilities are located within or without the utility's service territory, is in the public interest, and in
595 determining whether to approve such facility, the Commission shall liberally construe the provisions of
596 this title. A utility may enter into short-term or long-term power purchase contracts for the power
597 derived from sunlight generated by such generation facility prior to purchasing the generation facility.
598 The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the
599 aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year
600 period with new underground facilities in order to improve electric service reliability is in the public
601 interest. In determining whether to approve petitions for rate adjustment clauses for such new
602 underground facilities that meet this criteria, and in determining the level of costs to be recovered
603 thereunder, the Commission shall liberally construe the provisions of this title. ~~There shall be a~~
604 ~~rebuttable presumption that the~~ *The conversion of any such facilities will on or after September 1, 2016,*
605 *is deemed to provide local and system-wide benefits, that such new underground facilities are and to be*
606 *cost beneficial, and that the costs associated with such new underground facilities are deemed to be*
607 *reasonably and prudently incurred and shall be approved for recovery by the Commission pursuant to*
608 *this subdivision provided that the total costs associated with the replacement of any subset of existing*
609 *overhead distribution tap lines proposed by the utility with new underground facilities, exclusive of*
610 *financing costs, shall not exceed an average cost per customer of \$20,000, with such customers*
611 *including those served directly by or downline of the tap lines proposed for conversion and, further,*
612 *such total costs shall not exceed an average cost per mile of tap lines converted, exclusive of financing*

613 costs, of \$750,000. A utility may, without regard for whether it has petitioned for any rate adjustment
 614 clause pursuant to clause (vi), petition the Commission, not more than once annually, for approval of a
 615 plan for electric distribution grid transformation projects. In ruling upon such a petition, the
 616 Commission shall consider whether the utility's plan for such projects, and the projected costs
 617 associated therewith, are reasonable and prudent. Such petition shall be considered on a stand-alone
 618 basis without regard to the other costs, revenues, investments or earnings of the utility, without regard
 619 to whether the costs associated with such projects will be recovered through a rate adjustment clause
 620 under this subdivision or through the utility's rates for generation and distribution services, and without
 621 regard to whether such costs will be the subject of a customer credit offset, as applicable, pursuant to
 622 subdivision 8 d. The Commission's final order regarding any such petition for approval of an electric
 623 distribution grid transformation plan shall be entered by the Commission not more than six months after
 624 the date of filing such petition. The Commission shall likewise enter its final order with respect to any
 625 petition by a utility for a certificate to construct and operate a generating facility or facilities utilizing
 626 energy derived from sunlight, pursuant to § 56-580.D of this chapter, within six months after the date of
 627 filing such petition. The basis points to be added to the utility's general rate of return to calculate the
 628 enhanced rate of return on common equity, and the first portion of that facility's service life to which
 629 such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following
 630 table:

631	Type of Generation Facility	Basis Points	First Portion of Service Life
632	Nuclear-powered	200	Between 12 and 25 years
633	Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
634	Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
635	Coalbed methane gas powered	150	Between 5 and 15 years
636	Landfill gas powered	200	Between 5 and 15 years
637	Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

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

645 For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy
 646 derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such
 647 facilities shall continue to be eligible for an enhanced rate of return on common equity during the
 648 construction phase of the facility and the approved first portion of its service life of between 12 and 25
 649 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in
 650 the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1,
 651 2013, the enhanced return for such facilities constructed pursuant to clause (ii) shall be 100 basis points,
 652 which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty
 653 percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1,
 654 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred
 655 by the utility and recovered through a rate adjustment clause under this subdivision at such time as the
 656 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of
 657 all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall
 658 not be deferred for recovery through a rate adjustment clause under this subdivision; however, such
 659 remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by
 660 the Commission in the test periods under review in the utility's next ~~biennial~~ review filed after July 1,
 661 2014. Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the
 662 utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after
 663 December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under
 664 this subdivision at such time as the Commission provides in an order approving such a rate adjustment
 665 clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1,
 666 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under
 667 this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through
 668 existing base rates as determined by the Commission in the test periods under review in the utility's next
 669 ~~biennial~~ review filed after July 1, 2014.

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

673 In connection with planning to meet forecasted demand for electric generation supply and assure the
 674 adequate and sufficient reliability of service, consistent with § 56-598, planning and development

675 activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy
676 derived from sunlight with an aggregate capacity of 500 megawatts, or from offshore wind, are in the
677 public interest.

678 *To the extent a utility elects to recover the costs of any such new generation facility or facilities*
679 *through its rates for generation and distribution services and does not petition and receive approval*
680 *from the Commission for recovery of such costs through a rate adjustment clause described in clause*
681 *(ii), the Commission shall provide for a customer credit reinvestment offset, as applicable, pursuant to*
682 *subdivision 8 d.*

683 *Electric distribution grid transformation projects are in the public interest. To the extent a utility*
684 *elects to recover the costs of such electric distribution grid transformation projects through its rates for*
685 *generation and distribution services, and does not petition and receive approval from the Commission*
686 *for recovery of such costs through a rate adjustment clause described in clause (vi), the Commission*
687 *shall provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d.*

688 Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines nor
689 new underground facilities shall receive an enhanced rate of return on common equity as described
690 herein, but instead shall receive the utility's general rate of return during the construction phase of the
691 facility and, thereafter, for the entire service life of the facility. No rate adjustment clause for new
692 underground facilities shall allocate costs to, or provide for the recovery of costs from, customers that
693 are served within the large power service rate class for a Phase I Utility and the large general service
694 rate classes for a Phase II Utility. New underground facilities are hereby declared to be ordinary
695 extensions or improvements in the usual course of business under the provisions of § 56-265.2.

696 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility
697 is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.1-361.1, produced
698 from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired by
699 methane or other combustible gas produced by the anaerobic digestion or decomposition of
700 biodegradable materials in a solid waste management facility licensed by the Waste Management Board.
701 A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used
702 in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from
703 the solid waste management facility where it is collected to the generation facility where it is
704 combusted.

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

710 Notwithstanding any other provision of this subdivision, if the Commission finds during the ~~biennial~~
711 ~~triennial~~ review conducted for a Phase II Utility in ~~2018~~ 2021 that such utility has not filed applications
712 for all necessary federal and state regulatory approvals to construct one or more nuclear-powered or
713 coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount
714 of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such
715 approvals have been received, that the utility has not made reasonable and good faith efforts to construct
716 one or more such facilities that will provide such additional total capacity within a reasonable time after
717 obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a
718 prospective basis any enhanced rate of return on common equity previously applied to any such facility
719 to no less than the general rate of return for such utility and may apply no less than the utility's general
720 rate of return to any such facility for which the utility seeks approval in the future under this
721 subdivision.

722 *Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from*
723 *the Commission of a rate adjustment clause pursuant to subdivision A 6 associated with a test or*
724 *demonstration project involving a generation facility utilizing energy from offshore wind, and such utility*
725 *has not, as of July 1, 2023, commenced construction of a full-scale offshore wind generation facility,*
726 *then the Commission, if it finds it in the public interest, may direct that the costs associated with any*
727 *such rate adjustment clause involving said test or demonstration project shall thereafter no longer be*
728 *recovered through a rate adjustment clause pursuant to subdivision 6, and shall instead be recovered*
729 *through the utility's rates for generation and distribution services, with no change in such rates for*
730 *generation and distribution services as a result of the combination of such costs with the other costs,*
731 *revenues and investments included in the utility's rates for generation and distribution services. Any*
732 *such costs shall remain combined with the utility's other costs, revenues and investments included in its*
733 *rates for generation and distribution services until such costs are fully recovered.*

734 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
735 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
736 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the

737 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or
 738 that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to
 739 new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and
 740 records of the utility until the Commission's final order in the matter, or until the implementation of any
 741 applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in
 742 subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of
 743 such petition, or during the consideration thereof by the Commission, that are proposed for recovery in
 744 such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of
 745 subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of
 746 subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the
 747 books and records of the utility until the Commission's final order in the matter, or until the
 748 implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs
 749 prudently incurred after the expiration or termination of capped rates related to other matters described
 750 in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped
 751 rates, provided, however, that no provision of this act shall affect the rights of any parties with respect
 752 to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia
 753 Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset
 754 for regulatory accounting and ratemaking purposes under which it shall defer its operation and
 755 maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
 756 and (ii) other work at such plant normally performed during a refueling outage. The utility shall
 757 amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning
 758 with the month in which such plant resumes operation after such refueling. The refueling cycle shall be
 759 the applicable period of time between planned refueling outages for such plant. As of January 1, 2014,
 760 such amortized costs are a component of base rates, recoverable in base rates only ratably over the
 761 refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable
 762 in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage
 763 commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs
 764 of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with
 765 respect to ~~biennial~~ *triennial* filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant
 766 to § 56-245 or the Commission's rules governing utility rate increase applications as provided in
 767 subsection B. This provision shall not be deemed to change or reset base rates.

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

773 8. In any ~~biennial~~ *triennial* review proceeding, the following utility generation and distribution costs
 774 not proposed for recovery under any other subdivision of this subsection, as recorded per books by the
 775 utility for financial reporting purposes and accrued against income, shall be attributed to the test periods
 776 under review *and deemed fully recovered in the period recorded*: costs associated with asset impairments
 777 related to early retirement determinations made by the utility ~~prior to December 31, 2012~~, for utility
 778 generation ~~plant~~ *facilities fueled by coal, natural gas or oil or for automated meter reading electric*
 779 *distribution service meters; costs associated with projects necessary to comply with state or federal*
 780 *environmental laws, regulations or judicial or administrative orders relating to coal combustion*
 781 *by-product management which the utility does not petition to recover through a rate adjustment clause*
 782 *pursuant to subdivision 5 e*; costs associated with severe weather events; and costs associated with
 783 natural disasters. Such costs shall be deemed to have been recovered from customers through rates for
 784 generation and distribution services in effect during the test periods under review unless such costs,
 785 individually or in the aggregate, together with the utility's other costs, revenues, and investments to be
 786 recovered through rates for generation and distribution services, result in the utility's earned return on its
 787 generation and distribution services for the combined test periods under review to fall more than 50
 788 basis points below the fair combined rate of return authorized under subdivision 2 for such periods or,
 789 for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31,
 790 2013, for a Phase I Utility, to fall more than 70 basis points below the fair combined rate of return
 791 authorized under subdivision 2 for such periods. In such cases, the Commission shall, in such ~~biennial~~
 792 *triennial* review proceeding, authorize deferred recovery of such costs and allow the utility to amortize
 793 and recover such deferred costs over future periods as determined by the Commission. The aggregate
 794 amount of such deferred costs shall not exceed an amount that would, together with the utility's other
 795 costs, revenues, and investments to be recovered through rates for generation and distribution services,
 796 cause the utility's earned return on its generation and distribution services to exceed the fair rate of
 797 return authorized under subdivision 2, less 50 basis points, for the combined test periods under review

798 or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December
799 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2 less 70
800 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the provisions of
801 Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of combined test
802 period earnings of the utility in a ~~biennial~~ *triennial* review, for normalization of nonrecurring test period
803 costs and annualized adjustments for future costs, in determining any appropriate increase or decrease in
804 the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

805 If the Commission determines as a result of such ~~biennial~~ *triennial* review that:

806 a. The utility has, during the test period or periods under review, considered as a whole, earned more
807 than 50 basis points below a fair combined rate of return on its generation and distribution services or,
808 for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31,
809 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of return on its
810 generation and distribution services, as determined in subdivision 2, without regard to any return on
811 common equity or other matters determined with respect to facilities described in subdivision 6, the
812 Commission shall order increases to the utility's rates necessary to provide the opportunity to fully
813 recover the costs of providing the utility's services and to earn not less than such fair combined rate of
814 return, using the most recently ended 12-month test period as the basis for determining the amount of
815 the rate increase necessary. However, the Commission may not order such rate increase unless it finds
816 that the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs
817 of providing its services and to earn not less than a fair combined rate of return on both its generation
818 and distribution services, as determined in subdivision 2, without regard to any return on common equity
819 or other matters determined with respect to facilities described in subdivision 6, using the most recently
820 ended 12-month test period as the basis for determining the permissibility of any rate increase under the
821 standards of this sentence, and the amount thereof;

822 b. The utility has, during the test period or test periods under review, considered as a whole, earned
823 more than 50 basis points above a fair combined rate of return on its generation and distribution
824 services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
825 December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of
826 return on its generation and distribution services, as determined in subdivision 2, without regard to any
827 return on common equity or other matters determined with respect to facilities described in subdivision
828 6, the Commission shall, subject to the provisions of ~~subdivision~~ *subdivisions 8 d and 9*, direct that 60
829 percent of the amount of such earnings that were more than 50 basis points, or, for any test period
830 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
831 Utility, that 70 percent of the amount of such earnings that were more than 70 basis points, above such
832 fair combined rate of return for the test period or periods under review, considered as a whole, shall be
833 credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as
834 determined at the discretion of the Commission, following the effective date of the Commission's order,
835 and shall be allocated among customer classes such that the relationship between the specific customer
836 class rates of return to the overall target rate of return will have the same relationship as the last
837 approved allocation of revenues used to design base rates; or

838 c. Such ~~biennial~~ *triennial* review is the second consecutive ~~biennial~~ *triennial* review *occurring after*
839 *December 31, 2017*, in which the utility has, during the test period or test periods under review,
840 considered as a whole, earned more than 50 basis points above a fair combined rate of return on its
841 generation and distribution services or, for any test period commencing after December 31, 2012, for a
842 Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a
843 fair combined rate of return on its generation and distribution services, as determined in subdivision 2,
844 without regard to any return on common equity or other matter determined with respect to facilities
845 described in subdivision 6, *and the combined aggregate level of capital investment made by the utility*
846 *during the test periods under review in the two consecutive triennial review proceedings in new*
847 *utility-owned generation facilities utilizing energy derived from sunlight, or from onshore or offshore*
848 *wind, and in electric distribution grid transformation projects which the Commission has not approved*
849 *for recovery through a rate adjustment clause pursuant to subdivision 6, does not equal or exceed 70*
850 *percent of the earnings above the utility's fair combined rate of return on its generation and distribution*
851 *services for the combined test periods under review in the two consecutive triennial review proceedings,*
852 the Commission shall, subject to the provisions of subdivision 9 and in addition to the actions
853 authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, the
854 Commission may not order such rate reduction unless it finds that the resulting rates will provide the
855 utility with the opportunity to fully recover its costs of providing its services and to earn not less than a
856 fair combined rate of return on its generation and distribution services, as determined in subdivision 2,
857 without regard to any return on common equity or other matters determined with respect to facilities
858 described in subdivision 6, using the most recently ended 12-month test period as the basis for
859 determining the permissibility of any rate reduction under the standards of this sentence, and the amount

860 thereof; or

861 *d. In any triennial review proceeding conducted after December 31, 2017, the Commission shall*
862 *determine, prior to directing that 70 percent of earnings above the utility's fair combined rate of return*
863 *on its generation and distribution services for the test period or periods under review be credited to*
864 *customer bills pursuant to subdivision 8 b, the aggregate level of capital investment made by the utility*
865 *during the test period or periods under review in both (i) new utility-owned generation facilities utilizing*
866 *energy derived from sunlight, or from onshore or offshore wind, and (ii) electric distribution grid*
867 *transformation projects which the Commission has not approved for recovery through a rate adjustment*
868 *clause pursuant to subdivision 6, as determined by the utility's plant balances related to such*
869 *investments as recorded per books by the utility for financial reporting purposes as of the end of the*
870 *most recent test period under review. Any such combined capital investment amounts shall offset any*
871 *customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or*
872 *committed capital under clauses (i) and (ii). The aggregate level of invested or committed capital under*
873 *clauses (i) and (ii) is referred to in this subdivision as the customer credit reinvestment offset. If 70*
874 *percent of the amount of earnings above the utility's fair combined rate of return on its generation and*
875 *distribution services, as determined in subdivision 2, exceeds the aggregate level of invested capital in*
876 *new utility-owned generation facilities utilizing energy derived from sunlight, or from onshore or*
877 *offshore wind, and electric distribution grid transformation projects, as provided in clauses (i) and (ii),*
878 *during the test period or periods under review, then the amount of such excess shall be credited to*
879 *customer bills as provided in subdivision 8 b in connection with the subsequent triennial review*
880 *proceeding, unless the aggregate level of capital investment in new utility-owned generation facilities*
881 *utilizing energy derived from sunlight, or from onshore or offshore wind, and electric distribution grid*
882 *transformation projects, as provided in clauses (i) and (ii), over the test periods under review in the*
883 *subsequent triennial review proceeding which the Commission has not approved for recovery through a*
884 *rate adjustment clause pursuant to subdivision 6, exceeds both this excess amount and 70 percent of any*
885 *earnings above the utility's fair combined rate of return for the test period or periods under review in*
886 *the subsequent triennial review proceeding. Any costs associated with new utility-owned generation*
887 *facilities utilizing energy derived from sunlight, or from onshore or offshore wind, or electric*
888 *distribution grid transformation projects, that are the subject of any customer credit reinvestment offset*
889 *pursuant to this subdivision shall thereafter be recovered through the utility's rates for generation and*
890 *distribution services over the service life of such facilities, shall be included in the utility's costs,*
891 *revenues and investments in future triennial review proceedings conducted pursuant to subdivision 2*
892 *until such costs are fully recovered, with no rate base or other cost of service adjustment associated*
893 *with the customer credit reinvestment offset pursuant to this subdivision, and shall not be the subject of*
894 *a rate adjustment clause petition pursuant to subdivision 6. Only such costs of new utility-owned*
895 *generation facilities utilizing energy derived from sunlight, or from onshore or offshore wind, or electric*
896 *distribution grid transformation projects which have not included in any customer credit reinvestment*
897 *offset pursuant to this subdivision, and not otherwise recovered through the utility's rates for generation*
898 *and distribution services, may be the subject of a rate adjustment clause petition by the utility pursuant*
899 *to subdivision 6.*

900 The Commission's final order regarding such ~~biennial~~ *triennial* review shall be entered not more than
901 eight months after the date of filing, and any revisions in rates or credits so ordered shall take effect not
902 more than 60 days after the date of the order. The fair combined rate of return on common equity
903 determined pursuant to subdivision 2 in such ~~biennial~~ *triennial* review shall apply, for purposes of
904 reviewing the utility's earnings on its rates for generation and distribution services, to the entire ~~two~~
905 *three* successive 12-month test periods ending December 31 immediately preceding the year of the
906 utility's subsequent ~~biennial~~ *triennial* review filing under subdivision 3 *and shall apply to applicable*
907 *rate adjustment clauses under subdivisions 5 and 6 prospectively from the date the Commission's final*
908 *order in the triennial review proceeding, utilizing rate adjustment clause true-up protocols as the*
909 *commission in its discretion may determine.*

910 9. If, as a result of a ~~biennial~~ *triennial* review required under this subsection and conducted with
911 respect to any test period or periods under review ending later than December 31, 2010 (or, if the
912 Commission has elected to stagger its ~~biennial~~ reviews of utilities as provided in subdivision 1, under
913 review ending later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II
914 Utility), the Commission finds, with respect to such test period or periods considered as a whole, that (i)
915 any utility has, during the test period or periods under review, considered as a whole, earned more than
916 50 basis points above a fair combined rate of return on its generation and distribution services or, for
917 any test period commencing after December 31, 2012, for a Phase II Utility and after December 31,
918 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its
919 generation and distribution services, as determined in subdivision 2, without regard to any return on
920 common equity or other matters determined with respect to facilities described in subdivision 6, and (ii)

921 the total aggregate regulated rates of such utility at the end of the most recently-ended 12-month test
922 period exceeded the annual increases in the United States Average Consumer Price Index for all items,
923 all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
924 Department of Labor, compounded annually, when compared to the total aggregate regulated rates of
925 such utility as determined pursuant to the ~~biennial~~ review conducted for the base period, the
926 Commission shall, unless it finds that such action is not in the public interest or that the provisions of
927 subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for
928 such test period or periods under review, considered as a whole that were more than 50 basis points, or,
929 for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31,
930 2013, for a Phase I Utility, more than 70 basis points, above such fair combined rate of return shall be
931 credited to customers' bills, in lieu of the provisions of subdivisions 8 b and c, *provided that no credits*
932 *shall be provided pursuant to this subdivision in connection with any triennial review unless such bill*
933 *credits would be payable pursuant to the provisions of subdivision 8 d, and any credits under this*
934 *subdivision shall be calculated net of any customer credit reinvestment offset amounts under subdivision*
935 *8 d.* Any such credits shall be amortized and allocated among customer classes in the manner provided
936 by subdivision 8 b. For purposes of this subdivision:

937 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
938 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
939 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
940 period with respect to which credits have been applied to customers' bills under the provisions of this
941 subdivision, whichever is later.

942 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except
943 for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31,
944 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
945 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8
946 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
947 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as
948 of July 1, 2009.

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

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

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

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

982 E. The Commission shall promulgate such rules and regulations as may be necessary to implement

983 the provisions of this section.
984 **§ 56-585.1:1. Transitional Rate Period: review of rates, terms and conditions for utility**
985 **generation facilities.**

986 ~~Notwithstanding the provisions of §§ 56-249.6 and 56-585.1:~~

987 A. No biennial reviews of the rates, terms, and conditions for any service of a Phase I Utility, as
988 defined in § 56-585.1, shall be conducted at any time by the State Corporation Commission for the four
989 successive 12-month test periods beginning January 1, 2014, and ending December 31, 2017. No
990 biennial reviews of the rates, terms, and conditions for any service of a Phase II Utility, as defined in
991 § 56-585.1, shall be conducted at any time by the ~~State Corporation~~ Commission for the ~~five~~ *three*
992 successive 12-month test periods beginning January 1, 2015, and ending December 31, ~~2019~~2017. Such
993 test periods beginning January 1, 2014, and ending December 31, 2017, for a Phase I Utility, and
994 beginning January 1, 2015, and ending December 31, ~~2019~~2017, for a Phase II Utility, are collectively
995 referred to herein as the "Transitional Rate Period." Review of recovery of fuel and purchase power
996 costs shall continue during the Transitional Rate Period in accordance with § 56-249.6. Any biennial
997 review of the rates, terms, and conditions for any service of a Phase II Utility occurring in 2015 during
998 the Transitional Rate Period shall be solely a review of the utility's earnings on its rates for generation
999 and distribution services for the two 12-month test periods ending December 31, 2014, and a
1000 determination of whether any credits to customers are due for such test periods pursuant to subdivision
1001 A 8 b of § 56-585.1. After the conclusion of the Transitional Rate Period, ~~biennial~~ *reviews of the*
1002 *utility's rates for generation and distribution services* shall resume for a Phase I Utility in 2020, with the
1003 first such proceeding utilizing the two successive 12-month test periods beginning January 1, 2018, and
1004 ending December 31, 2019. After the conclusion of the Transitional Rate Period, ~~biennial~~ *reviews of the*
1005 *utility's rates for generation and distribution services* shall resume for a Phase II Utility, ~~as defined in~~
1006 ~~§ 56-585.1~~, in ~~2022~~2021, with the first such proceeding utilizing the ~~two~~ *three* successive 12-month test
1007 periods beginning January 1, ~~2020~~2018, and ending December 31, ~~2024~~2020. Consistent with this
1008 provision, (i) no biennial review filings shall be made by an investor-owned incumbent electric utility in
1009 the years 2016 through 2019, inclusive, and (ii) no adjustment to an investor-owned incumbent electric
1010 utility's existing tariff rates, including any rates adopted pursuant to § 56-235.2, shall be made between
1011 the beginning of the Transitional Rate Period and the conclusion of the first ~~biennial~~ review after the
1012 conclusion of the Transitional Rate Period, except as may be provided pursuant to § 56-245 or 56-249.6
1013 or subdivisions A 4, 5, or 6 of § 56-585.1.

1014 B. During the Transitional Rate Period, pursuant to § 56-36, the Commission shall have the right at
1015 all times to inspect the books, papers and documents of any investor-owned incumbent electric utility
1016 and to require from such companies, from time to time, special reports and statements, under oath,
1017 concerning their business.

1018 C. 1. Commencing in 2016 and concluding in 2018, the State Corporation Commission, after notice
1019 and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of
1020 return on common equity to be used by a Phase I Utility as the general rate of return applicable to rate
1021 adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1. A Phase I Utility's filing in such
1022 proceedings shall be made on or before March 31 of 2016, and 2018.

1023 2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice and
1024 opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return
1025 on common equity to be used by a Phase II Utility as the general rate of return applicable to rate
1026 adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1. A Phase II utility's filing in such
1027 proceedings shall be made on or before March 31 of 2017 and 2019.

1028 3. Such fair rate of return shall be calculated pursuant to the methodology set forth in subdivisions A
1029 2 a and b of § 56-585.1 and shall utilize the utility's actual end-of-test-period capital structure and cost
1030 of capital, as well as a 12-month test period ending December 31 immediately preceding the year in
1031 which the proceeding is conducted. The Commission's final order in such a proceeding shall be entered
1032 no later than eight months after the date of filing, with any adjustment to the fair rate of return for
1033 applicable rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1 taking effect on the date
1034 of the Commission's final order in the proceeding, utilizing rate adjustment clause true-up protocols as
1035 the Commission may in its discretion determine. Such proceeding shall concern only the issue of the
1036 determination of such fair rate of return to be used for rate adjustment clauses under subdivisions A 5
1037 and 6 of § 56-585.1, and such determination shall have no effect on rates other than those applicable to
1038 such rate adjustment clauses; however, after the final such proceeding for a utility has been concluded,
1039 the fair combined rate of return on common equity so determined therein shall also be deemed equal to
1040 the fair combined rate of return on common equity to be used in such utility's ~~first biennial~~ review
1041 proceeding conducted after the end of the utility's Transitional Rate Period to review such utility's
1042 earnings on its rates for generation and distribution services for the historic test periods.

1043 D. In furtherance of rate stability during the Transitional Rate Period, any Phase II Utility carrying a

1044 prior period deferred fuel expense recovery balance on its books and records as of December 31, 2014,
1045 shall not recover from customers 50 percent of any such balance outstanding as of December 31, 2014,
1046 and the State Corporation Commission shall implement as soon as practicable reductions in the fuel
1047 factor rate of any such Phase II Utility to reflect the nonrecovery of any such fuel expense as well as
1048 any reduction in the fuel factor associated with the Phase II Utility's current period forecasted fuel
1049 expense over recovery for the 2014-2015 fuel year and projected fuel expense for the 2015-2016 fuel
1050 year.

1051 E. Except for early retirement plans identified by the utility in an integrated resource plan filed with
1052 the State Corporation Commission by September 1, 2014, for utility generation plants, an investor-owned
1053 incumbent electric utility shall not permanently retire an electric power generation facility from service
1054 during the Transitional Rate Period without first obtaining the approval of the State Corporation
1055 Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the
1056 State Corporation Commission that the retirement determination is reasonable and prudent. During the
1057 Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs,
1058 as recorded per books by the utility for financial reporting purposes and accrued against income, only
1059 through its existing tariff rates for generation or distribution services, except such costs as may be
1060 recovered pursuant to § 56-245, § 56-249.6 or subdivisions A 4, A 5, or A 6 of § 56-585.1: (i) costs
1061 associated with asset impairments related to early retirement determinations for utility generation
1062 facilities resulting from the implementation of carbon emission guidelines for existing electric power
1063 generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of
1064 the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with natural
1065 disasters.

1066 F. During the Transitional Rate Period:

1067 1. The State Corporation Commission shall submit a report and make recommendations to the
1068 Governor and the General Assembly annually on or before December 1 of each year assessing the
1069 updated integrated resource plan of any investor-owned incumbent electric utility. The report shall
1070 include an analysis of, among other matters, the amount, reliability, and type of generation facilities
1071 needed to serve Virginia native load compared to what is then available to serve such load and what
1072 may be available to serve such load in the future in view of market conditions and current and pending
1073 state and federal environmental regulations. As a part of such report, the State Corporation Commission
1074 shall update its estimate of the impact upon electric rates in Virginia of the implementation of carbon
1075 emission guidelines for existing electric power generation facilities that the U.S. Environmental
1076 Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The State Corporation
1077 Commission shall submit copies of such annual reports to the Chairmen of the House and Senate
1078 Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility
1079 Regulation; and

1080 2. The Department of Environmental Quality shall submit a report and make recommendations to the
1081 Governor and the General Assembly annually on or before December 1 of each year concerning the
1082 implementation of carbon emission guidelines for existing electric power generation facilities that the
1083 U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The
1084 report shall include an analysis of, among other matters, the impact of such federal regulations on the
1085 operation of any investor-owned incumbent electric utility's electric power generation facilities and any
1086 changes, interdiction, or suspension of such regulations. The Department of Environmental Quality shall
1087 submit copies of such annual reports to the Chairmen of the House and Senate Committees on
1088 Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

1089 G. The construction or purchase by an investor-owned incumbent utility of one or more generation
1090 facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that
1091 does not exceed 500 megawatts, that use energy derived from sunlight and are located in the
1092 Commonwealth, regardless of whether any of such facilities are located within or without such utility's
1093 service territory, is in the public interest, and in determining whether to approve such facility, the
1094 Commission shall liberally construe the provisions of this section. Such utility shall utilize goods or
1095 services sourced, in whole or in part, from one or more Virginia businesses. The utility may propose a
1096 rate adjustment clause based on a market index in lieu of a cost of service model for such facility. An
1097 investor-owned incumbent utility may enter into short-term or long-term power purchase contracts for
1098 the power derived from sunlight generated by such generation facility prior to purchasing the generation
1099 facility.

1100 H. *To the extent the provisions of this section are inconsistent with the provisions of §§ 56-249.6 and*
1101 *56-585.1, the provisions of this section shall control.*

1102 **2. § 1. There is hereby established a pilot program to further the understanding of underground**
1103 **electric transmission lines in regard to electric reliability, construction methods and related cost**
1104 **and timeline estimating, and the probability of meeting such projections. The pilot program shall**
1105 **consist of the approval to construct qualifying electrical transmission lines of 230 kilovolts or less**

1106 (but greater than 69 kilovolts) in whole or in part underground. Such pilot program shall consist
1107 of a total of two qualifying electrical transmission line projects, constructed in whole or in part
1108 underground, as specified and set forth in this act.

1109 § 2. Notwithstanding any other law to the contrary, as a part of the pilot program established
1110 pursuant to this Act, the State Corporation Commission shall approve as a qualifying project a
1111 transmission line of 230 kilovolts or less that is pending final approval of a certificate of public
1112 convenience and necessity from the State Corporation Commission as of December 31, 2017, for
1113 the construction of an electrical transmission line approximately 5.3 miles in length utilizing both
1114 overhead and underground transmission facilities, of which the underground portion shall be
1115 approximately 3.1 miles in length, which has been previously proposed for construction within or
1116 immediately adjacent to the right of way of an interstate highway. Once the State Corporation
1117 Commission has affirmed the project need through a final order, the project shall be constructed
1118 in part underground, and the underground portion shall consist of a double circuit.

1119 The State Corporation Commission shall approve such underground construction within 30 days
1120 of receipt of the written request of the public utility to participate in the pilot program pursuant
1121 to this section. The State Corporation Commission shall not require the submission of additional
1122 technical and cost analyses as a condition of its approval, but may request such analyses for its
1123 review. The State Corporation Commission shall approve the underground construction of one
1124 contiguous segment of the transmission line that is approximately 3.1 miles in length that was
1125 previously proposed for construction within or immediately adjacent to the right of way of the
1126 interstate highway, which, by resolution, the city/locality has indicated general community support.
1127 The remainder of the construction for the transmission line shall be aboveground. The
1128 Commission shall not be required to perform any further analysis as to the impacts of this route,
1129 including environmental impacts or impacts upon historical resources.

1130 The electric utility may proceed to acquire right of way and take such other actions as it deems
1131 appropriate in furtherance of the construction of the approved transmission line, including
1132 acquiring the cables necessary for the underground installation.

1133 § 3. In reviewing applications submitted by public utilities for certificates of public convenience
1134 and necessity for the construction of electrical transmission lines of 230 kilovolts or less filed
1135 between the effective date of this Act and July 1, 2020, the State Corporation Commission shall
1136 approve, consistent with the requirements of § 4 of this enactment, one additional application as a
1137 qualifying project to be constructed in whole or in part underground, as a part of this pilot
1138 program. The one qualifying project shall be in addition to the qualifying project described in § 2
1139 of this enactment.

1140 §4. For purposes of § 3, a project shall be qualified to be placed underground, in whole or in part,
1141 if it meets all of the following criteria: (i) an engineering analysis demonstrates that it is
1142 technically feasible to place the proposed line, in whole or in part, underground; (ii) the governing
1143 body of each locality in which a portion of the proposed line will be placed underground indicates,
1144 by resolution, general community support for the project and that it supports the transmission line
1145 to be placed underground; (iii) a project has been filed with the State Corporation Commission or
1146 is pending issuance of a certificate of public convenience and necessity by July 1, 2020; (iv) the
1147 estimated additional cost of placing the proposed line, in whole or in part, underground does not
1148 exceed 2.5 times the cost of placing the same line overhead, assuming accepted industry standards
1149 for undergrounding to ensure safety and reliability; if the public utility, the affected localities, and
1150 the State Corporation Commission agree, a proposed underground line whose cost exceeds 2.5
1151 times the cost of placing the line overhead may also be accepted into the pilot program; (v) the
1152 public utility requests that the project be considered as a qualifying project under this enactment;
1153 and, (vi) the primary need of the project shall be for purposes of grid reliability, grid resiliency,
1154 or to support economic development priorities of the Commonwealth and shall not be to address
1155 aging assets that would have otherwise been replaced in due course.

1156 § 5. Approval of a transmission line pursuant to this enactment for inclusion in the pilot program
1157 shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect
1158 to such transmission line and any associated facilities, such as stations, substations, transition
1159 stations and locations, and switchyards or stations, that may be required.

1160 § 6. The State Corporation Commission shall report annually to the Commission on Electric Utility
1161 Restructuring, the Joint Commission on Technology and Science, and the Governor on the
1162 progress of the pilot program by no later than December 1 of each year that this act is in effect.
1163 The State Corporation Commission shall submit a final report to the Commission on Electric
1164 Utility Restructuring, the Joint Commission on Technology and Science, and the Governor no later
1165 than December 1, 2024, analyzing the entire program and making recommendations about the
1166 continued placement of transmission lines underground in the Commonwealth. The State

1167 Corporation Commission's final report shall include, but not limited to, analysis and findings of
1168 the costs of underground construction and historical and future consumer rate effects of such
1169 costs, effect of underground transmission lines on grid reliability, operability (including operating
1170 voltage), probability of meeting cost and construction timeline estimates of such underground
1171 transmission lines, and aesthetic or other benefits attendant to the placement of transmission lines
1172 underground.

1173 § 7. For the qualifying projects chosen pursuant to this enactment and not fully recoverable as
1174 charges for new transmission facilities pursuant to subdivision A 4 of § 56-585.1, the State
1175 Corporation Commission shall approve a rate adjustment clause. The rate adjustment clause shall
1176 provide for the full and timely recovery of any portion of the cost of such project not recoverable
1177 under applicable rates, terms, and conditions approved by the Federal Energy Regulatory
1178 Commission and shall include the use of the fair return on common equity most recently approved
1179 in a State Corporation Commission proceeding for such utility. Such costs shall be entirely
1180 assigned to the utility's Virginia jurisdictional customers. The State Corporation Commission's
1181 final order regarding any petition filed pursuant to this subsection shall be entered not more than
1182 three months after the filing of such petition.

1183 § 8. Approval of a proposed transmission line for inclusion in this program shall not preclude the
1184 placing of existing or future overhead facilities in the same area or corridor by other transmission
1185 projects.

1186 § 9. The provisions of this enactment shall not be construed to limit the ability of the State
1187 Corporation Commission to approve additional applications for placement of transmission lines
1188 underground.

1189 § 10. If two applications are not submitted to the State Corporation Commission that meet the
1190 requirements of this act, the State Corporation Commission shall document the failure of the
1191 projects to qualify for the pilot program in order to justify approving fewer than two projects to
1192 be placed underground, in whole or in part.

1193 § 11. Insofar as the provisions of this act are inconsistent with the provisions of any other law or
1194 local ordinance, the provisions of this act shall be controlling.

1195 3. That, no later than thirty (30) days following the effective date of this act, a Phase II Utility
1196 shall provide to its current customers a one-time, voluntary generation and distribution services
1197 bill credit, to be allocated on an historic test period energy usage basis, in an aggregate amount of
1198 \$133 million. The one-time voluntary generation and distribution services bill credit shall not be
1199 included in any earnings test after the effective date of this act.

1200 4. That any Phase II utility shall no longer recover from customers, as of the effective date of this
1201 act, any costs previously approved by the State Corporation Commission associated with major
1202 unit modifications to convert existing generation facilities to become operational as generation
1203 units utilizing biomass fuel through a rate adjustment clause pursuant to subdivision A 6 of
1204 § 56-585.1, and shall, as of the effective date of this act, instead begin to recover any such
1205 remaining costs through the utility's rates for generation and distribution services, with no change
1206 in such rates for generation and distribution services as a result of the combination of such costs
1207 with the other costs, revenues and investments included in its rates for generation and distribution
1208 services. Any such costs shall remain combined with the utility's other costs, revenues and
1209 investments included in its rates for generation and distribution services until such costs are fully
1210 recovered.

1211 5. That the State Corporation Commission shall implement reductions in the rates for generation
1212 and distribution services of incumbent electric utilities, as defined in § 56-576, effective April 1,
1213 2019, to reflect the actual annual reductions in corporate income taxes to be paid by such utilities
1214 pursuant to the provisions of the federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97).

1215 6. In advance of the determination of the State Corporation Commission as to rate reductions to
1216 reflect reductions in corporate income taxes pursuant to the fifth enactment of this act, any Phase
1217 II utility as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia shall reduce its
1218 existing rates for generation and distribution services on an interim basis, within thirty (30) days
1219 of the effective date of this act, in an amount sufficient to reduce its annual revenues from such
1220 rates by an aggregate amount of \$125 million, provided, however, that such \$125 million shall be
1221 reduced by the amount of any annual revenue requirement associated with any rate adjustment
1222 clause previously authorized pursuant to subdivision A 6 of § 56-585.1 and relating to major unit
1223 modifications of generation facilities that utilize biomass fuel which are withdrawn as of the
1224 effective date of this act pursuant to the fourth enactment of this act. The net amount of such
1225 interim reduction in rates for generation and distribution services shall be attributable to
1226 reductions in the corporate income tax obligations of the utility pursuant to the provisions of the
1227 Federal Tax Cut and Jobs Act of 2017 (Public Law 115-97). In implementing any further
1228 reductions to the rates for generation and distribution services of any such Phase II Utility

1229 effective April 1, 2019, pursuant to the fifth enactment of this act, the Commission shall consider
1230 this interim revenue requirement reduction, and its actions shall be limited to a true-up of this
1231 interim reduction amount to the actual annual reduction in corporate tax obligations of such
1232 utility as of the effective date of this act.
1233 7. That the provisions of this act amending and reenacting § 56-585.1 of the Code of Virginia by
1234 adding subdivision A 8 d shall expire on July 1, 2028.
1235 8. That each Phase I and Phase II utility, as such terms are defined in subdivision A 1 of
1236 § 56-585.1 of the Code of Virginia, shall continue, at no less than the existing levels of funding, as
1237 of the effective date of this act, the pilot programs established pursuant to Chapter 6 of the Acts
1238 of Assembly of 2015 for energy assistance and weatherization for low income, elderly, and disabled
1239 individuals in their respective service territories in the Commonwealth. Each such utility shall
1240 report on the status of its pilot program, including the number of individuals served thereby, to
1241 the Governor, the State Corporation Commission, and the Chairmen of the House and Senate
1242 Commerce and Labor Committees on July 1, 2019, and annually thereafter.
1243 9. The State Corporation Commission shall submit a report and make recommendations to the
1244 Governor and the General Assembly annually on or before December 1 of each year assessing (a)
1245 the reliability of electrical transmission or distribution systems; (b) the integration of utility or
1246 customer owned renewable electric generation resources with the utility's electric distribution grid;
1247 (c) the level of investment in generation, transmission, or distribution of electricity; (d) the need
1248 for additional generation of electricity during times of peak demand; and (e) distribution system
1249 hardening projects and enhanced physical security measures. The State Corporation Commission
1250 shall submit copies of such annual reports to the Chairmen of the House and Senate Committees
1251 on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.
1252 10. That this act shall be known as The Grid Modernization and Security Act.

INTRODUCED

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