

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 56-233.1, 56-234.2, 56-235.2, 56-235.6, 56-249.6, 56-576 through*
 3 *56-581, 56-582, 56-584, 56-585, 56-587, 56-589, 56-590, and 56-594 of the Code of Virginia, to*
 4 *amend the Code of Virginia by adding sections numbered 56-585.1, 56-585.2, and 56-585.3, and to*
 5 *repeal §§ 56-581.1 and 56-583 of the Code of Virginia, relating to the regulation of electric utility*
 6 *service.*

7 [S 1416]

8 Approved

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That §§ 56-233.1, 56-234.2, 56-235.2, 56-235.6, 56-249.6, 56-576 through 56-581, 56-582, 56-584,**
 11 **56-585, 56-587, 56-589, 56-590, and 56-594 of the Code of Virginia are amended and reenacted and**
 12 **that the Code of Virginia is amended by adding sections numbered 56-585.1, 56-585.2, and**
 13 **56-585.3 as follows:**

14 § 56-233.1. Public utilities purchasing practices.

15 Every public utility subject to the ~~annual~~ *biennial* review provisions of Title 56 shall use competitive
 16 bidding to the extent practicable in its purchasing and construction practices. In addition, all such public
 17 utilities shall file with the Commission and keep current a description of its purchasing and construction
 18 practices.

19 § 56-234.2. Review of rates.

20 The Commission shall review the rates of any public utility on an annual basis when, in the opinion
 21 of the Commission, such annual review is in the public interest, *provided that the rates of a public*
 22 *utility subject to § 56-585.1 shall be reviewed in accordance with subsection A of that section.*

23 § 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and
 24 conclusions to be set forth; alternative forms of regulation for electric companies.

25 A. Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be
 26 considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls,
 27 charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs
 28 incurred by the public utility in serving customers within the jurisdiction of the Commission, ~~subject to~~
 29 *including* such normalization for nonrecurring costs and *annualized* adjustments for ~~known~~ future
 30 ~~increases in~~ costs as the Commission ~~may deem reasonable~~ *finds reasonably can be predicted to occur*
 31 *during the rate year*, and a fair return on the public utility's rate base used to serve those jurisdictional
 32 customers, *which return shall be calculated in accordance with § 56-585.1 for utilities subject to such*
 33 *section*; (1a) the investor-owned public electric utility has demonstrated that no part of such rates, tolls,
 34 charges or schedules includes costs for advertisement, except for advertisements either required by law
 35 or rule or regulation, or for advertisements which solely promote the public interest, conservation or
 36 more efficient use of energy; and (2) the public utility has demonstrated that such rates, tolls, charges or
 37 schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission
 38 may approve, either in the context of or apart from a rate proceeding after notice to all affected parties
 39 and hearing, special rates, contracts or incentives to individual customers or classes of customers where
 40 it finds such measures are in the public interest. Such special charges shall not be limited by the
 41 provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method
 42 of estimating revenue needs; ~~but shall not consider any adjustments or expenses that are speculative or~~
 43 ~~cannot be predicted with reasonable certainty.~~ In any Commission order establishing a fair and
 44 reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission
 45 shall set forth the findings of fact and conclusions of law upon which such order is based.

46 B. ~~Upon application of any public service company furnishing electric service or on the~~
 47 ~~Commission's own motion, the Commission may approve after notice to all affected parties and hearing,~~
 48 ~~an alternative form of regulation. Alternatives may include, but are not limited to, the use of price~~
 49 ~~regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms~~
 50 ~~of regulation.~~

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

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

57 result of such special rates.

58 § 56-235.6. Optional performance-based regulation of certain utilities.

59 A. Notwithstanding any provision of law to the contrary, the Commission may approve a
60 performance-based ratemaking methodology for any public utility engaged in the business of furnishing
61 gas service (for the purposes of this section a "gas utility") *or electricity service (for the purposes of this*
62 *section an "electric utility")*, ~~either~~ upon application of the gas utility ~~or upon its own motion~~ *electric*
63 *utility*, and after such notice and opportunity for hearing as the Commission may prescribe. For the
64 purposes of this section, "performance-based ratemaking methodology" shall mean a method of
65 establishing rates and charges that are in the public interest, and that departs in whole or in part from
66 the cost-of-service methodology set forth in § 56-235.2.

67 B. The Commission shall approve such performance-based ratemaking methodology if it finds that it:
68 (i) preserves adequate service to all classes of customers; (including transportation-only customers *if for*
69 *a gas utility*); (ii) does not unreasonably prejudice or disadvantage any class of gas utility *or electric*
70 *utility* customers; (iii) provides incentives for improved performance by the gas utility *or electric utility*
71 in the conduct of its public duties; (iv) results in rates that are not excessive; and (v) is in the public
72 interest. Performance-based forms of regulation may include, but not be limited to, fixed or capped base
73 rates, the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing *for gas*
74 *utilities*, and innovative utilization of utility-related assets and activities (such as *a gas utility's*
75 *off-system sales of excess gas supplies; and release of upstream pipeline capacity, performance of billing*
76 *services for other gas or electricity suppliers, and reduction or elimination of regulatory requirements*) in
77 ways that benefit both the gas utility and its customers and may include a mechanism for automatic
78 annual adjustments to revenues or prices to reflect changes in any index adopted for the implementation
79 of such performance-based form of regulation. In making the findings required by this subsection, the
80 Commission shall include, but not be limited to, in its considerations: (i) any proposed measures,
81 including investments in infrastructure, that are reasonably estimated to preserve or improve system
82 reliability, safety, supply diversity, and *gas utility* transportation options; and (ii) other customer benefits
83 that are reasonably estimated to accrue from the gas *or electric* utility's proposal.

84 C. Each gas utility *or electric utility* shall have the option to apply for implementation of a
85 performance-based form of regulation. If the Commission approves the application with modifications,
86 the gas utility *or electric utility* may, at its option, withdraw its application and continue to be regulated
87 under the form of regulation that existed immediately prior to the filing of the application. The
88 Commission may, after notice and opportunity for hearing, alter, amend or revoke, or authorize a gas
89 utility *or electric utility* to discontinue, a performance-based form of regulation previously implemented
90 under this section if it finds that (i) gas service to one or more classes of customers has deteriorated, or
91 will deteriorate, to the point that the public interest will not be served by continuation of the
92 performance-based form of regulation; (ii) any class of gas utility customer *or electric utility customer* is
93 being unreasonably prejudiced or disadvantaged by the performance-based form of regulation; (iii) the
94 performance-based form of regulation does not, or will not, provide reasonable incentives for improved
95 performance by a gas utility *or electric utility* in the conduct of its public duties (which determination
96 may include, but not be limited to, consideration of whether rates are inadequate to recover *a gas utility*
97 *utility's or electric utility's* cost of service); (iv) the performance-based form of regulation is resulting in
98 rates that are excessive compared to a gas utility's *or electric utility's* cost of service and any benefits
99 that accrue from the performance-based plan; (v) the terms ordered by the Commission in connection
100 with approval of a gas utility's *or electric utility's* implementation of a performance-based form of
101 regulation have been violated; or (vi) the performance-based form of regulation is no longer in the
102 public interest. Any request by a gas utility *or electric utility* to discontinue its implementation of a
103 performance-based form of regulation may include application pursuant to this chapter for approval of
104 new rates under the standards of § 56-235.2 *for a gas utility or pursuant to § 56-585.1 for an*
105 *investor-owned incumbent electric utility*.

106 D. The Commission shall use the annual review process established in § 56-234.2 to monitor each
107 performance-based form of regulation approved under this section and to make any annual prospective
108 adjustments to revenues or prices necessary to reflect increases or decreases in any index adopted for the
109 implementation of such performance-based form of regulation.

110 § 56-249.6. Recovery of fuel and purchased power costs.

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

118 under-recovery of fuel costs previously incurred.

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

122 B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that
123 purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case
124 settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall
125 remain in effect until the ~~earlier~~ *later* of (i) July 1, 2007; ~~(ii) the termination of capped rates pursuant to~~
126 ~~the provisions of subsection C of § 56-582; or (iii) (ii) the establishment of tariff provisions under~~
127 subsection C. Any such utility shall continue to report to the Commission annually its actual fuel costs,
128 including the cost of purchased power ~~until July 1, 2007.~~

129 C. ~~Until the capped rates for such utility expire or are terminated pursuant to the provisions of~~
130 ~~§ 56-582, each~~ *Each* electric utility described in subsection B shall submit annually to the Commission
131 its estimate of fuel costs, including the cost of purchased power, for the successive 12-month periods
132 beginning on July 1, 2007, 2008, and 2009, ~~and the six-month period beginning July 1, 2010 and each~~
133 ~~July 1 thereafter.~~ Upon investigation of such estimates and hearings in accordance with law, the
134 Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel
135 costs determined by the Commission to be appropriate for such periods, adjusted for any over-recovery
136 or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any
137 over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to
138 July 1, 2007, and (ii) the Commission ~~may~~ *shall* order that ~~up to 40% the deferral portion, if any, of~~
139 ~~any the total~~ increase in fuel tariffs for all classes as determined by the Commission to be appropriate
140 for the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be
141 deferred *without interest* and recovered ~~during the period from July 1, 2008, through December 31, 2010~~
142 ~~from all classes of customers as follows: (i) in the 12-month period beginning July 1, 2008, that part of~~
143 ~~the deferral portion of the increase in fuel tariffs that the Commission determines would increase the~~
144 ~~total rates of the residential class of customers of the utility by four percent over the level of such total~~
145 ~~rates in existence on June 30, 2008, shall be recovered; (ii) in the 12-month period beginning July 1,~~
146 ~~2009, that part of the balance of the deferral portion of the increase in fuel tariffs, if any, that the~~
147 ~~Commission determines would increase the total rates of the residential class of customers of the utility~~
148 ~~by four percent over the level of such total rates in existence on June 30, 2009, shall be recovered; and~~
149 ~~(iii) in the 12-month period beginning July 1, 2010, the entire balance of the deferral portion of the~~
150 ~~increase in fuel tariffs, if any, shall be recovered. The "deferral portion of the increase in fuel tariffs"~~
151 ~~means the portion of such increase in fuel tariffs that exceeds the amount of such increase in fuel tariffs~~
152 ~~that the Commission determines would increase the total rates of the residential class of customers of~~
153 ~~the utility by more than four percent over the level of such total rates in existence on June 30, 2007.~~

154 D. ~~In proceedings under subsections A and C, the Commission may, to the extent deemed~~
155 ~~appropriate, offset against fuel costs and purchased power costs to be recovered the revenues attributable~~
156 ~~to sales of power pursuant to interconnection agreements with neighboring electric utilities.:~~

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

169 2. ~~In proceedings under subsections A and C, the~~ *The* Commission shall disallow recovery of any
170 fuel costs that it finds without just cause to be the result of failure of the utility to make every
171 reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel
172 costs, giving due regard to reliability of service and the need to maintain reliable sources of supply,
173 economical generation mix, generating experience of comparable facilities, and minimization of the total
174 cost of providing service.

175 3 E. The Commission is authorized to promulgate, in accordance with the provisions of this section,
176 all rules and regulations necessary to allow the recovery by electric utilities of all of their prudently
177 incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and
178 promptly as possible, with no over-recovery or under-recovery, except as provided in subsection C, in a

179 manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.
 180 The Commission may, however, dispense with the procedures set forth above for any electric utility
 181 if it finds, after notice and hearing, that the electric utility's fuel costs can be reasonably recovered
 182 through the rates and charges investigated and established in accordance with other sections of this
 183 chapter.

184 § 56-576. Definitions.

185 As used in this chapter:

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

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

200 "Billing services" means services related to billing customers for competitive electric services or
 201 billing customers on a consolidated basis for both competitive and regulated electric services.

202 "Commission" means the State Corporation Commission.

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

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

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

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

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

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

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

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

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

222 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
 223 1999, supplied electric energy to retail customers located in an exclusive service territory established by
 224 the Commission.

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

228 "Market power" means the ability to impose on customers a significant and nontransitory price
 229 increase on a product or service in a market above the price level which would prevail in a competitive
 230 market.

231 "Metering services" means the ownership, installation, maintenance, or reading of electric meters and
 232 includes meter data management services.

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

235 "Period of transition to customer choice" means the period beginning on January 1, 2002, and ending
 236 on January 1, 2004, unless otherwise extended by the Commission pursuant to this chapter, during
 237 which the Commission and all electric utilities authorized to do business in the Commonwealth shall
 238 implement customer choice for retail customers in the Commonwealth.

239 "Person" means any individual, corporation, partnership, association, company, business, trust, joint

240 venture, or other private legal entity, and the Commonwealth or any municipality.

241 "Renewable energy" means energy derived from sunlight, wind, falling water, sustainable biomass,
242 energy from waste, wave motion, tides, and geothermal power, and does not include energy derived
243 from coal, oil, natural gas or nuclear power.

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

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

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

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

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

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

258 § 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot
259 programs.

260 A. ~~The transition to retail~~ *Retail* competition for the purchase and sale of electric energy shall be
261 implemented as follows *subject to the following provisions*:

262 1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to
263 transmission capacity shall join or establish a regional transmission entity, which entity may be an
264 independent system operator, to which such utility shall transfer the management and control of its
265 transmission system, subject to the provisions of § 56-579.

266 2. ~~On and after January 1, 2002, retail customers of electric energy within the Commonwealth shall~~
267 ~~be permitted to purchase energy from any supplier of electric energy licensed to sell retail electric~~
268 ~~energy within the Commonwealth during and after the period of transition to retail competition, subject~~
269 ~~to the following:~~

270 a. ~~The Commission shall separately establish for each utility a phase-in schedule for customers by~~
271 ~~class, and by percentages of class, to ensure that by January 1, 2004, all retail customers of each utility~~
272 ~~are permitted to purchase electric energy from any supplier of electric energy licensed to sell retail~~
273 ~~electric energy within the Commonwealth.~~

274 b. ~~The Commission shall also ensure that residential and small business retail customers are~~
275 ~~permitted to select suppliers in proportions at least equal to that of other customer classes permitted to~~
276 ~~select suppliers during the period of transition to retail competition.~~

277 3. ~~On and after January 1, 2002, the~~ *The* generation of electric energy shall ~~no longer~~ be subject to
278 regulation ~~under this title, except as specified in this chapter.~~

279 4. ~~On and after 3.~~ *From* January 1, 2004, ~~until the expiration or termination of capped rates,~~ all
280 retail customers of electric energy within the Commonwealth, regardless of customer class, shall be
281 permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric
282 energy within the Commonwealth. ~~After the expiration or termination of capped rates, and subject to~~
283 ~~the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the~~
284 ~~Commonwealth, regardless of customer class, whose demand during the most recent calendar year~~
285 ~~exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's~~
286 ~~peak load during the most recent calendar year unless such customer had noncoincident peak demand~~
287 ~~in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase~~
288 ~~electric energy from any supplier of electric energy licensed to sell retail electric energy within the~~
289 ~~Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving~~
290 ~~the exclusive service territory in which such a customer is located, subject to the following conditions:~~

291 a. ~~If such customer does not purchase electric energy from licensed suppliers after that date, such~~
292 ~~customer shall purchase electric energy from its incumbent electric utility.~~

293 b. ~~Except as provided in subdivision 4, the demands of individual retail customers may not be~~
294 ~~aggregated or combined for the purpose of meeting the demand limitations of this provision, any other~~
295 ~~provision of this chapter to the contrary notwithstanding. For the purposes of this section, each~~
296 ~~noncontiguous site will nevertheless constitute an individual retail customer even though one or more~~
297 ~~such sites may be under common ownership of a single person.~~

298 c. ~~If such customer does purchase electric energy from licensed suppliers after the expiration or~~
299 ~~termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the~~
300 ~~incumbent electric utility without giving five years' advance written notice of such intention to such~~

301 utility, except where such customer demonstrates to the Commission, after notice and opportunity for
302 hearing, through clear and convincing evidence that its supplier has failed to perform, or has
303 anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of
304 the customer, and that such customer is unable to obtain service at reasonable rates from an alternative
305 supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an
306 exemption from the five-year notice requirement, such customer may thereafter purchase electric energy
307 at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the
308 remainder of the five-year notice period, after which point the customer may purchase electric energy
309 from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such
310 customer shall be allowed to individually purchase electric energy from the utility under rates, terms,
311 and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the
312 Commission finds that neither such customer's incumbent electric utility nor retail customers of such
313 utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in
314 a manner contrary to the public interest by granting such petition. In making such determination, the
315 Commission shall take into consideration, without limitation, the impact and effect of any and all other
316 previously approved petitions of like type with respect to such incumbent electric utility. Any customer
317 that returns to purchase electric energy from its incumbent electric utility, before or after expiration of
318 the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the
319 Commission pursuant to subdivision C 1.

320 d. The costs of serving a customer that has received an exemption from the five-year notice
321 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the
322 actual expenses of procuring such electric energy from the market, (ii) additional administrative and
323 transaction costs associated with procuring such energy, including, but not limited to, costs of
324 transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as
325 determined pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by
326 the Commission for determining such costs shall ensure that neither utilities nor other retail customers
327 are adversely affected in a manner contrary to the public interest.

328 4. After the expiration or termination of capped rates, two or more individual nonresidential retail
329 customers of electric energy within the Commonwealth, whose individual demand during the most recent
330 calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate
331 or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to
332 become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail
333 electric energy within the Commonwealth under the conditions specified in subdivision 3. The
334 Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

335 a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not
336 choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary
337 to the public interest by granting such petition. In making such determination, the Commission shall
338 take into consideration, without limitation, the impact and effect of any and all other previously
339 approved petitions of like type with respect to such incumbent electric utility; and

340 b. Approval of such petition is consistent with the public interest.

341 If such petition is approved, all customers whose load has been aggregated or combined shall
342 thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a single,
343 individual customer for the purposes of said subdivision. In addition, the Commission shall impose
344 reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they
345 continue, as a group, to meet the demand limitations of subdivision 3. If the Commission finds, after
346 notice and opportunity for hearing, that such group of customers no longer meets the above demand
347 limitations, the Commission may revoke its previous approval of the petition, or take such other actions
348 as may be consistent with the public interest.

349 5. After the expiration or termination of capped rates, individual retail customers of electric energy
350 within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy
351 provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail
352 electric energy within the Commonwealth, except for any incumbent electric utility other than the
353 incumbent electric utility serving the exclusive service territory in which such a customer is located, if
354 the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for
355 electric energy provided 100 percent from renewable energy.

356 B. The Commission may delay or accelerate the implementation of any of the provisions of this
357 section, subject to the following:

358 1. Any such delay or acceleration shall be based on considerations of reliability, safety,
359 communications or market power; and

360 2. Any such delay shall be limited to the period of time required to resolve the issues necessitating
361 the delay, but in no event shall any such delay extend the implementation of customer choice for all

362 customers beyond January 1, 2005.

363 The Commission shall, within a reasonable time, report to the General Assembly, or any legislative
364 entity monitoring the restructuring of Virginia's electric industry, any such delays and the reasons
365 therefor.

366 C. The Commission may conduct pilot programs encompassing retail customer choice of electricity
367 energy suppliers for each incumbent electric utility that has not transferred functional control of its
368 transmission facilities to a regional transmission entity prior to January 1, 2003. Upon application of an
369 incumbent electric utility, the Commission may establish opt-in and opt-out municipal aggregation pilots
370 and any other pilot programs the Commission deems to be in the public interest, and the Commission
371 shall report to the Commission on Electric Utility Restructuring on the status of such pilots by
372 November of each year through 2006.

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

375 E C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and,
376 if so, for what minimum periods, customers who request service from an incumbent electric utility
377 pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service
378 from other suppliers of electric energy, shall be required to use such service from such incumbent
379 electric utility or default service provider, as determined to be in the public interest by the Commission.

380 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the
381 management and control of an incumbent electric utility's transmission assets to a regional transmission
382 entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility
383 (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods
384 prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such
385 minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such
386 utility or default providers after a period of obtaining electric energy from another supplier. Such costs
387 shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional
388 administrative and transaction costs associated with procuring such energy, including, but not limited to,
389 costs of *transmission*, transmission line losses, and ancillary services, and (iii) a reasonable margin. The
390 methodology of ascertaining such costs shall be determined and approved by the Commission after
391 notice and opportunity for hearing and after review of any plan filed by such utility to procure electric
392 energy to serve such customers. The methodology established by the Commission for determining such
393 costs shall be consistent with the goals of (a) promoting the development of effective competition and
394 economic development within the Commonwealth as provided in subsection A of § 56-596, and (b)
395 ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy
396 from alternate suppliers are adversely affected.

397 3. Notwithstanding the provisions of subsection D of § 56-582 and ~~subdivision subsection C 4~~ of
398 § 56-585, however, any such customers exempted from any applicable minimum stay periods as
399 provided in subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their
400 incumbent electric utilities, or from any distributor required to provide default service under ~~subdivision~~
401 *subsection B 3* of § 56-585, at the capped rates established under § 56-582, unless such customers agree
402 to satisfy any minimum stay period then applicable while obtaining retail electric energy at capped rates.

403 4. The Commission shall promulgate such rules and regulations as may be necessary to implement
404 the provisions of this subsection, which rules and regulations shall include provisions specifying the
405 commencement date of such minimum stay exemption program.

406 § 56-578. Nondiscriminatory access to transmission and distribution system.

407 A. All distributors shall have the obligation to connect any retail customer, including those using
408 distributed generation, located within its service territory to those facilities of the distributor that are
409 used for delivery of retail electric energy, subject to Commission rules and regulations and approved
410 tariff provisions relating to connection of service.

411 B. Except as otherwise provided in this chapter, every distributor shall provide distribution service
412 within its service territory on a basis which is just, reasonable, and not unduly discriminatory to
413 suppliers of electric energy, including distributed generation, as the Commission may determine. The
414 distribution services provided to each supplier of electric energy shall be comparable in quality to those
415 provided by the distribution utility to itself or to any affiliate. ~~The Commission shall establish rates,~~
416 ~~terms and conditions for distribution service under Chapter 10 (§ 56-232 et seq.) of this title.~~

417 C. The Commission shall establish interconnection standards to ensure transmission and distribution
418 safety and reliability, which standards shall not be inconsistent with nationally recognized standards
419 acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall
420 seek to prevent barriers to new technology and shall not make compliance unduly burdensome and
421 expensive. The Commission shall determine questions about the ability of specific equipment to meet
422 interconnection standards.

423 D. The Commission shall consider developing expedited permitting processes for small generation
 424 facilities of fifty megawatts or less. The Commission shall also consider developing a standardized
 425 permitting process and interconnection arrangements for those power systems less than 500 kilowatts
 426 which have demonstrated approval from a nationally recognized testing laboratory acceptable to the
 427 Commission.

428 E. Upon the separation and deregulation of the generation function and services of incumbent electric
 429 utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and
 430 services, to the extent not preempted by federal law. Nothing in this section shall impair the
 431 Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 with respect to the construction of
 432 electric transmission facilities.

433 F. If the Commission determines that increases in the capacity of the transmission systems in the
 434 Commonwealth, or modifications in how such systems are planned, operated, maintained, used, financed
 435 or priced, will promote the efficient development of competition in the sale of electric energy, the
 436 Commission may, to the extent not preempted by federal law, require one or more persons having any
 437 ownership or control of, or responsibility to operate, all or part of such transmission systems to:

438 1. Expand the capacity of transmission systems;

439 2. File applications and tariffs with the Federal Energy Regulatory Commission (FERC) which (i)
 440 make transmission systems capacity available to retail sellers or buyers of electric energy under terms
 441 and conditions described by the Commission and (ii) require owners of generation capacity located in
 442 the Commonwealth to bear an appropriate share of the cost of transmission facilities, to the extent such
 443 cost is attributable to such generation capacity;

444 3. Enter into a contract with, or provide information to, a regional transmission entity; or

445 4. Take such other actions as the Commission determines to be necessary to carry out the purposes
 446 of this chapter.

447 G. If the Commission determines, after notice and opportunity for hearing, that a person has or will
 448 have, as a result of such person's control of electric generating capacity or energy within a transmission
 449 constrained area, market power over the sale of electric generating capacity or energy to retail customers
 450 located within the Commonwealth, the Commission may, to the extent not preempted by federal law and
 451 to the extent that the Commission determines market power is not adequately mitigated by rules and
 452 practices of the applicable regional transmission entity having responsibility for management and control
 453 of transmission assets within the Commonwealth, adjust such person's rates for such electric generating
 454 capacity or energy, only within such transmission-constrained area and only to the extent necessary to
 455 protect retail customers from such market power. Such rates shall remain regulated until the
 456 Commission, after notice and opportunity for hearing, determines that the market power has been
 457 mitigated.

458 § 56-579. Regional transmission entities.

459 A. As set forth in § 56-577, each incumbent electric utility owning, operating, controlling, or having
 460 an entitlement to transmission capacity shall join or establish a regional transmission entity, which
 461 hereafter may be referred to as "RTE," to which such utility shall transfer the management and control
 462 of its transmission assets, subject to the following:

463 1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any
 464 responsibility to operate, any portion of any transmission system located in the Commonwealth prior to
 465 July 1, 2004, and without obtaining, following notice and hearing, the prior approval of the
 466 Commission, as hereinafter provided. However, each incumbent electric utility shall file an application
 467 for approval pursuant to this section by July 1, 2003, and shall transfer management and control of its
 468 transmission assets to a regional transmission entity by January 1, 2005, subject to Commission approval
 469 as provided in this section.

470 2. The Commission shall develop rules and regulations under which any such incumbent electric
 471 utility owning, operating, controlling, or having an entitlement to transmission capacity within the
 472 Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon
 473 such terms and conditions that the Commission determines will:

474 a. Promote:

475 (1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission
 476 systems and any necessary additions thereto; and

477 (2) Policies for the pricing and access for service over such systems that are safe, reliable, efficient,
 478 not unduly discriminatory and consistent with the orderly development of competition in the
 479 Commonwealth;

480 b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

481 c. Be effectuated on terms that fairly compensate the transferor;

482 d. Generally promote the public interest, and are consistent with (i) ensuring that consumers' needs
 483 for economic and reliable transmission are met and (ii) meeting the transmission needs of electric

484 generation suppliers both within and without this Commonwealth, including those that do not own,
485 operate, control or have an entitlement to transmission capacity.

486 B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing
487 elements of regional transmission entity structures essential to the public interest, which elements shall
488 be applied by the Commission in determining whether to authorize transfer of ownership or control from
489 an incumbent electric utility to a regional transmission entity.

490 C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all
491 proceedings concerning regional transmission entities furnishing transmission services within the
492 Commonwealth, before the Federal Energy Regulatory Commission. Such participation may include such
493 intervention as is permitted state utility regulators under Federal Energy Regulatory Commission rules
494 and procedures.

495 D. Nothing in this section shall be deemed to abrogate or modify:

496 1. The Commission's authority over transmission line or facility construction, enlargement or
497 acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.) of this title;

498 2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a
499 public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this
500 title; however, on and after January 1, 2002, a petition may not be filed to exercise the right of eminent
501 domain in conjunction with the construction or enlargement of any utility facility whose purpose is the
502 generation of electric energy; or

503 3. The Commission's authority over retail electric energy sold to retail customers within the
504 Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as
505 specified in § 56-587.

506 E. For purposes of this section, transmission capacity shall not include capacity that is primarily
507 operated in a distribution function, as determined by the Commission, taking into consideration any
508 binding federal precedents.

509 F. Any request to the Commission for approval of such transfer of ownership or control of or
510 responsibility for transmission facilities shall include a study of the comparative costs and benefits
511 thereof, which study shall analyze the economic effects of the transfer on consumers, including the
512 effects of transmission congestion costs. The Commission may approve such a transfer if it finds, after
513 notice and hearing, that the transfer satisfies the conditions contained in this section.

514 G. The Commission shall report annually to the Commission on Electric Utility Restructuring its
515 assessment of the success in the practices and policies of the RTE facilitating the orderly development
516 of competition in the Commonwealth. Such report shall set forth actions taken by the Commission
517 regarding requests for the approval of any transfer of ownership or control of transmission facilities to
518 an RTE, including a description of the economic effects of such proposed transfers on consumers.

519 § 56-580. Transmission and distribution of electric energy.

520 A. ~~The~~ Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to
521 this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the
522 extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

523 B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the
524 reliability, quality and maintenance by transmitters and distributors of their transmission and retail
525 distribution systems.

526 C. The Commission shall develop codes of conduct governing the conduct of incumbent electric
527 utilities and affiliates thereof when any such affiliates provide, or control any entity that provides,
528 generation, distribution, or transmission of any services made competitive pursuant to § 56-581.1, to the
529 extent necessary to prevent impairment of competition. *Nothing in this chapter shall prevent an*
530 *incumbent electric utility from offering metering options to its customers.*

531 D. The Commission shall permit the construction and operation of electrical generating facilities in
532 Virginia upon a finding that such generating facility and associated facilities (i) will have no material
533 adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are
534 required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007,
535 and if they are to be constructed and operated by any regulated utility whose rates are regulated
536 pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a
537 petition for a certificate to construct and operate a generating facility described in this subsection, the
538 Commission shall give consideration to the effect of the facility and associated facilities on the
539 environment and establish such conditions as may be desirable or necessary to minimize adverse
540 environmental impact as provided in § 56-46.1. In order to avoid duplication of governmental activities,
541 any valid permit or approval required for an electric generating plant and associated facilities issued or
542 granted by a federal, state or local governmental entity charged by law with responsibility for issuing
543 permits or approvals regulating environmental impact and mitigation of adverse environmental impact or
544 for other specific public interest issues such as building codes, transportation plans, and public safety,

545 whether such permit or approval is prior to or after the Commission's decision, shall be deemed to
 546 satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or
 547 approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing
 548 such permit or approval, and the Commission shall impose no additional conditions with respect to such
 549 matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case
 550 open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance
 551 with applicable law. In the case of a proposed facility located in a region that was designated as of July
 552 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air
 553 Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon
 554 issuance of any environmental permit or approval.

555 E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric
 556 utilities, and incumbent electric utilities shall continue to provide distribution services within their
 557 exclusive service territories as established by the Commission. ~~Nothing in this chapter shall impair the~~
 558 ~~Commission's Subject to the provisions of § 56-585.1, the Commission shall continue to exercise its~~
 559 existing authority over the provision of electric distribution services to retail customers in the
 560 Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.)
 561 and 10.1 (§ 56-265.1 et seq.) of this title.

562 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or
 563 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt
 564 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any
 565 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt
 566 from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii)
 567 that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail
 568 customer *eligible to purchase electric energy from any supplier in accordance with § 56-577 if that*
 569 *retail customer is outside the geographic area that was served by such municipality as of July 1, 1999,*
 570 except (a) any area within the municipality that was served by an incumbent public utility as of that
 571 date but was thereafter served by an electric utility owned or operated by a municipality or by an
 572 authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403
 573 pursuant to the terms of a franchise agreement between the municipality and the incumbent public
 574 utility, or (b) where the geographic area served by an electric utility owned or operated by a
 575 municipality is changed pursuant to mutual agreement between the municipality and the affected
 576 incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated by a
 577 municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the
 578 referendum requirement of § 15.2-5403 is made subject to the provisions of this chapter pursuant to
 579 clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to
 580 incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

581 G. The applicability of this chapter to any investor-owned incumbent electric utility supplying
 582 electric service to retail customers on January 1, 2003, whose service territory assigned to it by the
 583 Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be
 584 suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any
 585 other service territory in any jurisdiction to customers who have the right to receive retail electric energy
 586 from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates
 587 established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and
 588 (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs
 589 pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

590 H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for
 591 which applications were filed with the Commission prior to July 1, 2002, shall be extended for an
 592 additional two years from the expiration date that otherwise would apply.

593 § 56-581. Regulation of rates subject to Commission's jurisdiction.

594 A. ~~Subject to the provisions of § 56-582 After the expiration or termination of capped rates except~~
 595 ~~as provided in § 56-585.1, the Commission shall regulate the rates of investor-owned incumbent electric~~
 596 ~~utilities for the transmission of electric energy, to the extent not prohibited by federal law, and for the~~
 597 ~~generation of electric energy and the distribution of electric energy to such retail customers on an~~
 598 ~~unbundled basis, but, subject to the provisions of this chapter after the date of customer choice, the~~
 599 ~~Commission no longer shall regulate rates and services for the generation component of retail electric~~
 600 ~~energy sold to retail customers pursuant to § 56-585.1.~~

601 B. Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power supply
 602 cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase
 603 or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be
 604 made to such cooperative's rates as a consequence thereof.

605 C. Except for the provision of default services under § 56-585 or emergency services in § 56-586,

606 nothing in this chapter shall authorize the Commission to regulate the rates or charges for electric
607 service to the Commonwealth and its municipalities.

608 § 56-582. Rate caps.

609 A. The Commission shall establish capped rates, effective January 1, 2001, for each service territory
610 of every incumbent utility as follows:

611 1. Capped rates shall be established for customers purchasing bundled electric transmission,
612 distribution and generation services from an incumbent electric utility.

613 2. Capped rates for electric generation services, only, shall also be established for the purpose of
614 effecting customer choice for those retail customers authorized under this chapter to purchase generation
615 services from a supplier other than the incumbent utility during this period.

616 3. The capped rates established under this section shall be the rates in effect for each incumbent
617 utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate
618 application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and
619 subsequently approved by the Commission, and made by an incumbent electric utility that is not
620 currently bound by a rate case settlement adopted by the Commission that extends in its application
621 beyond January 1, 2002. If such rate application is filed, the rates proposed therein shall go into effect
622 on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the
623 Commission has completed its investigation of such application. Any amount of the rates found
624 excessive by the Commission shall be subject to refund with interest, as may be ordered by the
625 Commission. The Commission shall act upon such applications prior to commencement of the period of
626 transition to customer choice. Such rate application and the Commission's approval shall give due
627 consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for
628 a period of time ending as late as July 1, 2007. The capped rates established under this section, which
629 include rates, tariffs, electric service contracts, and rate programs (including experimental rates,
630 regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs
631 of each incumbent electric utility, provided that experimental rates and rate programs may be closed to
632 new customers upon application to the Commission. Such capped rates shall also include rates for new
633 services where, subsequent to January 1, 2001, rate applications for any such rates are filed by
634 incumbent electric utilities with the Commission and are thereafter approved by the Commission. In
635 establishing such rates for new services, the Commission may use any rate method that promotes the
636 public interest and that is fairly compensatory to any utilities requesting such rates.

637 B. The Commission may adjust such capped rates in connection with the following: (i) utilities'
638 recovery of fuel and purchased power costs pursuant to § 56-249.6, and, if applicable, in accordance
639 with the terms of any Commission order approving the divestiture of generation assets pursuant to
640 § 56-590, (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues,
641 (iii) any financial distress of the utility beyond its control, (iv) with respect to cooperatives that were not
642 members of a power supply cooperative on January 1, 1999, and as long as they do not become
643 members, their cost of purchased wholesale power and discounts from capped rates to match the cost of
644 providing distribution services, (v) with respect to cooperatives that were members of a power supply
645 cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost
646 adjustment clauses of their tariffs pursuant to § 56-231.33, and (vi) with respect to incumbent electric
647 utilities that were not, as of the effective date of this chapter, bound by a rate case settlement adopted
648 by the Commission that extended in its application beyond January 1, 2002, the Commission shall adjust
649 such utilities' capped rates, not more than once in any 12-month period, for the timely recovery of their
650 incremental costs for transmission or distribution system reliability and compliance with state or federal
651 environmental laws or regulations to the extent such costs are prudently incurred on and after July 1,
652 2004. Any adjustments pursuant to § 56-249.6 and clause (i) of this subsection by an incumbent electric
653 utility that transferred all of its generation assets to an affiliate with the approval of the Commission
654 pursuant to § 56-590 prior to January 1, 2002, shall be effective only on and after July 1, 2007.
655 Notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include
656 incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting
657 retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined
658 by the Commission to be fair and reasonable to the utility and its customers.

659 C. A utility may petition the Commission to terminate the capped rates to all customers any time
660 after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an
661 effectively competitive market for generation services within the service territory of that utility. If its
662 capped rates, as established and adjusted from time to time pursuant to subsections A and B, are
663 continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this
664 chapter, bound by a rate case settlement adopted by the Commission that extends in its application
665 beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June
666 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July

667 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for
 668 approval of a one-time change in its rates. Any change in rates pursuant to this subsection by an
 669 incumbent electric utility that divested its generation assets with approval of the Commission pursuant to
 670 § 56-590 prior to January 1, 2002, shall be in accordance with the terms of any Commission order
 671 approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection
 672 shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

673 D. Until the expiration or termination of capped rates as provided in this section, the incumbent
 674 electric utility, consistent with the functional separation plan implemented under § 56-590, shall make
 675 electric service available at capped rates established under this section to any customer in the incumbent
 676 electric utility's service territory, including any customer that, until the expiration or termination of
 677 capped rates, requests such service after a period of utilizing service from another supplier.

678 E. During the period when capped rates are in effect for an incumbent electric utility, such utility
 679 may file with the Commission a plan describing the method used by such utility to assure full funding
 680 of its nuclear decommissioning obligation and specifying the amount of the revenues collected under
 681 either the capped rates, as provided in this section, or the wires charges, as provided in *former* § 56-583,
 682 that are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission
 683 shall approve the plan upon a finding that the plan is not contrary to the public interest.

684 F. The capped rates established pursuant to this section shall expire on December 31, ~~2010~~ 2008,
 685 unless sooner terminated by the Commission pursuant to the provisions of subsection C; *however, rates*
 686 *after the expiration or termination of capped rates shall equal capped rates until such rates are changed*
 687 *pursuant to other provisions of this title.*

688 § 56-584. Stranded costs.

689 Just and reasonable net stranded costs, to the extent that they exceed zero value in total for the
 690 incumbent electric utility, shall be recoverable by each incumbent electric utility provided each
 691 incumbent electric utility shall only recover its just and reasonable net stranded costs through either
 692 capped rates as provided in § 56-582 ~~or wires charges as provided in § 56-583~~. To the extent not
 693 preempted by federal law, the establishment by the Commission of wires charges for any distribution
 694 cooperative shall be conditioned upon such cooperative entering into binding commitments by which it
 695 will pay to any power supply cooperative of which such distribution cooperative is or was a member, as
 696 compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such
 697 wires charges, as determined by the Commission.

698 § 56-585. Default service.

699 A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of
 700 default service and (ii) establish one or more programs making such services available to retail
 701 customers requiring them ~~commencing with~~ *during* the availability throughout the Commonwealth of
 702 customer choice for all retail customers as established pursuant to § 56-577. For purposes of this
 703 chapter, "default service" means service made available under this section to retail customers who (i) do
 704 not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii)
 705 have contracted with an alternative supplier who fails to perform. *Availability of default service shall*
 706 *expire upon the expiration or termination of capped rates.*

707 B. ~~From time to time, the Commission shall designate one or more providers of default service. In~~
 708 ~~doing so, the Commission:~~

709 1. ~~Shall take into account the characteristics and qualifications of prospective providers, including~~
 710 ~~proposed rates, experience, safety, reliability, corporate structure, access to electric energy resources~~
 711 ~~necessary to serve customers requiring such services, and other factors deemed necessary to ensure the~~
 712 ~~reliable provision of such services, to prevent the inefficient use of such services, and to protect the~~
 713 ~~public interest;~~

714 2. ~~May periodically, as necessary, conduct competitive bidding processes under procedures~~
 715 ~~established by the Commission and, upon a finding that the public interest will be served, designate one~~
 716 ~~or more willing and suitable providers to provide one or more components of such services, in one or~~
 717 ~~more regions of the Commonwealth, to one or more classes of customers;~~

718 3. ~~To the extent that default service is not provided pursuant to a designation under subdivision 2,~~
 719 ~~may require a distributor to provide~~ *A distributor shall have the obligation and right to be the supplier*
 720 *of default services in its certificated service territory, and shall do so, in a safe and reliable manner, one*
 721 *or more components of such services, or to form an affiliate to do so, in one or more regions of the*
 722 *Commonwealth, at rates determined pursuant to subsection C and for periods specified by the*
 723 *Commission; however, the Commission may not require a distributor, or affiliate thereof, to provide any*
 724 *such services outside the territory in which such distributor provides service; and*

725 4. ~~Notwithstanding imposition on a distributor by the Commission of the requirement provided in~~
 726 ~~subdivision 3, the Commission may thereafter, upon a finding that the public interest will be served,~~
 727 ~~designate through the competitive bidding process established in subdivision 2 one or more willing and~~

728 suitable providers to provide one or more components of such services, in one or more regions of the
729 Commonwealth, to one or more classes of customers.

730 C. If a distributor is required to provide default services pursuant to subdivision B 3, after notice and
731 opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates,
732 terms and conditions for default services, taking into account the characteristics and qualifications set
733 forth in subdivision B 1, as follows:

734 1. Until the expiration or termination of capped rates, the rates for default service provided by a
735 distributor shall equal the capped rates established pursuant to subdivision A 2 of § 56-582. After the
736 expiration or termination of such capped rates, the rates for default services shall be based upon
737 competitive market prices for electric generation services.

738 2. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and
739 conditions for default service by such distributor on the basis of the provisions of Chapter 10 (§ 56-232
740 et seq.) of this title, except that the generation-related components of such rates shall be (i) based upon
741 a plan approved by the Commission as set forth in subdivision 3 or (ii) in the absence of an approved
742 plan, based upon prices for generation capacity and energy in competitive regional electricity markets,
743 except as provided in subsection G.

744 3. Prior to a distributor's provision of default service, and upon request of such distributor, the
745 Commission shall review any plan filed by the distributor to procure electric generation services for
746 default service. The Commission shall approve such plan if the Commission determines that the
747 procurement of electric generation capacity and energy under such plan is adequately based upon prices
748 of capacity and energy in competitive regional electricity markets. If the Commission determines that the
749 plan does not adequately meet such criteria, then the Commission shall modify the plan, with the
750 concurrence of the distributor, or reject the plan.

751 4. a. For purposes of this subsection, in determining whether regional electricity markets are
752 competitive and rates for default service, the Commission shall consider (i) the liquidity and price
753 transparency of such markets, (ii) whether competition is an effective regulator of prices in such
754 markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable
755 accessibility of such markets to the regional transmission entity to which the distributor belongs, and (v)
756 such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity
757 market" means a market in which competition, and not statutory or regulatory price constraints,
758 effectively regulates the price of electricity.

759 b. If, in establishing a distributor's default service generation rates, the Commission is unable to
760 identify regional electricity markets where competition is an effective regulator of rates, then the
761 Commission shall establish such distributor's default service generation rates by setting rates that would
762 approximate those likely to be produced in a competitive regional electricity market. Such proxy
763 generation rates shall take into account: (i) the factors set forth in subdivision C 4 a, and (ii) such
764 additional factors as the Commission deems necessary to produce such proxy generation rates.

765 D. In implementing this section, the Commission shall take into consideration the need of default
766 service customers for rate stability and for protection from unreasonable rate fluctuations.

767 E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after notice
768 and opportunity for hearing, whether there is a sufficient degree of competition such that the elimination
769 of default service for particular customers, particular classes of customers or particular geographic areas
770 of the Commonwealth will not be contrary to the public interest. The Commission shall report its
771 findings and recommendations concerning modification or termination of default service to the General
772 Assembly and to the Commission on Electric Utility Restructuring, not later than December 1, 2004, and
773 annually thereafter.

774 F D. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation
775 and right to be the supplier of default services in its certificated service territory. A distribution electric
776 cooperative's rates for such default services shall be the capped rate for the duration of the capped rate
777 period and shall be based upon the distribution electric cooperative's prudently incurred cost thereafter.
778 Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default
779 services, for the purposes of this subsection, shall include the supply of electric energy and all services
780 made competitive pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates
781 thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall
782 designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant
783 to subsection B.

784 G. To ensure a reliable and adequate supply of electricity, and to promote economic development, an
785 investor-owned distributor that has been designated a default service provider under this section may
786 petition the Commission for approval to construct, or cause to be constructed, a coal-fired generation
787 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
788 described in § 15.2-6002, to meet its native load and default service obligations, regardless of whether

789 such facility is located within or without the distributor's service territory. The Commission shall
 790 consider any petition filed under this subsection in accordance with its competitive bidding rules
 791 promulgated pursuant to §—56-234.3, and in accordance with the provisions of this chapter.
 792 Notwithstanding the provisions of subdivision C 3 related to the price of default service, a distributor
 793 that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the
 794 facility, including allowance for funds used during construction, life-cycle costs, and costs of
 795 infrastructure associated therewith, plus a fair rate of return, through its rates for default service. A
 796 distributor filing a petition for the construction of a facility under the provisions of this subsection shall
 797 file with its application a plan, or a revision to a plan previously filed, as described in subdivision C 3,
 798 that proposes default service rates to ensure such cost recovery and fair rate of return. The construction
 799 of such facility that utilizes energy resources located within the Commonwealth is in the public interest,
 800 and in determining whether to approve such facility, the Commission shall liberally construe the
 801 provisions of this title.

802 § 56-585.1. *Generation, distribution, and transmission rates after capped rates terminate or expire.*

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

839 1. *Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,*
 840 *and such reviews shall be conducted in a single, combined proceeding. The first such review shall*
 841 *utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission*
 842 *may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive*
 843 *12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive*
 844 *12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings*
 845 *utilizing the two successive 12-month test periods ending December 31 immediately preceding the year*
 846 *in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an*
 847 *investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case*
 848 *settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a*
 849 *Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.*

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

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

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

874 c. The Commission may increase or decrease such combined rate of return by up to 100 basis points
 875 based on the generating plant performance, customer service, and operating efficiency of a utility, as
 876 compared to nationally recognized standards determined by the Commission to be appropriate for such
 877 purposes, such action being referred to in this section as a Performance Incentive. If the Commission
 878 adopts such Performance Incentive, it shall remain in effect without change until the next biennial
 879 review for such utility is concluded and shall not be modified pursuant to any provision of the
 880 remainder of this subsection.

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

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

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

909 "Initial Return" means the fair combined rate of return on common equity determined for such utility
 910 by the Commission on the first occasion after July 1, 2009, under any provision of this subsection

911 pursuant to the provisions of subdivision 2 a.

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

915 f. The determination of such returns, including the determination of whether to adopt a Performance
 916 Incentive and the amount thereof, shall be made by the Commission on a stand-alone basis, and
 917 specifically without regard to any return on common equity or other matters determined with regard to
 918 facilities described in subdivision 6.

919 g. If the combined rate of return on common equity earned by both the generation and distribution
 920 services is no more than 50 basis points above or below the return as so determined, such combined
 921 return shall not be considered either excessive or insufficient, respectively.

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

925 3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2011,
 926 consisting of the schedules contained in the Commission's rules governing utility rate increase
 927 applications (20 VAC 5-200-30); however, if the Commission elects to stagger the dates of the biennial
 928 reviews of utilities as provided in subdivision 1, then Phase I utilities shall commence biennial filings in
 929 2011 and Phase II utilities shall commence biennial filings in 2012. Such filing shall encompass the two
 930 successive 12-month test periods ending December 31 immediately preceding the year in which such
 931 proceeding is conducted, and in every such case the filing for each year shall be identified separately
 932 and shall be segregated from any other year encompassed by the filing. If the Commission determines
 933 that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any
 934 rate adjustment clauses previously implemented pursuant to subdivision 4 or 5 or those related to
 935 facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with
 936 the utility's costs, revenues and investments until the amounts that are the subject of such rate
 937 adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's
 938 costs, revenues and investments only after it makes its initial determination with regard to necessary
 939 rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are
 940 combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and
 941 investments for the purposes of future biennial review proceedings. By the same date, each such utility
 942 shall also file its plan for its projected generation and transmission requirements to serve its native load
 943 for the next 10 years, including how the utility will obtain such resources, the capital requirements for
 944 providing such resources, and the anticipated sources of funding for such resources.

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

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

960 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
 961 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
 962 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
 963 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that comply
 964 with the requirements of clause (vi) of subsection B of § 56-582;

965 b. Projected and actual costs of providing incentives for the utility to design and operate fair and
 966 effective demand-management, conservation, energy efficiency, and load management programs. The
 967 Commission shall approve such a petition if it finds that the program is in the public interest and that
 968 the need for the incentives is demonstrated with reasonable certainty; provided that the Commission
 969 shall allow the recovery of such costs as it finds are reasonable;

970 c. Projected and actual costs of participation in a renewable energy portfolio standard program
 971 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve

972 such a petition allowing the recovery of such costs as are provided for in a program approved pursuant
 973 to § 56-585.2; and

974 d. Projected and actual costs of projects that the Commission finds to be necessary to comply with
 975 state or federal environmental laws or regulations applicable to generation facilities used to serve the
 976 utility's native load obligations. The Commission shall approve such a petition if it finds that such costs
 977 are necessary to comply with such environmental laws or regulations. If the Commission determines it
 978 would be just, reasonable, and in the public interest, the Commission may include the enhanced rate of
 979 return on common equity prescribed in subdivision 6 in a rate adjustment clause approved hereunder
 980 for a project whose purpose is to reduce the need for construction of new generation facilities by
 981 enabling the continued operation of existing generation facilities. In the event the Commission includes
 982 such enhanced return in such rate adjustment clause, the project that is the subject of such clause shall
 983 be treated as a facility described in subdivision 6 for the purposes of this section.

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

986 6. To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load
 987 obligations and to promote economic development, a utility may at any time, after the expiration or
 988 termination of capped rates, petition the Commission for approval of a rate adjustment clause for
 989 recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
 990 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
 991 described in § 15.2-6002, regardless of whether such facility is located within or without the utility's
 992 service territory, (ii) one or more other generation facilities, or (iii) one or more major unit
 993 modifications of generation facilities; however, such a petition concerning facilities described in clause
 994 (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by
 995 a Phase I utility, or facilities described in clause (i) may also be filed before the expiration or
 996 termination of capped rates. A utility that constructs any such facility shall have the right to recover the
 997 costs of the facility, as accrued against income, through its rates, including projected construction work
 998 in progress, and any associated allowance for funds used during construction, planning, development
 999 and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an
 1000 incentive to undertake such projects, an enhanced rate of return on common equity calculated as
 1001 specified below. The costs of the facility, other than return on projected construction work in progress
 1002 and allowance for funds used during construction, shall not be recovered prior to the date the facility
 1003 begins commercial operation. Such enhanced rate of return on common equity shall be applied to
 1004 allowance for funds used during construction and to construction work in progress during the
 1005 construction phase of the facility and shall thereafter be applied to the entire facility during the first
 1006 portion of the service life of the facility. The first portion of the service life shall be as specified in the
 1007 table below; however, the Commission shall determine the duration of the first portion of the service life
 1008 of any facility, within the range specified in the table below, which determination shall be consistent
 1009 with the public interest and shall reflect the Commission's determinations regarding how critical the
 1010 facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved
 1011 in the development of the facility. After the first portion of the service life of the facility is concluded,
 1012 the utility's general rate of return shall be applied to such facility for the remainder of its service life.
 1013 As used herein, the service life of the facility shall be deemed to begin on the date the facility begins
 1014 commercial operation, and such service life shall be deemed equal in years to the life of that facility as
 1015 used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity
 1016 shall be calculated by adding the basis points specified in the table below to the utility's general rate of
 1017 return, and such enhanced rate of return shall apply only to the facility that is the subject of such rate
 1018 adjustment clause. No change shall be made to any Performance Incentive previously adopted by the
 1019 Commission in implementing any rate of return under this subdivision. Allowance for funds used during
 1020 construction shall be calculated for any such facility utilizing the utility's actual capital structure and
 1021 overall cost of capital, including an enhanced rate of return on common equity as determined pursuant
 1022 to this subdivision, until such construction work in progress is included in rates. The construction of any
 1023 facility described in clause (i) is in the public interest, and in determining whether to approve such
 1024 facility, the Commission shall liberally construe the provisions of this title. The basis points to be added
 1025 to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the
 1026 first portion of that facility's service life to which such enhanced rate of return shall be applied, shall
 1027 vary by type of facility, as specified in the following table:

1029	Type of Generation Facility	Basis Points	First Portion of Service Life
1032	Nuclear-powered	200	Between 12 and 25 years

1033			
1034	Carbon capture compatible,		
1035	clean-coal powered	200	Between 10 and 20 years
1036			
1037	Renewable powered	200	Between 5 and 15 years
1038			
1039	Conventional coal or combined-		
1040	cycle combustion turbine	100	Between 10 and 20 years
1041			

1042 *Generation facilities described in clause (ii) that utilize simple-cycle combustion turbines shall not*
 1043 *receive an enhanced rate of return on common equity as described herein, but instead shall receive the*
 1044 *utility's general rate of return during the construction phase of the facility and, thereafter, for the entire*
 1045 *service life of the facility.*

1046 *For purposes of this subdivision, "general rate of return" means the fair combined rate of return on*
 1047 *common equity as it is determined by the Commission from time to time for such utility pursuant to*
 1048 *subdivision 2. In any proceeding under this subdivision conducted prior to the conclusion of the first*
 1049 *biennial review for such utility, the Commission shall determine a general rate of return for such utility*
 1050 *in the same manner as it would in a biennial review proceeding.*

1051 *Notwithstanding any other provision of this subdivision, if the Commission finds during the biennial*
 1052 *review conducted for a Phase II utility in 2018 that such utility has not filed applications for all*
 1053 *necessary federal and state regulatory approvals to construct one or more nuclear-powered or*
 1054 *coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the*
 1055 *amount of the utility's generating resources as such resources existed on July 1, 2007, or that, if all*
 1056 *such approvals have been received, that the utility has not made reasonable and good faith efforts to*
 1057 *construct one or more such facilities that will provide such additional total capacity within a reasonable*
 1058 *time after obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce*
 1059 *on a prospective basis any enhanced rate of return on common equity previously applied to any such*
 1060 *facility to no less than the general rate of return for such utility and may apply no less than the utility's*
 1061 *general rate of return to any such facility for which the utility seeks approval in the future under this*
 1062 *subdivision.*

1063 *7. Any petition filed pursuant to subdivision 4, 5 or 6 shall be considered by the Commission on a*
 1064 *stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any*
 1065 *costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the*
 1066 *Commission, that are proposed for recovery in such petition and that are related to clause (a) of*
 1067 *subdivision 5, or that are related to facilities and projects described in clause (i) of subdivision 6, shall*
 1068 *be deferred on the books and records of the utility until the Commission's final order in the matter, or*
 1069 *until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any*
 1070 *costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or*
 1071 *during the consideration thereof by the Commission, that are proposed for recovery in such petition and*
 1072 *that are related to facilities and projects described in clause (ii) of subdivision 6 that utilize nuclear*
 1073 *power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled*
 1074 *facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until*
 1075 *the Commission's final order in the matter, or until the implementation of any applicable approved rate*
 1076 *adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination*
 1077 *of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning*
 1078 *only upon the expiration or termination of capped rates, provided, however, that no provision of this act*
 1079 *shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory*
 1080 *Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P*
 1081 *61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or*
 1082 *6 shall be entered not more than three months, eight months, and nine months, respectively, after the*
 1083 *date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate*
 1084 *adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or*
 1085 *upon the expiration or termination of capped rates, whichever is later.*

1086 *8. If the Commission determines as a result of such biennial review that:*

1087 *(i) The utility has, during the test period or periods under review, considered as a whole, earned*
 1088 *more than 50 basis points below a fair combined rate of return on both its generation and distribution*
 1089 *services, as determined in subdivision 2, without regard to any return on common equity or other*
 1090 *matters determined with respect to facilities described in subdivision 6, the Commission shall order*
 1091 *increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing*
 1092 *the utility's services and to earn not less than such fair combined rate of return, using the most recently*
 1093 *ended 12-month test period as the basis for determining the amount of the rate increase necessary.*

1094 However, the Commission may not order such rate increase unless it finds that the resulting rates will
 1095 provide the utility with the opportunity to fully recover its costs of providing its services and to earn not
 1096 less than a fair combined rate of return on both its generation and distribution services, as determined
 1097 in subdivision 2, without regard to any return on common equity or other matters determined with
 1098 respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the
 1099 basis for determining the permissibility of any rate increase under the standards of this sentence, and
 1100 the amount thereof;

1101 (ii) The utility has, during the test period or test periods under review, considered as a whole,
 1102 earned more than 50 basis points above a fair combined rate of return on both its generation and
 1103 distribution services, as determined in subdivision 2, without regard to any return on common equity or
 1104 other matters determined with respect to facilities described in subdivision 6, the Commission shall,
 1105 subject to the provisions of subdivision 9, direct that 60 percent of the amount of such earnings that
 1106 were more than 50 basis points above such fair combined rate of return for the test period or periods
 1107 under review, considered as a whole, shall be credited to customers' bills. Any such credits shall be
 1108 amortized over a period of six to 12 months, as determined at the discretion of the Commission,
 1109 following the effective date of the Commission's order, and shall be allocated among customer classes
 1110 such that the relationship between the specific customer class rates of return to the overall target rate of
 1111 return will have the same relationship as the last approved allocation of revenues used to design base
 1112 rates; or

1113 (iii) Such biennial review is the second consecutive biennial review in which the utility has, during
 1114 the test period or test periods under review, considered as a whole, earned more than 50 basis points
 1115 above a fair combined rate of return on both its generation and distribution services, as determined in
 1116 subdivision 2, without regard to any return on common equity or other matter determined with respect
 1117 to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9
 1118 and in addition to the actions authorized in clause (ii) of this subdivision, also order reductions to the
 1119 utility's rates it finds appropriate. However, the Commission may not order such rate reduction unless it
 1120 finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of
 1121 providing its services and to earn not less than a fair combined rate of return on both its generation
 1122 and distribution services, as determined in subdivision 2, without regard to any return on common
 1123 equity or other matters determined with respect to facilities described in subdivision 6, using the most
 1124 recently ended 12-month test period as the basis for determining the permissibility of any rate reduction
 1125 under the standards of this sentence, and the amount thereof.

1126 The Commission's final order regarding such biennial review shall be entered not more than nine
 1127 months after the end of the test period, and any revisions in rates or credits so ordered shall take effect
 1128 not more than 60 days after the date of the order.

1129 9. If, as a result of a biennial review required under this subsection and conducted with respect to
 1130 any test period or periods under review ending later than December 31, 2010 (or, if the Commission
 1131 has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending
 1132 later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
 1133 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
 1134 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
 1135 points above a fair combined rate of return on both its generation and distribution services, as
 1136 determined in subdivision 2, without regard to any return on common equity or other matters
 1137 determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated
 1138 rates of such utility at the end of the most recently-ended 12-month test period exceeded the annual
 1139 increases in the United States Average Consumer Price Index for all items, all urban consumers
 1140 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor,
 1141 compounded annually, when compared to the total aggregate regulated rates of such utility as
 1142 determined pursuant to the biennial review conducted for the base period, the Commission shall, unless
 1143 it finds that such action is not in the public interest or that the provisions of clauses (ii) and (iii) of
 1144 subdivision 8 are more consistent with the public interest, direct that any or all earnings for such test
 1145 period or periods under review, considered as a whole that were more than 50 basis points above such
 1146 fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of clauses (ii)
 1147 and (iii) of subdivision 8. Any such credits shall be amortized and allocated among customer classes in
 1148 the manner provided by clause (ii) of subdivision 8. For purposes of this subdivision:

1149 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has
 1150 elected to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending
 1151 December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the
 1152 most recent test period with respect to which credits have been applied to customers' bills under the
 1153 provisions of this subdivision, whichever is later.

1154 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6,

1155 *except for any increases in fuel tariffs deferred by the Commission for recovery in periods after*
 1156 *December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate*
 1157 *adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates*
 1158 *pursuant to clause (i) of subdivision 8; (iv) revisions to the utility's rates pursuant to the Commission's*
 1159 *rules governing utility rate increase applications (20 VAC 5-200-30), as permitted by subsection B,*
 1160 *occurring after July 1, 2009; and (v) base rates in effect as of July 1, 2009.*

1161 *10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of*
 1162 *any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital*
 1163 *structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of*
 1164 *such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt*
 1165 *to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant*
 1166 *to clauses (i) and (iii) of subdivision 8, and without regard to the cost of capital, capital structure,*
 1167 *revenues, expenses or investments of any other entity with which such utility may be affiliated. In*
 1168 *particular, and without limitation, the Commission shall determine the federal and state income tax costs*
 1169 *for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's*
 1170 *apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if*
 1171 *the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax*
 1172 *costs shall be calculated according to the applicable federal income tax rate and shall exclude any*
 1173 *consolidated tax liability or benefit adjustments originating from any taxable income or loss of its*
 1174 *affiliates.*

1175 *B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying*
 1176 *for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase*
 1177 *applications (20 VAC 5-200-30); however, in any such filing, a fair rate of return on common equity*
 1178 *shall be determined pursuant to subdivision 2. Nothing in this section shall preclude such utility's*
 1179 *recovery of fuel and purchased power costs as provided in § 56-249.6.*

1180 *C. Except as otherwise provided in this section, the Commission shall exercise authority over the*
 1181 *rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation,*
 1182 *transmission and distribution services to retail customers in the Commonwealth pursuant to the*
 1183 *provisions of Chapter 10 (§ 56-232 et seq.) of this title, including specifically § 56-235.2.*

1184 *D. Nothing in this section shall preclude the Commission from determining, during any proceeding*
 1185 *authorized or required by this section, the reasonableness or prudence of any cost incurred or projected*
 1186 *to be incurred, by a utility in connection with the subject of the proceeding. A determination of the*
 1187 *Commission regarding the reasonableness or prudence of any such cost shall be consistent with the*
 1188 *Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to*
 1189 *the provisions of Chapter 10 (§ 56-232 et seq.) of this title.*

1190 *E. The Commission shall promulgate such rules and regulations as may be necessary to implement*
 1191 *the provisions of this section.*

1192 *§ 56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard*
 1193 *program.*

1194 *A. As used in this section:*

1195 *"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such*
 1196 *renewable energy is (i) generated or purchased in the Commonwealth or in the interconnection region*
 1197 *of the regional transmission entity of which the participating utility is a member, as it may change from*
 1198 *time to time; (ii) generated by a public utility providing electric service in the Commonwealth from a*
 1199 *facility in which the public utility owns at least a 49 percent interest and that is located in a control*
 1200 *area adjacent to such interconnection region; or (iii) represented by certificates issued by an affiliate of*
 1201 *such regional transmission entity, or any successor to such affiliate, and held or acquired by such*
 1202 *utility, which validate the generation of renewable energy by eligible sources in such region.*
 1203 *"Renewable energy" shall not include electricity generated from pumped storage, but shall include*
 1204 *run-of-river generation from a combined pumped-storage and run-of-river facility.*

1205 *"Total electric energy sold in the base year" means total electric energy sold to Virginia*
 1206 *jurisdictional retail customers by a participating utility in calendar year 2007, excluding an amount*
 1207 *equivalent to the average of the annual percentages of the electric energy that was supplied to such*
 1208 *customers from nuclear generating plants for the calendar years 2004 through 2006.*

1209 *B. Any investor-owned incumbent electric utility may apply to the Commission for approval to*
 1210 *participate in a renewable energy portfolio standard program, as defined in this section. The*
 1211 *Commission shall approve such application if the applicant demonstrates that it has a reasonable*
 1212 *expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources*
 1213 *during calendar year 2022, as provided in subsection D.*

1214 *C. It is in the public interest for utilities to achieve the goals set forth in subsection D, such goals*
 1215 *being referred to herein as "RPS Goals". Accordingly, the Commission, in addition to providing*

1216 recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined
 1217 rate of return on common equity for each utility participating in such program by a single Performance
 1218 Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an
 1219 RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation
 1220 of a fair combined rate of return for the purposes of the immediately succeeding biennial review
 1221 conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the
 1222 utility continues to meet the RPS Goals established in this section through and including the third
 1223 succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall
 1224 be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of
 1225 return on common equity for the same time periods. However, if the utility receives any other
 1226 Performance Incentive increasing its fair combined rate of return on common equity by more than 50
 1227 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance
 1228 Incentive during the term of such other Performance Incentive. A utility shall receive double credit
 1229 toward meeting the renewable energy portfolio standard for energy derived from sunlight or from wind.

1230 D. To qualify for the Performance Incentive established in subsection C, the total electric energy
 1231 sold by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy
 1232 from renewable energy sources, as adjusted for any sales volumes lost through operation of the
 1233 customer choice provisions of subdivision A 3 or A 4 of § 56-577:

1234 RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

1235 RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total
 1236 electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold
 1237 in the base year.

1238 RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total
 1239 electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold
 1240 in the base year.

1241 A utility may apply renewable energy sales achieved or renewable energy certificates acquired
 1242 during the periods covered by any such RPS Goal that are in excess of the sales requirement for that
 1243 RPS Goal to the sales requirements for any future RPS Goal.

1244 E. A utility participating in such program shall have the right to recover all incremental costs
 1245 incurred for the purpose of such participation in such program, as accrued against income, through rate
 1246 adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to,
 1247 administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described
 1248 in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for
 1249 funds used during construction until such time as an enhanced rate of return, as determined pursuant to
 1250 subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected
 1251 construction work in progress, planning, development and construction costs, life-cycle costs, and costs
 1252 of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to
 1253 subdivision A 6 of § 56-585.1. All incremental costs of the RPS program shall be allocated to and
 1254 recovered from the utility's customer classes based on the demand created by the class and within the
 1255 class based on energy used by the individual customer in the class, except that the incremental costs of
 1256 the RPS program shall not be allocated to or recovered from customers that are served within the large
 1257 industrial rate classes of the participating utilities and that are served at primary or transmission
 1258 voltage.

1259 F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable
 1260 energy from existing renewable energy sources owned by the participating utility or purchased as
 1261 allowed by contract at no additional cost to customers to the extent feasible. A utility participating in
 1262 such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable
 1263 to any renewable energy generated at a renewable energy generation source in operation as of July 1,
 1264 2007, that is operated by a person that is served within a utility's large industrial rate class and that is
 1265 served at primary or transmission voltage. A participating utility shall be required to fulfill any
 1266 remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost
 1267 and in a prudent manner to be determined by the Commission at the time of approval of any application
 1268 made pursuant to subsection B. Utilities participating in such program shall collectively, either through
 1269 the installation of new generating facilities, through retrofit of existing facilities or through purchases of
 1270 electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5
 1271 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used
 1272 or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting
 1273 RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January
 1274 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per
 1275 year in proportion to its share of the total electric energy sold in the base year, as defined in subsection
 1276 A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals, without

1277 limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue,
 1278 except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and
 1279 construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper;
 1280 landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar;
 1281 and gas produced from the anaerobic decomposition of animal waste.

1282 G. The Commission shall promulgate such rules and regulations as may be necessary to implement
 1283 the provisions of this section including a requirement that participants verify whether the RPS goals are
 1284 met in accordance with this section.

1285 § 56-585.3. Regulation of cooperative rates after rate caps.

1286 After the expiration or termination of capped rates, the rates, terms and conditions of distribution
 1287 electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of this title shall be
 1288 regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et
 1289 seq.) of this title, as modified by the following provisions:

1290 1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to
 1291 adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale
 1292 power cost which occurred during the capped rate period, other than in a general rate proceeding.

1293 2. Each cooperative may, without Commission approval or the requirement of any filing other than
 1294 as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or
 1295 decrease all classes of its rates for distribution services at any time, provided, however, that such
 1296 adjustments will not effect a cumulative net increase or decrease in excess of 5 percent in such rates in
 1297 any three year period. Such adjustments will not affect or be limited by any existing fuel or wholesale
 1298 power cost adjustment provisions. The cooperative will promptly file any such revised rates with the
 1299 Commission for informational purposes.

1300 3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board
 1301 of directors, make any adjustment to its terms and conditions that does not affect the cooperative's
 1302 revenues from the distribution or supply of electric energy. In addition, a cooperative may make such
 1303 adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and
 1304 deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007.
 1305 The cooperative will promptly file any such amended terms and conditions with the Commission for
 1306 informational purposes.

1307 4. A cooperative may, at any time after the expiration or termination of capped rates, petition the
 1308 Commission for approval of one or more rate adjustment clauses for the timely and current recovery
 1309 from customers of the costs described in subdivisions A 5 b and d of § 56-585.1.

1310 5. None of the adjustments described in subdivisions 2 through 4 will apply to the rates paid by any
 1311 customer that takes service by means of dedicated distribution facilities and had noncoincident peak
 1312 demand in excess of 90 megawatts in calendar year 2006.

1313 Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust
 1314 any terms and conditions of service or agreements regarding pole attachments or the use of the
 1315 cooperative's poles or conduits.

1316 § 56-587. Licensure of retail electric energy suppliers and persons providing other competitive
 1317 services.

1318 A. As a condition of doing business in the Commonwealth, each person except a default service
 1319 provider seeking to sell, offering to sell, or selling (i) electric energy to any retail customer in the
 1320 Commonwealth, on and after January 1, 2002 or (ii) any service that, pursuant to § 56-581.1, may be
 1321 provided by persons licensed to provide such service, shall obtain a license from the Commission to do
 1322 so. A license shall not be required solely for the leasing or financing of property used in the sale of
 1323 electricity to any retail customer in the Commonwealth.

1324 The license shall authorize that person to engage in the activities authorized by such license until the
 1325 license expires or is otherwise terminated, suspended or revoked.

1326 B. 1. As a condition of obtaining, retaining and renewing any license issued pursuant to this section,
 1327 a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the
 1328 Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory
 1329 to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to
 1330 ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission;
 1331 and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other
 1332 political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and
 1333 renewing any license pursuant to this section, a person shall satisfy such reasonable and
 1334 nondiscriminatory requirements as may be specified by the Commission, including but not limited to
 1335 requirements that such person demonstrate (i) technical capabilities as the Commission may deem
 1336 appropriate; (ii) in the case of a person seeking to sell, offering to sell, or selling electric energy to any
 1337 retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence

1338 to minimum market conduct standards.

1339 2. Any license issued by the Commission pursuant to this section to a person seeking to sell, offering
1340 to sell, or selling electric energy to any retail customer in the Commonwealth may be conditioned upon
1341 the licensee furnishing to the Commission prior to the provision of electric energy to consumers proof of
1342 adequate access to generation and generation reserves.

1343 C. 1. The Commission shall establish a reasonable period within which any retail customer may
1344 cancel, without penalty or cost, any contract entered into with any person licensed pursuant to this
1345 section.

1346 2. The Commission may adopt other rules and regulations governing the requirements for obtaining,
1347 retaining, and renewing a license issued pursuant to this section, and may, as appropriate, refuse to issue
1348 a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those
1349 requirements.

1350 D. Notwithstanding the provisions of § 13.1-620, a public service company may, through an affiliate
1351 or subsidiary, conduct one or more of the following businesses, even if such business is not related to or
1352 incidental to its stated business as a public service company: (i) become licensed as a retail electric
1353 energy supplier pursuant to this section, or for purposes of participation in an approved pilot program
1354 encompassing retail customer choice of electric energy suppliers; (ii) become licensed as an aggregator
1355 pursuant to § 56-588, or for purposes of participation in an approved pilot program encompassing retail
1356 customer choice of electric energy suppliers; ~~or (iii) become licensed to furnish any service that,~~
1357 ~~pursuant to § 56-581.1, may be provided by persons licensed to provide such service; or (iv) own,~~
1358 manage or control any plant or equipment or any part of a plant or equipment used for the generation of
1359 electric energy.

1360 § 56-589. Municipal and state aggregation.

1361 A. ~~Counties~~ *Subject to the provisions of subdivision A 3 of § 56-577, counties, cities, and towns*
1362 *(hereafter municipalities) and other political subdivisions of the Commonwealth may, at their election*
1363 *and upon authorization by majority votes of their governing bodies, aggregate electrical energy and*
1364 *demand requirements for the purpose of negotiating the purchase of electrical energy requirements from*
1365 *any licensed supplier within this Commonwealth, as follows:*

1366 1. Any municipality or other political subdivision of the Commonwealth may aggregate the electric
1367 energy load of residential, commercial, and industrial retail customers within its boundaries on an opt-in
1368 or opt-out basis.

1369 2. Any municipality or other political subdivision of the Commonwealth may aggregate the electric
1370 energy load of its governmental buildings, facilities, and any other governmental operations requiring the
1371 consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure
1372 pursuant to § 56-588.

1373 3. Two or more municipalities or other political subdivisions within the Commonwealth may
1374 aggregate the electric energy load of their governmental buildings, facilities, and any other governmental
1375 operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall
1376 not require licensure pursuant to § 56-588 when such municipalities or other political subdivisions are
1377 acting jointly to negotiate or arrange for themselves agreements for their energy needs directly with
1378 licensed suppliers or aggregators.

1379 Nothing in this subsection shall prohibit the Commission's development and implementation of pilot
1380 programs for opt-in, opt-out, or any other type of municipal aggregation, as provided in § 56-577.

1381 B. The Commonwealth, at its election, may aggregate the electric energy load of its governmental
1382 buildings, facilities, and any other government operations requiring the consumption of electric energy
1383 for the purpose of negotiating the purchase of electricity from any licensed supplier within the
1384 Commonwealth. Aggregation pursuant to this subsection shall not require licensure pursuant to § 56-588.

1385 C. *Nothing in this section shall preclude municipalities from aggregating the electric energy load of*
1386 *their governmental buildings, facilities and any other governmental operations requiring the*
1387 *consumption of electric energy for the purpose of negotiating rates and terms, and conditions of service*
1388 *from the electric utility certificated by the Commission to serve the territory in which such buildings,*
1389 *facilities and operations are located, provided, however, that no such electric energy load shall be*
1390 *aggregated for this purpose unless all such buildings, facilities and operations to be aggregated are*
1391 *served by the same electric utility.*

1392 § 56-590. Divestiture, functional separation and other corporate relationships.

1393 A. The Commission shall not require any incumbent electric utility to divest itself of any generation,
1394 transmission or distribution assets pursuant to any provision of this chapter.

1395 B. 1. The Commission shall, however, direct the functional separation of generation, retail
1396 transmission and distribution of all incumbent electric utilities in connection with the provisions of this
1397 chapter to be completed by January 1, 2002.

1398 2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for

1399 such functional separation which may be accomplished through the creation of affiliates, or through such
1400 other means as may be acceptable to the Commission.

1401 3. Consistent with this chapter, the Commission may impose conditions, as the public interest
1402 requires, upon its approval of any incumbent electric utility's plan for functional separation, including
1403 requirements that (i) the incumbent electric utility's generation assets or, at the election of the incumbent
1404 electric utility and if approved by the Commission pursuant to subdivision 4 of this subsection, their
1405 equivalent are made available for electric service during the capped rate period as provided in § 56-582
1406 and, if applicable, during any period the distributor serves as a default provider as provided for in
1407 § 56-585; (ii) the incumbent electric utility receive Commission approval for the sale, transfer or other
1408 disposition of generation assets during the capped rate period and, if applicable, during any period the
1409 distributor serves as a default provider; and (iii) any such generation asset sold, transferred, or otherwise
1410 disposed of by the incumbent electric utility with Commission approval shall not be further sold,
1411 transferred, or otherwise disposed of during the capped rate period and, if applicable, during any period
1412 the distributor serves as default provider, without additional Commission approval.

1413 4. If an incumbent electric utility proposes that the equivalent to its generation assets be made
1414 available pursuant to subdivision 3 of this subsection, the Commission shall determine the adequacy of
1415 such proposal and shall approve or reject such proposal based on the public interest.

1416 5. In exercising its authority under the provisions of this section and under § 56-90, the Commission
1417 shall have no authority to regulate, on a cost-of-service basis or other basis, the price at which
1418 generation assets or their equivalent are made available for default service purposes. Such restriction on
1419 the Commission's authority to regulate, on a cost-of-service basis or other basis, prices for default
1420 service shall not affect the ability of a distributor to offer to provide, and of the Commission to approve
1421 if appropriate the provision of, such services in any competitive bidding process pursuant to subdivision
1422 B 2 of § 56-585, on a cost plus basis or any other basis. The Commission's authority to regulate the
1423 price of default service shall be consistent with the pricing provisions applicable to a distributor pursuant
1424 to § 56-585. In addition, the Commission shall, in exercising its responsibilities under this section and
1425 under § 56-90, consider, among other factors, the potential effects of any such transfer on: (i) rates and
1426 reliability of capped rate service under § 56-582, and of default service under § 56-585, and (ii) the
1427 development of a competitive market in the Commonwealth for retail generation services. However, the
1428 Commission may not deny approval of a transfer proposed by an incumbent electric utility, pursuant to
1429 subdivisions 2 and 4 of subsection B, due to an inability to determine, at the time of consideration of
1430 the transfer, default service prices under § 56-585.

1431 C. ~~Whenever pursuant to § 56-581.1 services are made subject to competition, the Commission shall~~
1432 ~~direct the functional separation of such services to the extent necessary to achieve the purposes of this~~
1433 ~~section. Each affected incumbent electric utility shall, by dates prescribed by the Commission, submit for~~
1434 ~~the Commission's approval a plan for such functional separation.~~

1435 D. The Commission shall, to the extent necessary to promote effective competition in the
1436 Commonwealth, promulgate rules and regulations to carry out the provisions of this section, which rules
1437 and regulations shall include provisions:

- 1438 1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
- 1439 2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;
- 1440 3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units;

1441 and

- 1442 4. Establishing codes of conduct detailing permissible relations between functionally separate units.

1443 E D. Neither a covered entity nor an affiliate thereof may be a party to a covered transaction without
1444 the prior approval of the Commission. Any such person proposing to be a party to such transaction shall
1445 file an application with the Commission. The Commission shall approve or disapprove such transaction
1446 within sixty days after the filing of a completed application; however, the sixty-day period may be
1447 extended by Commission order for a period not to exceed an additional 120 days. The application shall
1448 be deemed approved if the Commission fails to act within such initial or extended period. The
1449 Commission shall approve such application if it finds, after notice and opportunity for hearing, that the
1450 transaction will comply with the requirements of subsection F E, and may, as a part of its approval,
1451 establish such conditions or limitations on such transaction as it finds necessary to ensure compliance
1452 with subsection F E.

1453 F E. A transaction described in subsection E D shall not:

- 1454 1. Substantially lessen competition among the actual or prospective providers of noncompetitive
1455 electric service or of a service which is, or is likely to become, a competitive electric service; or
- 1456 2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the
1457 provision of any noncompetitive electric service at just and reasonable rates.

1458 G F. Except as provided in subdivision B 5 of § 56-590, nothing in this chapter shall be deemed to
1459 abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or

1460 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements of subsection ~~E~~ D that
 1461 is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the
 1462 requirements of Chapter 5 of this title.

1463 § 56-594. Net energy metering provisions.

1464 A. The Commission shall establish by regulation a program, to begin no later than July 1, 2000,
 1465 which affords eligible customer-generators the opportunity to participate in net energy metering. The
 1466 regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or
 1467 operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible
 1468 customer-generators; or (v) any combination of the foregoing, as the Commission determines will
 1469 facilitate the provision of net energy metering, provided that the Commission determines that such
 1470 requirements do not adversely affect the public interest.

1471 B. For the purpose of this section:

1472 "Eligible customer-generator" means a customer that owns and operates, or contracts with other
 1473 persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than
 1474 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers; (ii) uses as its
 1475 total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises
 1476 and is connected to the customer's wiring on the customer's side of its interconnection with the
 1477 distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and
 1478 distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity
 1479 requirements.

1480 "Net energy metering" means measuring the difference, over the net metering period, between (i)
 1481 electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity
 1482 generated and fed back to the electric grid by the eligible customer-generator.

1483 "Net metering period" means the 12-month period following the date of final interconnection of the
 1484 eligible customer-generator's system with an electric service provider, and each 12-month period
 1485 thereafter.

1486 C. The Commission's regulations shall ensure that the metering equipment installed for net metering
 1487 shall be capable of measuring the flow of electricity in two directions, and shall allocate fairly the cost
 1488 of such equipment and any necessary interconnection. An eligible customer-generator's electrical
 1489 generating system shall meet all applicable safety and performance standards established by the National
 1490 Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories
 1491 such as Underwriters Laboratories. Beyond the requirements set forth in this section, an eligible
 1492 customer-generator whose electrical generating system meets those standards and rules shall bear the
 1493 reasonable cost, if any, as determined by the Commission, to (i) install additional controls, (ii) perform
 1494 or pay for additional tests, or (iii) purchase additional liability insurance.

1495 D. The Commission shall establish minimum requirements for contracts to be entered into by the
 1496 parties to net metering arrangements. Such requirements shall protect the customer-generator against
 1497 discrimination by virtue of its status as a customer-generator. Where electricity generated by the
 1498 customer-generator over the net metering period exceeds the electricity consumed by the
 1499 customer-generator, the customer-generator shall not be compensated for the excess electricity unless the
 1500 entity contracting to receive such electric energy and the customer-generator enter into a power purchase
 1501 agreement for such excess electricity. The net metering standard contract or tariff shall be available to
 1502 eligible customer-generators on a first-come, first-served basis in each electric distribution company's
 1503 Virginia service area until the rated generating capacity owned and operated by eligible
 1504 customer-generators in the state reaches ~~0.4~~ one percent of each electric distribution company's adjusted
 1505 Virginia peak-load forecast for the previous year.

1506 **2. That §§ 56-581.1 and 56-583 of the Code of Virginia are repealed.**

1507 **3. That it is in the public interest, and is consistent with the energy policy goals in § 67-102 of the**
 1508 **Code of Virginia, to promote cost-effective conservation of energy through fair and effective**
 1509 **demand side management, conservation, energy efficiency, and load management programs,**
 1510 **including consumer education. These programs may include activities by electric utilities, public**
 1511 **or private organizations, or both electric utilities and public or private organizations. The**
 1512 **Commonwealth shall have a stated goal of reducing the consumption of electric energy by retail**
 1513 **customers through the implementation of such programs by the year 2022 by an amount equal to**
 1514 **ten percent of the amount of electric energy consumed by retail customers in 2006. The State**
 1515 **Corporation Commission shall conduct a proceeding to (i) determine whether the ten percent**
 1516 **electric energy consumption reduction goal can be achieved cost-effectively through the operation**
 1517 **of such programs, and if not, determine the appropriate goal for the year 2022 relative to base**
 1518 **year of 2006, (ii) identify the mix of programs that should be implemented in the Commonwealth**
 1519 **to cost-effectively achieve the defined electric energy consumption reduction goal by 2022,**
 1520 **including but not limited to demand side management, conservation, energy efficiency, load**

1521 management, real-time pricing, and consumer education, (iii) develop a plan for the development
1522 and implementation of recommended programs, with incentives and alternative means of
1523 compliance to achieve such goals, (iv) determine the entity or entities that could most efficiently
1524 deploy and administer various elements of the plan, and (v) estimate the cost of attaining the
1525 energy consumption reduction goal. The Commission shall, on or before December 15, 2007,
1526 submit its findings and recommendations to the Governor and General Assembly, which shall
1527 include recommendations for any additional legislation necessary to implement the plan to meet
1528 the energy consumption reduction goal. In developing a plan to meet the goal, the Commission
1529 may consider providing for a public benefit fund and shall consider the fair and reasonable
1530 allocation by customer class of the incremental costs of meeting the goal that are recovered in
1531 accordance with subdivision A 5 b of § 56-585.1 of the Code of Virginia.

1532 4. That the Department of Taxation shall (i) conduct an analysis of the potential implications of
1533 the provisions of this act, as compared to previous law, on the system of taxation of the
1534 Commonwealth and the revenues generated thereby, and (ii) report its findings and any
1535 recommendations with respect thereto to the Commission on Electric Utility Restructuring by
1536 November 1, 2007.

1537 5. That nothing in this act shall be deemed to modify or impair the terms, unless otherwise
1538 modified by an order of the State Corporation Commission, of any order of the State Corporation
1539 Commission approving the divestiture of generation assets that was entered pursuant to § 56-590
1540 of the Code of Virginia.

1541 6. That the Office of Attorney General, in consultation with the State Corporation Commission,
1542 shall submit annual reports to the Commission on Electric Utility Restructuring on or before
1543 November 1, 2007, and November 1, 2008, in which it shall identify, and recommend appropriate
1544 corrective legislation to address, any issues that may impede the implementation of the provisions
1545 of this act.

1546 7. That the State Corporation Commission, in consultation with the Office of Attorney General,
1547 shall submit a report to the Governor and General Assembly by November 1, 2012, and every five
1548 years thereafter, assessing the rates and terms and conditions of incumbent electric utilities in the
1549 Commonwealth. Such report shall include an analysis of, among other matters, the amount,
1550 reliability and type of generation facilities needed to serve Virginia native load compared to that
1551 available to serve such load, and provide a comparison of such utilities to those in the peer group
1552 of such utilities that meet the criteria enumerated in subdivision A 2 of § 56-585.1 of the Code of
1553 Virginia.