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SENATE BILL NO. 731

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact § 56-585.1 of the Code of Virginia, relating to electric utility regulation; authorized rate of return.

Patrons—McClellan and Boysko

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

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

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

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

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase II Utility in 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and ending December 31, 2020, with subsequent reviews on a triennial basis

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59 utilizing the three successive 12-month test periods ending December 31 immediately preceding the year
60 in which such review proceeding is conducted. All such reviews occurring after December 31, 2017,
61 shall be referred to as triennial reviews. For purposes of this section, a Phase I Utility is an
62 investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case
63 settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a
64 Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

69 a. The Commission may use any methodology to determine such return it finds consistent with the
70 public interest, but (i) *prior to July 1, 2020*, such return shall not be set lower than the average of the
71 returns on common equity reported to the Securities and Exchange Commission for the three most
72 recent annual periods for which such data are available by not less than a majority, selected by the
73 Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group
74 of the utility subject to such triennial review, and (ii) *on and after July 1, 2020*, such return shall not
75 be set lower than the average of the authorized returns on common equity that is set by the applicable
76 regulatory commissions for not less than a majority, selected by the Commission as specified in
77 subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such
78 triennial review, nor shall the Commission set such return more than ~~300~~ 150 basis points higher than
79 such average.

80 b. In selecting such majority of peer group investor-owned electric utilities *on or after July 1, 2020*,
81 the Commission shall first remove from such group the two utilities within such group that have the
82 lowest reported *or authorized, as applicable*, returns of the group, as well as the two utilities within
83 such group that have the highest reported *or authorized, as applicable*, returns of the group, and the
84 Commission shall then select a majority of the utilities remaining in such peer group. In its final order
85 regarding such triennial review, the Commission shall identify the utilities in such peer group it selected
86 for the calculation of such limitation. For purposes of this subdivision, an investor-owned electric utility
87 shall be deemed part of such peer group if (i) its principal operations are conducted in the southeastern
88 United States east of the Mississippi River in either the states of West Virginia or Kentucky or in those
89 states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility
90 providing generation, transmission and distribution services whose facilities and operations are subject to
91 state public utility regulation in the state where its principal operations are conducted, (iii) it had a
92 long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the most
93 recent test period subject to such triennial review, and (iv) it is not an affiliate of the utility subject to
94 such triennial review.

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

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

119 "Current Proceeding" means any proceeding conducted under any provisions of this subsection that
120 require or authorize the Commission to determine a fair combined rate of return on common equity for

121 a utility and that will be concluded after the date on which the Commission determined the Initial
122 Return for such utility.

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

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

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

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

134 g. If the combined rate of return on common equity earned by the generation and distribution
135 services is no more than 50 basis points above or below the return as so determined or, for any test
136 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
137 Phase I Utility, such return is no more than 70 basis points above or below the return as so determined,
138 such combined return shall not be considered either excessive or insufficient, respectively. However, for
139 any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31,
140 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned
141 below the return as so determined, whether or not such combined return is within 70 basis points of the
142 return as so determined, the utility may petition the Commission for approval of an increase in rates in
143 accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a
144 fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the
145 provisions of this section. The provisions of this subdivision are subject to the provisions of subdivision
146 8.

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

150 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings
151 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021,
152 consisting of the schedules contained in the Commission's rules governing utility rate increase
153 applications. Such filing shall encompass the three successive 12-month test periods ending December
154 31 immediately preceding the year in which such proceeding is conducted, except that the filing for a
155 Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31,
156 2020, and in every such case the filing for each year shall be identified separately and shall be
157 segregated from any other year encompassed by the filing. If the Commission determines that rates
158 should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate
159 adjustment clauses previously implemented related to facilities utilizing simple-cycle combustion turbines
160 described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the
161 amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall
162 combine such clauses with the utility's costs, revenues and investments only after it makes its initial
163 determination with regard to necessary rate revisions or credits to customers' bills, and the amounts
164 thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part
165 of the utility's costs, revenues, and investments for the purposes of future triennial review proceedings.
166 In a triennial filing under this subdivision that does not result in an overall rate change a utility may
167 propose an adjustment to one or more tariffs that are revenue neutral to the utility.

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

182 recover these costs shall be designed using the appropriate billing determinants in the retail rate
183 schedules.

184 4. (Effective January 1, 2024) The following costs incurred by the utility shall be deemed reasonable
185 and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity
186 of which the utility is a member, as determined under applicable rates, terms and conditions approved
187 by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility that are associated
188 with demand response programs approved by the Federal Energy Regulatory Commission and
189 administered by the regional transmission entity of which the utility is a member. Upon petition of a
190 utility at any time after the expiration or termination of capped rates, but not more than once in any
191 12-month period, the Commission shall approve a rate adjustment clause under which such costs,
192 including, without limitation, costs for transmission service, charges for new and existing transmission
193 facilities, administrative charges, and ancillary service charges designed to recover transmission costs,
194 shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall
195 be designed using the appropriate billing determinants in the retail rate schedules.

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

199 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
200 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
201 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
202 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that
203 comply with the requirements of clause (vi) of subsection B of § 56-582;

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

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

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

230 d. Projected and actual costs of participation in a renewable energy portfolio standard program
231 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
232 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to
233 § 56-585.2;

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

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

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

248 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
249 utility's projected native load obligations and to promote economic development, a utility may at any
250 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate
251 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a
252 coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the
253 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
254 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major
255 unit modifications of generation facilities, including the costs of any system or equipment upgrade,
256 system or equipment replacement, or other cost reasonably appropriate to extend the combined operating
257 license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or
258 more new underground facilities to replace one or more existing overhead distribution facilities of 69
259 kilovolts or less located within the Commonwealth, (v) one or more pumped hydroelectricity generation
260 and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their
261 power source and such facilities and associated resources are located in the coalfield region of the
262 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
263 without the utility's service territory, or (vi) one or more electric distribution grid transformation
264 projects; however, subject to the provisions of the following sentence, the utility shall not file a petition
265 under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental
266 increase in the level of investments associated with such a petition that exceeds five percent of such
267 utility's distribution rate base, as such rate base was determined for the most recently ended 12-month
268 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by
269 final order of the Commission prior to the date of filing of such petition under clause (iv). In all
270 proceedings regarding petitions filed under clause (iv) or (vi), the level of investments approved for
271 recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously
272 approved for recovery in prior proceedings under clause (iv) or (vi), as applicable. As of December 1,
273 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any remaining costs
274 associated with conversions of overhead distribution facilities to underground facilities that have been
275 previously approved or are pending approval by the Commission through a petition by the utility under
276 this subdivision. Such a petition concerning facilities described in clause (ii) that utilize nuclear power,
277 facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities
278 described in clause (i) may also be filed before the expiration or termination of capped rates. A utility
279 that constructs or makes modifications to any such facility, or purchases any facility consisting of at
280 least one megawatt of generating capacity using energy derived from sunlight and located in the
281 Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more
282 Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income,
283 through its rates, including projected construction work in progress, and any associated allowance for
284 funds used during construction, planning, development and construction or acquisition costs, life-cycle
285 costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs
286 of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate
287 of return on common equity calculated as specified below; however, in determining the amounts
288 recoverable under a rate adjustment clause for new underground facilities, the Commission shall not
289 consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance
290 costs attributable to either the overhead distribution facilities being replaced or the new underground
291 facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.
292 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
293 eligible for recovery from customers through the utility's base rates for distribution service. A utility
294 filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of
295 generating capacity using energy derived from sunlight and located in the Commonwealth and that
296 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may
297 propose a rate adjustment clause based on a market index in lieu of a cost of service model for such
298 facility. A utility seeking approval to construct or purchase a generating facility described in clause (i)
299 or (ii) shall demonstrate that it has considered and weighed alternative options, including third-party
300 market alternatives, in its selection process. The costs of the facility, other than return on projected
301 construction work in progress and allowance for funds used during construction, shall not be recovered
302 prior to the date a facility constructed by the utility and described in clause (i), (ii), (iii) or (v) begins
303 commercial operation, the date the utility becomes the owner of a purchased generation facility
304 consisting of at least one megawatt of generating capacity using energy derived from sunlight and

305 located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one
306 or more Virginia businesses, or the date new underground facilities are classified by the utility as plant
307 in service.

308 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
309 construction and to construction work in progress during the construction phase of the facility and shall
310 thereafter be applied to the entire facility during the first portion of the service life of the facility. The
311 first portion of the service life shall be as specified in the table below; however, the Commission shall
312 determine the duration of the first portion of the service life of any facility, within the range specified in
313 the table below, which determination shall be consistent with the public interest and shall reflect the
314 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
315 the citizens of the Commonwealth and the risks involved in the development of the facility. After the
316 first portion of the service life of the facility is concluded, the utility's general rate of return shall be
317 applied to such facility for the remainder of its service life. As used herein, the service life of the
318 facility shall be deemed to begin on the date a facility constructed by the utility and described in clause
319 (i), (ii), (iii) or (v) begins commercial operation, the date the utility becomes the owner of a purchased
320 generation facility consisting of at least one megawatt of generating capacity using energy derived from
321 sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in
322 part, from one or more Virginia businesses, or the date new underground facilities or new electric
323 distribution grid transformation projects are classified by the utility as plant in service, and such service
324 life shall be deemed equal in years to the life of that facility as used to calculate the utility's
325 depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the
326 basis points specified in the table below to the utility's general rate of return, and such enhanced rate of
327 return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for
328 funds used during construction shall be calculated for any such facility utilizing the utility's actual
329 capital structure and overall cost of capital, including an enhanced rate of return on common equity as
330 determined pursuant to this subdivision, until such construction work in progress is included in rates.
331 The construction of any facility described in clause (i) or (v) is in the public interest, and in determining
332 whether to approve such facility, the Commission shall liberally construe the provisions of this title. The
333 construction or purchase by a utility of one or more generation facilities with at least one megawatt of
334 generating capacity, and with an aggregate rated capacity that does not exceed 5,000 megawatts,
335 including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate
336 capacity of 50 megawatts, that use energy derived from sunlight or from wind and are located in the
337 Commonwealth or off the Commonwealth's Atlantic shoreline, regardless of whether any of such
338 facilities are located within or without the utility's service territory, is in the public interest, and in
339 determining whether to approve such facility, the Commission shall liberally construe the provisions of
340 this title. A utility may enter into short-term or long-term power purchase contracts for the power
341 derived from sunlight generated by such generation facility prior to purchasing the generation facility.
342 The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the
343 aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year
344 period with new underground facilities in order to improve electric service reliability is in the public
345 interest. In determining whether to approve petitions for rate adjustment clauses for such new
346 underground facilities that meet this criteria, and in determining the level of costs to be recovered
347 thereunder, the Commission shall liberally construe the provisions of this title.

348 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local and
349 system-wide benefits and to be cost beneficial, and the costs associated with such new underground
350 facilities are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of
351 subsection C or D, shall be approved for recovery by the Commission pursuant to this subdivision,
352 provided that the total costs associated with the replacement of any subset of existing overhead
353 distribution tap lines proposed by the utility with new underground facilities, exclusive of financing
354 costs, shall not exceed an average cost per customer of \$20,000, with such customers, including those
355 served directly by or downline of the tap lines proposed for conversion, and, further, such total costs
356 shall not exceed an average cost per mile of tap lines converted, exclusive of financing costs, of
357 \$750,000. A utility shall, without regard for whether it has petitioned for any rate adjustment clause
358 pursuant to clause (vi), petition the Commission, not more than once annually, for approval of a plan for
359 electric distribution grid transformation projects. Any plan for electric distribution grid transformation
360 projects shall include both measures to facilitate integration of distributed energy resources and measures
361 to enhance physical electric distribution grid reliability and security. In ruling upon such a petition, the
362 Commission shall consider whether the utility's plan for such projects, and the projected costs associated
363 therewith, are reasonable and prudent. Such petition shall be considered on a stand-alone basis without
364 regard to the other costs, revenues, investments, or earnings of the utility; without regard to whether the
365 costs associated with such projects will be recovered through a rate adjustment clause under this
366 subdivision or through the utility's rates for generation and distribution services; and without regard to

367 whether such costs will be the subject of a customer credit offset, as applicable, pursuant to subdivision
 368 8 d. The Commission's final order regarding any such petition for approval of an electric distribution
 369 grid transformation plan shall be entered by the Commission not more than six months after the date of
 370 filing such petition. The Commission shall likewise enter its final order with respect to any petition by a
 371 utility for a certificate to construct and operate a generating facility or facilities utilizing energy derived
 372 from sunlight, pursuant to subsection D of § 56-580, within six months after the date of filing such
 373 petition. The basis points to be added to the utility's general rate of return to calculate the enhanced rate
 374 of return on common equity, and the first portion of that facility's service life to which such enhanced
 375 rate of return shall be applied, shall vary by type of facility, as specified in the following table:

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

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

390 For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy
 391 derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such
 392 facilities shall continue to be eligible for an enhanced rate of return on common equity during the
 393 construction phase of the facility and the approved first portion of its service life of between 12 and 25
 394 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in
 395 the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1,
 396 2013, the enhanced return for such facilities constructed pursuant to clause (ii) shall be 100 basis points,
 397 which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty
 398 percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1,
 399 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred
 400 by the utility and recovered through a rate adjustment clause under this subdivision at such time as the
 401 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of
 402 all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall
 403 not be deferred for recovery through a rate adjustment clause under this subdivision; however, such
 404 remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by
 405 the Commission in the test periods under review in the utility's next review filed after July 1, 2014.
 406 Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility
 407 incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December
 408 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this
 409 subdivision at such time as the Commission provides in an order approving such a rate adjustment
 410 clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1,
 411 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under
 412 this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through
 413 existing base rates as determined by the Commission in the test periods under review in the utility's next
 414 review filed after July 1, 2014.

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

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

422 Construction, purchasing, or leasing activities for a new utility-owned and utility-operated generating
 423 facility or facilities utilizing energy derived from sunlight or from wind with an aggregate capacity of
 424 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and
 425 with an aggregate capacity of 50 megawatts, together with a new test or demonstration project for a
 426 utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore
 427 wind with an aggregate capacity of not more than 16 megawatts, are in the public interest. To the extent
 428 that a utility elects to recover the costs of any such new generation facility or facilities through its rates

429 for generation and distribution services and does not petition and receive approval from the Commission
430 for recovery of such costs through a rate adjustment clause described in clause (ii), the Commission
431 shall, upon the request of the utility in a triennial review proceeding, provide for a customer credit
432 reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed
433 reasonable and prudent by the Commission in a proceeding pursuant to subsection D of § 56-580 or in a
434 triennial review proceeding.

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

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

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

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

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

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

487 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
488 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
489 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
490 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or

491 that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to
492 new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and
493 records of the utility until the Commission's final order in the matter, or until the implementation of any
494 applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in
495 subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of
496 such petition, or during the consideration thereof by the Commission, that are proposed for recovery in
497 such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of
498 subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of
499 subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the
500 books and records of the utility until the Commission's final order in the matter, or until the
501 implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs
502 prudently incurred after the expiration or termination of capped rates related to other matters described
503 in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped
504 rates, provided, however, that no provision of this act shall affect the rights of any parties with respect
505 to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia
506 Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset
507 for regulatory accounting and ratemaking purposes under which it shall defer its operation and
508 maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
509 and (ii) other work at such plant normally performed during a refueling outage. The utility shall
510 amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning
511 with the month in which such plant resumes operation after such refueling. The refueling cycle shall be
512 the applicable period of time between planned refueling outages for such plant. As of January 1, 2014,
513 such amortized costs are a component of base rates, recoverable in base rates only ratably over the
514 refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable
515 in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage
516 commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs
517 of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with
518 respect to triennial filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant to
519 § 56-245 or the Commission's rules governing utility rate increase applications as provided in subsection
520 B. This provision shall not be deemed to change or reset base rates.

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

526 8. In any triennial review proceeding, for the purposes of reviewing earnings on the utility's rates for
527 generation and distribution services, the following utility generation and distribution costs not proposed
528 for recovery under any other subdivision of this subsection, as recorded per books by the utility for
529 financial reporting purposes and accrued against income, shall be attributed to the test periods under
530 review and deemed fully recovered in the period recorded: costs associated with asset impairments
531 related to early retirement determinations made by the utility for utility generation facilities fueled by
532 coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs
533 associated with projects necessary to comply with state or federal environmental laws, regulations, or
534 judicial or administrative orders relating to coal combustion by-product management that the utility does
535 not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated
536 with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to
537 have been recovered from customers through rates for generation and distribution services in effect
538 during the test periods under review unless such costs, individually or in the aggregate, together with the
539 utility's other costs, revenues, and investments to be recovered through rates for generation and
540 distribution services, result in the utility's earned return on its generation and distribution services for the
541 combined test periods under review to fall more than 50 basis points below the fair combined rate of
542 return authorized under subdivision 2 for such periods or, for any test period commencing after
543 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall
544 more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for
545 such periods. In such cases, the Commission shall, in such triennial review proceeding, authorize
546 deferred recovery of such costs and allow the utility to amortize and recover such deferred costs over
547 future periods as determined by the Commission. The aggregate amount of such deferred costs shall not
548 exceed an amount that would, together with the utility's other costs, revenues, and investments to be
549 recovered through rates for generation and distribution services, cause the utility's earned return on its
550 generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less
551 50 basis points, for the combined test periods under review or, for any test period commencing after

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

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

560 a. The utility has, during the test period or periods under review, considered as a whole, earned more
561 than 50 basis points below a fair combined rate of return on its generation and distribution services or,
562 for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31,
563 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of return on its
564 generation and distribution services, as determined in subdivision 2, without regard to any return on
565 common equity or other matters determined with respect to facilities described in subdivision 6, the
566 Commission shall order increases to the utility's rates necessary to provide the opportunity to fully
567 recover the costs of providing the utility's services and to earn not less than such fair combined rate of
568 return, using the most recently ended 12-month test period as the basis for determining the amount of
569 the rate increase necessary. However, in the first triennial review proceeding conducted after January 1,
570 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all triennial reviews
571 of a Phase I or Phase II utility, the Commission may not order such rate increase unless it finds that the
572 resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of
573 providing its services and to earn not less than a fair combined rate of return on both its generation and
574 distribution services, as determined in subdivision 2, without regard to any return on common equity or
575 other matters determined with respect to facilities described in subdivision 6, using the most recently
576 ended 12-month test period as the basis for determining the permissibility of any rate increase under the
577 standards of this sentence, and the amount thereof; and provided that, solely in connection with making
578 its determination concerning the necessity for such a rate increase or the amount thereof, the
579 Commission shall, in any triennial review proceeding conducted prior to July 1, 2028, exclude from this
580 most recently ended 12-month test period any remaining investment levels associated with a prior
581 customer credit reinvestment offset pursuant to subdivision d.

582 b. The utility has, during the test period or test periods under review, considered as a whole, earned
583 more than 50 basis points above a fair combined rate of return on its generation and distribution
584 services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
585 December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of
586 return on its generation and distribution services, as determined in subdivision 2, without regard to any
587 return on common equity or other matters determined with respect to facilities described in subdivision
588 6, the Commission shall, subject to the provisions of subdivisions 8 d and 9, direct that 60 percent of
589 the amount of such earnings that were more than 50 basis points, or, for any test period commencing
590 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that
591 70 percent of the amount of such earnings that were more than 70 basis points, above such fair
592 combined rate of return for the test period or periods under review, considered as a whole, shall be
593 credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as
594 determined at the discretion of the Commission, following the effective date of the Commission's order,
595 and shall be allocated among customer classes such that the relationship between the specific customer
596 class rates of return to the overall target rate of return will have the same relationship as the last
597 approved allocation of revenues used to design base rates; or

598 c. In any triennial review proceeding conducted after January 1, 2020, for a Phase I Utility or after
599 January 1, 2021, for a Phase II Utility in which the utility has, during the test period or test periods
600 under review, considered as a whole, earned more than 50 basis points above a fair combined rate of
601 return on its generation and distribution services or, for any test period commencing after December 31,
602 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis
603 points above a fair combined rate of return on its generation and distribution services, as determined in
604 subdivision 2, without regard to any return on common equity or other matter determined with respect
605 to facilities described in subdivision 6, and the combined aggregate level of capital investment that the
606 Commission has approved other than those capital investments that the Commission has approved for
607 recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the
608 test periods under review in that triennial review proceeding in new utility-owned generation facilities
609 utilizing energy derived from sunlight, or from wind, and in electric distribution grid transformation
610 projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of the
611 earnings that are more than 70 basis points above the utility's fair combined rate of return on its
612 generation and distribution services for the combined test periods under review in that triennial review
613 proceeding, the Commission shall, subject to the provisions of subdivision 9 and in addition to the

614 actions authorized in subdivision b, also order reductions to the utility's rates it finds appropriate.
 615 However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility,
 616 any reduction to the utility's rates ordered by the Commission pursuant to this subdivision shall not
 617 exceed \$50 million in annual revenues, with any reduction allocated to the utility's rates for generation
 618 services, and in each triennial review of a Phase I or Phase II Utility, the Commission may not order
 619 such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to
 620 fully recover its costs of providing its services and to earn not less than a fair combined rate of return
 621 on its generation and distribution services, as determined in subdivision 2, without regard to any return
 622 on common equity or other matters determined with respect to facilities described in subdivision 6,
 623 using the most recently ended 12-month test period as the basis for determining the permissibility of any
 624 rate reduction under the standards of this sentence, and the amount thereof; and

625 d. (Expires July 1, 2028) In any triennial review proceeding conducted after December 31, 2017,
 626 upon the request of the utility, the Commission shall determine, prior to directing that 70 percent of
 627 earnings that are more than 70 basis points above the utility's fair combined rate of return on its
 628 generation and distribution services for the test period or periods under review be credited to customer
 629 bills pursuant to subdivision 8 b, the aggregate level of prior capital investment that the Commission has
 630 approved other than those capital investments that the Commission has approved for recovery pursuant
 631 to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test period or
 632 periods under review in both (i) new utility-owned generation facilities utilizing energy derived from
 633 sunlight, or from onshore or offshore wind, and (ii) electric distribution grid transformation projects, as
 634 determined by the utility's plant in service and construction work in progress balances related to such
 635 investments as recorded per books by the utility for financial reporting purposes as of the end of the
 636 most recent test period under review. Any such combined capital investment amounts shall offset any
 637 customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or
 638 committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or committed
 639 capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit reinvestment
 640 offset, which offsets the customer bill credit amount that the utility has invested or will invest in new
 641 solar or wind generation facilities or electric distribution grid transformation projects for the benefit of
 642 customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the
 643 utility's fair rate of return on its generation and distribution services, and thereby reduce or eliminate
 644 otherwise incremental rate adjustment clause charges and increases to customer bills, which is deemed to
 645 be in the public interest. If 100 percent of the amount of earnings that are more than 70 basis points
 646 above the utility's fair combined rate of return on its generation and distribution services, as determined
 647 in subdivision 2, exceeds the aggregate level of invested capital in new utility-owned generation
 648 facilities utilizing energy derived from sunlight, or from wind, and electric distribution grid
 649 transformation projects, as provided in clauses (i) and (ii), during the test period or periods under
 650 review, then 70 percent of the amount of such excess shall be credited to customer bills as provided in
 651 subdivision 8 b in connection with the triennial review proceeding. The portion of any costs associated
 652 with new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or
 653 electric distribution grid transformation projects that is the subject of any customer credit reinvestment
 654 offset pursuant to this subdivision shall not thereafter be recovered through the utility's rates for
 655 generation and distribution services over the service life of such facilities and shall not thereafter be
 656 included in the utility's costs, revenues, and investments in future triennial review proceedings conducted
 657 pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to
 658 subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing
 659 energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is
 660 not the subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered
 661 through the utility's rates for generation and distribution services over the service life of such facilities
 662 and shall be included in the utility's costs, revenues, and investments in future triennial review
 663 proceedings conducted pursuant to subdivision 2 until such costs are fully recovered, and if such costs
 664 are recovered through the utility's rates for generation and distribution services, they shall not be the
 665 subject of a rate adjustment clause petition pursuant to subdivision 6. Only the portion of such costs of
 666 new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or electric
 667 distribution grid transformation projects that has not been included in any customer credit reinvestment
 668 offset pursuant to this subdivision, and not otherwise recovered through the utility's rates for generation
 669 and distribution services, may be the subject of a rate adjustment clause petition by the utility pursuant
 670 to subdivision 6.

671 The Commission's final order regarding such triennial review shall be entered not more than eight
 672 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more
 673 than 60 days after the date of the order. The fair combined rate of return on common equity determined
 674 pursuant to subdivision 2 in such triennial review shall apply, for purposes of reviewing the utility's

675 earnings on its rates for generation and distribution services, to the entire three successive 12-month test
676 periods ending December 31 immediately preceding the year of the utility's subsequent triennial review
677 filing under subdivision 3 and shall apply to applicable rate adjustment clauses under subdivisions 5 and
678 6 prospectively from the date the Commission's final order in the triennial review proceeding, utilizing
679 rate adjustment clause true-up protocols as the Commission in its discretion may determine.

680 9. If, as a result of a triennial review required under this subsection and conducted with respect to
681 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
682 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
683 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
684 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
685 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
686 points above a fair combined rate of return on its generation and distribution services or, for any test
687 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
688 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
689 distribution services, as determined in subdivision 2, without regard to any return on common equity or
690 other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate
691 regulated rates of such utility at the end of the most recently ended 12-month test period exceeded the
692 annual increases in the United States Average Consumer Price Index for all items, all urban consumers
693 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor,
694 compounded annually, when compared to the total aggregate regulated rates of such utility as
695 determined pursuant to the review conducted for the base period, the Commission shall, unless it finds
696 that such action is not in the public interest or that the provisions of subdivisions 8 b and c are more
697 consistent with the public interest, direct that any or all earnings for such test period or periods under
698 review, considered as a whole that were more than 50 basis points, or, for any test period commencing
699 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more
700 than 70 basis points, above such fair combined rate of return shall be credited to customers' bills, in lieu
701 of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to this
702 subdivision in connection with any triennial review unless such bill credits would be payable pursuant to
703 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any
704 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized
705 and allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this
706 subdivision:

707 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
708 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
709 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
710 period with respect to which credits have been applied to customers' bills under the provisions of this
711 subdivision, whichever is later.

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

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

734 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying
735 for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase
736 applications; however, in any such filing, a fair rate of return on common equity shall be determined

737 pursuant to subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and
738 purchased power costs as provided in § 56-249.6.

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

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

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