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HOUSE BILL NO. 1450

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Labor and Commerce)
 (Patron Prior to Substitute—Delegate Sullivan)
 House Amendments in [] - February 10, 2020

A BILL to amend and reenact §§ 56-576, 56-585.1, and 56-596.2 of the Code of Virginia, relating to electric utility regulation; energy efficiency programs.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-576, 56-585.1, and 56-596.2 of the Code of Virginia are amended and reenacted as follows:

As used in this chapter:

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

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

(Expires December 31, 2023) "Business park" means a land development containing a minimum of 100 contiguous acres classified as a Tier 4 site under the Virginia Economic Development Partnership's Business Ready Sites Program that is developed and constructed by an industrial development authority, or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of the General Assembly, in order to promote business development and that is located in an area of the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

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

"Commission" means the State Corporation Commission.

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

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

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

"Cumulative energy savings" means the total combined kilowatt-hour savings achieved by deployed energy efficiency and demand response measures.

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

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

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

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

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

"Electric distribution grid transformation project" means a project associated with electric distribution infrastructure, including related data analytics equipment, that is designed to accommodate or facilitate the integration of utility-owned or customer-owned renewable electric generation resources with the utility's electric distribution grid or to otherwise enhance electric distribution grid reliability, electric distribution grid security, customer service, or energy efficiency and conservation, including advanced

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metering infrastructure; intelligent grid devices for real time system and asset information; automated control systems for electric distribution circuits and substations; communications networks for service meters; intelligent grid devices and other distribution equipment; distribution system hardening projects for circuits, other than the conversion of overhead tap lines to underground service, and substations designed to reduce service outages or service restoration times; physical security measures at key distribution substations; cyber security measures; energy storage systems and microgrids that support circuit-level grid stability, power quality, reliability, or resiliency or provide temporary backup energy supply; electrical facilities and infrastructure necessary to support electric vehicle charging systems; LED street light conversions; and new customer information platforms designed to provide improved customer access, greater service options, and expanded access to energy usage information.

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

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

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

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

"Historically economically disadvantaged community" means a community that is (i) a community in which a majority of the population are people of color [~~and~~ or] (ii) [~~is~~] a low-income geographic area.

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

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

"In the public interest," for purposes of assessing energy efficiency programs, describes an energy efficiency program if the Commission determines that the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the following four tests: (i) the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall be approved if the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the four tests. If the Commission determines that an energy efficiency program or portfolio of programs is not in the public interest, its final order shall include all work product and analysis conducted by the Commission's staff in relation to that program, including testimony relied upon by the Commission's staff, that has bearing upon the Commission's decision. If the Commission reduces the proposed budget for a program or portfolio of programs, its final order shall include an analysis of the impact such budget reduction has upon the cost-effectiveness of such program or portfolio of programs. An order by the Commission (a) finding that a program or portfolio of programs is not in the public interest or (b) reducing the proposed budget for any program or portfolio of programs shall adhere to existing protocols for extraordinarily sensitive information. In addition, an energy efficiency program may be deemed to be "in the public interest" if the program (i) provides measurable and verifiable energy savings to low-income customers or elderly customers or (ii) is a pilot program of limited scope, cost, and duration that is intended to determine whether a new or substantially revised program or

technology would be cost-effective.

"Low-income" means any person or household whose annual income is equal to or less than 80 percent of the lesser of either the state median income as set forth by U.S. Census Bureau's annual "American Community Survey" or the area median income as determined by the U.S. Department of Housing and Community Development.

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

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

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

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

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

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

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

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

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

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

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

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

"Rooftop solar installation" means a distributed electric generation facility, storage facility, or generation and storage facility utilizing energy derived from sunlight, with a rated capacity of not less than 50 kilowatts, that is installed on the roof structure of an incumbent electric utility's commercial or industrial class customer, including host sites on commercial buildings, multifamily residential buildings, school or university buildings, and buildings of a church or religious body.

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

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

180 consumption of an affiliate.

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

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

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

188 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or**
189 **expire.**

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

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

241 2. Subject to the provisions of subdivision 6, the fair rate of return on common equity applicable

separately to the generation and distribution services of such utility, and for the two such services combined, and for any rate adjustment clauses approved under subdivision 5 or 6, shall be determined by the Commission during each such triennial review, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021, consisting of the schedules contained in the Commission's rules governing utility rate increase applications. Such filing shall encompass the three successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted, except that the filing for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31, 2020, and in every such case the filing for each year shall be identified separately and shall be segregated from any other year encompassed by the filing. If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented related to facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future triennial review proceedings. In a triennial filing under this subdivision that does not result in an overall rate change a utility may propose an adjustment to one or more tariffs that are revenue neutral to the utility.

4. (Expires December 31, 2023) The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission; (ii) costs charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member; and (iii) costs incurred by the utility to construct, operate, and maintain transmission lines and substations installed in order to provide service to a business park. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service; charges for new and existing transmission facilities, including costs incurred by the utility to construct, operate, and maintain transmission lines and substations installed in order to provide service to a business park; administrative charges; and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

4. (Effective January 1, 2024) The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs,

shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

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

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

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

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs, including a margin to be recovered on operating expenses, which margin for the purposes of this section shall be equal to the general rate of return on common equity determined as described in subdivision 2 or pilot programs. Any such petition shall include a proposed budget for the design, implementation, and operation of the energy efficiency program, including anticipated savings from and spending on each program, and the Commission shall grant a final order on such petitions within eight months of initial filing. The Commission shall only approve such a petition if it finds that the program is in the public interest. If the Commission determines that an energy efficiency program or portfolio of programs is not in the public interest, its final order shall include all work product and analysis conducted by the Commission's staff in relation to that program that has bearing upon the Commission's determination. Such order shall adhere to existing protocols for extraordinarily sensitive information. As part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to energy efficiency programs. The Commission shall only allow such recovery to the extent that the Commission determines such revenue has not been recovered through margins from incremental off-system sales as defined in § 56-249.6 that are directly attributable to energy efficiency programs.

None of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, shall be assigned to any large general service customer. A large general service customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery. A utility shall not charge such large general service customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond what is required to provide electric service and meter such service on the customer's premises if the customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth; Energy efficiency pilot programs are in the public interest provided the pilot program is (i) of limited scope, cost, and duration and (ii) intended to determine whether a new or substantially revised program would be cost-effective.

Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses for energy efficiency programs and pilot programs, which margin shall be equal to the general rate of return on common equity determined as described in subdivision 2. Beginning January 1, 2022, and thereafter, if the Commission determines that the utility meets in any year the annual energy efficiency standards set forth in § 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program operating expenses in that year, to be recovered through a rate adjustment clause, which margin shall be equal to the general rate of return on common equity determined as described in subdivision 2. If the Commission does not approve energy efficiency programs that, in the aggregate, can achieve the annual energy efficiency standards, the Commission shall award a margin on energy efficiency operating expenses in that year for any programs the Commission has approved, to be recovered through a rate adjustment clause under this subdivision, which margin shall equal the general rate of return on common equity determined as described in subdivision 2. Any margin awarded pursuant to this subdivision shall be applied as part of the utility's next rate adjustment clause true-up proceeding. The Commission shall also award an additional 20 basis points for each additional incremental 0.1 percent in annual savings in any year, beyond the annual requirements set forth in § 56-596.2, provided that the total performance incentive awarded in any year shall not exceed 10 percent of that utility's total energy efficiency program spending in that same year.

The Commission shall annually monitor and report to the General Assembly the performance of all programs approved pursuant to this subdivision, including each utility's compliance with the net annual

426 savings required by § 56-596.2, as well as the annual and lifecycle net and gross energy and capacity
427 savings, related emissions reductions, and other quantifiable benefits of each program; total customer
428 bill savings that the programs produce; utility spending on each program, including any associated
429 administrative costs; and each utility's avoided costs and cost-effectiveness results.

430 Notwithstanding any other provision of law, unless the Commission finds in its discretion and after
431 consideration of all in-state and regional transmission entity resources that there is a threat to the
432 reliability or security of electric service to the utility's customers, the Commission shall not approve
433 construction of any new utility-owned generating facilities that emit carbon dioxide as a byproduct of
434 combusting fuel to generate electricity unless the utility has already met the energy savings goals
435 identified in § 56-596.2 and the Commission finds that supply-side resources are more cost-effective than
436 demand-side or energy storage resources.

437 As used in this subdivision, "large general service customer" means a customer that has a verifiable
438 history of having used more than one megawatt of demand from a single site. Large general service
439 customers shall be exempt from requirements that they participate in energy efficiency programs if the
440 Commission finds that the large general service customer has, at the customer's own expense,
441 implemented energy efficiency programs that have produced or will produce measured and verified
442 results consistent with industry standards and other regulatory criteria stated in this section. The
443 Commission shall, no later than June 30, 2021, adopt rules or regulations (i) establishing the process
444 for large general service customers to apply for such an exemption, (ii) establishing the administrative
445 procedures by which eligible customers will notify the utility, (iii) establishing an energy savings
446 account where individual customer fees for efficiency are collected and earmarked for energy efficiency
447 instead of allocated to the general rider for utility-administered programs, and (iv) defining the standard
448 criteria that shall be satisfied by an applicant in order to notify the utility, including means of
449 evaluation measurement and verification and confidentiality requirements. At a minimum, such rules and
450 regulations shall require that each exempted large general service customer certify to the utility and
451 Commission that its implemented energy efficiency programs have delivered measured and verified
452 savings within the prior five years. A customer shall establish an account into which payments in lieu of
453 the energy efficiency rider shall be deposited for use by the customer in implementing energy efficiency
454 measures at its facility. Any energy savings account shall allow year-to-year flexibility but should sunset
455 on a rolling basis after five years, with funds unused for energy efficiency subject to forfeiture to the
456 utility for use in support of other energy efficiency programs. In adopting such rules or regulations, the
457 Commission shall also specify the timing as to when a utility shall accept and act on such notice, taking
458 into consideration the utility's integrated resource planning process as well as its administration of
459 energy efficiency programs that are approved for cost recovery by the Commission. Savings from large
460 general service customers shall be accounted for in utility reporting in the standards in § 56-596.2.

461 The notice of nonparticipation by a large general service customer shall be for the duration of the
462 service life of the customer's energy efficiency measures. The Commission may on its own motion initiate
463 steps necessary to verify such nonparticipant's achievement of energy efficiency if the Commission has a
464 body of evidence that the nonparticipant has knowingly misrepresented its energy efficiency achievement.
465 A utility shall not charge such large general service customer for the costs of installing energy
466 efficiency equipment beyond what is required to provide electric service and meter such service on the
467 customer's premises if the customer provides, at the customer's expense, equivalent energy efficiency
468 equipment. In all relevant proceedings pursuant to this section, the Commission shall take into
469 consideration the goals of economic development, energy efficiency, and environmental protection in the
470 Commonwealth;

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

475 e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate
476 impacts to marine life caused by construction of offshore wind generating facilities, or to comply with
477 state or federal environmental laws or regulations applicable to generation facilities used to serve the
478 utility's native load obligations. The Commission shall approve such a petition if it finds that such costs
479 are necessary to comply with such environmental laws or regulations; and

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

486 g. Reasonable administrative and operational costs, as reviewed and approved by the Commission,
487 incurred to comply with percentage of income payment programs as established in § 63.2-806.

Any rate adjustment clause approved under subdivision 5 c by the Commission shall remain in effect until the utility exhausts the approved budget for the energy efficiency program. The Commission shall have the authority to determine the duration or amortization period for any other rate adjustment clause approved under this subdivision.

6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major unit modifications of generation facilities, including the costs of any system or equipment upgrade, system or equipment replacement, or other cost reasonably appropriate to extend the combined operating license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v) one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source and such facilities and associated resources are located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, or (vi) one or more electric distribution grid transformation projects; however, subject to the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental increase in the level of investments associated with such a petition that exceeds five percent of such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of overhead distribution facilities to underground facilities that have been previously approved or are pending approval by the Commission through a petition by the utility under this subdivision. Such a petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration or termination of capped rates. A utility that constructs or makes modifications to any such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below; however, in determining the amounts recoverable under a rate adjustment clause for new underground facilities, the Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance costs attributable to either the overhead distribution facilities being replaced or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval to construct or purchase a generating facility ~~described in clause (i) or (ii)~~ that emits carbon dioxide shall demonstrate that it has already met the energy savings goals identified in § 56-596.2 and the identified need cannot be met more affordably through the deployment or utilization of demand-side resources or energy storage resources, and that it has considered and weighed alternative options, including third-party market alternatives, in its selection process. In constructing any facility contemplated in subsection A of § 56-585.1:11, the utility shall (1) identify options for utilizing local workers; (2) identify the economic development benefits of the project for the

549 *Commonwealth, including capital investments and job creation; (3) consult with relevant governmental*
550 *entities, including the Commonwealth's Chief Workforce Development Officer, on opportunities to*
551 *advance the Commonwealth's workforce and economic development goals, including furtherance of*
552 *apprenticeship and other workforce training programs, and (4) give priority to the hiring of local*
553 *workers, including workers from historically economically disadvantaged communities. For the purposes*
554 *of this subsection, "historically economically disadvantaged community" means a community that is (A)*
555 *a community in which a majority of the population are people of color and (B) a low-income*
556 *geographic area. Relevant state agencies shall identify historically economically disadvantaged*
557 *communities utilizing geographic information systems, U.S. Census tract demographic and poverty*
558 *threshold data for the Commonwealth, and zip code areas.*

559 The costs of the facility, other than return on projected construction work in progress and allowance
560 for funds used during construction, shall not be recovered prior to the date a facility constructed by the
561 utility and described in clause (i), (ii), (iii) or (v) begins commercial operation, the date the utility
562 becomes the owner of a purchased generation facility consisting of at least one megawatt of generating
563 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or
564 services sourced, in whole or in part, from one or more Virginia businesses, or the date new
565 underground facilities are classified by the utility as plant in service. *In any application to construct a*
566 *new generating facility, the utility shall include, and the Commission shall consider, the social cost of*
567 *carbon, as determined by the Commission, as a benefit or cost, whichever is appropriate. The*
568 *Commission shall ensure that the development of new or expansion of existing energy resources or*
569 *facilities does not have a disproportionate adverse impact on historically economically disadvantaged*
570 *communities or low-income geographic areas. The Commission may adopt any rules it deems necessary*
571 *to determine the social cost of carbon.*

572 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
573 construction and to construction work in progress during the construction phase of the facility and shall
574 thereafter be applied to the entire facility during the first portion of the service life of the facility. The
575 first portion of the service life shall be as specified in the table below; however, the Commission shall
576 determine the duration of the first portion of the service life of any facility, within the range specified in
577 the table below, which determination shall be consistent with the public interest and shall reflect the
578 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
579 the citizens of the Commonwealth and the risks involved in the development of the facility. After the
580 first portion of the service life of the facility is concluded, the utility's general rate of return shall be
581 applied to such facility for the remainder of its service life. As used herein, the service life of the
582 facility shall be deemed to begin on the date a facility constructed by the utility and described in clause
583 (i), (ii), (iii) or (v) begins commercial operation, the date the utility becomes the owner of a purchased
584 generation facility consisting of at least one megawatt of generating capacity using energy derived from
585 sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in
586 part, from one or more Virginia businesses, or the date new underground facilities or new electric
587 distribution grid transformation projects are classified by the utility as plant in service, and such service
588 life shall be deemed equal in years to the life of that facility as used to calculate the utility's
589 depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the
590 basis points specified in the table below to the utility's general rate of return, and such enhanced rate of
591 return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for
592 funds used during construction shall be calculated for any such facility utilizing the utility's actual
593 capital structure and overall cost of capital, including an enhanced rate of return on common equity as
594 determined pursuant to this subdivision, until such construction work in progress is included in rates.
595 The construction of any facility described in clause (i) or (v) is in the public interest, and in determining
596 whether to approve such facility, the Commission shall liberally construe the provisions of this title. The
597 construction or purchase by a utility of one or more generation facilities with at least one megawatt of
598 generating capacity, and with an aggregate rated capacity that does not exceed ~~5,000~~ 16,100 megawatts,
599 including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate
600 capacity of ~~50~~ 100 megawatts, that use energy derived from sunlight or from wind and are located in
601 the Commonwealth or off the Commonwealth's Atlantic shoreline, regardless of whether any of such
602 facilities are located within or without the utility's service territory, is in the public interest, and in
603 determining whether to approve such facility, the Commission shall liberally construe the provisions of
604 this title. A utility may enter into short-term or long-term power purchase contracts for the power
605 derived from sunlight generated by such generation facility prior to purchasing the generation facility.
606 The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the
607 aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year
608 period with new underground facilities in order to improve electric service reliability is in the public
609 interest. In determining whether to approve petitions for rate adjustment clauses for such new
610 underground facilities that meet this criteria, and in determining the level of costs to be recovered

thereunder, the Commission shall liberally construe the provisions of this title.

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

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

For generating facilities other than those utilizing nuclear power constructed pursuant to clause (ii) or those utilizing energy derived from offshore wind, as of July 1, 2013, only *Only* those facilities as to which a rate adjustment clause under this subdivision has been previously approved by the Commission, or as to which a petition for approval of such rate adjustment clause was filed with the Commission, on or before January 1, 2013 2019, shall be entitled to the enhanced rate of return on common equity as specified in the above table during the construction phase of the facility and the approved first portion of its service life.

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

Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility

673 incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December
674 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this
675 subdivision at such time as the Commission provides in an order approving such a rate adjustment
676 clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1,
677 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under
678 this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through
679 existing base rates as determined by the Commission in the test periods under review in the utility's next
680 review filed after July 1, 2014.

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

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

688 Construction, purchasing, or leasing activities for a new utility-owned and utility-operated generating
689 facility or facilities utilizing energy derived from sunlight or from wind with an aggregate capacity of
690 ~~5,000~~ 16,100 megawatts, including rooftop solar installations with a capacity of not less than 50
691 kilowatts, and with an aggregate capacity of ~~50~~ 100 megawatts, together with a new test or
692 demonstration project for a utility-owned and utility-operated generating facility or facilities utilizing
693 energy derived from offshore wind with an aggregate capacity of not more than ~~46~~ 5,000 megawatts, are
694 in the public interest. To the extent that a utility elects to recover the costs of any such new generation
695 facility or facilities through its rates for generation and distribution services and does not petition and
696 receive approval from the Commission for recovery of such costs through a rate adjustment clause
697 described in clause (ii), the Commission shall, upon the request of the utility in a triennial review
698 proceeding, provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d
699 with respect to all costs deemed reasonable and prudent by the Commission in a proceeding pursuant to
700 subsection D of § 56-580 or in a triennial review proceeding.

701 Electric distribution grid transformation projects are in the public interest. To the extent that a utility
702 elects to recover the costs of such electric distribution grid transformation projects through its rates for
703 generation and distribution services, and does not petition and receive approval from the Commission for
704 recovery of such costs through a rate adjustment clause described in clause (vi), the Commission shall,
705 upon the request of the utility in a triennial review proceeding, provide for a customer credit
706 reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed
707 reasonable and prudent by the Commission in a proceeding for approval of a plan for electric
708 distribution grid transformation projects pursuant to subdivision 6 or in a triennial review proceeding.

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

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

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

728 Notwithstanding any other provision of this subdivision, if the Commission finds during the triennial
729 review conducted for a Phase II Utility in 2021 that such utility has not filed applications for all
730 necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled
731 generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the
732 utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals
733 have been received, that the utility has not made reasonable and good faith efforts to construct one or
734 more such facilities that will provide such additional total capacity within a reasonable time after

obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any enhanced rate of return on common equity previously applied to any such facility to no less than the general rate of return for such utility and may apply no less than the utility's general rate of return to any such facility for which the utility seeks approval in the future under this subdivision.

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

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

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

8. In any triennial review proceeding, for the purposes of reviewing earnings on the utility's rates for generation and distribution services, the following utility generation and distribution costs not proposed for recovery under any other subdivision of this subsection, as recorded per books by the utility for financial reporting purposes and accrued against income, shall be attributed to the test periods under

796 review and deemed fully recovered in the period recorded: costs associated with asset impairments
797 related to early retirement determinations made by the utility for utility generation facilities fueled by
798 coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs
799 associated with projects necessary to comply with state or federal environmental laws, regulations, or
800 judicial or administrative orders relating to coal combustion by-product management that the utility does
801 not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated
802 with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to
803 have been recovered from customers through rates for generation and distribution services in effect
804 during the test periods under review unless such costs, individually or in the aggregate, together with the
805 utility's other costs, revenues, and investments to be recovered through rates for generation and
806 distribution services, result in the utility's earned return on its generation and distribution services for the
807 combined test periods under review to fall more than 50 basis points below the fair combined rate of
808 return authorized under subdivision 2 for such periods or, for any test period commencing after
809 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall
810 more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for
811 such periods. In such cases, the Commission shall, in such triennial review proceeding, authorize
812 deferred recovery of such costs and allow the utility to amortize and recover such deferred costs over
813 future periods as determined by the Commission. The aggregate amount of such deferred costs shall not
814 exceed an amount that would, together with the utility's other costs, revenues, and investments to be
815 recovered through rates for generation and distribution services, cause the utility's earned return on its
816 generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less
817 50 basis points, for the combined test periods under review or, for any test period commencing after
818 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed
819 the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in this section shall
820 limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including
821 specifically § 56-235.2, following the review of combined test period earnings of the utility in a triennial
822 review, for normalization of nonrecurring test period costs and annualized adjustments for future costs,
823 in determining any appropriate increase or decrease in the utility's rates for generation and distribution
824 services pursuant to subdivision 8 a or 8 c.

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

826 a. The Revenue reductions related to energy efficiency measures or programs approved and deployed
827 since the utility's previous triennial review have caused the utility, as verified by the Commission,
828 during the test period or periods under review, considered as a whole, to earn more than 50 basis points
829 below a fair combined rate of return on its generation and distribution services or, for any test period
830 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
831 Utility, more than 70 basis points below a fair combined rate of return on its generation and distribution
832 services, as determined in subdivision 2, without regard to any return on common equity or other
833 matters determined with respect to facilities described in subdivision 6, the Commission shall order
834 increases to the utility's rates for generation and distribution services necessary to recover such revenue
835 reductions. If the Commission finds, for reasons other than revenue reductions related to energy
836 efficiency measures, that the utility has, during the test period or periods under review, considered as a
837 whole, earned more than 50 basis points below a fair combined rate of return on its generation and
838 distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility
839 and after December 31, 2013, for a Phase I Utility, more than 70 basis points below a fair combined
840 rate of return on its generation and distribution services, as determined in subdivision 2, without regard
841 to any return on common equity or other matters determined with respect to facilities described in
842 subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the
843 opportunity to fully recover the costs of providing the utility's services and to earn not less than such
844 fair combined rate of return, using the most recently ended 12-month test period as the basis for
845 determining the amount of the rate increase necessary. However, in the first triennial review proceeding
846 conducted after January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase,
847 and in all triennial reviews of a Phase I or Phase II utility, the Commission may not order such rate
848 increase unless it finds that the resulting rates are necessary to provide the utility with the opportunity to
849 fully recover its costs of providing its services and to earn not less than a fair combined rate of return
850 on both its generation and distribution services, as determined in subdivision 2, without regard to any
851 return on common equity or other matters determined with respect to facilities described in subdivision
852 6, using the most recently ended 12-month test period as the basis for determining the permissibility of
853 any rate increase under the standards of this sentence, and the amount thereof; and provided that, solely
854 in connection with making its determination concerning the necessity for such a rate increase or the
855 amount thereof, the Commission shall, in any triennial review proceeding conducted prior to July 1,
856 2028, exclude from this most recently ended 12-month test period any remaining investment levels
857 associated with a prior customer credit reinvestment offset pursuant to subdivision d.

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

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

d. (Expires July 1, 2028) In any triennial review proceeding conducted after December 31, 2017, upon the request of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that are more than 70 basis points above the utility's fair combined rate of return on its generation and distribution services for the test period or periods under review be credited to customer bills pursuant to subdivision 8 b, the aggregate level of prior capital investment that the Commission has approved other than those capital investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test period or periods under review in both (i) new utility-owned generation facilities utilizing energy derived from sunlight, or from onshore or offshore wind, and (ii) electric distribution grid transformation projects, as determined by the utility's plant in service and construction work in progress balances related to such investments as recorded per books by the utility for financial reporting purposes as of the end of the most recent test period under review. Any such combined capital investment amounts shall offset any customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or committed capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit reinvestment offset, which offsets the customer bill credit amount that the utility has invested or will invest in new solar or wind generation facilities or electric distribution grid transformation projects for the benefit of customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the

919 utility's fair rate of return on its generation and distribution services, and thereby reduce or eliminate
920 otherwise incremental rate adjustment clause charges and increases to customer bills, which is deemed to
921 be in the public interest. If 100 percent of the amount of earnings that are more than 70 basis points
922 above the utility's fair combined rate of return on its generation and distribution services, as determined
923 in subdivision 2, exceeds the aggregate level of invested capital in new utility-owned generation
924 facilities utilizing energy derived from sunlight, or from wind, and electric distribution grid
925 transformation projects, as provided in clauses (i) and (ii), during the test period or periods under
926 review, then 70 percent of the amount of such excess shall be credited to customer bills as provided in
927 subdivision 8 b in connection with the triennial review proceeding. The portion of any costs associated
928 with new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or
929 electric distribution grid transformation projects that is the subject of any customer credit reinvestment
930 offset pursuant to this subdivision shall not thereafter be recovered through the utility's rates for
931 generation and distribution services over the service life of such facilities and shall not thereafter be
932 included in the utility's costs, revenues, and investments in future triennial review proceedings conducted
933 pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to
934 subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing
935 energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is
936 not the subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered
937 through the utility's rates for generation and distribution services over the service life of such facilities
938 and shall be included in the utility's costs, revenues, and investments in future triennial review
939 proceedings conducted pursuant to subdivision 2 until such costs are fully recovered, and if such costs
940 are recovered through the utility's rates for generation and distribution services, they shall not be the
941 subject of a rate adjustment clause petition pursuant to subdivision 6. Only the portion of such costs of
942 new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or electric
943 distribution grid transformation projects that has not been included in any customer credit reinvestment
944 offset pursuant to this subdivision, and not otherwise recovered through the utility's rates for generation
945 and distribution services, may be the subject of a rate adjustment clause petition by the utility pursuant
946 to subdivision 6.

947 The Commission's final order regarding such triennial review shall be entered not more than eight
948 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more
949 than 60 days after the date of the order. The fair combined rate of return on common equity determined
950 pursuant to subdivision 2 in such triennial review shall apply, for purposes of reviewing the utility's
951 earnings on its rates for generation and distribution services, to the entire three successive 12-month test
952 periods ending December 31 immediately preceding the year of the utility's subsequent triennial review
953 filing under subdivision 3 and shall apply to applicable rate adjustment clauses under subdivisions 5 and
954 6 prospectively from the date the Commission's final order in the triennial review proceeding, utilizing
955 rate adjustment clause true-up protocols as the Commission in its discretion may determine.

956 9. If, as a result of a triennial review required under this subsection and conducted with respect to
957 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
958 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
959 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
960 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
961 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
962 points above a fair combined rate of return on its generation and distribution services or, for any test
963 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
964 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
965 distribution services, as determined in subdivision 2, without regard to any return on common equity or
966 other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate
967 regulated rates of such utility at the end of the most recently ended 12-month test period exceeded the
968 annual increases in the United States Average Consumer Price Index for all items, all urban consumers
969 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor,
970 compounded annually, when compared to the total aggregate regulated rates of such utility as
971 determined pursuant to the review conducted for the base period, the Commission shall, unless it finds
972 that such action is not in the public interest or that the provisions of subdivisions 8 b and c are more
973 consistent with the public interest, direct that any or all earnings for such test period or periods under
974 review, considered as a whole that were more than 50 basis points, or, for any test period commencing
975 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more
976 than 70 basis points, above such fair combined rate of return shall be credited to customers' bills, in lieu
977 of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to this
978 subdivision in connection with any triennial review unless such bill credits would be payable pursuant to
979 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any
980 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized

and allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this subdivision:

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

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

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

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

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

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

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

§ 56-596.2. Energy efficiency programs.

A. For purposes of this section:

"Net annual savings" means (i) the total combined energy savings achieved by deployed energy efficiency and demand response measures, net of free rider savings from customers who would have implemented a measure in absence of utility-delivered energy efficiency programs, and net of spillover savings from customers who implement an efficiency measure not directly targeted by utility-delivered energy efficiency programs and (ii) savings attributable to newly installed combined heat and power facilities, including waste heat-to-power facilities, either as a demand-side energy efficiency measure or a supply-side generation alternative, including any associated reduction in transmission line losses, provided that biomass is not a fuel and the total efficiency, including the use of thermal energy, for eligible combined heat and power facilities must meet or exceed 65 percent and have a nameplate

1042 capacity rating of less than 25 megawatts.

1043 "Qualified waste heat resource" means (i) exhaust heat or flared gas from an industrial process that
1044 does not have, as its primary purpose, the production of electricity and (ii) a pressure drop in any gas
1045 for an industrial or commercial process.

1046 "Waste heat to power" means a system that generates electricity through the recovery of a qualified
1047 waste heat resource.

1048 Each Phase I Utility and Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1,
1049 B. Notwithstanding subsection G of § 56-580, or any other provision of law, each incumbent
1050 investor-owned electric utility shall develop a proposed program of energy conservation measures. Any
1051 program shall provide for the submission of a petition or petitions for approval to design, implement,
1052 and operate energy efficiency programs pursuant to subdivision A 5 c of § 56-585.1. At least five 15
1053 percent of such proposed costs of energy efficiency programs shall be allocated to programs designed to
1054 benefit low-income, elderly, and or disabled individuals or veterans.

1055 C. Notwithstanding any other provision of law, each investor-owned incumbent electric utility shall
1056 implement energy efficiency programs and measures to achieve the following annual energy efficiency
1057 savings, as measured by the total combined kilowatt-hour savings achieved by deployed efficiency and
1058 demand response measures:

1059 1. For Phase I electric utilities:

1060 a. In calendar year 2022, at least 0.25 percent of the average annual energy jurisdictional retail
1061 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1062 b. In calendar year 2023, at least 0.50 percent of the average annual energy jurisdictional retail
1063 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1064 c. In calendar year 2024, at least 0.75 percent of the average annual energy jurisdictional retail
1065 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1066 d. In calendar year 2025, at least [~~1.00~~ 2.00] percent of the average annual energy jurisdictional
1067 retail sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1068 2. For Phase II electric utilities:

1069 a. In calendar year 2022, at least 0.25 percent of the average annual energy jurisdictional retail
1070 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1071 b. In calendar year 2023, at least 0.75 percent of the average annual energy jurisdictional retail
1072 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1073 c. In calendar year 2024, at least 1.75 percent of the average annual energy jurisdictional retail
1074 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1075 d. In calendar year 2025, at least [~~2.5~~ 5.0] percent of the average annual energy jurisdictional
1076 retail sales by that utility in 2019, adjusted for any supply service customer loss since that time.

1077 3. Beginning in 2026, and every three years thereafter, in each utility's annual energy efficiency rate
1078 adjustment clause proceeding, the Commission shall adjust the utility's required energy efficiency
1079 savings goals for the successive three-year period. As part of such proceeding, the Commission may
1080 consider the feasibility of achieving energy efficiency goals and future energy efficiency savings through
1081 cost-effective programs and measures.

1082 D. The projected costs for the utility to design, implement, and operate such energy efficiency
1083 programs, including a margin to be recovered on operating expenses, shall be no less than an aggregate
1084 amount of \$140 million for a Phase I Utility and \$870 million for a Phase II Utility for the period
1085 beginning July 1, 2018, and ending July 1, 2028, including any existing approved energy efficiency
1086 programs. In developing such portfolio of energy efficiency programs, each utility shall utilize a
1087 stakeholder process, to be facilitated by an independent monitor compensated under the funding provided
1088 pursuant to subdivision E of § 56-592.1, to provide input and feedback on (i) the development of such
1089 energy efficiency programs and portfolios of programs; (ii) compliance with the annual energy
1090 efficiency savings set forth in this subsection and how such savings affect utility integrated resource
1091 plans; (iii) recommended policy reforms by which the General Assembly or the Commission can ensure
1092 maximum and cost-effective deployment of energy efficiency technology across the Commonwealth; and
1093 (iv) best practices for evaluation, measurement, and verification for the purposes of assessing
1094 compliance with the annual energy efficiency savings set forth in subsection C. Utilities shall utilize the
1095 services of a third party to perform evaluation, measurement, and verification services to determine a
1096 utility's cumulative annual savings as required by this subdivision, as well as the annual and lifecycle
1097 net and gross energy and capacity savings, related emissions reductions, and other quantifiable benefits
1098 of each program; total customer bill savings that the programs and portfolios produce; and utility
1099 spending on each program, including any associated administrative costs. The third-party evaluator
1100 shall include and review each utility's avoided costs and cost-benefit analyses. The findings and reports
1101 of such third parties shall be concurrently provided to both the Commission and the utility, and the
1102 Commission shall make each such final annual report easily and publicly accessible online. Such
1103 stakeholder process shall include the participation of representatives from each utility, relevant directors,

1104 *deputy directors, and staff members of the State Corporation Commission who participate in approval*
1105 *and oversight of utility efficiency programs, the office of Consumer Counsel of the Attorney General,*
1106 *the Department of Mines, Minerals and Energy, energy efficiency program implementers, energy*
1107 *efficiency providers, residential and small business customers, and any other interested stakeholder who*
1108 *the independent monitor deems appropriate for inclusion in such process. The independent monitor shall*
1109 *convene meetings of the participants in the stakeholder process not less frequently than twice in each*
1110 *calendar year during the period beginning July 1, 2019, and ending July 1, 2028. The independent*
1111 *monitor shall report on the status of the energy efficiency stakeholder process, including (i) the*
1112 *objectives established by the stakeholder group during this process related to programs to be proposed,*
1113 *(ii) recommendations related to programs to be proposed that result from the stakeholder process, and*
1114 *(iii) the status of those recommendations, in addition to the petitions filed and the determination thereon,*
1115 *to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate*
1116 *Commerce and Labor Committees on July 1, 2019, and annually thereafter through July 1, 2028.*
1117 *E. Nothing in this section shall apply to any entity organized under Chapter 9.1 (§ 56-231.15 et seq.)*
1118 *of Title 56.*

ENGROSSED

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