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**HOUSE BILL NO. 73**

House Amendments in [ ] — February 11, 2022

*A BILL to amend and reenact §§ 10.1-1308, 56-576, 56-585.1, 56-585.1:4, and 56-585.1:11 of the Code of Virginia, relating to regulation of electric utilities; definitions; public interest; aggregate capacity requirements for renewable energy facilities; cost recovery.*

Patron Prior to Engrossment—Delegate Ware

Referred to Committee on Commerce and Energy

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

**1. That §§ 10.1-1308, 56-576, 56-585.1, 56-585.1:4, and 56-585.1:11 of the Code of Virginia are amended and reenacted as follows:**

**§ 10.1-1308. Regulations.**

A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. No such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. Any regulation that prohibits the selling of any consumer product shall not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

C. Any regulation requiring the use of stage 1 vapor recovery equipment at gasoline dispensing facilities may be applicable only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment for the pollutant ozone. For purposes of this section, gasoline dispensing facility means any site where gasoline is dispensed to motor vehicle tanks from storage tanks.

D. No regulation of the Board shall require permits for the construction or operation of qualified fumigation facilities, as defined in § 10.1-1308.01.

E. Notwithstanding any other provision of law and no earlier than July 1, 2024, the Board shall adopt regulations to reduce, for the period of 2031 to 2050, the carbon dioxide emissions from any electricity generating unit in the Commonwealth, regardless of fuel type, that serves an electricity generator with a nameplate capacity equal to or greater than 25 megawatts that supplies (i) 10 percent or more of its annual net electrical generation to the electric grid or (ii) more than 15 percent of its annual total useful energy to any entity other than the manufacturing facility to which the generating source is interconnected (covered unit).

The Board may establish, implement, and manage an auction program to sell allowances to carry out the purposes of such regulations or may in its discretion utilize an existing multistate trading system.

The Board may utilize its existing regulations to reduce carbon dioxide emissions from electric power generating facilities; however, the regulations shall provide that no allowances be issued for covered units in 2050 or any year beyond 2050. The Board may establish rules for trading, the use of banked allowances, and other auction or market mechanisms as it may find appropriate to control allowance costs and otherwise carry out the purpose of this subsection.

~~In adopting such regulations, the Board shall consider only the carbon dioxide emissions from the covered units. The Board shall not provide for emission offsetting or netting based on fuel type.~~

Regulations adopted by the Board under this subsection shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, 2.2-4007.05, and 2.2-4026 through 2.2-4030 of the Administrative Process Act (§ 2.2-4000 et seq.) and shall be published in the Virginia Register of Regulations.

**§ 56-576. Definitions.**

As used in this chapter:

ENGROSSED

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

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

73 (Expires December 31, 2023) "Business park" means a land development containing a minimum of  
74 100 contiguous acres classified as a Tier 4 site under the Virginia Economic Development Partnership's  
75 Business Ready Sites Program that is developed and constructed by an industrial development authority,  
76 or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of  
77 the General Assembly, in order to promote business development and that is located in an area of the  
78 Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his  
79 delegation of authority to the Internal Revenue Service.

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

82 "Commission" means the State Corporation Commission.

83 "Community in which a majority of the population are people of color" means a U.S. Census tract  
84 where more than 50 percent of the population comprises individuals who identify as belonging to one or  
85 more of the following groups: Black, African American, Asian, Pacific Islander, Native American, other  
86 non-white race, mixed race, Hispanic, Latino, or linguistically isolated.

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

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

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

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

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

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

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

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

104 "Electric distribution grid transformation project" means a project associated with electric distribution  
105 infrastructure, including related data analytics equipment, that is designed to accommodate or facilitate  
106 the integration of utility-owned or customer-owned renewable electric generation resources with the  
107 utility's electric distribution grid or to otherwise enhance electric distribution grid reliability, electric  
108 distribution grid security, customer service, or energy efficiency and conservation, including advanced  
109 metering infrastructure; intelligent grid devices for real time system and asset information; automated  
110 control systems for electric distribution circuits and substations; communications networks for service  
111 meters; intelligent grid devices and other distribution equipment; distribution system hardening projects  
112 for circuits, other than the conversion of overhead tap lines to underground service, and substations  
113 designed to reduce service outages or service restoration times; physical security measures at key  
114 distribution substations; cyber security measures; energy storage systems and microgrids that support  
115 circuit-level grid stability, power quality, reliability, or resiliency or provide temporary backup energy  
116 supply; electrical facilities and infrastructure necessary to support electric vehicle charging systems; LED  
117 street light conversions; and new customer information platforms designed to provide improved customer  
118 access, greater service options, and expanded access to energy usage information.

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

utility, or electric utility owned or operated by a municipality.

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

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

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

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

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

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

"In the public interest," for purposes of assessing energy efficiency programs, describes an energy efficiency program if the Commission determines that the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the following four tests: (i) the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall be approved if the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the four tests. If the Commission determines that an energy efficiency program or portfolio of programs is not in the public interest, its final order shall include all work product and analysis conducted by the Commission's staff in relation to that program, including testimony relied upon by the Commission's staff, that has bearing upon the Commission's decision. If the Commission reduces the proposed budget for a program or portfolio of programs, its final order shall include an analysis of the impact such budget reduction has upon the cost-effectiveness of such program or portfolio of programs. An order by the Commission (a) finding that a program or portfolio of programs is not in the public interest or (b) reducing the proposed budget for any program or portfolio of programs shall adhere to existing protocols for extraordinarily sensitive information. ~~In addition, an energy efficiency program may be deemed to be "in the public interest" if the program (1) provides measurable and verifiable energy savings to low-income customers or elderly customers or (2) is a pilot program of limited scope, cost, and duration, that is intended to determine whether a new or substantially revised program or technology would be cost-effective.~~

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Low-income utility customer" means any person or household whose income is no more than 80 percent of the median income of the locality in which the customer resides. The median income of the locality is determined by the U.S. Department of Housing and Urban Development.

"Measured and verified" means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects,

measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

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

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

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

"Percentage of Income Payment Program (PIPP) eligible utility customer" means any person or household whose income does not exceed 150 percent of the federal poverty level.

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

"Previously developed project site" means any property, including related buffer areas, if any, that has been previously disturbed or developed for non-single-family residential, non-agricultural, or non-silvicultural use, regardless of whether such property currently is being used for any purpose. "Previously developed project site" includes a brownfield as defined in § 10.1-1230 or any parcel that has been previously used (i) for a retail, commercial, or industrial purpose; (ii) as a parking lot; (iii) as the site of a parking lot canopy or structure; (iv) for mining, which is any lands affected by coal mining that took place before August 3, 1977, or any lands upon which extraction activities have been permitted by the Department of Energy under Title 45.2; (v) for quarrying; or (vi) as a landfill.

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

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

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

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

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

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

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

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

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

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

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

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

"Total annual energy savings" means (i) the total combined kilowatt-hour savings achieved by electric utility energy efficiency and demand response programs and measures installed in that program year, as well as savings still being achieved by measures and programs implemented in prior years, or (ii) savings attributable to newly installed combined heat and power facilities, including waste heat-to-power facilities, and any associated reduction in transmission line losses, provided that biomass is not a fuel and the total efficiency, including the use of thermal energy, for eligible combined heat and power facilities must meet or exceed 65 percent and have a nameplate capacity rating of less than 25 megawatts.

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

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

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

**§ 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:

305 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,  
306 and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of  
307 § 56-585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three  
308 successive 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter,  
309 reviews for a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three  
310 successive 12-month test periods ending December 31 immediately preceding the year in which such  
311 review proceeding is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct  
312 a review for a Phase II Utility in 2021, utilizing the four successive 12-month test periods beginning  
313 January 1, 2017, and ending December 31, 2020, with subsequent reviews on a triennial basis utilizing  
314 the three successive 12-month test periods ending December 31 immediately preceding the year in which  
315 such review proceeding is conducted. All such reviews occurring after December 31, 2017, shall be  
316 referred to as triennial reviews. For purposes of this section, a Phase I Utility is an investor-owned  
317 incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by  
318 the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an  
319 investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

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

351 d. In any Current Proceeding, the Commission shall determine whether the Current Return has  
352 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a  
353 percentage, in the United States Average Consumer Price Index for all items, all urban consumers  
354 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since  
355 the date on which the Commission determined the Initial Return. If so, the Commission may conduct an  
356 additional analysis of whether it is in the public interest to utilize such Current Return for the Current  
357 Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall  
358 be made without regard to any enhanced rate of return on common equity awarded pursuant to the  
359 provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration  
360 of overall economic conditions, the level of interest rates and cost of capital with respect to business and  
361 industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of  
362 goods and services, the effect on the utility's ability to provide adequate service and to attract capital if  
363 less than the Current Return were utilized for the Current Proceeding then pending, and such other  
364 factors as the Commission may deem relevant. If, as a result of such analysis, the Commission finds that  
365 use of the Current Return for the Current Proceeding then pending would not be in the public interest,  
366 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) (i) establishing the process for large general service customers to apply for such an exemption, (b) (ii) establishing the administrative procedures by which eligible customers will notify the utility, and (c) (iii) 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

551 programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled  
552 individuals or (ii) organizations providing residential services to low-income, elderly, and disabled  
553 individuals for the installation of, or access to, equipment to generate electric energy derived from  
554 sunlight, provided the low-income, elderly, and disabled individuals, or organizations providing  
555 residential services to low-income, elderly, and disabled individuals, first participate in incentive  
556 programs for the installation of measures that reduce heating or cooling costs.

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

561 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the  
562 utility's projected native load obligations and to promote economic development, a utility may at any  
563 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate  
564 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a  
565 coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the  
566 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or  
567 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major  
568 unit modifications of generation facilities, including the costs of any system or equipment upgrade,  
569 system or equipment replacement, or other cost reasonably appropriate to extend the combined operating  
570 license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or  
571 more new underground facilities to replace one or more existing overhead distribution facilities of 69  
572 kilovolts or less located within the Commonwealth, (v) one or more pumped hydroelectricity generation  
573 and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their  
574 power source and such facilities and associated resources are located in the coalfield region of the  
575 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or  
576 without the utility's service territory, or (vi) one or more electric distribution grid transformation  
577 projects; however, subject to the provisions of the following sentence, the utility shall not file a petition  
578 under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental  
579 increase in the level of investments associated with such a petition that exceeds five percent of such  
580 utility's distribution rate base, as such rate base was determined for the most recently ended 12-month  
581 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by  
582 final order of the Commission prior to the date of filing of such petition under clause (iv). In all  
583 proceedings regarding petitions filed under clause (iv) or (vi), the level of investments approved for  
584 recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously  
585 approved for recovery in prior proceedings under clause (iv) or (vi), as applicable. As of December 1,  
586 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any remaining costs  
587 associated with conversions of overhead distribution facilities to underground facilities that have been  
588 previously approved or are pending approval by the Commission through a petition by the utility under  
589 this subdivision. Such a petition concerning facilities described in clause (ii) that utilize nuclear power,  
590 facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities  
591 described in clause (i) may also be filed before the expiration or termination of capped rates. A utility  
592 that constructs or makes modifications to any such facility, or purchases any facility consisting of at  
593 least one megawatt of generating capacity using energy derived from sunlight and located in the  
594 Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more  
595 Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income,  
596 through its rates, including projected construction work in progress, and any associated allowance for  
597 funds used during construction, planning, development and construction or acquisition costs, life-cycle  
598 costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs  
599 of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate  
600 of return on common equity calculated as specified below; however, in determining the amounts  
601 recoverable under a rate adjustment clause for new underground facilities, the Commission shall not  
602 consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance  
603 costs attributable to either the overhead distribution facilities being replaced or the new underground  
604 facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.  
605 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain  
606 eligible for recovery from customers through the utility's base rates for distribution service. A utility  
607 filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of  
608 generating capacity using energy derived from sunlight and located in the Commonwealth and that  
609 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may  
610 propose a rate adjustment clause based on a market index in lieu of a cost of service model for such  
611 facility. A utility seeking approval to construct or purchase a generating facility that emits carbon  
612 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,

736 purchasing, or leasing activities for a new utility-owned and utility-operated generating facility or  
 737 facilities utilizing energy derived from sunlight or from onshore wind with an aggregate capacity of  
 738 16,100 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and  
 739 with an aggregate capacity of 100 megawatts, together with a utility-owned and utility-operated  
 740 generating facility or facilities utilizing energy derived from offshore wind with an aggregate capacity of  
 741 not more than 3,000 megawatts, are in the public interest. Additionally, energy storage facilities with an  
 742 aggregate capacity of 2,700 megawatts are in the public interest. To the extent that a utility elects to  
 743 recover the costs of any such new generation or energy storage facility or facilities through its rates for  
 744 generation and distribution services and does not petition and receive approval from the Commission for  
 745 recovery of such costs through a rate adjustment clause described in clause (ii), the Commission shall,  
 746 upon the request of the utility in a triennial review proceeding, provide for a customer credit  
 747 reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed  
 748 reasonable and prudent by the Commission in a proceeding pursuant to subsection D of § 56-580 or in a  
 749 triennial review proceeding.

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

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

766 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility  
 767 is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.2-1600, produced  
 768 from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired by  
 769 methane or other combustible gas produced by the anaerobic digestion or decomposition of  
 770 biodegradable materials in a solid waste management facility licensed by the Waste Management Board.  
 771 A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used  
 772 in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from  
 773 the solid waste management facility where it is collected to the generation facility where it is  
 774 combusted.

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

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

789 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from  
 790 the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or  
 791 demonstration project involving a generation facility utilizing energy from offshore wind, and such  
 792 utility has not, as of July 1, 2023, commenced construction as defined for federal income tax purposes  
 793 of an offshore wind generation facility or facilities with a minimum aggregate capacity of 250  
 794 megawatts, then the Commission, if it finds it in the public interest, may direct that the costs associated  
 795 with any such rate adjustment clause involving said test or demonstration project shall thereafter no  
 796 longer be recovered through a rate adjustment clause pursuant to subdivision 6 and shall instead be

797 recovered through the utility's rates for generation and distribution services, with no change in such rates  
798 for generation and distribution services as a result of the combination of such costs with the other costs,  
799 revenues, and investments included in the utility's rates for generation and distribution services. Any  
800 such costs shall remain combined with the utility's other costs, revenues, and investments included in its  
801 rates for generation and distribution services until such costs are fully recovered.

802 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a  
803 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any  
804 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the  
805 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or  
806 that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to  
807 new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and  
808 records of the utility until the Commission's final order in the matter, or until the implementation of any  
809 applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in  
810 subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of  
811 such petition, or during the consideration thereof by the Commission, that are proposed for recovery in  
812 such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of  
813 subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of  
814 subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the  
815 books and records of the utility until the Commission's final order in the matter, or until the  
816 implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs  
817 prudently incurred after the expiration or termination of capped rates related to other matters described  
818 in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped  
819 rates, provided, however, that no provision of this act shall affect the rights of any parties with respect  
820 to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia  
821 Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset  
822 for regulatory accounting and ratemaking purposes under which it shall defer its operation and  
823 maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant  
824 and (ii) other work at such plant normally performed during a refueling outage. The utility shall  
825 amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning  
826 with the month in which such plant resumes operation after such refueling. The refueling cycle shall be  
827 the applicable period of time between planned refueling outages for such plant. As of January 1, 2014,  
828 such amortized costs are a component of base rates, recoverable in base rates only ratably over the  
829 refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable  
830 in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage  
831 commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs  
832 of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with  
833 respect to triennial filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant to  
834 § 56-245 or the Commission's rules governing utility rate increase applications as provided in subsection  
835 B. This provision shall not be deemed to change or reset base rates.

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

841 8. In any triennial review proceeding, for the purposes of reviewing earnings on the utility's rates for  
842 generation and distribution services, the following utility generation and distribution costs not proposed  
843 for recovery under any other subdivision of this subsection, as recorded per books by the utility for  
844 financial reporting purposes and accrued against income, shall be attributed to the test periods under  
845 review and deemed fully recovered in the period recorded: costs associated with asset impairments  
846 related to early retirement determinations made by the utility for utility generation facilities fueled by  
847 coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs  
848 associated with projects necessary to comply with state or federal environmental laws, regulations, or  
849 judicial or administrative orders relating to coal combustion by-product management that the utility does  
850 not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated  
851 with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to  
852 have been recovered from customers through rates for generation and distribution services in effect  
853 during the test periods under review unless such costs, individually or in the aggregate, together with the  
854 utility's other costs, revenues, and investments to be recovered through rates for generation and  
855 distribution services, result in the utility's earned return on its generation and distribution services for the  
856 combined test periods under review to fall more than 50 basis points below the fair combined rate of  
857 return authorized under subdivision 2 for such periods or, for any test period commencing after  
858 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,

920 and shall be allocated among customer classes such that the relationship between the specific customer  
921 class rates of return to the overall target rate of return will have the same relationship as the last  
922 approved allocation of revenues used to design base rates; or

923 c. In any triennial review proceeding conducted after January 1, 2020, for a Phase I Utility or after  
924 January 1, 2021, for a Phase II Utility in which the utility has, during the test period or test periods  
925 under review, considered as a whole, earned more than 50 basis points above a fair combined rate of  
926 return on its generation and distribution services or, for any test period commencing after December 31,  
927 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis  
928 points above a fair combined rate of return on its generation and distribution services, as determined in  
929 subdivision 2, without regard to any return on common equity or other matter determined with respect  
930 to facilities described in subdivision 6, and the combined aggregate level of capital investment that the  
931 Commission has approved other than those capital investments that the Commission has approved for  
932 recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the  
933 test periods under review in that triennial review proceeding in new utility-owned generation facilities  
934 utilizing energy derived from sunlight, or from wind, and in electric distribution grid transformation  
935 projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of the  
936 earnings that are more than 70 basis points above the utility's fair combined rate of return on its  
937 generation and distribution services for the combined test periods under review in that triennial review  
938 proceeding, the Commission shall, subject to the provisions of subdivision 9 and in addition to the  
939 actions authorized in subdivision b, also order reductions to the utility's rates it finds appropriate.  
940 However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility,  
941 any reduction to the utility's rates ordered by the Commission pursuant to this subdivision shall not  
942 exceed \$50 million in annual revenues, with any reduction allocated to the utility's rates for generation  
943 services, and in each triennial review of a Phase I or Phase II Utility, the Commission may not order  
944 such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to  
945 fully recover its costs of providing its services and to earn not less than a fair combined rate of return  
946 on its generation and distribution services, as determined in subdivision 2, without regard to any return  
947 on common equity or other matters determined with respect to facilities described in subdivision 6,  
948 using the most recently ended 12-month test period as the basis for determining the permissibility of any  
949 rate reduction under the standards of this sentence, and the amount thereof; and

950 d. (Expires July 1, 2028) In any triennial review proceeding conducted after December 31, 2017,  
951 upon the request of the utility, the Commission shall determine, prior to directing that 70 percent of  
952 earnings that are more than 70 basis points above the utility's fair combined rate of return on its  
953 generation and distribution services for the test period or periods under review be credited to customer  
954 bills pursuant to subdivision 8 b, the aggregate level of prior capital investment that the Commission has  
955 approved other than those capital investments that the Commission has approved for recovery pursuant  
956 to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test period or  
957 periods under review in both (i) new utility-owned generation facilities utilizing energy derived from  
958 sunlight, or from onshore or offshore wind, and (ii) electric distribution grid transformation projects, as  
959 determined by the utility's plant in service and construction work in progress balances related to such  
960 investments as recorded per books by the utility for financial reporting purposes as of the end of the  
961 most recent test period under review. Any such combined capital investment amounts shall offset any  
962 customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or  
963 committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or committed  
964 capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit reinvestment  
965 offset, which offsets the customer bill credit amount that the utility has invested or will invest in new  
966 solar or wind generation facilities or electric distribution grid transformation projects for the benefit of  
967 customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the  
968 utility's fair rate of return on its generation and distribution services, and thereby reduce or eliminate  
969 otherwise incremental rate adjustment clause charges and increases to customer bills, which is deemed to  
970 be in the public interest. If 100 percent of the amount of earnings that are more than 70 basis points  
971 above the utility's fair combined rate of return on its generation and distribution services, as determined  
972 in subdivision 2, exceeds the aggregate level of invested capital in new utility-owned generation  
973 facilities utilizing energy derived from sunlight, or from wind, and electric distribution grid  
974 transformation projects, as provided in clauses (i) and (ii), during the test period or periods under  
975 review, then 70 percent of the amount of such excess shall be credited to customer bills as provided in  
976 subdivision 8 b in connection with the triennial review proceeding. The portion of any costs associated  
977 with new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or  
978 electric distribution grid transformation projects that is the subject of any customer credit reinvestment  
979 offset pursuant to this subdivision shall not thereafter be recovered through the utility's rates for  
980 generation and distribution services over the service life of such facilities and shall not thereafter be  
981 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

1043 of July 1, 2009.

1044 10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any  
1045 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital  
1046 structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are  
1047 the obligation of non-Virginia jurisdictional customers, unless the Commission finds that the debt to  
1048 equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may  
1049 utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate  
1050 adjustment pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure,  
1051 revenues, expenses or investments of any other entity with which such utility may be affiliated. In  
1052 particular, and without limitation, the Commission shall determine the federal and state income tax costs  
1053 for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's  
1054 apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the  
1055 utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax  
1056 costs shall be calculated according to the applicable federal income tax rate and shall exclude any  
1057 consolidated tax liability or benefit adjustments originating from any taxable income or loss of its  
1058 affiliates.

1059 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying  
1060 for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase  
1061 applications; however, in any such filing, a fair rate of return on common equity shall be determined  
1062 pursuant to subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and  
1063 purchased power costs as provided in § 56-249.6.

1064 C. Except as otherwise provided in this section, the Commission shall exercise authority over the  
1065 rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation,  
1066 transmission and distribution services to retail customers in the Commonwealth pursuant to the  
1067 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

1068 D. The Commission may determine, during any proceeding authorized or required by this section, the  
1069 reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection  
1070 with the subject of the proceeding. A determination of the Commission regarding the reasonableness or  
1071 prudence of any such cost shall be consistent with the Commission's authority to determine the  
1072 reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et  
1073 seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its  
1074 customers from renewable energy resources, the Commission shall consider the extent to which such  
1075 renewable energy resources, whether utility-owned or by contract, further the objectives of the  
1076 Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and shall also consider whether the costs  
1077 of such resources is likely to result in unreasonable increases in rates paid by customers.

1078 E. Notwithstanding any other provision of law, the Commission shall determine the amortization  
1079 period for recovery of any appropriate costs due to the early retirement of any electric generation  
1080 facilities owned or operated by any Phase I Utility or Phase II Utility. In making such determination, the  
1081 Commission shall (i) perform an independent analysis of the remaining undepreciated capital costs; (ii)  
1082 establish a recovery period that best serves ratepayers; and (iii) allow for the recovery of any carrying  
1083 costs that the Commission deems appropriate.

1084 F. The Commission shall promulgate such rules and regulations as may be necessary to implement  
1085 the provisions of this section.

1086 **§ 56-585.1:4. Development of solar and wind generation and energy storage capacity in the**  
1087 **Commonwealth.**

1088 A. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar  
1089 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic  
1090 shoreline, each having a rated capacity of at least one megawatt and having in the aggregate a rated  
1091 capacity that does not exceed 5,000 megawatts, or (ii) the purchase by a public utility of energy,  
1092 capacity, and environmental attributes from solar facilities described in clause (i) owned by persons  
1093 other than a public utility is in the public interest, and the Commission shall so find if required to make  
1094 a finding regarding whether such construction or purchase is in the public interest.

1095 B. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar  
1096 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic  
1097 shoreline, each having a rated capacity of less than one megawatt, including rooftop solar installations  
1098 with a capacity of not less than 50 kilowatts, and having in the aggregate a rated capacity that does not  
1099 exceed 500 megawatts, or (ii) the purchase by a public utility of energy, capacity, and environmental  
1100 attributes from solar facilities described in clause (i) owned by persons other than a public utility is in  
1101 the public interest, and the Commission shall so find if required to make a finding regarding whether  
1102 such construction or purchase is in the public interest.

1103 C. The aggregate cap of 5,000 megawatts of rated capacity described in clause (i) of subsection A,  
1104 the aggregate cap of 500 megawatts of rated capacity described in clause (i) of subsection B, and the

aggregate cap of 200 megawatts of rated capacity described in subsection I are separate and independent from each other. The capacity of facilities in subsection B shall not be counted in determining the capacity of facilities in subsection A or I; the capacity of facilities in subsection A shall not be counted in determining the capacity of facilities in subsection B or I; and the capacity of facilities in subsection I shall not be counted in determining the capacity of facilities in subsection A or B.

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

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

F. Prior to January 1, 2035, (i) [ ~~the any~~ ] construction by a public utility of one or more energy storage facilities located in the Commonwealth, having in the aggregate a rated capacity that does not exceed 2,700 megawatts, or (ii) [ ~~the any~~ ] purchase by a public utility of energy storage facilities described in clause (i) owned by persons other than a public utility ~~or the capacity from such facilities is in the public interest, and the Commission shall so find if required to make a finding regarding whether such construction or purchase is in the public interest~~ [ ~~shall comply with subsections G and H~~ ] .

G. At least 35 percent of the energy storage capacity placed in service on or after July 1, 2020, located in the Commonwealth ~~and found to be in the public interest pursuant to subsection F~~ shall be from the purchase by a public utility of energy storage facilities owned by persons other than a public utility ~~or the capacity from such facilities~~. All of the energy storage facilities located in the Commonwealth ~~and found to be in the public interest pursuant to subsection F~~ shall be subject to competitive procurement, provided that a public utility may select energy storage facilities without regard to whether such selection satisfies price criteria if the selection of the energy storage facilities materially advances non-price criteria, including favoring geographic distribution of generating facilities, areas of higher employment, or regional economic development, if such energy storage facilities selected for the advancement of non-price criteria do not exceed 25 percent of the utility's energy storage capacity.

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

I. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar or wind generation facilities located on a previously developed project site in the Commonwealth having in the aggregate a rated capacity that does not exceed 200 megawatts or (ii) the purchase by a public utility of energy, capacity, and environmental attributes from solar facilities described in clause (i) owned by persons other than a public utility, is in the public interest.

**§ 56-585.1:11. Development of offshore wind capacity.**

A. As used in this section:

"Advanced clean energy buyer" means a commercial or industrial customer of a Phase II Utility, irrespective of generation supplier, (i) with an aggregate load over 100 megawatts; (ii) with an aggregate amount of at least 200 megawatts of solar or wind energy supply under contract with a term of 10 years or more from facilities located within the Commonwealth by January 1, 2024; and (iii) that directly procures from the utility the electric supply and environmental attributes of the offshore wind facility associated with the lesser of 50 megawatts of nameplate capacity or 15 percent of the commercial or industrial customer's annual peak demand for a contract period of 15 years.

"Aggregate load" means the combined electrical load associated with selected accounts of an advanced clean energy buyer with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of

1166 affiliated entities under a common parent.

1167 "Control" means the legal right, directly or indirectly, to direct or cause the direction of the  
1168 management, actions, or policies of an affiliated entity, whether through the ability to exercise voting  
1169 power, by contract, or otherwise. "Control" does not include control of an entity through a franchise or  
1170 similar contractual agreement.

1171 "Qualifying large general service customer" means a customer of a Phase II Utility, irrespective of  
1172 general supplier, (i) whose peak demand during the most recent calendar year exceeded five megawatts  
1173 and (ii) that contracts with the utility to directly procure electric supply and environmental attributes  
1174 associated with the offshore wind facility in amounts commensurate with the customer's electric usage  
1175 for a contract period of 15 years or more.

1176 B. In order to meet the Commonwealth's clean energy goals, prior to December 31, 2034, the  
1177 *Commission [ shall may ] approve* construction or purchase by a public utility of one or more offshore  
1178 wind generation facilities located off the Commonwealth's Atlantic shoreline or in federal waters and  
1179 interconnected directly into the Commonwealth, with an aggregate capacity of up to 5,200 megawatts, is  
1180 ~~in the public interest and the Commission shall so find~~, provided that no customers of the utility shall  
1181 be responsible for costs of any such facility in a proportion greater than the utility's share of the facility.

1182 C. 1. Pursuant to subsection B, construction by a Phase II Utility of one or more new utility-owned  
1183 and utility-operated generating facilities utilizing energy derived from offshore wind and located off the  
1184 Commonwealth's Atlantic shoreline, with an aggregate rated capacity of not less than 2,500 megawatts  
1185 and not more than 3,000 megawatts, along with electrical transmission or distribution facilities associated  
1186 therewith for interconnection is in the public interest. In acting upon any request for cost recovery by a  
1187 Phase II Utility for costs associated with such a *an offshore wind generation* facility, the Commission  
1188 shall determine the reasonableness and prudence of any such costs; provided that such costs shall be  
1189 presumed to be reasonably and prudently incurred if the Commission determines that (i) the utility has  
1190 complied with the competitive solicitation and procurement requirements pursuant to subsection E; (ii)  
1191 the project's projected total levelized cost of energy, including any tax credit, on a cost per megawatt  
1192 hour basis, inclusive of the costs of transmission and distribution facilities associated with the facility's  
1193 interconnection, does not exceed 1.4 times the comparable cost, on an unweighted average basis, of a  
1194 conventional simple cycle combustion turbine generating facility as estimated by the U.S. Energy  
1195 Information Administration in its Annual Energy Outlook 2019; and (iii) the utility has commenced  
1196 construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan  
1197 for such facility or facilities to be in service prior to January 1, 2028. The Commission shall disallow  
1198 costs, or any portion thereof, only if they are otherwise unreasonably and imprudently incurred. In its  
1199 review, the Commission shall give due consideration to (a) the Commonwealth's renewable portfolio  
1200 standards and carbon reduction requirements, (b) the promotion of new renewable generation resources,  
1201 and (c) the economic development benefits of the project for the Commonwealth, including capital  
1202 investments and job creation.

1203 2. Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate of  
1204 return to a Phase II Utility for the construction of one or more new utility-owned and utility-operated  
1205 generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's  
1206 Atlantic shoreline pursuant to this section.

1207 3. Any such costs proposed for recovery through a rate adjustment clause pursuant to subdivision A  
1208 6 of § 56-585.1 shall be allocated to all customers of the utility in the Commonwealth as a  
1209 non-bypassable charge, regardless of the generation supplier of any such customer, other than (i) PIPP  
1210 eligible utility customers, (ii) advanced clean energy buyers, and (iii) qualifying large general service  
1211 customers. No electric cooperative customer of the utility shall be assigned, nor shall the utility collect  
1212 from any such cooperative, any of the costs of such facilities, including electrical transmission or  
1213 distribution facilities associated therewith for interconnection. The Commission may promulgate such  
1214 rules, regulations, or other directives necessary to administer the eligibility for these exemptions.

1215 4. The Commission shall permit a portion of the nameplate capacity of any such facility, in the  
1216 aggregate, to be allocated to (i) advanced clean energy buyers or (ii) qualifying large general service  
1217 customers, provided that no more than 10 percent of the offshore wind facility's capacity is allocated to  
1218 qualifying large general service customers. A Phase II Utility shall petition the Commission for approval  
1219 of a special contract with any advanced clean energy buyer, or any special rate applicable to qualifying  
1220 large general service customers, pursuant to § 56-235.2, no later than 15 months prior to the projected  
1221 commercial operation date of the facility, and all customer enrollments associated with such special  
1222 contracts or rates shall be completed prior to commercial operation of the facility. Any such special  
1223 contract or rate may include provisions for levelized rates of service over the duration of the customer's  
1224 contracted agreement with the utility, and the Commission shall determine that such special contract or  
1225 rate is designed to hold nonparticipating customers harmless over its term in connection with any  
1226 petition for approval by the utility. The utility may petition for approval of such special contracts or  
1227 rates in connection with any petition for approval of a rate adjustment clause pursuant to subdivision A

6 of § 56-585.1 to recover the costs of the facility, and the Commission shall rule upon any such petitions in its final order in such proceeding within nine months from the date of filing.

D. In constructing any such facility contemplated in subsection B, the utility shall develop and submit a plan to the Commission for review that includes the following considerations: (i) options for utilizing local workers; (ii) the economic development benefits of the project for the Commonwealth, including capital investments and job creation; (iii) consultation with the Commonwealth's Chief Workforce Development Officer, the Chief Diversity, Equity, and Inclusion Officer, and the Virginia Economic Development Partnership on opportunities to advance the Commonwealth's workforce and economic development goals, including furtherance of apprenticeship and other workforce training programs; (iv) giving priority to the hiring, apprenticeship, and training of veterans, as that term is defined in § 2.2-2000.1, local workers, and workers from historically economically disadvantaged communities; and (v) procurement of equipment from Virginia-based or United States-based manufacturers using materials or product components made in Virginia or the United States, if reasonably available and competitively priced.

E. Any project constructed or purchased pursuant to subsection B shall (i) be subject to competitive procurement or solicitation for a substantial majority of the services and equipment, exclusive of interconnection costs, associated with the facility's construction; (ii) involve at least one experienced developer; and (iii) demonstrate the economic development benefits within the Commonwealth, including capital investments and job creation. A utility may give appropriate consideration to suppliers and developers that have demonstrated successful experience in offshore wind.

F. Any project shall include an environmental and fisheries mitigation plan submitted to the Commission for the construction and operation of such offshore wind facilities, provided that such plan includes an explicit description of the best management practices the bidder will employ that considers the latest science at the time the proposal is made to mitigate adverse impacts to wildlife, natural resources, ecosystems, and traditional or existing water-dependent uses. The plan shall include a summary of pre-construction assessment activities, consistent with federal requirements, to determine the spatial and temporal presence and abundance of marine mammals, sea turtles, birds, and bats in the offshore wind lease area.

**2. That the State Corporation Commission shall not be required to wait until any reporting requirements to the General Assembly relating to recommendations on how to achieve 100 percent carbon-free electric energy generation by 2045 at least cost for ratepayers are satisfied prior to issuing a certificate of public convenience and necessity for any investor-owned utility to own, operate, or construct any electric generating unit that emits carbon as a by-product of combusting fuel to generate electricity.**

**[ 3. That the provisions of the first enactment of this act shall apply to any applications filed with the State Corporation Commission on or after July 1, 2021. ]**