

19105312D

SENATE BILL NO. 1780

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 28, 2019)

(Patron Prior to Substitute—Senator Petersen)

A BILL to amend and reenact §§ 56-235.2, 56-249.6, 56-585.1, 56-585.1:1, 56-585.1:4, and 56-599 of the Code of Virginia, to amend and reenact the fifth and twenty-third enactments of Chapter 296 of the Acts of Assembly of 2018, and to amend the Code of Virginia by adding sections numbered 56-235.2:1 and 56-235.2:2, relating to public utilities; electric utility rates and charges; contracts for natural gas pipeline capacity; prohibited expenditures; refunds for nonessential expenditures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-235.2, 56-249.6, 56-585.1, 56-585.1:1, 56-585.1:4, and 56-599 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-235.2:1 and 56-235.2:2 as follows:

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

A. Any rate, toll, charge or schedule of any public utility operating in this the Commonwealth shall be considered to be just and reasonable only if: (i) the public utility has demonstrated that such rates, tolls, charges, or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, including such normalization for nonrecurring costs and annualized adjustments for future costs as the Commission finds reasonably can be predicted to occur during the rate year, and a fair return on the public utility's rate base used to serve those jurisdictional customers, which return shall be calculated in accordance with § 56-585.1 for utilities subject to such section; (ii) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges, or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation, or for advertisements which solely promote the public interest, conservation or more efficient use of energy; (iii) the public electric utility has demonstrated that no part of such rates, tolls, charges, or schedules in 2020 and any year thereafter includes nonessential expenditures as defined in § 56-235.1:2; and (iv) the public utility has demonstrated that such rates, tolls, charges, or schedules contain reasonable classifications of customers.

Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs. In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

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

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

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

§ 56-235.2:1. Nonessential expenditures by public electric utilities; refund required.

A. As used in this section, "nonessential expenditure" means:

- 1. Contributions to political candidates, party committees, or inaugural committees;
2. Costs of lobbying the General Assembly or any member thereof;
3. Compensation for any officer or employee of the public electric utility or any affiliate thereof in excess of \$5 million in any calendar year;

SENATE SUBSTITUTE

SB1780S1

60 4. Costs of advertisements, except for advertisements (i) that are required by law or rule or
61 regulation or (ii) that solely promote the public interest, conservation, or more efficient use of energy;
62 or

63 5. Salaries, retainers, or other compensation for any person, whether as an employee or contractor,
64 who engages, directly or indirectly, in government relations work, including preparations for lobbying
65 efforts.

66 B. The Commission shall by January 1, 2020, adopt regulations that clarify or supplement the
67 definition of nonessential expenditures in subsection A in order to ensure that all expenditures of an
68 electric public utility that are not necessary to the performance of its function of providing customers
69 with electric service are classified as nonessential.

70 C. No public electric utility operating in the Commonwealth or any affiliate thereof shall in calendar
71 year 2020 or any year thereafter use revenue collected from its customers through rates, tolls, or
72 charges to pay, compensate, or reimburse any person for a nonessential expenditure.

73 D. The Commission shall conduct annual proceedings, commencing in 2021, in which it shall
74 determine whether each electric public utility used revenue collected from its customers through rates,
75 tolls, or charges to pay, compensate, or reimburse any person for a nonessential expenditure and, if so,
76 shall determine the amount and type of expenditure found to be improper. Such proceedings shall be
77 held within a reasonable time following receipt of a report submitted pursuant to § 56-235.2:2.

78 E. The Commission, upon finding in a proceeding under subsection D that an electric public utility
79 used revenue collected from its customers through rates, tolls, or charges to pay, compensate, or
80 reimburse any person for a nonessential expenditure, shall in its final order in such proceeding order
81 the public electric utility to refund an amount equal to the nonessential expenditures to its customers;
82 however, if a nonessential expenditure is of the type described in subdivision A 5, the Commission shall
83 order the public electric utility to refund, with respect to that portion of nonessential expenditures, an
84 amount equal to three times the amount by which the public electric utility's compensation of any officer
85 or employee of the public electric utility or any affiliate thereof in the year under review in such
86 proceeding exceeded \$5 million.

87 F. Any refund ordered by the Commission pursuant to this section shall be credited to customers'
88 bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the
89 discretion of the Commission, following the effective date of the Commission's order, and shall be
90 allocated among customer classes in such manner that the Commission finds is in the public interest.

91 **§ 56-235.2:2. Report on certain expenditures.**

92 Each public electric utility operating in the Commonwealth, no later than March 1 of each year
93 commencing in 2021, shall submit to the General Assembly an annual report that discloses, by separate
94 line item identifying the amount and identifying the date, payee, and purpose, all nonessential
95 expenditures made by the public electric utility and its affiliates during the preceding calendar year.

96 **§ 56-249.6. Recovery of fuel and purchased power costs.**

97 A. 1. Each electric utility that purchases fuel for the generation of electricity or purchases power and
98 that was not, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that
99 extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel
100 costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed
101 by the Commission. Upon investigation of such estimates and hearings in accordance with law, the
102 Commission shall direct each company to place in effect tariff provisions designed to recover the fuel
103 costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or
104 under-recovery of fuel costs previously incurred.

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

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

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

121 C. Each electric utility described in subsection B shall submit annually to the Commission its

122 estimate of fuel costs, including the cost of purchased power, for successive 12-month periods beginning
 123 on July 1, 2007, and each July 1 thereafter. Upon investigation of such estimates and hearings in
 124 accordance with law, the Commission shall direct each such utility to place in effect tariff provisions
 125 designed to recover the fuel costs determined by the Commission to be appropriate for such periods,
 126 adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such
 127 adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for
 128 any period prior to July 1, 2007, and (ii) the Commission shall order that the deferral portion, if any, of
 129 the total increase in fuel tariffs for all classes as determined by the Commission to be appropriate for
 130 the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred
 131 without interest and recovered from all classes of customers as follows: (i) in the 12-month period
 132 beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the
 133 Commission determines would increase the total rates of the residential class of customers of the utility
 134 by four percent over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii)
 135 in the 12-month period beginning July 1, 2009, that part of the balance of the deferral portion of the
 136 increase in fuel tariffs, if any, that the Commission determines would increase the total rates of the
 137 residential class of customers of the utility by four percent over the level of such total rates in existence
 138 on June 30, 2009, shall be recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire
 139 balance of the deferral portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral
 140 portion of the increase in fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the
 141 amount of such increase in fuel tariffs that the Commission determines would increase the total rates of
 142 the residential class of customers of the utility by more than four percent over the level of such total
 143 rates in existence on June 30, 2007.

144 D. In proceedings under subsections A and C:

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

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

162 *In any proceeding for the recovery of fuel costs under this subdivision in which the costs sought to*
 163 *be recovered by a utility include costs incurred under a natural gas capacity contract not previously*
 164 *subject to a review under this subdivision, the Commission shall require the utility to prove by clear and*
 165 *convincing evidence that at the time the utility executed the contract giving rise to the costs for which*
 166 *recovery is sought the utility had (i) identified and determined the date and amount of new fueling*
 167 *resource it needed; (ii) objectively studied all available alternative fueling resource options, including*
 168 *options other than a new capacity contract or contracts to meet the identified and determined need; and*
 169 *(iii) determined that the pipeline capacity contract or contracts were the lowest-cost available option,*
 170 *taking into consideration fixed and variable costs and a reasonable projection of utilization. Absent the*
 171 *Commission's finding that the utility has proven by clear and convincing evidence that at the time the*
 172 *contract was executed the utility had complied with the requirements of clauses (i), (ii), and (iii), the*
 173 *Commission shall deny the utility's recovery of such costs. Nothing in this subdivision shall limit the*
 174 *Commission's discretion to review and make a determination as to the reasonableness of the recovery by*
 175 *a utility of costs, including costs incurred under a natural gas capacity contract, that were previously*
 176 *subject to a review under this subdivision.*

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

182 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or**

183 expire.

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

220 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
221 and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of
222 § 56-585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three
223 successive 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter,
224 reviews for a Phase I Utility will be on a ~~triennial~~ *biennial* basis with subsequent proceedings utilizing
225 the ~~three~~ *two* successive 12-month test periods ending December 31 immediately preceding the year in
226 which such review proceeding is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission
227 shall conduct a review for a Phase II Utility in ~~2021~~ 2019, utilizing the ~~four~~ *two* successive 12-month
228 test periods beginning January 1, 2017, and ending December 31, ~~2020~~ 2018, with subsequent reviews
229 on a ~~triennial~~ *biennial* basis utilizing the ~~three~~ *two* successive 12-month test periods ending December
230 31 immediately preceding the year in which such review proceeding is conducted. All such reviews
231 occurring after December 31, 2017, shall be referred to as ~~triennial~~ *biennial* reviews. For purposes of
232 this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1,
233 1999, not bound by a rate case settlement adopted by the Commission that extended in its application
234 beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was
235 bound by such a settlement.

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

240 a. The Commission may use any methodology to determine such return it finds consistent with the
241 public interest, but *in such proceedings conducted prior to July 1, 2019*, such return shall not be set
242 lower than the average of the returns on common equity reported to the Securities and Exchange
243 Commission for the three most recent annual periods for which such data are available by not less than
244 a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric

245 utilities in the peer group of the utility subject to such ~~triennial~~ *biennial* review, nor shall the
 246 Commission set such return more than 300 basis points higher than such average *and in such*
 247 *proceedings conducted on or after July 1, 2019, such return shall be set in accordance with the*
 248 *cost-of-service methodology set forth in § 56-235.2, at a level that is sufficient to enable the utility to*
 249 *attract the necessary capital to carry out its obligation to render service to the public.*

250 b. In selecting such majority of peer group investor-owned electric utilities *for proceedings prior to*
 251 *July 1, 2019*, the Commission shall first remove from such group the two utilities within such group that
 252 have the lowest reported returns of the group, as well as the two utilities within such group that have
 253 the highest reported returns of the group, and the Commission shall then select a majority of the utilities
 254 remaining in such peer group. In its final order regarding such ~~triennial~~ *biennial* review, the Commission
 255 shall identify the utilities in such peer group it selected for the calculation of such limitation. For
 256 purposes of this subdivision, an investor-owned electric utility shall be deemed part of such peer group
 257 if (i) its principal operations are conducted in the southeastern United States east of the Mississippi
 258 River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding
 259 the state of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission
 260 and distribution services whose facilities and operations are subject to state public utility regulation in
 261 the state where its principal operations are conducted, (iii) it had a long-term bond rating assigned by
 262 Moody's Investors Service of at least Baa at the end of the most recent test period subject to such
 263 ~~triennial~~ *biennial* review, and (iv) it is not an affiliate of the utility subject to such ~~triennial~~ *biennial*
 264 review.

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

268 d. In any Current Proceeding *conducted prior to July 1, 2019*, the Commission shall determine
 269 whether the Current Return has increased, on a percentage basis, above the Initial Return by more than
 270 the increase, expressed as a percentage, in the United States Average Consumer Price Index for all
 271 items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States
 272 Department of Labor, since the date on which the Commission determined the Initial Return. If so, the
 273 Commission may conduct an additional analysis of whether it is in the public interest to utilize such
 274 Current Return for the Current Proceeding then pending. A finding of whether the Current Return
 275 justifies such additional analysis shall be made without regard to any enhanced rate of return on
 276 common equity awarded pursuant to the provisions of subdivision 6. Such additional analysis shall
 277 include, but not be limited to, a consideration of overall economic conditions, the level of interest rates
 278 and cost of capital with respect to business and industry, in general, as well as electric utilities, the
 279 current level of inflation and the utility's cost of goods and services, the effect on the utility's ability to
 280 provide adequate service and to attract capital if less than the Current Return were utilized for the
 281 Current Proceeding then pending, and such other factors as the Commission may deem relevant. If, as a
 282 result of such analysis, the Commission finds that use of the Current Return for the Current Proceeding
 283 then pending would not be in the public interest, then the lower limit imposed by subdivision 2 a on the
 284 return to be determined by the Commission for such utility shall be calculated, for that Current
 285 Proceeding only, by increasing the Initial Return by a percentage at least equal to the increase,
 286 expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban
 287 consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of
 288 Labor, since the date on which the Commission determined the Initial Return. For purposes of this
 289 subdivision:

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

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

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

299 e. In addition to other considerations, in setting the return on equity within the range allowed by this
 300 section *in proceedings conducted prior to July 1, 2019*, the Commission shall strive to maintain costs of
 301 retail electric energy that are cost competitive with costs of retail electric energy provided by the other
 302 peer group investor-owned electric utilities.

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

306 g. If *In proceedings conducted prior to July 1, 2019, if* the combined rate of return on common
 307 equity earned by the generation and distribution services is no more than 50 basis points above or below
 308 the return as so determined or, for any test period commencing after December 31, 2012, for a Phase II
 309 Utility and after December 31, 2013, for a Phase I Utility, such return is no more than 70 basis points
 310 above or below the return as so determined, such combined return shall not be considered either
 311 excessive or insufficient, respectively. However, for any test period commencing after December 31,
 312 2012, for a Phase II Utility, and after December 31, 2013, for a Phase I Utility, if the utility has, during
 313 the test period or periods under review, earned below the return as so determined, whether or not such
 314 combined return is within 70 basis points of the return as so determined, the utility may petition the
 315 Commission for approval of an increase in rates in accordance with the provisions of subdivision 8 a as
 316 if it had earned more than 70 basis points below a fair combined rate of return, and such proceeding
 317 shall otherwise be conducted in accordance with the provisions of this section. The provisions of this
 318 subdivision are subject to the provisions of subdivision 8.

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

322 3. Each such utility shall make a ~~triennial~~ filing by ~~March 31~~ of every ~~third~~ *second* year, with such
 323 filings commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in
 324 ~~2024~~ *2019*, consisting of the schedules contained in the Commission's rules governing utility rate
 325 increase applications. Such filing shall encompass the ~~three~~ *two* successive 12-month test periods ending
 326 December 31 immediately preceding the year in which such proceeding is conducted, except that the
 327 filing for a Phase ~~I~~ *I* Utility in ~~2024~~ *2020* shall encompass the ~~four~~ *three* successive 12-month test
 328 periods ending December 31, ~~2020~~ *2019*, and in every such case the filing for each year shall be
 329 identified separately and shall be segregated from any other year encompassed by the filing. If the
 330 Commission determines that rates should be revised or credits be applied to customers' bills pursuant to
 331 subdivision 8 or 9, any rate adjustment clauses previously implemented related to facilities utilizing
 332 simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs,
 333 revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully
 334 recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments
 335 only after it makes its initial determination with regard to necessary rate revisions or credits to
 336 customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they
 337 shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of
 338 future ~~triennial~~ *biennial* review proceedings. In a ~~triennial~~ *biennial* filing under this subdivision that does
 339 not result in an overall rate change a utility may propose an adjustment to one or more tariffs that are
 340 revenue neutral to the utility.

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

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

356 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
 357 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
 358 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
 359 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that
 360 comply with the requirements of clause (vi) of subsection B of § 56-582;

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

364 c. Projected and actual costs for the utility to design, implement, and operate energy efficiency
 365 programs, including a margin to be recovered on operating expenses, which margin for the purposes of
 366 this section shall be equal to the general rate of return on common equity determined as described in
 367 subdivision 2. The Commission shall only approve such a petition if it finds that the program is in the

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

373 None of the costs of new energy efficiency programs of an electric utility, including recovery of
374 revenue reductions, shall be assigned to any large general service customer. A large general service
375 customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand
376 from a single meter of delivery. A utility shall not charge such large general service customer, as
377 defined by the Commission, for the costs of installing energy efficiency equipment beyond what is
378 required to provide electric service and meter such service on the customer's premises if the customer
379 provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings
380 pursuant to this section, the Commission shall take into consideration the goals of economic
381 development, energy efficiency and environmental protection in the Commonwealth;

382 d. Projected and actual costs of participation in a renewable energy portfolio standard program
383 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
384 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
385 § 56-585.2;

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

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

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

398 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
399 utility's projected native load obligations and to promote economic development, a utility may at any
400 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate
401 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a
402 coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the
403 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
404 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major
405 unit modifications of generation facilities, including the costs of any system or equipment upgrade,
406 system or equipment replacement, or other cost reasonably appropriate to extend the combined operating
407 license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or
408 more new underground facilities to replace one or more existing overhead distribution facilities of 69
409 kilovolts or less located within the Commonwealth, (v) one or more pumped hydroelectricity generation
410 and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their
411 power source and such facilities and associated resources are located in the coalfield region of the
412 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
413 without the utility's service territory, or (vi) one or more electric distribution grid transformation
414 projects; however, subject to the provisions of the following sentence, the utility shall not file a petition
415 under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental
416 increase in the level of investments associated with such a petition that exceeds five percent of such
417 utility's distribution rate base, as such rate base was determined for the most recently ended 12-month
418 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by
419 final order of the Commission prior to the date of filing of such petition under clause (iv). In all
420 proceedings regarding petitions filed under clause (iv) or (vi), the level of investments approved for
421 recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously
422 approved for recovery in prior proceedings under clause (iv) or (vi), as applicable. As of December 1,
423 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any remaining costs
424 associated with conversions of overhead distribution facilities to underground facilities that have been
425 previously approved or are pending approval by the Commission through a petition by the utility under
426 this subdivision. Such a petition concerning facilities described in clause (ii) that utilize nuclear power,
427 facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities
428 described in clause (i) may also be filed before the expiration or termination of capped rates. A utility

429 that constructs or makes modifications to any such facility, or purchases any facility consisting of at
430 least one megawatt of generating capacity using energy derived from sunlight and located in the
431 Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more
432 Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income,
433 through its rates, including projected construction work in progress, and any associated allowance for
434 funds used during construction, planning, development and construction or acquisition costs, life-cycle
435 costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs
436 of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate
437 of return on common equity calculated as specified below; however, in determining the amounts
438 recoverable under a rate adjustment clause for new underground facilities, the Commission shall not
439 consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance
440 costs attributable to either the overhead distribution facilities being replaced or the new underground
441 facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.
442 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
443 eligible for recovery from customers through the utility's base rates for distribution service. A utility
444 filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of
445 generating capacity using energy derived from sunlight and located in the Commonwealth and that
446 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may
447 propose a rate adjustment clause based on a market index in lieu of a cost of service model for such
448 facility. A utility seeking approval to construct or purchase a generating facility described in clause (i)
449 or (ii) shall demonstrate that it has considered and weighed alternative options, including third-party
450 market alternatives, in its selection process. The costs of the facility, other than return on projected
451 construction work in progress and allowance for funds used during construction, shall not be recovered
452 prior to the date a facility constructed by the utility and described in clause (i), (ii), (iii) or (v) begins
453 commercial operation, the date the utility becomes the owner of a purchased generation facility
454 consisting of at least one megawatt of generating capacity using energy derived from sunlight and
455 located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one
456 or more Virginia businesses, or the date new underground facilities are classified by the utility as plant
457 in service.

458 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
459 construction and to construction work in progress during the construction phase of the facility and shall
460 thereafter be applied to the entire facility during the first portion of the service life of the facility. The
461 first portion of the service life shall be as specified in the table below; however, the Commission shall
462 determine the duration of the first portion of the service life of any facility, within the range specified in
463 the table below, which determination shall be consistent with the public interest and shall reflect the
464 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
465 the citizens of the Commonwealth and the risks involved in the development of the facility. After the
466 first portion of the service life of the facility is concluded, the utility's general rate of return shall be
467 applied to such facility for the remainder of its service life. As used herein, the service life of the
468 facility shall be deemed to begin on the date a facility constructed by the utility and described in clause
469 (i), (ii), (iii) or (v) begins commercial operation, the date the utility becomes the owner of a purchased
470 generation facility consisting of at least one megawatt of generating capacity using energy derived from
471 sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in
472 part, from one or more Virginia businesses, or the date new underground facilities or new electric
473 distribution grid transformation projects are classified by the utility as plant in service, and such service
474 life shall be deemed equal in years to the life of that facility as used to calculate the utility's
475 depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the
476 basis points specified in the table below to the utility's general rate of return, and such enhanced rate of
477 return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for
478 funds used during construction shall be calculated for any such facility utilizing the utility's actual
479 capital structure and overall cost of capital, including an enhanced rate of return on common equity as
480 determined pursuant to this subdivision, until such construction work in progress is included in rates.
481 The construction of any facility described in clause (i) or (v) is in the public interest, and in determining
482 whether to approve such facility, the Commission shall liberally construe the provisions of this title. The
483 construction or purchase by a utility of one or more generation facilities with at least one megawatt of
484 generating capacity, and with an aggregate rated capacity that does not exceed 5,000 megawatts,
485 including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate
486 capacity of 50 megawatts, that use energy derived from sunlight or from wind and are located in the
487 Commonwealth or off the Commonwealth's Atlantic shoreline, regardless of whether any of such
488 facilities are located within or without the utility's service territory, is in the public interest, and in
489 determining whether to approve such facility, the Commission shall liberally construe the provisions of
490 this title. A utility may enter into short-term or long-term power purchase contracts for the power

491 derived from sunlight generated by such generation facility prior to purchasing the generation facility.
 492 The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the
 493 aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year
 494 period with new underground facilities in order to improve electric service reliability is in the public
 495 interest. In determining whether to approve petitions for rate adjustment clauses for such new
 496 underground facilities that meet this criteria, and in determining the level of costs to be recovered
 497 thereunder, the Commission shall liberally construe the provisions of this title.

498 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local and
 499 system-wide benefits and to be cost beneficial, and the costs associated with such new underground
 500 facilities are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of
 501 subsection C or D, shall be approved for recovery by the Commission pursuant to this subdivision,
 502 provided that the total costs associated with the replacement of any subset of existing overhead
 503 distribution tap lines proposed by the utility with new underground facilities, exclusive of financing
 504 costs, shall not exceed an average cost per customer of \$20,000, with such customers, including those
 505 served directly by or downline of the tap lines proposed for conversion, and, further, such total costs
 506 shall not exceed an average cost per mile of tap lines converted, exclusive of financing costs, of
 507 \$750,000. A utility shall, without regard for whether it has petitioned for any rate adjustment clause
 508 pursuant to clause (vi), petition the Commission, not more than once annually, for approval of a plan for
 509 electric distribution grid transformation projects. Any plan for electric distribution grid transformation
 510 projects shall include both measures to facilitate integration of distributed energy resources and measures
 511 to enhance physical electric distribution grid reliability and security. In ruling upon such a petition, the
 512 Commission shall consider whether the utility's plan for such projects, and the projected costs associated
 513 therewith, are reasonable and prudent. Such petition shall be considered on a stand-alone basis without
 514 regard to the other costs, revenues, investments, or earnings of the utility; without regard to whether the
 515 costs associated with such projects will be recovered through a rate adjustment clause under this
 516 subdivision or through the utility's rates for generation and distribution services; and without regard to
 517 whether such costs will be the subject of a customer credit offset, as applicable, pursuant to subdivision
 518 8 d. The Commission's final order regarding any such petition for approval of an electric distribution
 519 grid transformation plan shall be entered by the Commission not more than six months after the date of
 520 filing such petition. The Commission shall likewise enter its final order with respect to any petition by a
 521 utility for a certificate to construct and operate a generating facility or facilities utilizing energy derived
 522 from sunlight, pursuant to subsection D of § 56-580, within six months after the date of filing such
 523 petition. The basis points to be added to the utility's general rate of return to calculate the enhanced rate
 524 of return on common equity, and the first portion of that facility's service life to which such enhanced
 525 rate of return shall be applied, shall vary by type of facility, as specified in the following table:

526	Type of Generation Facility	Basis Points	First Portion of Service Life
527	Nuclear-powered	200	Between 12 and 25 years
528	Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
529	Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
530	Coalbed methane gas powered	150	Between 5 and 15 years
531	Landfill gas powered	200	Between 5 and 15 years
532	Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

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

540 For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy
 541 derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such
 542 facilities shall continue to be eligible for an enhanced rate of return on common equity during the
 543 construction phase of the facility and the approved first portion of its service life of between 12 and 25
 544 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in
 545 the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1,
 546 2013, the enhanced return for such facilities constructed pursuant to clause (ii) shall be 100 basis points,
 547 which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty
 548 percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1,
 549 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred
 550 by the utility and recovered through a rate adjustment clause under this subdivision at such time as the
 551 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of
 552 all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall

553 not be deferred for recovery through a rate adjustment clause under this subdivision; however, such
554 remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by
555 the Commission in the test periods under review in the utility's next review filed after July 1, 2014.
556 Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility
557 incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December
558 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this
559 subdivision at such time as the Commission provides in an order approving such a rate adjustment
560 clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1,
561 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under
562 this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through
563 existing base rates as determined by the Commission in the test periods under review in the utility's next
564 review filed after July 1, 2014.

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

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

572 Construction, purchasing, or leasing activities for a new utility-owned and utility-operated generating
573 facility or facilities utilizing energy derived from sunlight or from wind with an aggregate capacity of
574 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and
575 with an aggregate capacity of 50 megawatts, together with a new test or demonstration project for a
576 utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore
577 wind with an aggregate capacity of not more than 16 megawatts, are in the public interest. To the extent
578 that a utility elects to recover the costs of any such new generation facility or facilities through its rates
579 for generation and distribution services and does not petition and receive approval from the Commission
580 for recovery of such costs through a rate adjustment clause described in clause (ii), the Commission
581 shall, upon the request of the utility in a ~~triennial~~ *biennial* review proceeding, provide for a customer
582 credit reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed
583 reasonable and prudent by the Commission in a proceeding pursuant to subsection D of § 56-580 or in a
584 ~~triennial~~ *biennial* review proceeding.

585 Electric distribution grid transformation projects are in the public interest. To the extent that a utility
586 elects to recover the costs of such electric distribution grid transformation projects through its rates for
587 generation and distribution services, and does not petition and receive approval from the Commission for
588 recovery of such costs through a rate adjustment clause described in clause (vi), the Commission shall,
589 upon the request of the utility in a ~~triennial~~ *biennial* review proceeding, provide for a customer credit
590 reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed
591 reasonable and prudent by the Commission in a proceeding for approval of a plan for electric
592 distribution grid transformation projects pursuant to subdivision 6 or in a ~~triennial~~ *biennial* review
593 proceeding.

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

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

611 For purposes of this subdivision, "general rate of return" means the fair combined rate of return on
612 common equity as it is determined by the Commission for such utility pursuant to subdivision 2.

613 Notwithstanding any other provision of this subdivision, if the Commission finds during the ~~triennial~~
614 *biennial* review conducted for a Phase II Utility in 2021 that such utility has not filed applications for

615 all necessary federal and state regulatory approvals to construct one or more nuclear-powered or
 616 coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount
 617 of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such
 618 approvals have been received, that the utility has not made reasonable and good faith efforts to construct
 619 one or more such facilities that will provide such additional total capacity within a reasonable time after
 620 obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a
 621 prospective basis any enhanced rate of return on common equity previously applied to any such facility
 622 to no less than the general rate of return for such utility and may apply no less than the utility's general
 623 rate of return to any such facility for which the utility seeks approval in the future under this
 624 subdivision.

625 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from
 626 the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or
 627 demonstration project involving a generation facility utilizing energy from offshore wind, and such
 628 utility has not, as of July 1, 2023, commenced construction as defined for federal income tax purposes
 629 of an offshore wind generation facility or facilities with a minimum aggregate capacity of 250
 630 megawatts, then the Commission, if it finds it in the public interest, may direct that the costs associated
 631 with any such rate adjustment clause involving said test or demonstration project shall thereafter no
 632 longer be recovered through a rate adjustment clause pursuant to subdivision 6 and shall instead be
 633 recovered through the utility's rates for generation and distribution services, with no change in such rates
 634 for generation and distribution services as a result of the combination of such costs with the other costs,
 635 revenues, and investments included in the utility's rates for generation and distribution services. Any
 636 such costs shall remain combined with the utility's other costs, revenues, and investments included in its
 637 rates for generation and distribution services until such costs are fully recovered.

638 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
 639 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
 640 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
 641 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or
 642 that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to
 643 new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and
 644 records of the utility until the Commission's final order in the matter, or until the implementation of any
 645 applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in
 646 subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of
 647 such petition, or during the consideration thereof by the Commission, that are proposed for recovery in
 648 such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of
 649 subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of
 650 subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the
 651 books and records of the utility until the Commission's final order in the matter, or until the
 652 implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs
 653 prudently incurred after the expiration or termination of capped rates related to other matters described
 654 in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped
 655 rates, provided, however, that no provision of this act shall affect the rights of any parties with respect
 656 to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia
 657 Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset
 658 for regulatory accounting and ratemaking purposes under which it shall defer its operation and
 659 maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
 660 and (ii) other work at such plant normally performed during a refueling outage. The utility shall
 661 amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning
 662 with the month in which such plant resumes operation after such refueling. The refueling cycle shall be
 663 the applicable period of time between planned refueling outages for such plant. As of January 1, 2014,
 664 such amortized costs are a component of base rates, recoverable in base rates only ratably over the
 665 refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable
 666 in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage
 667 commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs
 668 of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with
 669 respect to ~~triennial~~ *biennial* filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant
 670 to § 56-245 or the Commission's rules governing utility rate increase applications as provided in
 671 subsection B. This provision shall not be deemed to change or reset base rates.

672 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be
 673 entered not more than three months, eight months, and nine months, respectively, after the date of filing
 674 of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment
 675 clause be applied to customers' bills not more than 60 days after the date of the order, or upon the

676 expiration or termination of capped rates, whichever is later.

677 8. In any ~~triennial~~ *biennial* review proceeding, for the purposes of reviewing earnings on the utility's
678 rates for generation and distribution services, the following utility generation and distribution costs not
679 proposed for recovery under any other subdivision of this subsection, as recorded per books by the
680 utility for financial reporting purposes and accrued against income, shall be attributed to the test periods
681 under review and deemed fully recovered in the period recorded: costs associated with asset impairments
682 related to early retirement determinations made by the utility for utility generation facilities fueled by
683 coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs
684 associated with projects necessary to comply with state or federal environmental laws, regulations, or
685 judicial or administrative orders relating to coal combustion by-product management that the utility does
686 not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated
687 with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to
688 have been recovered from customers through rates for generation and distribution services in effect
689 during the test periods under review unless such costs, individually or in the aggregate, together with the
690 utility's other costs, revenues, and investments to be recovered through rates for generation and
691 distribution services, result in the utility's earned return on its generation and distribution services for the
692 combined test periods under review to fall more than 50 basis points below the fair combined rate of
693 return authorized under subdivision 2 for such periods or, for any test period commencing after
694 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall
695 more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for
696 such periods. In such cases, the Commission shall, in such ~~triennial~~ *biennial* review proceeding,
697 authorize deferred recovery of such costs and allow the utility to amortize and recover such deferred
698 costs over future periods as determined by the Commission. The aggregate amount of such deferred
699 costs shall not exceed an amount that would, together with the utility's other costs, revenues, and
700 investments to be recovered through rates for generation and distribution services, cause the utility's
701 earned return on its generation and distribution services to exceed the fair rate of return authorized under
702 subdivision 2, less 50 basis points, for the combined test periods under review or, for any test period
703 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
704 Utility, to exceed the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in
705 this section shall limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ 56-232 et
706 seq.), including specifically § 56-235.2, following the review of combined test period earnings of the
707 utility in a ~~triennial~~ *biennial* review, for normalization of nonrecurring test period costs and annualized
708 adjustments for future costs, in determining any appropriate increase or decrease in the utility's rates for
709 generation and distribution services pursuant to subdivision 8 a or 8 c.

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

711 a. The utility has, during the test period or periods under review, considered as a whole, earned more
712 than 50 basis points below a fair combined rate of return on its generation and distribution services or,
713 for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31,
714 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of return on its
715 generation and distribution services, as determined in subdivision 2, without regard to any return on
716 common equity or other matters determined with respect to facilities described in subdivision 6, the
717 Commission shall order increases to the utility's rates necessary to provide the opportunity to fully
718 recover the costs of providing the utility's services and to earn not less than such fair combined rate of
719 return, using the most recently ended 12-month test period as the basis for determining the amount of
720 the rate increase necessary. However, in the first ~~triennial~~ *biennial* review proceeding conducted after
721 January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all
722 ~~triennial~~ *biennial* reviews of a Phase I or Phase II utility, the Commission may not order such rate
723 increase unless it finds that the resulting rates are necessary to provide the utility with the opportunity to
724 fully recover its costs of providing its services and to earn not less than a fair combined rate of return
725 on both its generation and distribution services, as determined in subdivision 2, without regard to any
726 return on common equity or other matters determined with respect to facilities described in subdivision
727 6, using the most recently ended 12-month test period as the basis for determining the permissibility of
728 any rate increase under the standards of this sentence, and the amount thereof; and provided that, solely
729 in connection with making its determination concerning the necessity for such a rate increase or the
730 amount thereof, the Commission shall, in any ~~triennial~~ *biennial* review proceeding conducted prior to
731 July 1, 2028, exclude from this most recently ended 12-month test period any remaining investment
732 levels associated with a prior customer credit reinvestment offset pursuant to subdivision d.

733 b. The utility has, during the test period or test periods under review, considered as a whole, earned
734 more than 50 basis points above a fair combined rate of return on its generation and distribution
735 services or, for any test period commencing after December 31, 2012, *but before December 31, 2016*,
736 for a Phase II Utility and after December 31, 2013, *but before December 31, 2016*, for a Phase I Utility,
737 more than 70 basis points above a fair combined rate of return on its generation and distribution

738 services, or for any test period commencing after December 31, 2016, for a Phase II Utility or for a
 739 Phase I Utility, more than 50 basis points above a fair combined rate of return on its generation and
 740 distribution services as determined in subdivision 2, without regard to any return on common equity or
 741 other matters determined with respect to facilities described in subdivision 6, the Commission shall,
 742 subject to the provisions of subdivisions 8 d and 9, direct that 60 percent of the amount of such
 743 earnings that were more than 50 basis points, or, for any test period commencing after December 31,
 744 2012, but before December 31, 2016, for a Phase II Utility and after December 31, 2013, but before
 745 December 31, 2016, for a Phase I Utility, that 70 percent of the amount of such earnings that were more
 746 than 70 basis points, or, for any test period commencing after December 31, 2016, for a Phase II Utility
 747 or for a Phase I Utility, that 90 percent of the amount of such earnings that were more than 50 basis
 748 points above such fair combined rate of return for the test period or periods under review, considered as
 749 a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period of six to
 750 12 months, as determined at the discretion of the Commission, following the effective date of the
 751 Commission's order, and shall be allocated among customer classes such that the relationship between
 752 the specific customer class rates of return to the overall target rate of return will have the same
 753 relationship as the last approved allocation of revenues used to design base rates; or

754 c. In any ~~triennial~~ *biennial* review proceeding conducted after January 1, 2020, for a Phase I Utility
 755 or after January 1, ~~2021~~ 2019, for a Phase II Utility in which the utility has, during the test period or
 756 test periods under review, considered as a whole, earned more than 50 basis points above a fair
 757 combined rate of return on its generation and distribution services or, for any test period commencing
 758 after December 31, 2012, but before December 31, 2016, for a Phase II Utility and after December 31,
 759 2013, but before December 31, 2016, for a Phase I Utility, more than 70 basis points above a fair
 760 combined rate of return on its generation and distribution services, or, for any test period commencing
 761 after December 31, 2016, for a Phase II Utility or for a Phase I Utility, more than 50 basis points
 762 above a fair combined rate of return on its generation and distribution services as determined in
 763 subdivision 2, without regard to any return on common equity or other matter determined with respect
 764 to facilities described in subdivision 6, and the combined aggregate level of capital investment that the
 765 Commission has approved other than those capital investments that the Commission has approved for
 766 recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the
 767 test periods under review in that ~~triennial~~ *biennial* review proceeding in new utility-owned generation
 768 facilities utilizing energy derived from sunlight, or from wind, and in electric distribution grid
 769 transformation projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent
 770 of the earnings that are more than ~~70~~ 50 basis points above the utility's fair combined rate of return on
 771 its generation and distribution services for the combined test periods under review in that ~~triennial~~
 772 *biennial* review proceeding, the Commission shall, subject to the provisions of subdivision 9 and in
 773 addition to the actions authorized in subdivision b, also order reductions to the utility's rates it finds
 774 appropriate. However, in the first ~~triennial~~ *biennial* review proceeding conducted after January 1, ~~2021~~
 775 2019, for a Phase II Utility, any reduction to the utility's rates ordered by the Commission pursuant to
 776 this subdivision shall not exceed \$50 million in annual revenues, with any reduction allocated to the
 777 utility's rates for generation services, and in each ~~triennial~~ *biennial* review of a Phase I or Phase II
 778 Utility, the Commission may not order such rate reduction unless it finds that the resulting rates will
 779 provide the utility with the opportunity to fully recover its costs of providing its services and to earn not
 780 less than a fair combined rate of return on its generation and distribution services, as determined in
 781 subdivision 2, without regard to any return on common equity or other matters determined with respect
 782 to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis
 783 for determining the permissibility of any rate reduction under the standards of this sentence, and the
 784 amount thereof; and

785 d. (Expires July 1, 2028) In any ~~triennial~~ *biennial* review proceeding conducted after December 31,
 786 2017, upon the request of the utility, the Commission shall determine, prior to directing that ~~70~~ 90
 787 percent of earnings that are more than ~~70~~ 50 basis points above the utility's fair combined rate of return
 788 on its generation and distribution services for the test period or periods under review be credited to
 789 customer bills pursuant to subdivision 8 b, the aggregate level of prior capital investment that the
 790 Commission has approved other than those capital investments that the Commission has approved for
 791 recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the
 792 test period or periods under review in both (i) new utility-owned generation facilities utilizing energy
 793 derived from sunlight, or from onshore or offshore wind, and (ii) electric distribution grid transformation
 794 projects, as determined by the utility's plant in service and construction work in progress balances
 795 related to such investments as recorded per books by the utility for financial reporting purposes as of the
 796 end of the most recent test period under review. Any such combined capital investment amounts shall
 797 offset any customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested
 798 or committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or committed

799 capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit reinvestment
800 offset, which offsets the customer bill credit amount that the utility has invested or will invest in new
801 solar or wind generation facilities or electric distribution grid transformation projects for the benefit of
802 customers, in amounts up to 100 percent of earnings that are more than ~~70~~ 50 basis points above the
803 utility's fair rate of return on its generation and distribution services, and thereby reduce or eliminate
804 otherwise incremental rate adjustment clause charges and increases to customer bills, which is deemed to
805 be in the public interest. If 100 percent of the amount of earnings that are more than ~~70~~ 50 basis points
806 above the utility's fair combined rate of return on its generation and distribution services, as determined
807 in subdivision 2, exceeds the aggregate level of invested capital in new utility-owned generation
808 facilities utilizing energy derived from sunlight, or from wind, and electric distribution grid
809 transformation projects, as provided in clauses (i) and (ii), during the test period or periods under
810 review, then ~~70~~ 90 percent of the amount of such excess shall be credited to customer bills as provided
811 in subdivision 8 b in connection with the ~~triennial~~ *biennial* review proceeding. The portion of any costs
812 associated with new utility-owned generation facilities utilizing energy derived from sunlight, or from
813 wind, or electric distribution grid transformation projects that is the subject of any customer credit
814 reinvestment offset pursuant to this subdivision shall not thereafter be recovered through the utility's
815 rates for generation and distribution services over the service life of such facilities and shall not
816 thereafter be included in the utility's costs, revenues, and investments in future ~~triennial~~ *biennial* review
817 proceedings conducted pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause
818 petition pursuant to subdivision 6. The portion of any costs associated with new utility-owned generation
819 facilities utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation
820 projects that is not the subject of any customer credit reinvestment offset pursuant to this subdivision
821 may be recovered through the utility's rates for generation and distribution services over the service life
822 of such facilities and shall be included in the utility's costs, revenues, and investments in future ~~triennial~~
823 *biennial* review proceedings conducted pursuant to subdivision 2 until such costs are fully recovered,
824 and if such costs are recovered through the utility's rates for generation and distribution services, they
825 shall not be the subject of a rate adjustment clause petition pursuant to subdivision 6. Only the portion
826 of such costs of new utility-owned generation facilities utilizing energy derived from sunlight, or from
827 wind, or electric distribution grid transformation projects that has not been included in any customer
828 credit reinvestment offset pursuant to this subdivision, and not otherwise recovered through the utility's
829 rates for generation and distribution services, may be the subject of a rate adjustment clause petition by
830 the utility pursuant to subdivision 6.

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

841 9. If, as a result of a ~~triennial~~ *biennial* review required under this subsection and conducted with
842 respect to any test period or periods under review ending later than December 31, 2010 (or, if the
843 Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under
844 review ending later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II
845 Utility), the Commission finds, with respect to such test period or periods considered as a whole, that (i)
846 any utility has, during the test period or periods under review, considered as a whole, earned more than
847 50 basis points above a fair combined rate of return on its generation and distribution services or, for
848 any test period commencing after December 31, 2012, *but before December 31, 2016*, for a Phase II
849 Utility and after December 31, 2013, *but before December 31, 2016*, for a Phase I Utility, more than 70
850 basis points above a fair combined rate of return on its generation and distribution services, *or for any*
851 *test period commencing after December 31, 2016, for a Phase II Utility or for a Phase I Utility, more*
852 *than 50 basis points above a fair combined rate of return on its generation and distribution services*, as
853 determined in subdivision 2, without regard to any return on common equity or other matters determined
854 with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such
855 utility at the end of the most recently ended 12-month test period exceeded the annual increases in the
856 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
857 by the Bureau of Labor Statistics of the United States Department of Labor, compounded annually,
858 when compared to the total aggregate regulated rates of such utility as determined pursuant to the
859 review conducted for the base period, the Commission shall, unless it finds that such action is not in the
860 public interest or that the provisions of subdivisions 8 b and c are more consistent with the public

861 interest, direct that any or all earnings for such test period or periods under review, considered as a
 862 whole that were more than 50 basis points, or, for any test period commencing after December 31,
 863 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis
 864 points, *or, for any test period commencing after December 31, 2016, for a Phase II Utility or for a*
 865 *Phase I Utility, more than 50 basis points*, above such fair combined rate of return shall be credited to
 866 customers' bills, in lieu of the provisions of subdivisions 8 b and c, provided that no credits shall be
 867 provided pursuant to this subdivision in connection with any ~~triennial~~ *biennial* review unless such bill
 868 credits would be payable pursuant to the provisions of subdivision 8 d, and any credits under this
 869 subdivision shall be calculated net of any customer credit reinvestment offset amounts under subdivision
 870 8 d. Any such credits shall be amortized and allocated among customer classes in the manner provided
 871 by subdivision 8 b. For purposes of this subdivision:

872 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
 873 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
 874 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
 875 period with respect to which credits have been applied to customers' bills under the provisions of this
 876 subdivision, whichever is later.

877 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except
 878 for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31,
 879 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
 880 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8
 881 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
 882 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as
 883 of July 1, 2009.

884 10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any
 885 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital
 886 structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are
 887 the obligation of non-Virginia jurisdictional customers, unless the Commission finds that the debt to
 888 equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may
 889 utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate
 890 adjustment pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure,
 891 revenues, expenses or investments of any other entity with which such utility may be affiliated. In
 892 particular, and without limitation, the Commission shall determine the federal and state income tax costs
 893 for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's
 894 apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the
 895 utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax
 896 costs shall be calculated according to the applicable federal income tax rate and shall exclude any
 897 consolidated tax liability or benefit adjustments originating from any taxable income or loss of its
 898 affiliates.

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

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

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

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

920 **§ 56-585.1:1. Transitional Rate Period: review of rates, terms and conditions for utility**
 921 **generation facilities.**

922 A. No biennial reviews of the rates, terms, and conditions for any service of a Phase I Utility, as
923 defined in § 56-585.1, shall be conducted at any time by the Commission for the three successive
924 12-month test periods beginning January 1, 2014, and ending December 31, 2016. No biennial reviews
925 of the rates, terms, and conditions for any service of a Phase II Utility, as defined in § 56-585.1, shall
926 be conducted at any time by the Commission for the two successive 12-month test periods beginning
927 January 1, 2015, and ending December 31, 2016. Such test periods beginning January 1, 2014, and
928 ending December 31, ~~2017~~ 2016, for a Phase I Utility, and beginning January 1, 2015, and ending
929 December 31, 2016, for a Phase II Utility, are collectively referred to herein as the "Transitional Rate
930 Period." Review of recovery of fuel and purchase power costs shall continue during the Transitional
931 Rate Period in accordance with § 56-249.6. Any biennial review of the rates, terms, and conditions for
932 any service of a Phase II Utility occurring in 2015 during the Transitional Rate Period shall be solely a
933 review of the utility's earnings on its rates for generation and distribution services for the two 12-month
934 test periods ending December 31, 2014, and a determination of whether any credits to customers are due
935 for such test periods pursuant to subdivision A 8 b of § 56-585.1. After the conclusion of the
936 Transitional Rate Period, reviews of the utility's rates for generation and distribution services shall
937 resume for a Phase I Utility in 2020, with the first such proceeding utilizing the three successive
938 12-month test periods beginning January 1, 2017, and ending December 31, 2019. After the conclusion
939 of the Transitional Rate Period, reviews of the utility's rates for generation and distribution services shall
940 resume for a Phase II Utility in ~~2021~~ 2019, with the first such proceeding utilizing the ~~four~~ two
941 successive 12-month test periods beginning January 1, 2017, and ending December 31, ~~2020~~ 2018.
942 Consistent with this provision, (i) no biennial review filings shall be made by an investor-owned
943 incumbent electric utility in the years 2016 through ~~2019~~ 2018, inclusive, and (ii) no adjustment to an
944 investor-owned incumbent electric utility's existing tariff rates, including any rates adopted pursuant to
945 § 56-235.2, shall be made between the beginning of the Transitional Rate Period and the conclusion of
946 the first review after the conclusion of the Transitional Rate Period, except as may be provided pursuant
947 to § 56-245 or 56-249.6 or subdivisions A 4, 5, or 6 of § 56-585.1.

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

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

957 2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice and
958 opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return
959 on common equity to be used by a Phase II Utility as the general rate of return applicable to rate
960 adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1 *and to the biennial review conducted in*
961 *2019*. A Phase II utility's filing in such proceedings shall be made on or before March 31 of 2017 and
962 2019.

963 3. Such fair rate of return shall be ~~calculated pursuant to the methodology set forth in subdivisions A~~
964 ~~2 a and b of § 56-585.1 set, in proceedings conducted on or after July 1, 2019, in accordance with the~~
965 ~~cost-of-service methodology set forth in § 56-235.2, at a level that is sufficient to enable the utility to~~
966 ~~attract the necessary capital to carry out its obligation to render service to the public and shall utilize~~
967 ~~the utility's actual end-of-test-period capital structure and cost of capital, as well as a 12-month test~~
968 ~~period ending December 31 immediately preceding the year in which the proceeding is conducted. The~~
969 ~~Commission's final order in such a proceeding shall be entered no later than eight months after the date~~
970 ~~of filing, with any adjustment to the fair rate of return for applicable rate adjustment clauses under~~
971 ~~subdivisions A 5 and 6 of § 56-585.1 taking effect on the date of the Commission's final order in the~~
972 ~~proceeding, utilizing rate adjustment clause true-up protocols as the Commission may in its discretion~~
973 ~~determine. Such proceeding shall concern only the issue of the determination of such fair rate of return~~
974 ~~to be used for rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1, and such~~
975 ~~determination shall have no effect on rates other than those applicable to such rate adjustment clauses;~~
976 ~~however, after the final such proceeding for a utility has been concluded, the fair combined rate of~~
977 ~~return on common equity so determined therein shall also be deemed equal to the fair combined rate of~~
978 ~~return on common equity to be used in such utility's first review proceeding conducted after the end of~~
979 ~~the utility's Transitional Rate Period to review such utility's earnings on its rates for generation and~~
980 ~~distribution services for the historic test periods.~~

981 D. In furtherance of rate stability during the Transitional Rate Period, any Phase II Utility carrying a
982 prior period deferred fuel expense recovery balance on its books and records as of December 31, 2014,
983 shall not recover from customers 50 percent of any such balance outstanding as of December 31, 2014,

984 and the State Corporation Commission shall implement as soon as practicable reductions in the fuel
985 factor rate of any such Phase II Utility to reflect the nonrecovery of any such fuel expense as well as
986 any reduction in the fuel factor associated with the Phase II Utility's current period forecasted fuel
987 expense over recovery for the 2014-2015 fuel year and projected fuel expense for the 2015-2016 fuel
988 year.

989 E. Except for early retirement plans identified by the utility in an integrated resource plan filed with
990 the State Corporation Commission by September 1, 2014, for utility generation plants, an investor-owned
991 incumbent electric utility shall not permanently retire an electric power generation facility from service
992 during the Transitional Rate Period without first obtaining the approval of the State Corporation
993 Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the
994 State Corporation Commission that the retirement determination is reasonable and prudent. During the
995 Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs,
996 as recorded per books by the utility for financial reporting purposes and accrued against income, only
997 through its existing tariff rates for generation or distribution services, except such costs as may be
998 recovered pursuant to § 56-245, § 56-249.6 or subdivisions A 4, A 5, or A 6 of § 56-585.1: (i) costs
999 associated with asset impairments related to early retirement determinations for utility generation
1000 facilities resulting from the implementation of carbon emission guidelines for existing electric power
1001 generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of
1002 the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with natural
1003 disasters.

1004 F. During the Transitional Rate Period:

1005 1. The State Corporation Commission shall submit a report and make recommendations to the
1006 Governor and the General Assembly annually on or before December 1 of each year assessing the
1007 updated integrated resource plan of any investor-owned incumbent electric utility. The report shall
1008 include an analysis of, among other matters, the amount, reliability, and type of generation facilities
1009 needed to serve Virginia native load compared to what is then available to serve such load and what
1010 may be available to serve such load in the future in view of market conditions and current and pending
1011 state and federal environmental regulations. As a part of such report, the State Corporation Commission
1012 shall update its estimate of the impact upon electric rates in Virginia of the implementation of carbon
1013 emission guidelines for existing electric power generation facilities that the U.S. Environmental
1014 Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The State Corporation
1015 Commission shall submit copies of such annual reports to the Chairmen of the House and Senate
1016 Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility
1017 Regulation; and

1018 2. The Department of Environmental Quality shall submit a report and make recommendations to the
1019 Governor and the General Assembly annually on or before December 1 of each year concerning the
1020 implementation of carbon emission guidelines for existing electric power generation facilities that the
1021 U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The
1022 report shall include an analysis of, among other matters, the impact of such federal regulations on the
1023 operation of any investor-owned incumbent electric utility's electric power generation facilities and any
1024 changes, interdiction, or suspension of such regulations. The Department of Environmental Quality shall
1025 submit copies of such annual reports to the Chairmen of the House and Senate Committees on
1026 Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

1027 G. The construction or purchase by an investor-owned incumbent utility of one or more generation
1028 facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that
1029 does not exceed 5,000 megawatts, including rooftop solar installations with a capacity of not less than
1030 50 kilowatts, and with an aggregate capacity of 50 megawatts, that use energy derived from sunlight or
1031 from wind and are located in the Commonwealth or off the Commonwealth's Atlantic shoreline,
1032 regardless of whether any of such facilities are located within or without such utility's service territory,
1033 is in the public interest, and in determining whether to approve such facility, the Commission shall
1034 liberally construe the provisions of this section. Such utility shall utilize goods or services sourced, in
1035 whole or in part, from one or more Virginia businesses. The utility may propose a rate adjustment
1036 clause based on a market index in lieu of a cost of service model for such facility. An investor-owned
1037 incumbent utility may enter into short-term or long-term power purchase contracts for the power derived
1038 from sunlight generated by such generation facility prior to purchasing the generation facility.

1039 H. To the extent that the provisions of this section are inconsistent with the provisions of
1040 §§ 56-249.6 and 56-585.1, the provisions of this section shall control.

1041 **§ 56-585.1:4. Development of solar and wind generation capacity in the Commonwealth.**

1042 A. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar
1043 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic
1044 shoreline, each having a rated capacity of at least one megawatt and having in the aggregate a rated

1045 capacity that does not exceed 5,000 megawatts, or (ii) the purchase by a public utility of energy,
 1046 capacity, and environmental attributes from solar facilities described in clause (i) owned by persons
 1047 other than a public utility is in the public interest, and the Commission shall so find if required to make
 1048 a finding regarding whether such construction or purchase is in the public interest.

1049 B. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar
 1050 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic
 1051 shoreline, each having a rated capacity of less than one megawatt, including rooftop solar installations
 1052 with a capacity of not less than 50 kilowatts, and having in the aggregate a rated capacity that does not
 1053 exceed 500 megawatts, or (ii) the purchase by a public utility of energy, capacity, and environmental
 1054 attributes from solar facilities described in clause (i) owned by persons other than a public utility is in
 1055 the public interest, and the Commission shall so find if required to make a finding regarding whether
 1056 such construction or purchase is in the public interest.

1057 C. The aggregate cap of 5,000 megawatts of rated capacity described in clause (i) of subsection A
 1058 and the aggregate cap of 500 megawatts of rated capacity described in clause (i) of subsection B are
 1059 separate and independent from each other. The capacity of facilities in subsection B shall not be counted
 1060 in determining the capacity of facilities in subsection A, and the capacity of facilities in subsection A
 1061 shall not be counted in determining the capacity of facilities in subsection B.

1062 D. Twenty-five percent of the solar generation capacity placed in service on or after July 1, 2018,
 1063 located in the Commonwealth, and found to be in the public interest pursuant to subsection A or B shall
 1064 be from the purchase by a public utility of energy, capacity, and environmental attributes from solar
 1065 facilities owned by persons other than a public utility. The remainder shall be construction or purchase
 1066 by a public utility of one or more solar generation facilities located in the Commonwealth. All of the
 1067 solar generation capacity located in the Commonwealth and found to be in the public interest pursuant
 1068 to subsection A or B shall be subject to competitive procurement, provided that a public utility may
 1069 select solar generation capacity without regard to whether such selection satisfies price criteria if the
 1070 selection of the solar generating capacity materially advances non-price criteria, including favoring
 1071 geographic distribution of generating capacity, areas of higher employment, or regional economic
 1072 development, if such non-price solar generating capacity selected does not exceed 25 percent of the
 1073 utility's solar generating capacity.

1074 E. Construction, purchasing, or leasing activities for a test or demonstration project for a new
 1075 utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore
 1076 wind with an aggregate capacity of not more than 16 megawatts are in the public interest.

1077 F. A utility may elect to petition the Commission, outside of a ~~triennial~~ *biennial* review proceeding
 1078 conducted pursuant to § 56-585.1, at any time for a prudency determination with respect to the
 1079 construction or purchase by the utility of one or more solar or wind generation facilities located in the
 1080 Commonwealth or off the Commonwealth's Atlantic Shoreline or the purchase by the utility of energy,
 1081 capacity, and environmental attributes from solar or wind facilities owned by persons other than the
 1082 utility. The Commission's final order regarding any such petition shall be entered by the Commission
 1083 not more than three months after the date of the filing of such petition.

1084 **§ 56-599. Integrated resource plan required.**

1085 A. Each electric utility shall file an updated integrated resource plan by July 1, 2015. Thereafter,
 1086 each electric utility shall file an updated integrated resource plan by May 1, in each year immediately
 1087 preceding the year the utility is subject to a ~~triennial~~ *biennial* review filing. A copy of each integrated
 1088 resource plan shall be provided to the Chairmen of the House and Senate Committees on Commerce and
 1089 Labor and to the Chairman of the Commission on Electric Utility Regulation. All updated integrated
 1090 resource plans shall comply with the provisions of any relevant order of the Commission establishing
 1091 guidelines for the format and contents of updated and revised integrated resource plans. Each integrated
 1092 resource plan shall consider options for maintaining and enhancing rate stability, energy independence,
 1093 economic development including retention and expansion of energy-intensive industries, and service
 1094 reliability.

1095 B. In preparing an integrated resource plan, each electric utility shall systematically evaluate, and
 1096 may propose:

- 1097 1. Entering into short-term and long-term electric power purchase contracts;
- 1098 2. Owning and operating electric power generation facilities;
- 1099 3. Building new generation facilities;
- 1100 4. Relying on purchases from the short term or spot markets;
- 1101 5. Making investments in demand-side resources, including energy efficiency and demand-side
 1102 management services;
- 1103 6. Taking such other actions, as the Commission may approve, to diversify its generation supply
 1104 portfolio and ensure that the electric utility is able to implement an approved plan;
- 1105 7. The methods by which the electric utility proposes to acquire the supply and demand resources
 1106 identified in its proposed integrated resource plan;

1107 8. The effect of current and pending state and federal environmental regulations upon the continued
1108 operation of existing electric generation facilities or options for construction of new electric generation
1109 facilities;

1110 9. The most cost effective means of complying with current and pending state and federal
1111 environmental regulations, including compliance options to minimize effects on customer rates of such
1112 regulations;

1113 10. Long-term electric distribution grid planning and proposed electric distribution grid
1114 transformation projects; and

1115 11. Developing a long-term plan for energy efficiency measures to accomplish policy goals of
1116 reduction in customer bills, particularly for low-income, elderly, and disabled customers; reduction in
1117 emissions; and reduction in carbon intensity.

1118 C. The Commission shall analyze and review an integrated resource plan and, after giving notice and
1119 opportunity to be heard, the Commission shall make a determination within nine months after the date
1120 of filing as to whether such an integrated resource plan is reasonable and is in the public interest.

1121 2. That the fifth enactment of Chapter 296 of the Acts of Assembly of 2018 is amended and
1122 reenacted as follows:

1123 5. That, no later than 30 days after January 1, 2019, each Phase II Utility shall provide to its
1124 current customers a one-time, voluntary generation and distribution services bill credit, to be
1125 allocated on a historic test period energy usage basis, in an aggregate amount of \$67 million,
1126 which one-time voluntary generation and distribution services bill credit shall be included in the
1127 earnings test for the utility in its first ~~triennial~~ *biennial* review after January 1, 2019.

1128 3. That the twenty-third enactment of Chapter 296 of the Acts of Assembly of 2018 is amended
1129 and reenacted as follows:

1130 23. That within 60 days after the conclusion of each ~~triennial~~ *biennial* review proceeding
1131 conducted pursuant to § 56-585.1 of the Code of Virginia, the State Corporation Commission (the
1132 Commission) shall submit a report to the Governor and the General Assembly and the Chairmen
1133 of the House and Senate Commerce and Labor Committees describing and quantifying all
1134 investments made by the utility during the test period or periods under review in both (i) new
1135 utility-owned generation facilities utilizing energy derived from sunlight or from onshore or
1136 offshore wind and (ii) electric distribution grid transformation projects, as determined by the
1137 utility's plant in service and construction work in progress balances related to such investments as
1138 recorded per books by the utility for financial reporting purposes as of the end of the most recent
1139 test period under review. The Commission's report shall include, but not be limited to, an analysis
1140 of the financial effects of such investments, including the effects on customer rates, customer bill
1141 credits, and the earnings and rate base of each utility subject to the ~~triennial~~ *biennial* review
1142 provisions of § 56-585.1.

1143 4. That the State Corporation Commission shall conduct a proceeding to establish the proper
1144 amount of natural gas pipeline capacity that an electric utility needs to purchase under firm
1145 contract, including a reasonable reserve margin, in order to ensure a reliable supply of natural
1146 gas. The Commission shall complete the proceeding by December 1, 2019, for any investor-owned
1147 electric utility that was bound by a rate case settlement that extended in its application beyond
1148 January 1, 2002.

1149 5. That the State Corporation Commission shall prepare a report that identifies and analyzes
1150 potential amendments to the Commonwealth's system of regulating the rates of public utilities in
1151 order to implement an alternative system, including performance-based testing, that (i) removes
1152 incentives for public utilities to engage in excessive amounts of capital accumulation or to
1153 over-invest in order to expand the volume of their profits and (ii) creates incentives for public
1154 utilities to attain goals that are in the public interest. The State Corporation Commission shall
1155 submit copies of the report to the Governor and the Chairmen of the House and Senate
1156 Committees on Commerce and Labor on or before December 1, 2019.

1157 6. That by September 1, 2019, each investor-owned incumbent electric utility shall deliver to the
1158 State Corporation Commission each of its audited financial reports covering each fiscal year of the
1159 utility from 2015 through 2018. On or before September 1, 2020, and each year thereafter each
1160 investor-owned incumbent electric utility shall deliver to the State Corporation Commission its
1161 audited financial reports covering the most recent fiscal year for which such reports are available.
1162 Such reports shall (i) identify, on a line-by-line basis, the amount and a description of all
1163 expenditures by the utility during the applicable period and (ii) include the information that the
1164 utility would have been required to submit in a rate case or biennial review. The Commission shall
1165 review such information for compliance by the utility with the requirements of this title, including
1166 the provisions of §§ 56-235.2 of the Code of Virginia, as amended by this act, and 56-235.2:1 of the
1167 Code of Virginia, as created by this act.