

24101834D

HOUSE BILL NO. 746

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 56-576, 56-585.1, and 56-596.2 of the Code of Virginia, relating to energy efficiency programs; incremental annual savings.

Patrons—Webert, Lopez, Maldonado, Shin, Sullivan, Clark, Feggans, Helmer, Henson and McClure

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

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

§ 56-576. Definitions.

As used in this chapter:

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

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

"Business park" means a land development containing a minimum of 100 contiguous acres classified as a Tier 4 site under the Virginia Economic Development Partnership's Business Ready Sites Program that is developed and constructed by a locality, an industrial development authority, or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of the General Assembly, in order to promote business development.

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

"Commission" means the State Corporation Commission.

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

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

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

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

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

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

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

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

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

"Electric distribution grid transformation project" means a project associated with electric distribution

INTRODUCED

HB746

59 infrastructure, including related data analytics equipment, that is designed to accommodate or facilitate
60 the integration of utility-owned or customer-owned renewable electric generation resources with the
61 utility's electric distribution grid or to otherwise enhance electric distribution grid reliability, electric
62 distribution grid security, customer service, or energy efficiency and conservation, including advanced
63 metering infrastructure; intelligent grid devices for real time system and asset information; automated
64 control systems for electric distribution circuits and substations; communications networks for service
65 meters; intelligent grid devices and other distribution equipment; distribution system hardening projects
66 for circuits, other than the conversion of overhead tap lines to underground service, and substations
67 designed to reduce service outages or service restoration times; physical security measures at key
68 distribution substations; cyber security measures; energy storage systems and microgrids that support
69 circuit-level grid stability, power quality, reliability, or resiliency or provide temporary backup energy
70 supply; electrical facilities and infrastructure necessary to support electric vehicle charging systems; LED
71 street light conversions; and new customer information platforms designed to provide improved customer
72 access, greater service options, and expanded access to energy usage information.

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

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

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

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

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

99 *"Incremental annual savings" means the total combined kilowatt-hour savings achieved by electric*
100 *utility energy efficiency and demand response programs and measures installed in that program year.*

101 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
102 1999, supplied electric energy to retail customers located in an exclusive service territory established by
103 the Commission.

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

107 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy
108 efficiency program if the Commission determines that the net present value of the benefits exceeds the
109 net present value of the costs as determined by not less than any three of the following four tests: (i) the
110 Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test);
111 (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include
112 an analysis of all four tests, and a program or portfolio of programs shall be approved if the net present
113 value of the benefits exceeds the net present value of the costs as determined by not less than any three
114 of the four tests *program is cost-effective, as determined by applicable Commission regulations.* If the
115 Commission determines that an energy efficiency program or portfolio of programs is not in the public
116 interest, its final order shall include all work product and analysis conducted by the Commission's staff
117 in relation to that program, including testimony relied upon by the Commission's staff, that has bearing
118 upon the Commission's decision. If the Commission reduces the proposed budget for a program or
119 portfolio of programs, its final order shall include an analysis of the impact such budget reduction has
120 upon the cost-effectiveness of such program or portfolio of programs. An order by the Commission (a)

(i) finding that a program or portfolio of programs is not in the public interest or ~~(b)~~ (ii) 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)~~ (a) provides measurable and verifiable energy savings to low-income customers or elderly customers or ~~(2)~~ (b) 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

182 (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial,
183 institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per
184 megawatt hour.

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

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

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

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

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

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

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

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

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

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

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

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

224 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or**
225 **expire.**

226 A. During the first six months of 2009, the Commission shall, after notice and opportunity for
227 hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation,
228 distribution and transmission services of each investor-owned incumbent electric utility. Such
229 proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified
230 herein. In such proceedings the Commission shall determine fair rates of return on common equity
231 applicable to the generation and distribution services of the utility. In so doing, the Commission may use
232 any methodology to determine such return it finds consistent with the public interest, but such return
233 shall not be set lower than the average of the returns on common equity reported to the Securities and
234 Exchange Commission for the three most recent annual periods for which such data are available by not
235 less than a majority, selected by the Commission as specified in subdivision 2 b, of other
236 investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return
237 more than 300 basis points higher than such average. The peer group of the utility shall be determined
238 in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined
239 rate of return by up to 100 basis points based on the generating plant performance, customer service,
240 and operating efficiency of a utility, as compared to nationally recognized standards determined by the
241 Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine
242 the rates that the utility may charge until such rates are adjusted. If the Commission finds that the
243 utility's combined rate of return on common equity is more than 50 basis points below the combined

rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such combined rate of return. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than the fair rates of return on common equity applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order and be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the provision of generation, distribution and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase II Utility in 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and ending December 31, 2020, with subsequent reviews on a biennial basis commencing in 2023, with such proceedings utilizing the two successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

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

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

b. For a Phase I Utility, in selecting such majority of peer group investor-owned electric utilities for applications received by the Commission on or after January 1, 2020, the Commission shall first remove from such group the two utilities within such group that have the lowest reported or authorized, as applicable, returns of the group, as well as the two utilities within such group that have the highest reported or authorized, as applicable, returns of the group, and the Commission shall then select a majority of the utilities remaining in such peer group. In its final order regarding such triennial review, the Commission shall identify the utilities in such peer group it selected for the calculation of such limitation. With respect to a Phase I Utility, for purposes of this subdivision 2, an investor-owned electric utility shall be deemed part of such peer group if (i) its principal operations are conducted in the southeastern United States east of the Mississippi River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission, and distribution services whose facilities and operations are subject to state public utility regulation in the state where its principal operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the most recent test period subject to such review, and (iv) it is not an affiliate

305 of the utility subject to such review or a utility whose fair rate of return on common equity is
306 determined by the Commission.

307 c. The Commission may increase or decrease the utility's combined rate of return for generation and
308 distribution services by up to 50 basis points based on factors that may include reliability, generating
309 plant performance, customer service, and operating efficiency of a utility. Any such adjustment to the
310 combined rate of return for generation and distribution services shall include consideration of nationally
311 recognized standards determined by the Commission to be appropriate for such purposes.

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

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

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

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

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

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

348 g. If the combined rate of return on common equity earned by the generation and distribution
349 services is no more than 50 basis points above or below the return as so determined or, for any test
350 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
351 Phase I Utility, such return is no more than 70 basis points above or below the return as so determined,
352 such combined return shall not be considered either excessive or insufficient, respectively. However, for
353 any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31,
354 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned
355 below the return as so determined, whether or not such combined return is within 70 basis points of the
356 return as so determined, the utility may petition the Commission for approval of an increase in rates in
357 accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a
358 fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the
359 provisions of this section. The provisions of this subdivision are subject to the provisions of subdivision
360 8.

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

364 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings
365 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021
366 and terminating thereafter. 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. After 2021, each Phase II Utility shall make a biennial filing by March 31 of every second year, except that the 2023 filing for a Phase II Utility shall be made on or after July 1, 2023. All biennial filings shall encompass the two successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. All such filings shall consist of the schedules contained in the Commission's rules governing utility rate increase applications, 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. In a 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.

If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 10, 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 specified in this paragraph, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future review proceedings.

As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1, 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues, and investments for generation and distribution services. After such rate adjustment clauses are combined as specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings, and the combination of such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination shall not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution services in its 2023 biennial proceeding.

4. 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.

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

428 months of initial filing. The Commission shall only approve such a petition if it finds that the program
429 is in the public interest. If the Commission determines that an energy efficiency program or portfolio of
430 programs is not in the public interest, its final order shall include all work product and analysis
431 conducted by the Commission's staff in relation to that program that has bearing upon the Commission's
432 determination. Such order shall adhere to existing protocols for extraordinarily sensitive information.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major unit modifications of generation facilities, including the costs of any system or equipment upgrade, system or equipment replacement, or other cost reasonably appropriate to extend the combined operating license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v) one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source and such facilities and associated resources are located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, or (vi) one or more electric distribution grid transformation projects; however, subject to the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental increase in the level of investments associated with such a petition that exceeds five percent of such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of overhead distribution facilities to underground facilities that have been

551 previously approved or are pending approval by the Commission through a petition by the utility under
552 this subdivision. Such a petition concerning facilities described in clause (ii) that utilize nuclear power,
553 facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities
554 described in clause (i) may also be filed before the expiration or termination of capped rates. A utility
555 that constructs or makes modifications to any such facility, or purchases any facility consisting of at
556 least one megawatt of generating capacity using energy derived from sunlight and located in the
557 Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more
558 Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income,
559 through its rates, including projected construction work in progress, and any associated allowance for
560 funds used during construction, planning, development and construction or acquisition costs, life-cycle
561 costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs
562 of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate
563 of return on common equity calculated as specified below; however, in determining the amounts
564 recoverable under a rate adjustment clause for new underground facilities, the Commission shall not
565 consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance
566 costs attributable to either the overhead distribution facilities being replaced or the new underground
567 facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.
568 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
569 eligible for recovery from customers through the utility's base rates for distribution service. A utility
570 filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of
571 generating capacity using energy derived from sunlight and located in the Commonwealth and that
572 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may
573 propose a rate adjustment clause based on a market index in lieu of a cost of service model for such
574 facility. A utility seeking approval to construct or purchase a generating facility that emits carbon
575 dioxide shall demonstrate that it has already met the energy savings goals identified in § 56-596.2 and
576 that the identified need cannot be met more affordably through the deployment or utilization of
577 demand-side resources or energy storage resources and that it has considered and weighed alternative
578 options, including third-party market alternatives, in its selection process.

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

596 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
597 construction and to construction work in progress during the construction phase of the facility and shall
598 thereafter be applied to the entire facility during the first portion of the service life of the facility. The
599 first portion of the service life shall be as specified in the table below; however, the Commission shall
600 determine the duration of the first portion of the service life of any facility, within the range specified in
601 the table below, which determination shall be consistent with the public interest and shall reflect the
602 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
603 the citizens of the Commonwealth and the risks involved in the development of the facility. After the
604 first portion of the service life of the facility is concluded, the utility's general rate of return shall be
605 applied to such facility for the remainder of its service life. As used herein, the service life of the
606 facility shall be deemed to begin on the date a facility constructed by the utility and described in clause
607 (i), (ii), (iii), or (v) begins commercial operation, the date the utility becomes the owner of a purchased
608 generation facility consisting of at least one megawatt of generating capacity using energy derived from
609 sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in
610 part, from one or more Virginia businesses, or the date new underground facilities or new electric
611 distribution grid transformation projects are classified by the utility as plant in service, and such service
612 life shall be deemed equal in years to the life of that facility as used to calculate the utility's

depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the basis points specified in the table below to the utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as determined pursuant to this subdivision, until such construction work in progress is included in rates. The construction of any facility described in clause (i) or (v) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. The construction or purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 16,100 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts, that use energy derived from sunlight or from onshore wind and are located in the Commonwealth or off the Commonwealth's Atlantic shoreline, regardless of whether any of such facilities are located within or without the utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. A utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation facility prior to purchasing the generation facility. The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year period with new underground facilities in order to improve electric service reliability is in the public interest. In determining whether to approve petitions for rate adjustment clauses for such new underground facilities that meet this criteria, and in determining the level of costs to be recovered thereunder, the Commission shall liberally construe the provisions of this title.

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

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

Only those facilities as to which a rate adjustment clause under this subdivision has been previously approved by the Commission, or as to which a petition for approval of such rate adjustment clause was filed with the Commission, on or before January 1, 2013, shall be entitled to the enhanced rate of return

on common equity as specified in the above table during the construction phase of the facility and the approved first portion of its service life.

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

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

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

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

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

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

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

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

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

Deploying demand-side management programs and energy efficiency measures throughout the Commonwealth to achieve the greatest possible reductions in energy consumption is in the public interest. The Commission may in its discretion increase or decrease any such utility's combined rate of return on its generation and distribution services and on any rate adjustment clauses by up to 50 basis points based on the utility's success in complying with the energy efficiency program targets set by the Commission in § 56-596.2. The Commission may increase the utility's combined rate of return in a given year only if the energy efficiency program targets in that year were exceeded by the utility.

7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped rates, provided, however, that no provision of this act shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a component of base rates, recoverable in base rates only ratably over the

798 refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable
799 in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage
800 commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs
801 of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with
802 respect to filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant to § 56-245 or
803 the Commission's rules governing utility rate increase applications as provided in subsection B. This
804 provision shall not be deemed to change or reset base rates.

805 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be
806 entered not more than three months, eight months, and nine months, respectively, after the date of filing
807 of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment
808 clause be applied to customers' bills not more than 60 days after the date of the order, or upon the
809 expiration or termination of capped rates, whichever is later. At any time, the Commission may, in its
810 discretion, for a Phase I Utility, upon petition by such a utility or upon its own initiated proceeding,
811 direct the consolidation of any one or more subsets of rate adjustment clauses previously implemented
812 pursuant to subdivision 5 or 6 in the interest of judicial economy, customer transparency, or other
813 factors the Commission determines to be appropriate. Any subset of rate adjustment clauses so
814 consolidated shall continue to be considered by the Commission without regard to the other costs,
815 revenues, investments, or earnings of the utility and remain as a cost recovery mechanism independent
816 from the utility's rates for generation and distribution services pursuant to § 56-585.8 and subdivisions 5
817 and 6, but will be combined as a single rate adjustment clause for cost recovery and review purposes.
818 Any rate adjustment clause or subset of rate adjustment clauses so consolidated shall be named in a
819 manner, as determined by the Commission, that reasonably informs customers as to the nature of the
820 costs recovered by the consolidated rate adjustment clause. At any time, the Commission may, in its
821 discretion, for a Phase II Utility, upon petition by such a utility or upon its own initiated proceeding,
822 direct the consolidation of any one or more subsets of rate adjustment clauses previously implemented
823 pursuant to subdivision 5 or 6 in the interest of judicial economy, customer transparency, or other
824 factors the Commission determines to be appropriate. Any subset of rate adjustment clauses so
825 consolidated shall continue to be considered by the Commission without regard to the other costs,
826 revenues, investments, or earnings of the utility and remain as a cost recovery mechanism independent
827 from the utility's rates for generation and distribution services pursuant to this subdivision and
828 subdivisions 5 and 6, but will be combined as a single rate adjustment clause for cost recovery and
829 review purposes. Any rate adjustment clause or subset of rate adjustment clauses so consolidated shall
830 be named in a manner, as determined by the Commission, that reasonably informs customers as to the
831 nature of the costs recovered by the consolidated rate adjustment clause.

832 8. For a Phase I Utility in any triennial review proceeding filed on or before June 30, 2023 or for a
833 Phase II Utility in any biennial review proceeding, for the purposes of reviewing earnings on the utility's
834 rates for generation and distribution services, the following utility generation and distribution costs not
835 proposed for recovery under any other subdivision of this subsection, as recorded per books by the
836 utility for financial reporting purposes and accrued against income, shall be attributed to the test periods
837 under review and deemed fully recovered in the period recorded: costs associated with asset impairments
838 related to early retirement determinations made by the utility for utility generation facilities fueled by
839 coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs
840 associated with projects necessary to comply with state or federal environmental laws, regulations, or
841 judicial or administrative orders relating to coal combustion by-product management that the utility does
842 not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated
843 with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to
844 have been recovered from customers through rates for generation and distribution services in effect
845 during the test periods under review unless such costs, individually or in the aggregate, together with the
846 utility's other costs, revenues, and investments to be recovered through rates for generation and
847 distribution services, result in the utility's earned return on its generation and distribution services for the
848 combined test periods under review to fall more than 50 basis points below the fair combined rate of
849 return authorized under subdivision 2 for such periods or, for any test period commencing after
850 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall
851 more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for
852 such periods. In such cases, the Commission shall, in such review proceeding, authorize deferred
853 recovery of such costs and allow the utility to amortize and recover such deferred costs over future
854 periods as determined by the Commission. The aggregate amount of such deferred costs shall not exceed
855 an amount that would, together with the utility's other costs, revenues, and investments to be recovered
856 through rates for generation and distribution services, cause the utility's earned return on its generation
857 and distribution services to exceed the fair rate of return authorized under subdivision 2, less 50 basis
858 points, for the combined test periods under review or, for any test period commencing after December
859 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. Notwithstanding the prior sentence, the aggregate amount of actual and reasonable costs associated with severe weather events eligible for such deferral 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 for the combined test periods under review. For the purposes of determining any amount of costs that are associated with severe weather events, the Commission shall consider nationally recognized standards such as those published by the Institute of Electrical and Electronics Engineers (IEEE). 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 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 any triennial review initiated prior to July 1, 2023 that:

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

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

921 approved allocation of revenues used to design base rates; or

922 c. The utility has, during the test period or test periods under review, considered as a whole, earned
923 more than 50 basis points above a fair combined rate of return on its generation and distribution
924 services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
925 December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of
926 return on its generation and distribution services, as determined in subdivision 2, without regard to any
927 return on common equity or other matter determined with respect to facilities described in subdivision 6,
928 and the combined aggregate level of capital investment that the Commission has approved other than
929 those capital investments that the Commission has approved for recovery pursuant to a rate adjustment
930 clause pursuant to subdivision 6 made by the utility during the test periods under review in that triennial
931 review proceeding in new utility-owned generation facilities utilizing energy derived from sunlight, or
932 from wind, and in electric distribution grid transformation projects, as determined pursuant to
933 subdivision 8 d, does not equal or exceed 100 percent of the earnings that are more than 70 basis points
934 above the utility's fair combined rate of return on its generation and distribution services for the
935 combined test periods under review in that triennial review proceeding, the Commission shall, subject to
936 the provisions of subdivision 10 and in addition to the actions authorized in subdivision b, also order
937 reductions to the utility's rates it finds appropriate. However, in the first triennial review proceeding
938 conducted after January 1, 2021, for a Phase II Utility, any reduction to the utility's rates ordered by the
939 Commission pursuant to this subdivision shall not exceed \$50 million in annual revenues, with any
940 reduction allocated to the utility's rates for generation services, and in each triennial review of a Phase I
941 or Phase II Utility, the Commission may not order such rate reduction unless it finds that the resulting
942 rates will provide the utility with the opportunity to fully recover its costs of providing its services and
943 to earn not less than a fair combined rate of return on its generation and distribution services, as
944 determined in subdivision 2, without regard to any return on common equity or other matters determined
945 with respect to facilities described in subdivision 6, using the most recently ended 12-month test period
946 as the basis for determining the permissibility of any rate reduction under the standards of this sentence,
947 and the amount thereof; and

948 d. (Expires July 1, 2028) In any review proceeding conducted after December 31, 2017, upon the
949 request of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that
950 are more than 70 basis points above the utility's fair combined rate of return on its generation and
951 distribution services for the test period or periods under review be credited to customer bills pursuant to
952 subdivision 8 b, the aggregate level of prior capital investment that the Commission has approved other
953 than those capital investments that the Commission has approved for recovery pursuant to a rate
954 adjustment clause pursuant to subdivision 6 made by the utility during the test period or periods under
955 review in both (i) new utility-owned generation facilities utilizing energy derived from sunlight, or from
956 onshore or offshore wind, and (ii) electric distribution grid transformation projects, as determined by the
957 utility's plant in service and construction work in progress balances related to such investments as
958 recorded per books by the utility for financial reporting purposes as of the end of the most recent test
959 period under review. Any such combined capital investment amounts shall offset any customer bill
960 credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or committed capital
961 under clauses (i) and (ii). The aggregate level of qualifying invested or committed capital under clauses
962 (i) and (ii) is referred to in this subdivision as the customer credit reinvestment offset, which offsets the
963 customer bill credit amount that the utility has invested or will invest in new solar or wind generation
964 facilities or electric distribution grid transformation projects for the benefit of customers, in amounts up
965 to 100 percent of earnings that are more than 70 basis points above the utility's fair rate of return on its
966 generation and distribution services, and thereby reduce or eliminate otherwise incremental rate
967 adjustment clause charges and increases to customer bills, which is deemed to be in the public interest.
968 If 100 percent of the amount of earnings that are more than 70 basis points above the utility's fair
969 combined rate of return on its generation and distribution services, as determined in subdivision 2,
970 exceeds the aggregate level of invested capital in new utility-owned generation facilities utilizing energy
971 derived from sunlight, or from wind, and electric distribution grid transformation projects, as provided in
972 clauses (i) and (ii), during the test period or periods under review, then 70 percent of the amount of
973 such excess shall be credited to customer bills as provided in subdivision 8 b in connection with the
974 review proceeding. The portion of any costs associated with new utility-owned generation facilities
975 utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation projects
976 that is the subject of any customer credit reinvestment offset pursuant to this subdivision shall not
977 thereafter be recovered through the utility's rates for generation and distribution services over the service
978 life of such facilities and shall not thereafter be included in the utility's costs, revenues, and investments
979 in future review proceedings conducted pursuant to subdivision 2 and shall not be the subject of a rate
980 adjustment clause petition pursuant to subdivision 6. The portion of any costs associated with new
981 utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or electric
982 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 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.

e. In any biennial review of a Phase II Utility, the Commission's final order regarding such 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 review shall apply, for purposes of reviewing the utility's earnings on its rates for generation and distribution services, to the entire two or three, as applicable, successive 12-month test periods ending December 31 immediately preceding the year of the utility's subsequent 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 review proceeding, utilizing rate adjustment clause true-up protocols as the Commission in its discretion may determine.

9. a. In any biennial review for a Phase II Utility filed on or prior to December 31, 2023, if the Commission determines that the utility has during the test period or test periods under review, considered as a whole, earned more than 70 basis points above a fair combined rate of return on its generation and distribution services previously authorized by the Commission, 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, which have not been combined with the utility's costs, revenues, and investments for generation and distribution services, the Commission shall direct that 85 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, be credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates.

b. In any biennial review for a Phase II Utility filed on or after January 1, 2024, if the Commission determines that the utility has during the test period or test periods under review, considered as a whole, earned above its fair combined rate of return on its generation and distribution services previously authorized by the Commission, 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, which have not been combined with the utility's costs, revenues, and investments for generation and distribution services, the Commission shall direct that 85 percent of the amount of such earnings above such fair combined rate of return for the test period or periods under review, considered as a whole, be credited to customers' bills. Further, if the Commission determines that during the test period or test periods under review, considered as a whole, a Phase II Utility earned more than 150 basis points above a fair combined rate of return on its generation and distribution services previously authorized by the Commission, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, which have not been combined with the utility's costs, revenues, and investments for generation and distribution services, the Commission shall direct that all such earnings that were more than 150 basis points above such fair combined rate of return for the test period or periods under review, considered as a whole, be credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates.

10. If, as a result of a triennial review required under this subsection and conducted with respect to any test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis

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

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

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

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

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

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

D. The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et

seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources, the Commission shall consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Clean Energy Policy set forth in § 45.2-1706.1, and shall also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by customers.

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

F. The Commission shall include in its report required by subsection B of § 56-596 any information concerning the reliability impacts of generation unit additions and retirement determinations by a Phase I or Phase II Utility along with the potential impact on the purchase of power from generation assets outside the Virginia jurisdiction used to serve the utility's native load, utilizing information from the respective utility's integrated resource plan or information from the respective utility's plan filed pursuant to subsection D of § 56-585.5.

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

§ 56-596.2. Energy efficiency policy and programs; financial assistance for low-income customers.

A. It shall be the policy of the Commonwealth to deploy demand-side management programs and energy efficiency measures throughout the Commonwealth to achieve the greatest possible reductions in energy consumption that are in the public interest. The Commission and its staff shall have the duty to assist in achieving the objectives of this policy.

B. Notwithstanding subsection G of § 56-580, or any other provision of law, each incumbent investor-owned electric utility shall develop proposed energy efficiency programs. Any program shall provide for the submission of a petition or petitions for approval to design, implement, and operate energy efficiency programs pursuant to subdivision A 5 c of § 56-585.1. At least 15 percent of such proposed costs of energy efficiency programs shall be allocated to programs designed to benefit low-income, elderly, or disabled individuals or veterans.

~~B.~~ C. Notwithstanding any other provision of law, each investor-owned incumbent electric utility shall implement energy efficiency programs and measures to achieve the following total annual energy savings:

1. For Phase I electric utilities:

a. In calendar year 2022, at least 0.5 percent of the average annual energy jurisdictional retail sales by that utility in 2019;

b. In calendar year 2023, at least 1.0 percent of the average annual energy jurisdictional retail sales by that utility in 2019;

c. In calendar year 2024, at least 1.5 percent of the average annual energy jurisdictional retail sales by that utility in 2019; and

d. In calendar year 2025, at least 2.0 percent of the average annual energy jurisdictional retail sales by that utility in 2019;

2. For Phase II electric utilities:

a. In calendar year 2022, at least 1.25 percent of the average annual energy jurisdictional retail sales by that utility in 2019;

b. In calendar year 2023, at least 2.5 percent of the average annual energy jurisdictional retail sales by that utility in 2019;

c. In calendar year 2024, at least 3.75 percent of the average annual energy jurisdictional retail sales by that utility in 2019; and

d. In calendar year 2025, at least 5.0 percent of the average annual energy jurisdictional retail sales by that utility in 2019; and

3. For the time period 2026 through 2028, and for every successive three-year period thereafter, the Commission shall establish new energy efficiency savings targets. In advance of the effective date of such targets, the Commission shall, after notice and opportunity for hearing, initiate proceedings to establish such targets. As part of such proceeding, the Commission shall consider the feasibility of achieving energy efficiency goals and future energy efficiency savings through cost-effective programs and measures. The Commission shall annually review the feasibility of the energy efficiency program savings in this section and report to the Chairs of the House Committee on Labor and Commerce and the Senate Committee on Commerce and Labor and the Secretary of Natural and Historic Resources and the Secretary of Commerce and Trade on such feasibility by October 1, 2022, and each year thereafter.

1167 ~~C. D.~~ The projected costs for the utility to design, implement, and operate such energy efficiency
1168 programs and portfolios of programs shall be no less than an aggregate amount of \$140 million for a
1169 Phase I Utility and \$870 million for a Phase II Utility for the period beginning July 1, 2018, and ending
1170 July 1, 2028, including any existing approved energy efficiency programs. In developing such portfolio
1171 of energy efficiency programs and portfolios of programs, each utility shall utilize a stakeholder process,
1172 to be facilitated by an independent monitor compensated under the funding provided pursuant to
1173 subsection E of § 56-592.1, to provide input and feedback on (i) the development of such energy
1174 efficiency programs and portfolios of programs; (ii) compliance with the total annual energy savings set
1175 forth in this subsection and how such savings affect utility integrated resource plans; (iii) recommended
1176 policy reforms by which the General Assembly or the Commission can ensure maximum and
1177 cost-effective deployment of energy efficiency technology across the Commonwealth; and (iv) best
1178 practices for evaluation, measurement, and verification for the purposes of assessing compliance with the
1179 total annual energy savings set forth in subsection B C. Utilities shall utilize the services of a third party
1180 to perform evaluation, measurement, and verification services to determine a utility's total annual savings
1181 as required by this subsection, as well as the annual and lifecycle net and gross energy and capacity
1182 savings, related emissions reductions, and other quantifiable benefits of each program; total customer bill
1183 savings that the programs and portfolios produce; and utility spending on each program, including any
1184 associated administrative costs. The third-party evaluator shall include and review each utility's avoided
1185 costs and cost-benefit analyses. The findings and reports of such third parties shall be concurrently
1186 provided to both the Commission and the utility, and the Commission shall make each such final annual
1187 report easily and publicly accessible online. Such stakeholder process shall include the participation of
1188 representatives from each utility, relevant directors, deputy directors, and staff members of the
1189 Commission who participate in approval and oversight of utility energy efficiency savings programs, the
1190 office of Consumer Counsel of the Attorney General, the Department of Energy, energy efficiency
1191 program implementers, energy efficiency providers, residential and small business customers, and any
1192 other interested stakeholder whom the independent monitor deems appropriate for inclusion in such
1193 process. The independent monitor shall convene meetings of the participants in the stakeholder process
1194 not less frequently than twice in each calendar year during the period beginning July 1, 2019, and
1195 ending July 1, 2028. The independent monitor shall report on the status of the energy efficiency
1196 stakeholder process, including (a) the objectives established by the stakeholder group during this process
1197 related to programs to be proposed, (b) recommendations related to programs to be proposed that result
1198 from the stakeholder process, and (c) the status of those recommendations, in addition to the petitions
1199 filed and the determination thereon, to the Governor, the Commission, and the Chairmen of the House
1200 Committee on Labor and Commerce and the Senate Committee on Commerce and Labor on July 1,
1201 2019, and annually thereafter through July 1, 2028.

1202 ~~D. E.~~ Nothing in this section shall apply to any entity organized under Chapter 9.1 (§ 56-231.15 et
1203 seq.).

1204 **2. That, no later than December 31, 2025, the State Corporation Commission (the Commission)**
1205 **shall promulgate regulations establishing a single, consistent cost-effectiveness test for use in**
1206 **evaluating proposed energy efficiency programs. In developing this test, the Commission shall use**
1207 **the cost-benefit analysis framework and process contained in the National Energy Screening**
1208 **Project's National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy**
1209 **Resources.**