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**HOUSE BILL NO. 2758**

Offered January 17, 2025

*A BILL to amend and reenact §§ 56-249.6, 56-585.1, and 56-585.8 of the Code of Virginia, relating to electric utilities; rate increases during certain months; biennial rate reviews.*

Patrons—Shin and Convirs-Fowler; Senator: Salim

Referred to Committee on Labor and Commerce

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

**1. That §§ 56-249.6, 56-585.1, and 56-585.8 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

3. Beginning July 1, 2009, for all utilities described in subdivision A 1 and subsection B, if the Commission approves any increase in fuel factor charges pursuant to this section that would increase the total rates of the residential class of customers of any such utility by more than 20 percent, the Commission, within six months following the effective date of such increase, shall review fuel costs, and if the Commission finds that the utility is, or is likely to be, in an over-recovery position with respect to fuel costs for the 12-month period for which the increase in fuel factor charges was approved by more than five percent, it may reduce the utility's fuel cost tariffs to correct the over-recovery.

B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall remain in effect until the later of (i) July 1, 2007 or (ii) the establishment of tariff provisions under subsection C. Any such utility shall continue to report to the Commission annually its actual fuel costs, including the cost of purchased power.

C. Each electric utility described in subsection B shall submit annually to the Commission its estimate of fuel costs, including the cost of purchased power, for successive 12-month periods beginning on July 1, 2007, and each July 1 thereafter. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for such periods, adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the Commission shall order that the deferral portion, if any, of the total increase in fuel tariffs for all classes as determined by the Commission to be appropriate for the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred without interest and recovered from all classes of customers as follows: (i) in the 12-month period beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii) in the 12-month period beginning July 1, 2009, that part of the balance of the deferral portion of the increase in fuel tariffs, if any, that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2009, shall be recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire balance of the deferral portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral portion of the increase in fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the amount of such increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by more than four percent over the level of such total rates in existence on June 30, 2007.

59 D. *A Phase I Utility shall not be required to file a case for fuel cost recovery in 2025. Commencing in*  
 60 *2026, annual filings shall be made by January 15 with interim rates effective March 1 of each year.*

61 E. In proceedings under subsections A and C:

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

73 2. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result  
 74 of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility  
 75 resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to maintain  
 76 reliable sources of supply, economical generation mix, generating experience of comparable facilities, and  
 77 minimization of the total cost of providing service.

78 In any proceeding for the recovery of fuel costs under this subdivision in which the costs a utility seeks to  
 79 recover include costs incurred under a natural gas capacity contract for a term of more than 10 years that  
 80 procures more than 250,000 dekatherms per day that has not previously been subject to a review under this  
 81 subdivision, the Commission shall require the utility to prove by a preponderance of the evidence that the  
 82 utility has (i) determined that the utility cannot meet its service obligations, giving due regard, in the  
 83 Commission's sole discretion, to reliability of service and the need to maintain reliable sources of supply,  
 84 without an additional fuel resource; (ii) reasonably identified and determined the date and amount of the new  
 85 fuel resource it needs; (iii) objectively studied available alternative fuel resource options, as verified by the  
 86 Commission, including options other than a new natural gas capacity contract or contracts to meet the  
 87 identified and determined need; and (iv) determined that the natural gas capacity contract or contracts are the  
 88 lowest-cost available option, taking into consideration fixed and variable costs and a reasonable projection of  
 89 utilization. Absent the Commission's finding that the utility has proven by a preponderance of the evidence  
 90 that the utility had complied with the requirements of clauses (i), (ii), (iii), and (iv), the Commission shall  
 91 deny the utility's recovery of such costs. Nothing in this subdivision shall limit the Commission's discretion to  
 92 review and make a determination as to the reasonableness of the recovery by a utility of costs, including costs  
 93 incurred under a natural gas capacity contract, that were previously subject to a review under this subdivision.

94 ~~E.~~ F. The Commission is authorized to promulgate, in accordance with the provisions of this section, all  
 95 rules and regulations necessary to allow the recovery by electric utilities of all of their prudently incurred fuel  
 96 costs under subsections A and C, including the cost of purchased power, as precisely and promptly as  
 97 possible, with no over-recovery or under-recovery, except as provided in subsection C, in a manner that will  
 98 tend to assure public confidence and minimize abrupt changes in charges to consumers.

99 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire.**

100 A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing,  
 101 initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and  
 102 transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed  
 103 by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such proceedings the  
 104 Commission shall determine fair rates of return on common equity applicable to the generation and  
 105 distribution services of the utility. In so doing, the Commission may use any methodology to determine such  
 106 return it finds consistent with the public interest, but such return shall not be set lower than the average of the  
 107 returns on common equity reported to the Securities and Exchange Commission for the three most recent  
 108 annual periods for which such data are available by not less than a majority, selected by the Commission as  
 109 specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall  
 110 the Commission set such return more than 300 basis points higher than such average. The peer group of the  
 111 utility shall be determined in the manner prescribed in subdivision 2 b. The Commission may increase or  
 112 decrease such combined rate of return by up to 100 basis points based on the generating plant performance,  
 113 customer service, and operating efficiency of a utility, as compared to nationally recognized standards  
 114 determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission  
 115 shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that  
 116 the utility's combined rate of return on common equity is more than 50 basis points below the combined rate  
 117 of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide  
 118 the opportunity to fully recover the costs of providing the utility's services and to earn not less than such

119 combined rate of return. If the Commission finds that the utility's combined rate of return on common equity  
 120 is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either  
 121 (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order  
 122 such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully  
 123 recover its costs of providing its services and to earn not less than the fair rates of return on common equity  
 124 applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the  
 125 utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year  
 126 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12  
 127 months, as determined at the discretion of the Commission, following the effective date of the Commission's  
 128 order and be allocated among customer classes such that the relationship between the specific customer class  
 129 rates of return to the overall target rate of return will have the same relationship as the last approved  
 130 allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and  
 131 opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the provision of  
 132 generation, distribution and transmission services by each investor-owned incumbent electric utility, subject  
 133 to the following provisions:

134 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and  
 135 such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-585.1:1,  
 136 the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive 12-month  
 137 test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for a Phase I  
 138 Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-month test  
 139 periods ending December 31 immediately preceding the year in which such review proceeding is conducted.  
 140 Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase II Utility in  
 141 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and ending December  
 142 31, 2020, with subsequent reviews on a biennial basis commencing in 2023, with such proceedings utilizing  
 143 the two successive 12-month test periods ending December 31 immediately preceding the year in which such  
 144 review proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned  
 145 incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the  
 146 Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an  
 147 investor-owned incumbent electric utility that was bound by such a settlement.

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

152 a. The Commission may use any methodology to determine such return it finds consistent with the public  
 153 interest. However, for a Phase I Utility, for applications received by the Commission on or after January 1,  
 154 2020, such return shall not be set lower than the average of either (i) the returns on common equity reported  
 155 to the Securities and Exchange Commission for the three most recent annual periods for which such data are  
 156 available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other  
 157 investor-owned electric utilities in the peer group of the utility subject to such triennial review or (ii) the  
 158 authorized returns on common equity that are set by the applicable regulatory commissions for the same  
 159 selected peer group, nor shall the Commission set such return more than 150 basis points higher than such  
 160 average.

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

177 c. The Commission may increase or decrease the utility's combined rate of return for generation and  
 178 distribution services by up to 50 basis points based on factors that may include reliability, generating plant  
 179 performance, customer service, and operating efficiency of a utility. Any such adjustment to the combined

180 rate of return for generation and distribution services shall include consideration of nationally recognized  
181 standards determined by the Commission to be appropriate for such purposes.

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

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

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

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

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

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

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

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

232 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings  
233 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021 and  
234 terminating thereafter. Such filing shall encompass the three successive 12-month test periods ending  
235 December 31 immediately preceding the year in which such proceeding is conducted, except that the filing  
236 for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31,  
237 2020. After 2021, each Phase II Utility shall make a biennial filing by March 31 of every second year, except  
238 that the 2023 filing for a Phase II Utility shall be made on or after July 1, 2023. All biennial filings shall  
239 encompass the two successive 12-month test periods ending December 31 immediately preceding the year in  
240 which such review proceeding is conducted. All such filings shall consist of the schedules contained in the

241 Commission's rules governing utility rate increase applications, and in every such case the filing for each year  
 242 shall be identified separately and shall be segregated from any other year encompassed by the filing. In a  
 243 filing under this subdivision that does not result in an overall rate change, a utility may propose an adjustment  
 244 to one or more tariffs that are revenue neutral to the utility.

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

254 As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously  
 255 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,  
 256 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues, and  
 257 investments for generation and distribution services. After such rate adjustment clauses are combined as  
 258 specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,  
 259 revenues, and investments for the purposes of future biennial review proceedings, and the combination of  
 260 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023  
 261 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination shall  
 262 not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution services in its  
 263 2023 biennial proceeding.

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

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

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

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

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

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

301 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses for

302 energy efficiency programs and pilot programs, which margin shall be equal to the general rate of return on  
303 common equity determined as described in subdivision 2. Beginning January 1, 2022, and thereafter, if the  
304 Commission determines that the utility meets in any year the annual energy efficiency standards set forth in §  
305 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program  
306 operating expenses in that year, to be recovered through a rate adjustment clause, which margin shall be equal  
307 to the general rate of return on common equity determined as described in subdivision 2. If the Commission  
308 does not approve energy efficiency programs that, in the aggregate, can achieve the annual energy efficiency  
309 standards, the Commission shall award a margin on energy efficiency operating expenses in that year for any  
310 programs the Commission has approved, to be recovered through a rate adjustment clause under this  
311 subdivision, which margin shall equal the general rate of return on common equity determined as described in  
312 subdivision 2. Any margin awarded pursuant to this subdivision shall be applied as part of the utility's next  
313 rate adjustment clause true-up proceeding. The Commission shall also award an additional 20 basis points for  
314 each additional incremental 0.1 percent in annual savings in any year achieved by the utility's energy  
315 efficiency programs approved by the Commission pursuant to this subdivision, beyond the annual  
316 requirements set forth in § 56-596.2, provided that the total performance incentive awarded in any year shall  
317 not exceed 10 percent of that utility's total energy efficiency program spending in that same year.

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

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

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

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

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

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

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

361 e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate impacts to  
362 marine life caused by construction of offshore wind generating facilities, as described in § 56-585.1:11, or to

363 comply with state or federal environmental laws or regulations applicable to generation facilities used to  
 364 serve the utility's native load obligations, including the costs of allowances purchased through a market-based  
 365 trading program for carbon dioxide emissions. The Commission shall approve such a petition if it finds that  
 366 such costs are necessary to comply with such environmental laws or regulations;

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

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

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

383 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the  
 384 utility's projected native load obligations and to promote economic development, a utility may at any time,  
 385 after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment  
 386 clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation  
 387 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in  
 388 § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii)  
 389 one or more other generation facilities, (iii) one or more major unit modifications of generation facilities,  
 390 including the costs of any system or equipment upgrade, system or equipment replacement, or other cost  
 391 reasonably appropriate to extend the combined operating license for or the operating life of one or more  
 392 generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or  
 393 more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v)  
 394 one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable  
 395 energy resources as all or a portion of their power source and such facilities and associated resources are  
 396 located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such  
 397 facility is located within or without the utility's service territory, or (vi) one or more electric distribution grid  
 398 transformation projects; however, subject to the provisions of the following sentence, the utility shall not file  
 399 a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual  
 400 incremental increase in the level of investments associated with such a petition that exceeds five percent of  
 401 such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month  
 402 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by final  
 403 order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings  
 404 regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery in such  
 405 proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery  
 406 in prior proceedings under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by  
 407 a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of  
 408 overhead distribution facilities to underground facilities that have been previously approved or are pending  
 409 approval by the Commission through a petition by the utility under this subdivision. Such a petition  
 410 concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that  
 411 are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed  
 412 before the expiration or termination of capped rates. A utility that constructs or makes modifications to any  
 413 such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy  
 414 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole  
 415 or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as  
 416 accrued against income, through its rates, including projected construction work in progress, and any  
 417 associated allowance for funds used during construction, planning, development and construction or  
 418 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new  
 419 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such  
 420 projects, an enhanced rate of return on common equity calculated as specified below; however, in  
 421 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the  
 422 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation  
 423 and maintenance costs attributable to either the overhead distribution facilities being replaced or the new

424 underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.  
425 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain  
426 eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a  
427 petition for approval to construct or purchase a facility consisting of at least one megawatt of generating  
428 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or  
429 services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment  
430 clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval  
431 to construct or purchase a generating facility that emits carbon dioxide shall demonstrate that it has already  
432 met the energy savings goals identified in § 56-596.2 and that the identified need cannot be met more  
433 affordably through the deployment or utilization of demand-side resources or energy storage resources and  
434 that it has considered and weighed alternative options, including third-party market alternatives, in its  
435 selection process.

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

452 Such enhanced rate of return on common equity shall be applied to allowance for funds used during  
453 construction and to construction work in progress during the construction phase of the facility and shall  
454 thereafter be applied to the entire facility during the first portion of the service life of the facility. The first  
455 portion of the service life shall be as specified in the table below; however, the Commission shall determine  
456 the duration of the first portion of the service life of any facility, within the range specified in the table below,  
457 which determination shall be consistent with the public interest and shall reflect the Commission's  
458 determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the  
459 Commonwealth and the risks involved in the development of the facility. After the first portion of the service  
460 life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the  
461 remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the  
462 date a facility constructed by the utility and described in clause (i), (ii), (iii), or (v) begins commercial  
463 operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one  
464 megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and  
465 that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date  
466 new underground facilities or new electric distribution grid transformation projects are classified by the  
467 utility as plant in service, and such service life shall be deemed equal in years to the life of that facility as  
468 used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be  
469 calculated by adding the basis points specified in the table below to the utility's general rate of return, and  
470 such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause.  
471 Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's  
472 actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as  
473 determined pursuant to this subdivision, until such construction work in progress is included in rates. The  
474 construction of any facility described in clause (i) or (v) is in the public interest, and in determining whether  
475 to approve such facility, the Commission shall liberally construe the provisions of this title. The construction  
476 or purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity,  
477 and with an aggregate rated capacity that does not exceed 16,100 megawatts, including rooftop solar  
478 installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts,  
479 that use energy derived from sunlight or from onshore wind and are located in the Commonwealth or off the  
480 Commonwealth's Atlantic shoreline, regardless of whether any of such facilities are located within or without  
481 the utility's service territory, is in the public interest, and in determining whether to approve such facility, the  
482 Commission shall liberally construe the provisions of this title. A utility may enter into short-term or long-  
483 term power purchase contracts for the power derived from sunlight generated by such generation facility prior  
484 to purchasing the generation facility. The replacement of any subset of a utility's existing overhead



485 distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-  
 486 per-mile over a preceding 10-year period with new underground facilities in order to improve electric service  
 487 reliability is in the public interest. In determining whether to approve petitions for rate adjustment clauses for  
 488 such new underground facilities that meet this criteria, and in determining the level of costs to be recovered  
 489 thereunder, the Commission shall liberally construe the provisions of this title.

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

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

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

530 Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July  
 531 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by  
 532 the utility and recovered through a rate adjustment clause under this subdivision at such time as the  
 533 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all  
 534 costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be  
 535 deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70  
 536 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in  
 537 the test periods under review in the utility's next review filed after July 1, 2014. Thirty percent of all costs of  
 538 a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and  
 539 December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility  
 540 and recovered through a rate adjustment clause under this subdivision at such time as the Commission  
 541 provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a  
 542 facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for  
 543 recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all  
 544 costs shall be recovered ratably through existing base rates as determined by the Commission in the test  
 545 periods under review in the utility's next review filed after July 1, 2014.

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

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

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

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

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

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

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

601 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from the  
602 Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or demonstration  
603 project involving a generation facility utilizing energy from offshore wind, and such utility has not, as of July  
604 1, 2023, commenced construction as defined for federal income tax purposes of an offshore wind generation  
605 facility or facilities with a minimum aggregate capacity of 250 megawatts, then the Commission, if it finds it  
606 in the public interest, may direct that the costs associated with any such rate adjustment clause involving said

607 test or demonstration project shall thereafter no longer be recovered through a rate adjustment clause pursuant  
 608 to subdivision 6 and shall instead be recovered through the utility's rates for generation and distribution  
 609 services, with no change in such rates for generation and distribution services as a result of the combination  
 610 of such costs with the other costs, revenues, and investments included in the utility's rates for generation and  
 611 distribution services. Any such costs shall remain combined with the utility's other costs, revenues, and  
 612 investments included in its rates for generation and distribution services until such costs are fully recovered.

613 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a  
 614 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs  
 615 incurred by a utility prior to the filing of such petition, or during the consideration thereof by the  
 616 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are  
 617 related to facilities and projects described in clause (i) of subdivision 6, or that are related to new  
 618 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of  
 619 the utility until the Commission's final order in the matter, or until the implementation of any applicable  
 620 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs  
 621 prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the  
 622 consideration thereof by the Commission, that are proposed for recovery in such petition and that are related  
 623 to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or  
 624 coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be  
 625 built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final  
 626 order in the matter, or until the implementation of any applicable approved rate adjustment clauses,  
 627 whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to  
 628 other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or  
 629 termination of capped rates, provided, however, that no provision of this act shall affect the rights of any  
 630 parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC  
 631 and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a  
 632 regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation  
 633 and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant  
 634 and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize  
 635 such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in  
 636 which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of  
 637 time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a  
 638 component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such  
 639 outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to  
 640 any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the  
 641 Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs  
 642 for the purpose of proceedings conducted (a) with respect to filings under subdivision 3 made on and after  
 643 July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate increase  
 644 applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

645 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be  
 646 entered not more than three months, eight months, and nine months, respectively, after the date of filing of  
 647 such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be  
 648 applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or  
 649 termination of capped rates, whichever is later, *provided that for a Phase I Utility such rate adjustment shall*  
 650 *not occur during the months of November through February. Orders issued between September 1 and*  
 651 *December 31 shall direct that the applicable rate adjustment clause be applied to customers' bills beginning*  
 652 *on March 1.* At any time, the Commission may, in its discretion, for a Phase I Utility, upon petition by such a  
 653 utility or upon its own initiated proceeding, direct the consolidation of any one or more subsets of rate  
 654 adjustment clauses previously implemented pursuant to subdivision 5 or 6 in the interest of judicial economy,  
 655 customer transparency, or other factors the Commission determines to be appropriate. Any subset of rate  
 656 adjustment clauses so consolidated shall continue to be considered by the Commission without regard to the  
 657 other costs, revenues, investments, or earnings of the utility and remain as a cost recovery mechanism  
 658 independent from the utility's rates for generation and distribution services pursuant to § 56-585.8 and  
 659 subdivisions 5 and 6, but will be combined as a single rate adjustment clause for cost recovery and review  
 660 purposes. Any rate adjustment clause or subset of rate adjustment clauses so consolidated shall be named in a  
 661 manner, as determined by the Commission, that reasonably informs customers as to the nature of the costs  
 662 recovered by the consolidated rate adjustment clause.

663 At any time, the Commission may, in its discretion, for a Phase II Utility, upon petition by such a utility  
 664 or upon its own initiated proceeding, direct the consolidation of any one or more subsets of rate adjustment  
 665 clauses previously implemented pursuant to subdivision 5 or 6 in the interest of judicial economy, customer  
 666 transparency, or other factors the Commission determines to be appropriate. Any subset of rate adjustment  
 667 clauses so consolidated shall continue to be considered by the Commission without regard to the other costs,

668 revenues, investments, or earnings of the utility and remain as a cost recovery mechanism independent from  
669 the utility's rates for generation and distribution services pursuant to this subdivision and subdivisions 5 and  
670 6, but will be combined as a single rate adjustment clause for cost recovery and review purposes. Any rate  
671 adjustment clause or subset of rate adjustment clauses so consolidated shall be named in a manner, as  
672 determined by the Commission, that reasonably informs customers as to the nature of the costs recovered by  
673 the consolidated rate adjustment clause.

674 8. For a Phase I Utility in any triennial review proceeding filed on or before June 30, 2023 or for a Phase  
675 II Utility in any biennial review proceeding, for the purposes of reviewing earnings on the utility's rates for  
676 generation and distribution services, the following utility generation and distribution costs not proposed for  
677 recovery under any other subdivision of this subsection, as recorded per books by the utility for financial  
678 reporting purposes and accrued against income, shall be attributed to the test periods under review and  
679 deemed fully recovered in the period recorded: costs associated with asset impairments related to early  
680 retirement determinations made by the utility for utility generation facilities fueled by coal, natural gas, or oil  
681 or for automated meter reading electric distribution service meters; costs associated with projects necessary to  
682 comply with state or federal environmental laws, regulations, or judicial or administrative orders relating to  
683 coal combustion by-product management that the utility does not petition to recover through a rate  
684 adjustment clause pursuant to subdivision 5 e; costs associated with severe weather events; and costs  
685 associated with natural disasters. Such costs shall be deemed to have been recovered from customers through  
686 rates for generation and distribution services in effect during the test periods under review unless such costs,  
687 individually or in the aggregate, together with the utility's other costs, revenues, and investments to be  
688 recovered through rates for generation and distribution services, result in the utility's earned return on its  
689 generation and distribution services for the combined test periods under review to fall more than 50 basis  
690 points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test  
691 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase  
692 I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision  
693 2 for such periods. In such cases, the Commission shall, in such review proceeding, authorize deferred  
694 recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as  
695 determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that  
696 would, together with the utility's other costs, revenues, and investments to be recovered through rates for  
697 generation and distribution services, cause the utility's earned return on its generation and distribution  
698 services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined  
699 test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility  
700 and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under  
701 subdivision 2 less 70 basis points. Notwithstanding the prior sentence, the aggregate amount of actual and  
702 reasonable costs associated with severe weather events eligible for such deferral shall not exceed an amount  
703 that would, together with the utility's other costs, revenues, and investments to be recovered through rates for  
704 generation and distribution services, cause the utility's earned return on its generation and distribution  
705 services to exceed the fair rate of return authorized for the combined test periods under review. For the  
706 purposes of determining any amount of costs that are associated with severe weather events, the Commission  
707 shall consider nationally recognized standards such as those published by the Institute of Electrical and  
708 Electronics Engineers (IEEE). Nothing in this section shall limit the Commission's authority, pursuant to the  
709 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of  
710 combined test period earnings of the utility in a review, for normalization of nonrecurring test period costs  
711 and annualized adjustments for future costs, in determining any appropriate increase or decrease in the  
712 utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

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

714 a. Revenue reductions related to energy efficiency measures or programs approved and deployed since the  
715 utility's previous triennial review have caused the utility, as verified by the Commission, during the test  
716 period or periods under review, considered as a whole, to earn more than 50 basis points below a fair  
717 combined rate of return on its generation and distribution services or, for any test period commencing after  
718 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70  
719 basis points below a fair combined rate of return on its generation and distribution services, as determined in  
720 subdivision 2, without regard to any return on common equity or other matters determined with respect to  
721 facilities described in subdivision 6, the Commission shall order increases to the utility's rates for generation  
722 and distribution services necessary to recover such revenue reductions. If the Commission finds, for reasons  
723 other than revenue reductions related to energy efficiency measures, that the utility has, during the test period  
724 or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate  
725 of return on its generation and distribution services or, for any test period commencing after December 31,  
726 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points  
727 below a fair combined rate of return on its generation and distribution services, as determined in subdivision  
728 2, without regard to any return on common equity or other matters determined with respect to facilities

729 described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the  
730 opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair  
731 combined rate of return, using the most recently ended 12-month test period as the basis for determining the  
732 amount of the rate increase necessary. However, in the first triennial review proceeding conducted after  
733 January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all triennial  
734 reviews of a Phase I or Phase II utility, the Commission may not order such rate increase unless it finds that  
735 the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of  
736 providing its services and to earn not less than a fair combined rate of return on both its generation and  
737 distribution services, as determined in subdivision 2, without regard to any return on common equity or other  
738 matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-  
739 month test period as the basis for determining the permissibility of any rate increase under the standards of  
740 this sentence, and the amount thereof; and provided that, solely in connection with making its determination  
741 concerning the necessity for such a rate increase or the amount thereof, the Commission shall, in any triennial  
742 review proceeding conducted prior to July 1, 2028, exclude from this most recently ended 12-month test  
743 period any remaining investment levels associated with a prior customer credit reinvestment offset pursuant  
744 to subdivision d.

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

760 c. The utility has, during the test period or test periods under review, considered as a whole, earned more  
761 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any  
762 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a  
763 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and  
764 distribution services, as determined in subdivision 2, without regard to any return on common equity or other  
765 matter determined with respect to facilities described in subdivision 6, and the combined aggregate level of  
766 capital investment that the Commission has approved other than those capital investments that the  
767 Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made  
768 by the utility during the test periods under review in that triennial review proceeding in new utility-owned  
769 generation facilities utilizing energy derived from sunlight, or from wind, and in electric distribution grid  
770 transformation projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of  
771 the earnings that are more than 70 basis points above the utility's fair combined rate of return on its  
772 generation and distribution services for the combined test periods under review in that triennial review  
773 proceeding, the Commission shall, subject to the provisions of subdivision 10 and in addition to the actions  
774 authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, in the  
775 first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the  
776 utility's rates ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual  
777 revenues, with any reduction allocated to the utility's rates for generation services, and in each triennial  
778 review of a Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that  
779 the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its  
780 services and to earn not less than a fair combined rate of return on its generation and distribution services, as  
781 determined in subdivision 2, without regard to any return on common equity or other matters determined with  
782 respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the  
783 basis for determining the permissibility of any rate reduction under the standards of this sentence, and the  
784 amount thereof; and

785 d. (Expires July 1, 2028) In any review proceeding conducted after December 31, 2017, upon the request  
786 of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that are more  
787 than 70 basis points above the utility's fair combined rate of return on its generation and distribution services  
788 for the test period or periods under review be credited to customer bills pursuant to subdivision 8 b, the  
789 aggregate level of prior capital investment that the Commission has approved other than those capital

790 investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant to  
791 subdivision 6 made by the utility during the test period or periods under review in both (i) new utility-owned  
792 generation facilities utilizing energy derived from sunlight, or from onshore or offshore wind, and (ii) electric  
793 distribution grid transformation projects, as determined by the utility's plant in service and construction work  
794 in progress balances related to such investments as recorded per books by the utility for financial reporting  
795 purposes as of the end of the most recent test period under review. Any such combined capital investment  
796 amounts shall offset any customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of  
797 invested or committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or  
798 committed capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit  
799 reinvestment offset, which offsets the customer bill credit amount that the utility has invested or will invest in  
800 new solar or wind generation facilities or electric distribution grid transformation projects for the benefit of  
801 customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the utility's fair  
802 rate of return on its generation and distribution services, and thereby reduce or eliminate otherwise  
803 incremental rate adjustment clause charges and increases to customer bills, which is deemed to be in the  
804 public interest. If 100 percent of the amount of earnings that are more than 70 basis points above the utility's  
805 fair combined rate of return on its generation and distribution services, as determined in subdivision 2,  
806 exceeds the aggregate level of invested capital in new utility-owned generation facilities utilizing energy  
807 derived from sunlight, or from wind, and electric distribution grid transformation projects, as provided in  
808 clauses (i) and (ii), during the test period or periods under review, then 70 percent of the amount of such  
809 excess shall be credited to customer bills as provided in subdivision 8 b in connection with the review  
810 proceeding. The portion of any costs associated with new utility-owned generation facilities utilizing energy  
811 derived from sunlight, or from wind, or electric distribution grid transformation projects that is the subject of  
812 any customer credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through  
813 the utility's rates for generation and distribution services over the service life of such facilities and shall not  
814 thereafter be included in the utility's costs, revenues, and investments in future review proceedings conducted  
815 pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to  
816 subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing  
817 energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is not the  
818 subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered through the  
819 utility's rates for generation and distribution services over the service life of such facilities and shall be  
820 included in the utility's costs, revenues, and investments in future review proceedings conducted pursuant to  
821 subdivision 2 until such costs are fully recovered, and if such costs are recovered through the utility's rates for  
822 generation and distribution services, they shall not be the subject of a rate adjustment clause petition pursuant  
823 to subdivision 6. Only the portion of such costs of new utility-owned generation facilities utilizing energy  
824 derived from sunlight, or from wind, or electric distribution grid transformation projects that has not been  
825 included in any customer credit reinvestment offset pursuant to this subdivision, and not otherwise recovered  
826 through the utility's rates for generation and distribution services, may be the subject of a rate adjustment  
827 clause petition by the utility pursuant to subdivision 6.

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

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

851 b. In any biennial review for a Phase II Utility filed on or after January 1, 2024, if the Commission

852 determines that the utility has during the test period or test periods under review, considered as a whole,  
 853 earned above its fair combined rate of return on its generation and distribution services previously authorized  
 854 by the Commission, as determined in subdivision 2, without regard to any return on common equity or other  
 855 matters determined with respect to facilities described in subdivision 6, which have not been combined with  
 856 the utility's costs, revenues, and investments for generation and distribution services, the Commission shall  
 857 direct that 85 percent of the amount of such earnings above such fair combined rate of return for the test  
 858 period or periods under review, considered as a whole, be credited to customers' bills. Further, if the  
 859 Commission determines that during the test period or test periods under review, considered as a whole, a  
 860 Phase II Utility earned more than 150 basis points above a fair combined rate of return on its generation and  
 861 distribution services previously authorized by the Commission, without regard to any return on common  
 862 equity or other matters determined with respect to facilities described in subdivision 6, which have not been  
 863 combined with the utility's costs, revenues, and investments for generation and distribution services, the  
 864 Commission shall direct that all such earnings that were more than 150 basis points above such fair combined  
 865 rate of return for the test period or periods under review, considered as a whole, be credited to customers'  
 866 bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of  
 867 the Commission, following the effective date of the Commission's order, and shall be allocated among  
 868 customer classes such that the relationship between the specific customer class rates of return to the overall  
 869 target rate of return will have the same relationship as the last approved allocation of revenues used to design  
 870 base rates.

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

897 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to  
 898 stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31,  
 899 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period  
 900 with respect to which credits have been applied to customers' bills under the provisions of this subdivision,  
 901 whichever is later.

902 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for  
 903 any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010,  
 904 pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses  
 905 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a;  
 906 (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase  
 907 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July  
 908 1, 2009.

909 11. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any  
 910 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and  
 911 cost of capital of such utility, excluding any debt associated with securitized bonds that are the obligation of  
 912 non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity ratio of such

913 capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity  
914 ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions  
915 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any  
916 other entity with which such utility may be affiliated. In particular, and without limitation, the Commission  
917 shall determine the federal and state income tax costs for any such utility that is part of a publicly traded,  
918 consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated  
919 according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates,  
920 and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income  
921 tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable  
922 income or loss of its affiliates.

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

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

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

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

948 F. The Commission shall include in its report required by subsection B of § 56-596 any information  
949 concerning the reliability impacts of generation unit additions and retirement determinations by a Phase I or  
950 Phase II Utility, along with the potential impact on the purchase of power from generation assets outside the  
951 Virginia jurisdiction used to serve the utility's native load, utilizing information from the respective utility's  
952 integrated resource plan or information from the respective utility's plan filed pursuant to subsection D of §  
953 56-585.5.

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

956 **§ 56-585.8. Biennial rate reviews.**

957 A. For the purposes of this section:

958 "Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

959 "Utility" means a Phase I Utility.

960 B. With the first review commencing on March 31, 2024, and biennially thereafter, the Commission shall  
961 conduct rate reviews of the rates, terms, and conditions for the provision of generation and distribution  
962 services by a Phase I Utility that participated in triennial review proceedings in 2020 and 2023, and such  
963 Phase I Utility shall no longer be subject to triennial review proceedings pursuant to § 56-585.1.

964 C. In each biennial review, the Commission shall conduct a proceeding to review all rates, terms, and  
965 conditions for generation and distribution services with such proceeding utilizing the two successive  
966 12-month test periods ending December 31 immediately preceding the year in which such proceeding is  
967 conducted. Such biennial review shall be conducted in a single, combined proceeding, except for review of  
968 the following costs, which the utility shall continue to recover and the Commission shall continue to review  
969 separately, pursuant to the applicable statutory provisions: costs that are recovered pursuant to (i) § 56-249.6,  
970 (ii) subdivisions A 4, 5, and 6 of § 56-585.1, and (iii) § 56-585.6.

971 D. Each biennial rate review proceeding shall commence on or before ~~March 31~~ April 30 of the biennial  
972 review year with the filing of a petition by each Phase I Utility subject to the provisions of this section. The  
973 Commission, after providing notice and an opportunity for hearing, shall grant a final order on such petition



974 no later than ~~November 20~~ *December 31*. Any revisions in rates ordered by the Commission pursuant to the  
 975 rate review shall take effect no later than ~~January 1~~ *March 1* of the subsequent year.

976 E. In each biennial review proceeding, the Commission shall set the fair rate of return on common equity  
 977 applicable to the generation and distribution services of the utility for the two such services combined and for  
 978 any rate adjustment clauses approved under subdivision A 5 or 6 of § 56-585.1. The Commission may use  
 979 any methodology it finds consistent with the public interest to determine the Phase I Utility's fair rate of  
 980 return on common equity. The Commission may increase or decrease the combined rate of return for  
 981 generation and distribution services by up to 50 basis points based on factors that may include reliability,  
 982 generating plant performance, customer service, and operating efficiency of a utility. Any such adjustment to  
 983 the combined rate of return for generation and distribution services shall include consideration of nationally  
 984 recognized standards determined by the Commission to be appropriate for such purposes.

985 F. In any biennial review for a Phase I Utility, if the Commission determines in its sole discretion that the  
 986 utility's existing rates for generation and distribution services will, on a going-forward basis, either produce  
 987 (i) revenues in excess of the utility's authorized rate of return or (ii) revenues below the utility's authorized  
 988 rate of return, then the Commission shall order any reductions or increases, as applicable and necessary, to  
 989 such rates for generation and distribution services that it deems appropriate to ensure the resulting rates for  
 990 generation and distribution services (a) are just and reasonable and (b) provide the utility an opportunity to  
 991 recover its costs of providing services over the rate period ending on December 31 of the year of the utility's  
 992 succeeding review and earn a fair rate of return authorized pursuant to this section. Such determination shall  
 993 be limited to the Phase I Utility's rates for generation and distribution services and shall not consider the costs  
 994 or revenues recovered in any rate adjustment clause authorized pursuant to this chapter.

995 G. In any biennial review of rates for generation and distribution services, if the combined rate of return  
 996 on common equity earned is no more than 100 basis points above or below the fair combined rate of return,  
 997 as determined by the Commission, for the test period under review, then such combined return shall not be  
 998 considered either excessive or insufficient, respectively.

999 1. If in any biennial review, the Commission finds that, during the test period under review, considered as  
 1000 a whole, the utility has earned more than 100 basis points above the authorized fair combined rate of return  
 1001 on its generation or distribution services, the Commission shall direct that 100 percent of the amount of such  
 1002 earnings that were more than 100 basis points above such fair combined rate of return for the test period  
 1003 under review, considered as a whole, be credited to customers' bills. Any such credits shall be applied to  
 1004 customers' bills, as determined at the discretion of the Commission, following the effective date of the  
 1005 Commission's order, and shall be allocated among customer classes such that the relationship between the  
 1006 specific customer class rates of return to the overall target rate of return will have the same relationship as the  
 1007 last approved allocation of revenues used to design base rates; or

1008 2. The Commission shall authorize deferred recovery for reasonable (i) actual costs associated with severe  
 1009 weather events and (ii) actual costs associated with natural disasters, not currently in rates, and the  
 1010 Commission shall allow the utility to amortize and recover such deferred costs over future periods as  
 1011 determined by the Commission. The amount of any such deferral shall not exceed an amount that would,  
 1012 together with the utility's other costs, revenues, and investments recovered through rates for generation and  
 1013 distribution services for the test period under review, cause the utility's earned return on its generation and  
 1014 distribution services to exceed 100 basis points above the fair combined rate of return applicable to the test  
 1015 period under review. For the purposes of determining any amount of costs that are associated with severe  
 1016 weather events, the Commission shall consider nationally recognized standards such as those published by  
 1017 the Institute of Electrical and Electronics Engineers (IEEE).

1018 Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant  
 1019 to this subsection shall not be considered for the purpose of determining the utility's earnings in any  
 1020 subsequent biennial review.

1021 H. In any proceeding under this title, including each biennial review, to determine the prior two years'  
 1022 excess or deficiency for the purposes of subsection F, the Commission shall use an average rate base using  
 1023 the actual starting and end-of-test period capital structure of the utility, excluding any debt associated with  
 1024 any securitized bonds and without regard to the cost of capital, capital structure, or investments of any other  
 1025 entities with which the utility is affiliated. To determine a revenue requirement in any proceeding under this  
 1026 title, the Commission shall use the utility's actual end-of-test period capital structure and cost of capital  
 1027 without regard to the cost of capital, capital structure, or investments of any other entities with which the  
 1028 utility is affiliated, including debt associated with any securitized bonds, unless the Commission makes a  
 1029 finding, based on evidence in the record, that the debt to equity ratio of the actual end-of-test period capital  
 1030 structure of such utility is unreasonable, in which case the Commission may utilize a debt to equity ratio that  
 1031 it finds to be reasonable.

1032 In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the Commission  
 1033 shall determine federal and state income tax costs as follows: (i) the utility's apportioned state income tax  
 1034 costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated

1035 return with its affiliates, and (ii) the utility's federal income tax costs shall be calculated according to the  
1036 applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments  
1037 originating from any taxable income or loss of its affiliates.

1038 I. The Commission is authorized to determine during any biennial review the reasonableness or prudence  
1039 of any cost subject to the rate review incurred or projected to be incurred by the utility, and a Phase I Utility  
1040 shall recover such costs that the Commission finds to be reasonable and prudent.

1041 J. In any biennial review conducted pursuant to this section, a Phase I Utility or any other party may  
1042 propose changes to its terms and conditions and the Commission may approve, reject, or amend any changes  
1043 and may propose any special rates, contracts, or incentives pursuant to § 56-235.2.

1044 K. Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ 56-585.5 and 56-596.2.

1045 L. To the extent that the provisions of this section are inconsistent with the provisions of § 56-585.1, the  
1046 provisions of this section shall control.