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HOUSE BILL NO. 1835

Offered January 13, 2021

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A BILL to amend and reenact § 56-585.1 of the Code of Virginia, relating to electric utilities; triennial review; rate reductions.

Patrons—Subramanyam, Carr, Helmer, Hope and Lopez

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

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

a. The Commission may use any methodology to determine such return it finds consistent with the public interest, but for applications received by the Commission on or after January 1, 2020, such return shall not be set lower than the average of either (i) the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such triennial review or (ii) the authorized returns on common equity that are set by the applicable regulatory commissions for the same selected peer group, nor shall the Commission set such return more than 150 basis points higher than such average.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs or pilot programs. Any such petition shall include a proposed budget for the design, implementation, and operation of the energy efficiency program, including anticipated savings from and spending on each program, and the Commission shall grant a final order on such petitions within eight months of initial filing. The Commission shall only approve such a petition if it finds that the program is in the public interest. If the Commission determines that an energy efficiency program or portfolio of programs is not in the public interest, its final order shall include all work product and analysis conducted by the Commission's staff in relation to that program that has bearing upon the Commission's determination. Such order shall adhere to existing protocols for extraordinarily sensitive information.

Energy efficiency pilot programs are in the public interest provided that the pilot program is (i) of limited scope, cost, and duration and (ii) intended to determine whether a new or substantially revised program would be cost-effective.

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

The Commission shall annually monitor and report to the General Assembly the performance of all programs approved pursuant to this subdivision, including each utility's compliance with the total annual savings required by § 56-596.2, as well as the annual and lifecycle net and gross energy and capacity savings, related emissions reductions, and other quantifiable benefits of each program; total customer bill savings that the programs produce; utility spending on each program, including any associated administrative costs; and each utility's avoided costs and cost-effectiveness results.

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

As used in this subdivision, "large general service customer" means a customer that has a verifiable history of having used more than one megawatt of demand from a single site.

Large general service customers shall be exempt from requirements that they participate in energy efficiency programs if the Commission finds that the large general service customer has, at the customer's own expense, implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in this section. The Commission shall, no later than June 30, 2021, adopt rules or regulations (a) establishing the process for large general service customers to apply for such an exemption, (b) establishing the administrative procedures by which eligible customers will notify the utility, and (c) defining the standard criteria that shall be satisfied by an applicant in order to notify the utility, including means of evaluation measurement and verification and confidentiality requirements. At a minimum, such rules and regulations shall require that each exempted large general service customer certify to the utility and Commission that its implemented energy efficiency programs have delivered measured and verified savings within the prior five years. In adopting such rules or regulations, the Commission shall also specify the timing as to when a utility shall accept and act on such notice, taking into consideration the utility's integrated resource planning process, as well as its administration of energy efficiency programs that are approved for cost recovery by the Commission. Savings from large general service customers shall be accounted for in utility reporting in the standards in § 56-596.2.

The notice of nonparticipation by a large general service customer shall be for the duration of the service life of the customer's energy efficiency measures. The Commission may on its own motion initiate steps necessary to verify such nonparticipant's achievement of energy efficiency if the Commission has a body of evidence that the nonparticipant has knowingly misrepresented its energy efficiency achievement.

A utility shall not charge such large general service customer for the costs of installing energy efficiency equipment beyond what is required to provide electric service and meter such service on the customer's premises if the customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth;

d. Projected and actual costs of compliance with renewable energy portfolio standard requirements pursuant to § 56-585.5 that are not recoverable under subdivision 6. The Commission shall approve such a petition allowing the recovery of such costs incurred as required by § 56-585.5, provided that the Commission does not otherwise find such costs were unreasonably or imprudently incurred;

e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate impacts to marine life caused by construction of offshore wind generating facilities, as described in § 56-585.1:11, or to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations, including the costs of allowances purchased through a market-based trading program for carbon dioxide emissions. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations;

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

g. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled individuals or (ii) organizations providing residential services to low-income, elderly, and disabled individuals for the installation of, or access to, equipment to generate electric energy derived from sunlight, provided the low-income, elderly, and disabled individuals, or organizations providing residential services to low-income, elderly, and disabled individuals, first participate in incentive programs for the installation of measures that reduce heating or cooling costs.

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

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

The costs of the facility, other than return on projected construction work in progress and allowance for funds used during construction, shall not be recovered prior to the date a facility constructed by the utility and described in clause (i), (ii), (iii) or (v) begins commercial operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the utility as plant in service. In any application to construct a new generating facility, the utility shall include, and the Commission shall consider, the social cost of carbon, as determined by the Commission, as a benefit or cost, whichever is appropriate. The Commission shall ensure that the development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on historically economically disadvantaged communities. The Commission may adopt any rules it deems necessary to determine the social cost of carbon and shall use the best available science and technology, including the Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, published by the Interagency Working Group on Social Cost of Greenhouse Gases from the United States Government in August 2016, as guidance. The Commission shall include a system to adjust the costs established in this section with inflation.

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

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

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

Only those facilities as to which a rate adjustment clause under this subdivision has been previously approved by the Commission, or as to which a petition for approval of such rate adjustment clause was filed with the Commission, on or before January 1, 2013, shall be entitled to the enhanced rate of return on common equity as specified in the above table during the construction phase of the facility and the approved first portion of its service life.

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

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

Notwithstanding any provision of Chapter 296 of the Acts of Assembly of 2018, construction, purchasing, or leasing activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from sunlight or from onshore wind with an aggregate capacity of 16,100 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts, together with a utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 3,000 megawatts, are in the public interest. Additionally, energy storage facilities with an aggregate capacity of 2,700 megawatts are in the public interest. To the extent that a utility elects to recover the costs of any such new generation or energy storage facility or facilities through its rates for generation and distribution services and does not petition and receive approval from the Commission for recovery of such costs through a rate adjustment clause described in clause (ii), the Commission shall, upon the request of the utility in a triennial review proceeding, provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent by the Commission in a proceeding pursuant to subsection D of § 56-580 or in a triennial review proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are

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

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

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

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

E. Notwithstanding any other provision of law, the Commission shall determine the amortization period for recovery of any appropriate costs due to the early retirement of any electric generation facilities owned or operated by any Phase I Utility or Phase II Utility. In making such determination, the Commission shall (i) perform an independent analysis of the remaining undepreciated capital costs; (ii) establish a recovery period that best serves ratepayers; and (iii) allow for the recovery of any carrying costs that the Commission deems appropriate.

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

2. That the provisions of this act shall apply beginning with the first triennial review proceeding conducted after January 1, 2021, by the State Corporation Commission for a Phase II utility, as that term is defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, as amended by this act.