

24100901D

SENATE BILL NO. 664

Offered January 16, 2024

A BILL to amend and reenact § 56-585.1 of the Code of Virginia, relating to electric utilities; electric distribution infrastructure serving data centers.

Patron—Stuart

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

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

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

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

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

59 owned incumbent electric utility that was bound by such a settlement.

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

64 a. The Commission may use any methodology to determine such return it finds consistent with the public
65 interest. However, for a Phase I Utility, for applications received by the Commission on or after January 1,
66 2020, such return shall not be set lower than the average of either (i) the returns on common equity reported
67 to the Securities and Exchange Commission for the three most recent annual periods for which such data are
68 available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other
69 investor-owned electric utilities in the peer group of the utility subject to such triennial review or (ii) the
70 authorized returns on common equity that are set by the applicable regulatory commissions for the same
71 selected peer group, nor shall the Commission set such return more than 150 basis points higher than such
72 average.

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

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

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

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

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

120 "Initial Return" means the fair combined rate of return on common equity determined for such utility by

121 the Commission on the first occasion after July 1, 2009, under any provision of this subsection pursuant to
 122 the provisions of subdivision 2 a.

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

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

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

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

144 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings
 145 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021 and
 146 terminating thereafter. Such filing shall encompass the three successive 12-month test periods ending
 147 December 31 immediately preceding the year in which such proceeding is conducted, except that the filing
 148 for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31,
 149 2020. After 2021, each Phase II Utility shall make a biennial filing by March 31 of every second year, except
 150 that the 2023 filing for a Phase II Utility shall be made on or after July 1, 2023. All biennial filings shall
 151 encompass the two successive 12-month test periods ending December 31 immediately preceding the year in
 152 which such review proceeding is conducted. All such filings shall consist of the schedules contained in the
 153 Commission's rules governing utility rate increase applications, and in every such case the filing for each year
 154 shall be identified separately and shall be segregated from any other year encompassed by the filing. In a
 155 filing under this subdivision that does not result in an overall rate change, a utility may propose an adjustment
 156 to one or more tariffs that are revenue neutral to the utility.

157 If the Commission determines that rates should be revised or credits be applied to customers' bills
 158 pursuant to subdivision 8 or 10, any rate adjustment clauses previously implemented related to facilities
 159 utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's
 160 costs, revenues, and investments until the amounts that are the subject of such rate adjustment clauses are
 161 fully recovered. The Commission shall combine such clauses with the utility's costs, revenues, and
 162 investments only after it makes its initial determination with regard to necessary rate revisions or credits to
 163 customers' bills, and the amounts thereof, but after such clauses are combined as specified in this paragraph,
 164 they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of
 165 future review proceedings.

166 As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously
 167 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,
 168 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues, and
 169 investments for generation and distribution services. After such rate adjustment clauses are combined as
 170 specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,
 171 revenues, and investments for the purposes of future biennial review proceedings, and the combination of
 172 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023
 173 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination shall
 174 not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution services in its
 175 2023 biennial proceeding.

176 4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for
 177 transmission services provided to the utility by the regional transmission entity of which the utility is a
 178 member, as determined under applicable rates, terms and conditions approved by the Federal Energy
 179 Regulatory Commission; (ii) costs charged to the utility that are associated with demand response programs
 180 approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity
 181 of which the utility is a member; and (iii) costs incurred by the utility to construct, operate, and maintain

182 transmission lines and substations installed in order to provide service to a business park. Upon petition of a
183 utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month
184 period, the Commission shall approve a rate adjustment clause under which such costs, including, without
185 limitation, costs for transmission service; charges for new and existing transmission facilities, including costs
186 incurred by the utility to construct, operate, and maintain transmission lines and substations installed in order
187 to provide service to a business park; administrative charges; and ancillary service charges designed to
188 recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to
189 recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

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

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

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

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

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

213 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses for
214 energy efficiency programs and pilot programs, which margin shall be equal to the general rate of return on
215 common equity determined as described in subdivision 2. Beginning January 1, 2022, and thereafter, if the
216 Commission determines that the utility meets in any year the annual energy efficiency standards set forth in §
217 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program
218 operating expenses in that year, to be recovered through a rate adjustment clause, which margin shall be equal
219 to the general rate of return on common equity determined as described in subdivision 2. If the Commission
220 does not approve energy efficiency programs that, in the aggregate, can achieve the annual energy efficiency
221 standards, the Commission shall award a margin on energy efficiency operating expenses in that year for any
222 programs the Commission has approved, to be recovered through a rate adjustment clause under this
223 subdivision, which margin shall equal the general rate of return on common equity determined as described in
224 subdivision 2. Any margin awarded pursuant to this subdivision shall be applied as part of the utility's next
225 rate adjustment clause true-up proceeding. The Commission shall also award an additional 20 basis points for
226 each additional incremental 0.1 percent in annual savings in any year achieved by the utility's energy
227 efficiency programs approved by the Commission pursuant to this subdivision, beyond the annual
228 requirements set forth in § 56-596.2, provided that the total performance incentive awarded in any year shall
229 not exceed 10 percent of that utility's total energy efficiency program spending in that same year.

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

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

243 As used in this subdivision, "large general service customer" means a customer that has a verifiable

244 history of having used more than one megawatt of demand from a single site.

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

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

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

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

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

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

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

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

295 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
296 utility's projected native load obligations and to promote economic development, a utility may at any time,
297 after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment
298 clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
299 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in
300 § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii)
301 one or more other generation facilities, (iii) one or more major unit modifications of generation facilities,
302 including the costs of any system or equipment upgrade, system or equipment replacement, or other cost
303 reasonably appropriate to extend the combined operating license for or the operating life of one or more
304 generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or

305 more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v)
306 one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable
307 energy resources as all or a portion of their power source and such facilities and associated resources are
308 located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such
309 facility is located within or without the utility's service territory, or (vi) one or more electric distribution grid
310 transformation projects; however, subject to the provisions of the following sentence, the utility shall not file
311 a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual
312 incremental increase in the level of investments associated with such a petition that exceeds five percent of
313 such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month
314 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by final
315 order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings
316 regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery in such
317 proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery
318 in prior proceedings under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by
319 a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of
320 overhead distribution facilities to underground facilities that have been previously approved or are pending
321 approval by the Commission through a petition by the utility under this subdivision. Such a petition
322 concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that
323 are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed
324 before the expiration or termination of capped rates. A utility that constructs or makes modifications to any
325 such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy
326 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole
327 or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as
328 accrued against income, through its rates, including projected construction work in progress, and any
329 associated allowance for funds used during construction, planning, development and construction or
330 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new
331 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such
332 projects, an enhanced rate of return on common equity calculated as specified below; however, in
333 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the
334 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation
335 and maintenance costs attributable to either the overhead distribution facilities being replaced or the new
336 underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.
337 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
338 eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a
339 petition for approval to construct or purchase a facility consisting of at least one megawatt of generating
340 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or
341 services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment
342 clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval
343 to construct or purchase a generating facility that emits carbon dioxide shall demonstrate that it has already
344 met the energy savings goals identified in § 56-596.2 and that the identified need cannot be met more
345 affordably through the deployment or utilization of demand-side resources or energy storage resources and
346 that it has considered and weighed alternative options, including third-party market alternatives, in its
347 selection process.

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

364 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
365 construction and to construction work in progress during the construction phase of the facility and shall

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

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

427 and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall
 428 vary by type of facility, as specified in the following table:

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

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

442 Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July
 443 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by
 444 the utility and recovered through a rate adjustment clause under this subdivision at such time as the
 445 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all
 446 costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be
 447 deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70
 448 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in
 449 the test periods under review in the utility's next review filed after July 1, 2014. Thirty percent of all costs of
 450 a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and
 451 December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility
 452 and recovered through a rate adjustment clause under this subdivision at such time as the Commission
 453 provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a
 454 facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for
 455 recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all
 456 costs shall be recovered ratably through existing base rates as determined by the Commission in the test
 457 periods under review in the utility's next review filed after July 1, 2014.

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

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

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

484 Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines nor new
 485 underground facilities shall receive an enhanced rate of return on common equity as described herein, but
 486 instead shall receive the utility's general rate of return during the construction phase of the facility and,
 487 thereafter, for the entire service life of the facility. No rate adjustment clause for new underground facilities

488 shall allocate costs to, or provide for the recovery of costs from, customers that are served within the large
 489 power service rate class for a Phase I Utility and the large general service rate classes for a Phase II Utility.
 490 New underground facilities are hereby declared to be ordinary extensions or improvements in the usual
 491 course of business under the provisions of § 56-265.2.

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

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

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

513 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from the
 514 Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or demonstration
 515 project involving a generation facility utilizing energy from offshore wind, and such utility has not, as of July
 516 1, 2023, commenced construction as defined for federal income tax purposes of an offshore wind generation
 517 facility or facilities with a minimum aggregate capacity of 250 megawatts, then the Commission, if it finds it
 518 in the public interest, may direct that the costs associated with any such rate adjustment clause involving said
 519 test or demonstration project shall thereafter no longer be recovered through a rate adjustment clause pursuant
 520 to subdivision 6 and shall instead be recovered through the utility's rates for generation and distribution
 521 services, with no change in such rates for generation and distribution services as a result of the combination
 522 of such costs with the other costs, revenues, and investments included in the utility's rates for generation and
 523 distribution services. Any such costs shall remain combined with the utility's other costs, revenues, and
 524 investments included in its rates for generation and distribution services until such costs are fully recovered.

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

549 time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a
550 component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such
551 outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to
552 any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the
553 Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs
554 for the purpose of proceedings conducted (a) with respect to filings under subdivision 3 made on and after
555 July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate increase
556 applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

557 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be
558 entered not more than three months, eight months, and nine months, respectively, after the date of filing of
559 such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be
560 applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or
561 termination of capped rates, whichever is later. At any time, the Commission may, in its discretion, for a
562 Phase I Utility, upon petition by such a utility or upon its own initiated proceeding, direct the consolidation of
563 any one or more subsets of rate adjustment clauses previously implemented pursuant to subdivision 5 or 6 in
564 the interest of judicial economy, customer transparency, or other factors the Commission determines to be
565 appropriate. Any subset of rate adjustment clauses so consolidated shall continue to be considered by the
566 Commission without regard to the other costs, revenues, investments, or earnings of the utility and remain as
567 a cost recovery mechanism independent from the utility's rates for generation and distribution services
568 pursuant to § 56-585.8 and subdivisions 5 and 6, but will be combined as a single rate adjustment clause for
569 cost recovery and review purposes. Any rate adjustment clause or subset of rate adjustment clauses so
570 consolidated shall be named in a manner, as determined by the Commission, that reasonably informs
571 customers as to the nature of the costs recovered by the consolidated rate adjustment clause. At any time, the
572 Commission may, in its discretion, for a Phase II Utility, upon petition by such a utility or upon its own
573 initiated proceeding, direct the consolidation of any one or more subsets of rate adjustment clauses previously
574 implemented pursuant to subdivision 5 or 6 in the interest of judicial economy, customer transparency, or
575 other factors the Commission determines to be appropriate. Any subset of rate adjustment clauses so
576 consolidated shall continue to be considered by the Commission without regard to the other costs, revenues,
577 investments, or earnings of the utility and remain as a cost recovery mechanism independent from the utility's
578 rates for generation and distribution services pursuant to this subdivision and subdivisions 5 and 6, but will be
579 combined as a single rate adjustment clause for cost recovery and review purposes. Any rate adjustment
580 clause or subset of rate adjustment clauses so consolidated shall be named in a manner, as determined by the
581 Commission, that reasonably informs customers as to the nature of the costs recovered by the consolidated
582 rate adjustment clause.

583 8. For a Phase I Utility in any triennial review proceeding filed on or before June 30, 2023 or for a Phase
584 II Utility in any biennial review proceeding, for the purposes of reviewing earnings on the utility's rates for
585 generation and distribution services, the following utility generation and distribution costs not proposed for
586 recovery under any other subdivision of this subsection, as recorded per books by the utility for financial
587 reporting purposes and accrued against income, shall be attributed to the test periods under review and
588 deemed fully recovered in the period recorded: costs associated with asset impairments related to early
589 retirement determinations made by the utility for utility generation facilities fueled by coal, natural gas, or oil
590 or for automated meter reading electric distribution service meters; costs associated with projects necessary to
591 comply with state or federal environmental laws, regulations, or judicial or administrative orders relating to
592 coal combustion by-product management that the utility does not petition to recover through a rate
593 adjustment clause pursuant to subdivision 5 e; costs associated with severe weather events; and costs
594 associated with natural disasters. Such costs shall be deemed to have been recovered from customers through
595 rates for generation and distribution services in effect during the test periods under review unless such costs,
596 individually or in the aggregate, together with the utility's other costs, revenues, and investments to be
597 recovered through rates for generation and distribution services, result in the utility's earned return on its
598 generation and distribution services for the combined test periods under review to fall more than 50 basis
599 points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test
600 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase
601 I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision
602 2 for such periods. In such cases, the Commission shall, in such review proceeding, authorize deferred
603 recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as
604 determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that
605 would, together with the utility's other costs, revenues, and investments to be recovered through rates for
606 generation and distribution services, cause the utility's earned return on its generation and distribution
607 services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined
608 test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility
609 and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under

610 subdivision 2 less 70 basis points. Notwithstanding the prior sentence, the aggregate amount of actual and
 611 reasonable costs associated with severe weather events eligible for such deferral shall not exceed an amount
 612 that would, together with the utility's other costs, revenues, and investments to be recovered through rates for
 613 generation and distribution services, cause the utility's earned return on its generation and distribution
 614 services to exceed the fair rate of return authorized for the combined test periods under review. For the
 615 purposes of determining any amount of costs that are associated with severe weather events, the Commission
 616 shall consider nationally recognized standards such as those published by the Institute of Electrical and
 617 Electronics Engineers (IEEE). Nothing in this section shall limit the Commission's authority, pursuant to the
 618 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of
 619 combined test period earnings of the utility in a review, for normalization of nonrecurring test period costs
 620 and annualized adjustments for future costs, in determining any appropriate increase or decrease in the
 621 utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

622 If the Commission determines as a result of any triennial review initiated prior to July 1, 2023 that:

623 a. Revenue reductions related to energy efficiency measures or programs approved and deployed since the
 624 utility's previous triennial review have caused the utility, as verified by the Commission, during the test
 625 period or periods under review, considered as a whole, to earn more than 50 basis points below a fair
 626 combined rate of return on its generation and distribution services or, for any test period commencing after
 627 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
 628 basis points below a fair combined rate of return on its generation and distribution services, as determined in
 629 subdivision 2, without regard to any return on common equity or other matters determined with respect to
 630 facilities described in subdivision 6, the Commission shall order increases to the utility's rates for generation
 631 and distribution services necessary to recover such revenue reductions. If the Commission finds, for reasons
 632 other than revenue reductions related to energy efficiency measures, that the utility has, during the test period
 633 or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate
 634 of return on its generation and distribution services or, for any test period commencing after December 31,
 635 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points
 636 below a fair combined rate of return on its generation and distribution services, as determined in subdivision
 637 2, without regard to any return on common equity or other matters determined with respect to facilities
 638 described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the
 639 opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair
 640 combined rate of return, using the most recently ended 12-month test period as the basis for determining the
 641 amount of the rate increase necessary. However, in the first triennial review proceeding conducted after
 642 January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all triennial
 643 reviews of a Phase I or Phase II utility, the Commission may not order such rate increase unless it finds that
 644 the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of
 645 providing its services and to earn not less than a fair combined rate of return on both its generation and
 646 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
 647 matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-
 648 month test period as the basis for determining the permissibility of any rate increase under the standards of
 649 this sentence, and the amount thereof; and provided that, solely in connection with making its determination
 650 concerning the necessity for such a rate increase or the amount thereof, the Commission shall, in any triennial
 651 review proceeding conducted prior to July 1, 2028, exclude from this most recently ended 12-month test
 652 period any remaining investment levels associated with a prior customer credit reinvestment offset pursuant
 653 to subdivision d.

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

669 c. The utility has, during the test period or test periods under review, considered as a whole, earned more
 670 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any

671 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
672 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
673 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
674 matter determined with respect to facilities described in subdivision 6, and the combined aggregate level of
675 capital investment that the Commission has approved other than those capital investments that the
676 Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made
677 by the utility during the test periods under review in that triennial review proceeding in new utility-owned
678 generation facilities utilizing energy derived from sunlight, or from wind, and in electric distribution grid
679 transformation projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of
680 the earnings that are more than 70 basis points above the utility's fair combined rate of return on its
681 generation and distribution services for the combined test periods under review in that triennial review
682 proceeding, the Commission shall, subject to the provisions of subdivision 10 and in addition to the actions
683 authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, in the
684 first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the
685 utility's rates ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual
686 revenues, with any reduction allocated to the utility's rates for generation services, and in each triennial
687 review of a Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that
688 the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its
689 services and to earn not less than a fair combined rate of return on its generation and distribution services, as
690 determined in subdivision 2, without regard to any return on common equity or other matters determined with
691 respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the
692 basis for determining the permissibility of any rate reduction under the standards of this sentence, and the
693 amount thereof; and

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

732 to subdivision 6. Only the portion of such costs of new utility-owned generation facilities utilizing energy
733 derived from sunlight, or from wind, or electric distribution grid transformation projects that has not been
734 included in any customer credit reinvestment offset pursuant to this subdivision, and not otherwise recovered
735 through the utility's rates for generation and distribution services, may be the subject of a rate adjustment
736 clause petition by the utility pursuant to subdivision 6.

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

747 9. a. In any biennial review for a Phase II Utility filed on or prior to December 31, 2023, if the
748 Commission determines that the utility has during the test period or test periods under review, considered as a
749 whole, earned more than 70 basis points above a fair combined rate of return on its generation and
750 distribution services previously authorized by the Commission, as determined in subdivision 2, without
751 regard to any return on common equity or other matters determined with respect to facilities described in
752 subdivision 6, which have not been combined with the utility's costs, revenues, and investments for
753 generation and distribution services, the Commission shall direct that 85 percent of the amount of such
754 earnings that were more than 70 basis points above such fair combined rate of return for the test period or
755 periods under review, considered as a whole, be credited to customers' bills. Any such credits shall be
756 amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the
757 effective date of the Commission's order, and shall be allocated among customer classes such that the
758 relationship between the specific customer class rates of return to the overall target rate of return will have the
759 same relationship as the last approved allocation of revenues used to design base rates.

760 b. In any biennial review for a Phase II Utility filed on or after January 1, 2024, if the Commission
761 determines that the utility has during the test period or test periods under review, considered as a whole,
762 earned above its fair combined rate of return on its generation and distribution services previously authorized
763 by the Commission, as determined in subdivision 2, without regard to any return on common equity or other
764 matters determined with respect to facilities described in subdivision 6, which have not been combined with
765 the utility's costs, revenues, and investments for generation and distribution services, the Commission shall
766 direct that 85 percent of the amount of such earnings above such fair combined rate of return for the test
767 period or periods under review, considered as a whole, be credited to customers' bills. Further, if the
768 Commission determines that during the test period or test periods under review, considered as a whole, a
769 Phase II Utility earned more than 150 basis points above a fair combined rate of return on its generation and
770 distribution services previously authorized by the Commission, without regard to any return on common
771 equity or other matters determined with respect to facilities described in subdivision 6, which have not been
772 combined with the utility's costs, revenues, and investments for generation and distribution services, the
773 Commission shall direct that all such earnings that were more than 150 basis points above such fair combined
774 rate of return for the test period or periods under review, considered as a whole, be credited to customers'
775 bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of
776 the Commission, following the effective date of the Commission's order, and shall be allocated among
777 customer classes such that the relationship between the specific customer class rates of return to the overall
778 target rate of return will have the same relationship as the last approved allocation of revenues used to design
779 base rates.

780 10. If, as a result of a triennial review required under this subsection and conducted with respect to any
781 test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected
782 to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than
783 December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission
784 finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test
785 period or periods under review, considered as a whole, earned more than 50 basis points above a fair
786 combined rate of return on its generation and distribution services or, for any test period commencing after
787 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
788 basis points above a fair combined rate of return on its generation and distribution services, as determined in
789 subdivision 2, without regard to any return on common equity or other matters determined with respect to
790 facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the
791 most recently ended 12-month test period exceeded the annual increases in the United States Average
792 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor

793 Statistics of the United States Department of Labor, compounded annually, when compared to the total
794 aggregate regulated rates of such utility as determined pursuant to the review conducted for the base period,
795 the Commission shall, unless it finds that such action is not in the public interest or that the provisions of
796 subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test
797 period or periods under review, considered as a whole that were more than 50 basis points, or, for any test
798 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase
799 I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers'
800 bills, in lieu of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to
801 this subdivision in connection with any triennial review unless such bill credits would be payable pursuant to
802 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any
803 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized and
804 allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this
805 subdivision:

806 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to
807 stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31,
808 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period
809 with respect to which credits have been applied to customers' bills under the provisions of this subdivision,
810 whichever is later.

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

817 11. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any
818 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and
819 cost of capital of such utility, excluding any debt associated with securitized bonds that are the obligation of
820 non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity ratio of such
821 capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity
822 ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions
823 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any
824 other entity with which such utility may be affiliated. In particular, and without limitation, the Commission
825 shall determine the federal and state income tax costs for any such utility that is part of a publicly traded,
826 consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated
827 according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates,
828 and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income
829 tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable
830 income or loss of its affiliates.

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

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

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

850 E. Notwithstanding any other provision of law, the Commission shall determine the amortization period
851 for recovery of any appropriate costs due to the early retirement of any electric generation facilities owned or
852 operated by any Phase I Utility or Phase II Utility. In making such determination, the Commission shall (i)

853 perform an independent analysis of the remaining undepreciated capital costs; (ii) establish a recovery period
854 that best serves ratepayers; and (iii) allow for the recovery of any carrying costs that the Commission deems
855 appropriate.

856 *F. Notwithstanding any other provision of this section or § 56-585.8, no costs associated with the*
857 *construction or extension of any electric distribution infrastructure that primarily serves the load of a data*
858 *center, as that term is defined in § 58.1-3506, shall be allocated to or recovered from any other customer.*

859 *G.* The Commission shall include in its report required by subsection B of § 56-596 any information
860 concerning the reliability impacts of generation unit additions and retirement determinations by a Phase I or
861 Phase II Utility along with the potential impact on the purchase of power from generation assets outside the
862 Virginia jurisdiction used to serve the utility's native load, utilizing information from the respective utility's
863 integrated resource plan or information from the respective utility's plan filed pursuant to subsection D of §
864 56-585.5.

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

INTRODUCED

SB664