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HOUSE BILL NO. 2621
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Ballard)

(Patrons Prior to Substitute—Delegates Ballard and Williams [HB 1588])

House Amendments in [] - February 3, 2025

A *BILL to amend and reenact §§ 56-585.1 and 56-585.8 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-249.8, relating to Phase I Utilities; biennial rate reviews; recovery of certain costs.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.1 and 56-585.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-249.8 as follows:

§ 56-249.8. Financing for certain securitized asset costs; Phase I Utility.

A. As used in this section:

"Ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with securitized asset cost bonds.

"Assignee" means a legally recognized entity to which an electric utility assigns, sells, or transfers, other than as a security, all or a portion of its interest in or right to securitized asset cost property. "Assignee" includes a corporation, limited liability company, general partnership or limited partnership, public authority trust, financing entity, or other entity to which an assignee assigns, sells, or transfers, other than as a security, all or a portion of its interest in or right to securitized asset cost property.

"Bondholder" means a person who holds a securitized asset cost bond.

"Electric utility" means a Phase I Utility, as that term is defined in subdivision A 1 of § 56-585.1.

"Financing costs" means:

1. Interest and any premium, including any acquisition, defeasance, or redemption premium, payable on securitized asset cost bonds;

2. Any payment required under any indenture, ancillary agreement, or other financing documents pertaining to securitized asset cost bonds and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized asset bonds;

3. Any other costs related to structuring, offering, issuing, supporting, repaying, refunding, servicing, and complying with securitized asset cost bonds, including service fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized asset cost bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

4. Any taxes and license fees or other fees imposed on the revenues generated from the collection of securitized asset cost charges or otherwise resulting from the collection of securitized asset cost charges, in any such case whether paid, payable, or accrued;

5. Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued;

6. Any costs incurred by the Commission for any outside consultants or counsel retained in connection with the securitization of securitized asset costs; and

7. Any financing costs on the utility's securitized asset cost balance prior to issuance of any securitized asset cost bonds, calculated at the utility's approved weighted average cost of capital.

"Financing order" means an order that authorizes the issuance of securitized asset cost bonds; the imposition, collection, and periodic adjustments of a securitized asset cost charge; the creation of securitized asset cost property; the sale, assignment, or transfer of securitized asset cost property to an assignee; and any other actions necessary or advisable to take actions described in the financing order.

"Financing party" means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.

"Financing statement" has the same meaning as provided in § 8.9A-102 of the Uniform Commercial Code.

"Pledgee" means a financing party to which an electric utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to securitized asset cost property.

"Securitized asset cost bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued

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60 *in one or more series or tranches by an electric utility or its assignee pursuant to a financing order, the*
61 *proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved*
62 *securitized asset costs and financing costs, and that are secured by or payable from securitized asset cost*
63 *property. If certificates of participation or ownership are issued, references in this section to principal,*
64 *interest, or premium shall be construed to refer to comparable amounts under those certificates.*

65 *"Securitized asset cost charge" means the non-bypassable charges authorized by the Commission to*
66 *repay, finance, or securitized asset costs and financing costs (i) imposed on and part of all retail customer*
67 *bills, except those of exempt retail access customers; (ii) collected by an electric utility or its successor or*
68 *assignees, or a collection agent, in full, separate and apart from the electric utility's base rates; and (iii) paid*
69 *by all retail customers of the electric utility, irrespective of the generation supplier of such customer, except*
70 *for an exempt retail access customer.*

71 *"Securitized asset costs" means (i) storm recovery costs incurred by an electric utility due to severe*
72 *weather events, as recognized by nationally recognized standards including standards published by the*
73 *Institute of Electrical and Electronics Engineers, and natural disasters and (ii) undepreciated generation*
74 *utility plant balances.*

75 *"Storm recovery costs" means investments and expenses incurred by an electric utility on or after January*
76 *1, 2024, arising from or related to any major storm, extraordinary weather event, or natural disaster*
77 *affecting Phase I Utility ratepayers in Virginia, including costs of the mobilization, staging, construction,*
78 *reconstruction, repair, or replacement of production, generation, transport, transmission, general, or*
79 *distribution facilities.*

80 *"Undepreciated generation utility plant balances" means any unrecovered capitalized costs of or*
81 *undepreciated investments in one or more fossil-fired electric generating plants having nameplate capacity in*
82 *excess of 1,000 megawatts each, and related supply, transmission, equipment, and fixtures. Undepreciated*
83 *generation utility plant balances shall include (i) the net book value of assets on the electric utility's balance*
84 *sheet related to such generating plants and related infrastructure and (ii) carrying costs authorized by the*
85 *Commission. "Undepreciated generation utility plant balances" does not include (a) any costs of removing*
86 *retired generating plant assets; (b) any capitalized costs and investments in fossil-fired electric generating*
87 *plants and related supply, transmission, equipment, and fixtures incurred or made by an electric utility on or*
88 *after December 31, 2023; and (c) any non-cash asset retirement obligation assets and related accumulated*
89 *depreciation.*

90 *"Uniform Commercial Code" means Titles 8.1A through 8.13 (§ 8.1A-101 et seq.).*

91 *B. Notwithstanding the provisions of Chapter 3 (§ 56-55 et seq.), an electric utility may petition the*
92 *Commission for a financing order pursuant to this section. No more than four months after the date such*
93 *petition is filed, the Commission shall either issue (i) such financing order in accordance with the*
94 *requirements of subdivision 2 or (ii) an order rejecting the petition.*

95 *1. The petition shall include (i) an estimate of the total amount of any securitized asset costs that the*
96 *electric utility has incurred over the time period noted in the petition; (ii) an indication of whether the*
97 *electric utility proposes to finance all or a portion of the securitized asset costs using one or more series or*
98 *tranches of securitized asset cost bonds; (iii) an estimate and details of the financing costs related to the*
99 *securitized asset costs to be financed through the securitized asset cost bonds; (iv) an estimate of the*
100 *securitized asset cost charges necessary to recover the securitized asset costs and all financing costs and the*
101 *proposed period for recovery of such costs; (v) a description of any benefits expected to result from the*
102 *issuance of securitized asset cost bonds, including the avoidance of or significant mitigation of abrupt and*
103 *significant increases in rates to the electric utility's customers for the applicable time period; and (vi) direct*
104 *testimony and exhibits supporting the petition. If the electric utility proposes to finance a portion of the*
105 *securitized asset costs, the electric utility shall identify in the petition the specific amount of securitized asset*
106 *costs for the applicable time period to be financed using securitized asset cost bonds. By electing not to*
107 *finance a portion of the securitized asset costs for an applicable time period using securitized asset cost*
108 *bonds, an electric utility shall not be deemed to waive its right to recover such costs pursuant to a separate*
109 *proceeding with the Commission.*

110 *2. a. A financing order issued by the Commission pursuant to this section shall include:*

111 *(1) The amount of securitized asset costs to be financed using securitized asset cost bonds. The*
112 *Commission shall describe and estimate the amount of financing costs that may be recovered through*
113 *securitized asset cost charges. The financing order shall also specify the period over which securitized asset*
114 *costs and financing costs may be recovered and whether the securitized asset cost bonds may be offered and*
115 *issued in one or more series or tranches during a fixed period not to exceed one year after the date of the*
116 *financing order;*

117 *(2) A finding that the proposed issuance of securitized asset cost bonds is in the public interest and the*
118 *associated securitized asset cost charges are just and reasonable;*

119 *(3) A finding that the structuring and pricing of the securitized asset cost bonds are reasonably expected*
120 *to result in reasonable securitized asset charges consistent with market conditions at the time the securitized*
121 *asset cost bonds are priced and the terms set forth in such financing order;*

122 (4) A requirement that, for so long as the securitized asset cost bonds are outstanding and until all
 123 financing costs have been paid in full, the imposition and collection of securitized asset cost charges
 124 authorized under a financing order shall be non-bypassable and paid by all retail customers of the electric
 125 utility, irrespective of the generation supplier of such customer, except for an exempt retail access customer;

126 (5) A formula-based true-up mechanism for making annual adjustments to the securitized asset cost
 127 charges that customers are required to pay pursuant to the financing order and for making any adjustments
 128 that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure
 129 the timely payment of securitized asset cost bonds and financing costs and other required amounts and
 130 charges payable in connection with the securitized asset cost bonds;

131 (6) The securitized asset cost property that is, or shall be, created in favor of an electric utility or its
 132 successors or assignees and that shall be used to pay or secure securitized asset cost bonds and all financing
 133 costs;

134 (7) The authority of the electric utility to establish the terms and conditions of the securitized asset cost
 135 bonds, including repayment schedules, expected interest rates, the issuance in one or more series or tranches
 136 with different maturity dates, and other financing costs, and the authority to establish the terms and
 137 conditions of the ancillary documents related to the securitized asset cost bonds, including servicing
 138 arrangement for the securitized asset cost charges;

139 (8) A finding that the securitized asset cost charges shall be allocated among customer classes in
 140 accordance with the methodology approved in the electric utility's most recent base rate case;

141 (9) A requirement that after the final terms of an issuance of securitized asset cost bonds have been
 142 established and before the issuance of securitized asset cost bonds, the electric utility determines the
 143 resulting initial securitized asset cost charge in accordance with the financing order and that such initial
 144 securitized asset cost charge be final and effective upon the issuance of such securitized asset cost bonds
 145 without further Commission action so long as such initial securitized asset cost charge is consistent with the
 146 financing order;

147 (10) A requirement that the electric utility's base rates, exclusive of the cost of securitized asset cost
 148 bonds, reflect the reduction of rate base associated with the securitization of utility plant balances effective
 149 on the date proceeds from the issuance of the securitized asset cost bonds are received by the utility. This can
 150 be accomplished through the use of a temporary tracker to credit customers until the electric utility's next
 151 base rate case, at which point the reduction in rate base shall be reflected in base rates;

152 (11) A method of tracing funds collected as securitized asset cost charges, or other proceeds of securitized
 153 asset cost property, and a requirement that such method be the method of tracing such funds and determining
 154 the identifiable cash proceeds of any securitized asset cost property subject to the financing order under
 155 applicable law;

156 (12) Any other conditions not otherwise inconsistent with this section that the Commission determines are
 157 appropriate.

158 b. Neither a financing order issued pursuant to this section nor the Commission's approval of a petition
 159 for a financing order shall require that securitized asset cost bonds be marketed as a specified type of
 160 security or that the assignee be formed as a specified type of entity. The electric utility shall maintain
 161 discretion to determine the type of security that securitized asset cost bonds shall be.

162 c. A financing order issued to an electric utility may provide that creation of the electric utility's
 163 securitized asset cost property is conditioned upon, and simultaneous with, the sale or other transfer for the
 164 securitized asset cost property to an assignee and the pledge of the securitized asset cost property to secure
 165 securitized asset cost bonds.

166 d. If the Commission issues a financing order, the Commission shall establish a protocol for the electric
 167 utility to annually file a petition or, in the Commission's discretion, a letter setting out application of the
 168 formula-based mechanism and, based on estimates of consumption for each rate class and other
 169 mathematical factors, requesting administrative approval to make applicable adjustments. The review of the
 170 filing shall be limited to determining whether there are any mathematical or clerical errors in the application
 171 of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection
 172 of securitized asset cost charges and the amount of an adjustment. The adjustments shall ensure the recovery
 173 of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing
 174 costs, or redemption premium and other fees, costs, and charges in respect of securitized asset cost bonds
 175 approved under the financing order. Within 30 days after receiving an electric utility's request pursuant to
 176 this subdivision d, the Commission shall either approve the request or inform the electric utility of any
 177 mathematical or clerical errors in its calculation. If the Commission informs the electric utility of any
 178 mathematical or clerical errors in its calculation, the electric utility may correct such errors and refile its
 179 request. The 30-day time frame previously described in this subdivision d shall apply to a refiled request.

180 e. Subsequent to the transfer of securitized asset cost property to an assignee or the issuance of
 181 securitized asset cost bonds authorized thereby, whichever is earlier, a financing order shall be irrevocable
 182 and, except for changes made pursuant to the formula-based mechanism authorized in this section, the
 183 Commission shall not amend, modify, or terminate the financing order by any subsequent action or reduce,

184 *impair, postpone, terminate, or otherwise adjust securitized asset cost charges approved in the financing*
185 *order. After the issuance of a financing order, the electric utility shall retain sole discretion regarding*
186 *whether to assign, sell, or otherwise transfer securitized asset cost property or to cause securitized asset cost*
187 *bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.*

188 3. *At the request of an electric utility, the Commission may commence a proceeding and issue a*
189 *subsequent financing order that provides for refinancing, retiring, or refunding securitized asset cost bonds*
190 *issued pursuant to the original financing order if the Commission finds that the subsequent financing order*
191 *satisfies all of the criteria specified in this section for a financing order. Effective upon retirement of the*
192 *refunded securitized asset bonds and the issuance of new securitized asset cost bonds, the Commission shall*
193 *adjust the related securitized asset cost charges accordingly.*

194 4. a. *A financing order shall remain in effect and securitized asset cost property under the financing order*
195 *shall continue to exist until securitized asset cost bonds issued pursuant to the financing order have been paid*
196 *in full or defeased and, in each case, all Commission-approved financing costs of such securitized asset cost*
197 *bonds have been recovered in full.*

198 b. *A financing order issued to an electric utility shall remain in effect and unabated notwithstanding the*
199 *reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the electric utility or its*
200 *successors or assignees.*

201 C. 1. *The Commission shall not, in exercising its powers and carrying out its duties regarding any matter*
202 *within its authority pursuant to this chapter, and notwithstanding any other provision of law, (i) consider the*
203 *securitized asset cost bonds issued pursuant to a financing order to be the debt of the electric utility other*
204 *than for federal income tax purposes, including for any purpose under § 56-585.8; (ii) consider the*
205 *securitized asset cost charges paid under the financing order to be the revenue of the electric utility for any*
206 *purpose, including for any purpose under § 56-585.8; (iii) consider the securitized asset costs or financing*
207 *costs specified in the financing order to be the costs of the electric utility, including for any purpose under §*
208 *56-585.8; or (iv) determine any action taken by an electric utility that is consistent with the financing order to*
209 *be unjust or unreasonable.*

210 2. *The Commission shall not order or otherwise directly or indirectly require an electric utility to use*
211 *securitized asset cost bonds to finance any project, addition, plant, facility, extension, capital improvement,*
212 *equipment, or any other expenditure. After the issuance of a financing order, the electric utility shall retain*
213 *sole discretion regarding whether to cause the securitized asset cost bonds to be issued, including the right to*
214 *defer or postpone such sale, assignment, transfer, or issuance. Nothing shall prevent the electric utility from*
215 *abandoning the issuance of securitized asset cost bonds under the financing order by filing with the*
216 *Commission a statement of abandonment and the reasons therefor. The Commission shall not deny an*
217 *electric utility its right to recover securitized asset costs as otherwise provided in this section, or refuse or*
218 *condition authorization or approval of the issuance and sale by an electric utility of securities or the*
219 *assumption by the electric utility of liabilities or obligations, solely because of the potential availability of*
220 *securitized asset cost bond financing.*

221 D. *The electric bills of an electric utility that has obtained a financing order and caused securitized asset*
222 *cost bonds to be issued shall comply with the provisions of this subsection; however, the failure of an electric*
223 *utility to comply with this subsection shall not invalidate, impair, or affect any financing order, securitized*
224 *asset cost property, securitized asset cost charge, or securitized asset cost bonds. The electric utility shall:*

225 1. *Explicitly reflect that a portion of the charges on any electric bill represents securitized asset cost*
226 *charges approved in a financing order issued to the electric utility and, if the securitized asset cost property*
227 *has been transferred to an assignee, such bill shall include a statement to the effect that the assignee is the*
228 *owner of the rights to securitized asset cost charges and that the electric utility or another entity, if*
229 *applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers*
230 *must indicate the securitized asset cost charge and the ownership of the charge; and*

231 2. *Include the securitized asset cost charge on each customer's bill as a separate line item and include*
232 *both the rate and the amount of the charge on each bill.*

233 E. 1. *The following provisions shall be applicable to securitized asset cost property:*

234 a. *All securitized asset cost property that is specified in a financing order shall constitute an existing,*
235 *present intangible property right or interest therein, notwithstanding that the imposition and collection of*
236 *securitized asset cost charges depends on the electric utility, to which the financing order is issued,*
237 *performing its servicing functions relating to the collection of securitized asset cost charges and on future*
238 *electricity consumption. The securitized asset cost property shall exist (i) regardless of whether or not the*
239 *revenues or proceeds arising from the securitized asset cost property have been billed, have accrued, or have*
240 *been collected and (ii) notwithstanding the fact that the value or amount of the securitized asset cost property*
241 *is dependent on the future provision of service to customers by the electric utility or its successors or*
242 *assignees and the future consumption of electricity by customers;*

243 b. *Securitized asset cost property specified in a financing order shall exist until securitized asset cost*
244 *bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such*
245 *securitized asset cost bonds have been recovered in full;*

246 c. All or any portion of securitized asset cost property specified in a financing order issued to an electric
 247 utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned,
 248 directly or indirectly, by the electric utility and created for the limited purpose of acquiring, owning, or
 249 administering securitized asset cost property or issuing securitized asset cost bonds under the financing
 250 order. All or any portion of securitized asset cost property may be pledged to secure securitized asset cost
 251 bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties
 252 under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant
 253 of a security interest in or pledge of securitized asset cost property by an electric utility, or an affiliate of the
 254 electric utility, to an assignee, to the extent previously authorized in a financing order, shall not require the
 255 prior consent and approval of the Commission;

256 d. If an electric utility defaults on any required payment of charges arising from securitized asset cost
 257 property specified in a financing order, a court, upon application by an interested party, and without limiting
 258 any other remedies available to the applying party, shall order the sequestration and payment of the revenues
 259 arising from the securitized asset cost property to the financing parties or their assignees. Any such financing
 260 order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other
 261 insolvency proceedings with respect to the electric utility or its successors or assignees;

262 e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in securitized asset cost property
 263 specified in a financing order issued to an electric utility, and in the revenue and collections arising from that
 264 property, shall not be subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other
 265 person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any
 266 other entity;

267 f. Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other
 268 insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business
 269 combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, shall
 270 perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility
 271 under the financing order in the same manner and to the same extent as the electric utility, including
 272 collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the
 273 securitized asset cost property. Nothing in this subdivision f is intended to limit or impair any authority of the
 274 Commission concerning the transfer or succession of interests of public utilities; and

275 g. Securitized asset cost bonds shall be nonrecourse to the credit or any assets of the electric utility other
 276 than the securitized asset cost property as specified in the financing order and any rights under any ancillary
 277 agreement.

278 2. The following provisions shall be applicable to security interests:

279 a. The creation, perfection, and enforcement of any security interest in securitized asset cost property to
 280 secure the repayment of the principal and interest and other amounts payable in respect of securitized asset
 281 cost bonds; amounts payable under any indenture, ancillary agreement, or other financing documents in
 282 respect of the securitized asset costs; and other financing costs shall be governed by this subsection and not
 283 by the provisions of the Uniform Commercial Code;

284 b. A security interest in securitized asset cost property shall be created and enforceable when all of the
 285 following have occurred: (i) a financing order is issued, (ii) value is received by the debtor or seller for such
 286 securitized asset cost property, (iii) the debtor or seller has rights in such securitized asset cost property or
 287 the power to transfer rights in such securitized asset cost property, and (iv) a security agreement granting
 288 such security interest is executed and delivered by the debtor or seller. The description of securitized asset
 289 cost property in a security agreement shall be sufficient if the description refers to this section and the
 290 financing order creating the securitized asset cost property;

291 c. A security interest shall attach without any physical delivery of collateral or other act and, upon the
 292 filing of a financing statement with the Commission, the lien of the security interest shall be valid, binding,
 293 and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person
 294 granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a
 295 transfer of an interest in the securitized asset cost property shall be perfected against all parties having
 296 claims of any kind, including any judicial lien or other lien creditors or any claims of the transferor or
 297 creditors of the transferor, and shall have priority over all competing claims other than any prior security
 298 interest, ownership interest, or assignment in the property previously perfected in accordance with this
 299 section;

300 d. The Commission shall maintain any financing statement filed to perfect any security interest under this
 301 section in the same manner that the Commission maintains financing statements filed by transmitting utilities
 302 under the Uniform Commercial Code. The filing of a financing statement under this section shall be governed
 303 by the provisions regarding the filing of financing statements in the Uniform Commercial Code;

304 e. The priority of a security interest in securitized asset cost property shall not be affected by the
 305 commingling of securitized asset cost charges with other amounts. Any pledgee or secured party shall have a
 306 perfected security interest in the amount of all securitized asset cost charges that are deposited in any cash or
 307 deposit account of the qualifying utility in which securitized asset cost charges have been commingled with

308 *other funds and any other security interest that may apply to those funds shall be terminated when they are*
 309 *transferred to a segregated account for the assignee or a financing party;*

310 *f. No application of the formula-based adjustment mechanism as provided in this section shall affect the*
 311 *validity, perfection, or priority of a security interest in or transfer of securitized asset cost property; and*

312 *g. If a default or termination occurs under the securitized asset cost bonds, the financing parties or their*
 313 *representatives may foreclose on or otherwise enforce their lien and security interest in any securitized asset*
 314 *cost property as if they were secured parties with a perfected and prior lien under the Uniform Commercial*
 315 *Code, and the Commission may order that amounts arising from securitized asset cost charges be transferred*
 316 *to a separate account for the financing parties' benefit, to which their lien and security interest shall apply.*
 317 *On application by or on behalf of the financing parties, the Commission shall order the sequestration and*
 318 *payment to them of revenues arising from the securitized asset cost charges.*

319 *3. a. Any sale, assignment, or other transfer of securitized asset cost property shall be an absolute*
 320 *transfer and true sale of and not a pledge of, or secured transaction relating to, the transferor's right, title,*
 321 *and interest in, to, and under the securitized asset cost property if the documents governing the transaction*
 322 *expressly state that the transaction is a sale or other absolute transfer other than for federal and state income*
 323 *tax purposes. For all purposes other than federal and state income tax purposes, the parties' characterization*
 324 *of a transaction as a sale of an interest in securitized asset cost property shall be conclusive that the*
 325 *transaction is a true sale and that ownership has passed to the party characterized as the purchaser,*
 326 *regardless of any fact or circumstance that might support characterization of the transfer as a secured*
 327 *transaction. A transfer of an interest in securitized asset cost property shall occur only when all of the*
 328 *following have occurred: (i) the financing order creating the securitized asset cost property has become*
 329 *effective, (ii) the documents evidencing the transfer of securitized asset cost property have been executed by*
 330 *the transferor and delivered to the assignee, and (iii) value is received by the transferor for the securitized*
 331 *asset cost property. After such a transaction, the securitized asset cost property shall not be subject to any*
 332 *claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in*
 333 *the securitized asset cost property perfected in accordance with subdivision 2.*

334 *b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale,*
 335 *and the corresponding characterization of the interest of the assignee as an ownership interest, shall not be*
 336 *affected or impaired by the occurrence of any of the following factors:*

337 *(1) Commingling of securitized asset cost charges with other amounts;*

338 *(2) The retention by the seller of (i) a partial or residual interest, including an equity interest, in the*
 339 *securitized asset cost property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the*
 340 *right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of*
 341 *securitized asset cost charges;*

342 *(3) Any recourse that the assignee may have against the seller;*

343 *(4) Any right or obligation that the seller may have to repurchase the securitized asset cost charges;*

344 *(5) Any indemnification obligations of the seller;*

345 *(6) The obligation of the seller to collect securitized asset cost charges on behalf of the assignee;*

346 *(7) The transferor acting as the servicer of the securitized asset cost charges or the existence of any*
 347 *contract that authorizes or requires the electric utility, to the extent that any interest in securitized asset cost*
 348 *property is sold or assigned, to agree with the assignee or any financing party that it will continue to operate*
 349 *its system to provide service to its customers, will collect amounts in respect of the securitized asset cost*
 350 *charges for the benefit and account of such assignee or financing party, and will account for and remit such*
 351 *amounts to or for the account of such assignee or financing party;*

352 *(8) The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or*
 353 *other purposes;*

354 *(9) The granting or providing to bondholders of a preferred right to the securitized asset cost property or*
 355 *credit enhancement by the electric utility or its affiliates with respect to the securitized asset cost bonds; or*

356 *(10) Any application of the formula-based adjustment mechanism as provided in this section.*

357 *c. Any right that an electric utility has in the securitized asset cost property before its pledge, sale, or*
 358 *transfer or any other right created under this section or created in the financing order and assignable under*
 359 *this section or assignable pursuant to a financing order shall be property in the form of a contract right or a*
 360 *chose in action. Transfer of an interest in securitized asset cost property to an assignee shall be enforceable*
 361 *only when all of the following have occurred: (i) a financing order is issued, (ii) value is received by the*
 362 *transferor for such securitized asset cost property, (iii) the transferor has rights in such securitized asset cost*
 363 *property or the power to transfer rights in such securitized asset cost property, and (iv) transfer documents in*
 364 *connection with the issuance of securitized asset cost bonds are executed and delivered by the transferor. An*
 365 *enforceable transfer of an interest in securitized asset cost property to an assignee shall be perfected against*
 366 *all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been*
 367 *given by the filing of a financing statement in accordance with subdivision 2 c. The transfer shall be perfected*
 368 *against third parties as of the date of filing.*

369 *d. The Commission shall maintain any financing statement filed to perfect any sale, assignment, or*

370 transfer of securitized asset cost property under this section in the same manner that the Commission
 371 maintains financing statements filed by transmitting utilities under the Uniform Commercial Code. The filing
 372 of any financing statement under this section shall be governed by the provisions regarding the filing of
 373 financing statements in the Uniform Commercial Code. The filing of such a financing statement shall be the
 374 only method of perfecting a transfer of securitized asset cost property.

375 e. The priority of a transfer perfected under this section shall not be impaired by any later modification of
 376 the financing order or securitized asset cost property or by the commingling of funds arising from securitized
 377 asset cost property with other funds. Any other security interest that may apply to those funds, other than a
 378 security interest perfected under subdivision 2, shall be terminated when they are transferred to a segregated
 379 account for the assignee or a financing party. If securitized asset cost property has been transferred to an
 380 assignee or financing party, any proceeds of that property shall be held in trust for the assignee or financing
 381 party.

382 f. The priority of the conflicting interests of assignees in the same interest or rights in any securitized
 383 asset cost property shall be determined as follows:

384 (1) Conflicting perfected interests or rights of assignees shall rank according to priority in time of
 385 perfection. Priority shall date from the time a filing covering the transfer is made in accordance with
 386 subdivision 2 c;

387 (2) A perfected interest or right of an assignee shall have priority over a conflicting unperfected interest
 388 or right of an assignee; and

389 (3) A perfected interest or right of an assignee shall have priority over a person who becomes a lien
 390 creditor after the perfection of such assignee's interest or right.

391 F. The description of securitized asset cost property being transferred to an assignee in any sale
 392 agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security
 393 agreement, pledge agreement, or other security document, or indicated in any financing statement, shall only
 394 be sufficient if such description or indication refers to the financing order that created the securitized asset
 395 cost property and states that the agreement or financing statement covers all or part of the property
 396 described in the financing order. This section shall apply to all purported transfers of, and all purported
 397 grants or liens or security interests in, securitized asset cost property, regardless of whether the related sale
 398 agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other
 399 security document was entered into, or any financing statement was filed.

400 G. All financing statements referenced in this section shall be subject to Part 5 of Title 8.9A (§ 8.9A-501
 401 et seq.) of the Uniform Commercial Code, except that the requirement as to continuation statements shall not
 402 apply.

403 H. The laws of the Commonwealth shall govern the validity, enforceability, attachment, perfection,
 404 priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation
 405 of a security interest in any securitized asset cost property.

406 I. Neither the Commonwealth nor its political subdivisions shall be liable on any securitized asset cost
 407 bonds, and the bonds shall not be a debt or a general obligation of the Commonwealth or any of its political
 408 subdivisions, agencies, or instrumentalities, nor shall they be special obligations or indebtedness of the
 409 Commonwealth or any of its agencies or political subdivisions. An issue of securitized asset cost bonds shall
 410 not, directly, indirectly, or contingently, obligate the Commonwealth or any agency, political subdivision, or
 411 instrumentality of the Commonwealth to levy any tax or make any appropriation for payment of the
 412 securitized asset cost bonds, other than in their capacity as consumers of electricity. All securitized asset cost
 413 bonds shall contain on the face thereof a statement to the following effect: "NEITHER THE FULL FAITH
 414 AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH IS PLEDGED TO THE
 415 PAYMENT OF THE PRINCIPAL OF, OR INTEREST ON, THIS BOND."

416 J. All of the following entities may legally invest any sinking funds, moneys, or other funds in securitized
 417 asset cost bonds:

418 1. Subject to applicable statutory restrictions on state or local investment authority, the Commonwealth,
 419 units of local government, political subdivisions, public bodies, and public officers, except for members of the
 420 Commission;

421 2. Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and
 422 institutions, investment companies, insurance companies, insurance associations, and other persons carrying
 423 on a banking or insurance business;

424 3. Personal representatives, guardians, trustees, and other fiduciaries; and

425 4. All other persons authorized to invest in bonds or other obligations of a similar nature.

426 K. 1. The Commonwealth and its agencies, including the Commission, pledge and agree with
 427 bondholders, the owners of the securitized asset cost property, and other financing parties that the
 428 Commonwealth and its agencies shall not take any action listed in this subdivision. This subsection does not
 429 preclude limitation or alteration if full compensation is made by law for the full protection of the securitized
 430 asset cost charges collected pursuant to a financing order and of the bondholders and any assignee or
 431 financing party entering into a contract with the electric utility. The Commonwealth and its agencies,

432 including the Commission, shall not:

433 a. Alter the provisions of this section that authorize the Commission to create an irrevocable contract
434 right or chose in action by the issuance of a financing order, to create securitized asset cost property, and to
435 make the securitized asset cost charges imposed by a financing order irrevocable, binding, or non-
436 bypassable charges;

437 b. Take or permit any action that impairs or would impair the value of securitized asset cost property or
438 the security for the securitized asset cost bonds or revises the securitized asset costs for which recovery is
439 authorized;

440 c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties;
441 or

442 d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this
443 section, reduce, alter, or impair securitized asset cost charges that are to be imposed, billed, charged,
444 collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until
445 any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and
446 any contracts to be performed, in connection with the related securitized asset cost bonds have been paid and
447 performed in full.

448 2. Any person that issues securitized asset cost bonds may include the language specified in subdivision 1
449 in the securitized asset cost bonds and related documentation.

450 L. An assignee or financing party shall not be considered an electric utility or person providing electric
451 service by virtue of engaging in the transactions described in this section.

452 M. If there is a conflict between this section and any other law regarding the attachment, assignment, or
453 perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in
454 securitized asset cost property, this section shall govern.

455 N. In making determinations under this section, the Commission may engage an outside consultant and
456 counsel.

457 O. Nothing in this section shall be construed to limit the ability of an electric utility to seek any available
458 relief pursuant to any other provision of law, including § 56-585.8.

459 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire.**

460 A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing,
461 initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and
462 transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed
463 by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such proceedings the
464 Commission shall determine fair rates of return on common equity applicable to the generation and
465 distribution services of the utility. In so doing, the Commission may use any methodology to determine such
466 return it finds consistent with the public interest, but such return shall not be set lower than the average of the
467 returns on common equity reported to the Securities and Exchange Commission for the three most recent
468 annual periods for which such data are available by not less than a majority, selected by the Commission as
469 specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall
470 the Commission set such return more than 300 basis points higher than such average. The peer group of the
471 utility shall be determined in the manner prescribed in subdivision 2 b. The Commission may increase or
472 decrease such combined rate of return by up to 100 basis points based on the generating plant performance,
473 customer service, and operating efficiency of a utility, as compared to nationally recognized standards
474 determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission
475 shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that
476 the utility's combined rate of return on common equity is more than 50 basis points below the combined rate
477 of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide
478 the opportunity to fully recover the costs of providing the utility's services and to earn not less than such
479 combined rate of return. If the Commission finds that the utility's combined rate of return on common equity
480 is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either
481 (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order
482 such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully
483 recover its costs of providing its services and to earn not less than the fair rates of return on common equity
484 applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the
485 utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year
486 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12
487 months, as determined at the discretion of the Commission, following the effective date of the Commission's
488 order and be allocated among customer classes such that the relationship between the specific customer class
489 rates of return to the overall target rate of return will have the same relationship as the last approved
490 allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and
491 opportunity for hearing, shall conduct reviews of the rates, terms and conditions for the provision of
492 generation, distribution and transmission services by each investor-owned incumbent electric utility, subject
493 to the following provisions:

494 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and
495 such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of § 56-585.1:1,
496 the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three successive 12-month
497 test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter, reviews for a Phase I
498 Utility will be on a triennial basis with subsequent proceedings utilizing the three successive 12-month test
499 periods ending December 31 immediately preceding the year in which such review proceeding is conducted.
500 Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct a review for a Phase II Utility in
501 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and ending December
502 31, 2020, with subsequent reviews on a biennial basis commencing in 2023, with such proceedings utilizing
503 the two successive 12-month test periods ending December 31 immediately preceding the year in which such
504 review proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned
505 incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the
506 Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an
507 investor-owned incumbent electric utility that was bound by such a settlement.

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

512 a. The Commission may use any methodology to determine such return it finds consistent with the public
513 interest. However, for a Phase I Utility, for applications received by the Commission on or after January 1,
514 2020, such return shall not be set lower than the average of either (i) the returns on common equity reported
515 to the Securities and Exchange Commission for the three most recent annual periods for which such data are
516 available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other
517 investor-owned electric utilities in the peer group of the utility subject to such triennial review or (ii) the
518 authorized returns on common equity that are set by the applicable regulatory commissions for the same
519 selected peer group, nor shall the Commission set such return more than 150 basis points higher than such
520 average.

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

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

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

556 public interest, then the lower limit imposed by subdivision 2 a on the return to be determined by the
557 Commission for such utility shall be calculated, for that Current Proceeding only, by increasing the Initial
558 Return by a percentage at least equal to the increase, expressed as a percentage, in the United States Average
559 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
560 Statistics of the United States Department of Labor, since the date on which the Commission determined the
561 Initial Return. For purposes of this subdivision:

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

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

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

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

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

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

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

592 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings
593 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021 and
594 terminating thereafter. Such filing shall encompass the three successive 12-month test periods ending
595 December 31 immediately preceding the year in which such proceeding is conducted, except that the filing
596 for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31,
597 2020. After 2021, each Phase II Utility shall make a biennial filing by March 31 of every second year, except
598 that the 2023 filing for a Phase II Utility shall be made on or after July 1, 2023. All biennial filings shall
599 encompass the two successive 12-month test periods ending December 31 immediately preceding the year in
600 which such review proceeding is conducted. All such filings shall consist of the schedules contained in the
601 Commission's rules governing utility rate increase applications, and in every such case the filing for each year
602 shall be identified separately and shall be segregated from any other year encompassed by the filing. In a
603 filing under this subdivision that does not result in an overall rate change, a utility may propose an adjustment
604 to one or more tariffs that are revenue neutral to the utility.

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

614 As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously
615 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,
616 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues, and
617 investments for generation and distribution services. After such rate adjustment clauses are combined as

618 specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,
 619 revenues, and investments for the purposes of future biennial review proceedings, and the combination of
 620 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023
 621 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination shall
 622 not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution services in its
 623 2023 biennial proceeding.

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

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

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

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

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

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

661 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses for
 662 energy efficiency programs and pilot programs, which margin shall be equal to the general rate of return on
 663 common equity determined as described in subdivision 2. Beginning January 1, 2022, and thereafter, if the
 664 Commission determines that the utility meets in any year the annual energy efficiency standards set forth in §
 665 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program
 666 operating expenses in that year, to be recovered through a rate adjustment clause, which margin shall be equal
 667 to the general rate of return on common equity determined as described in subdivision 2. If the Commission
 668 does not approve energy efficiency programs that, in the aggregate, can achieve the annual energy efficiency
 669 standards, the Commission shall award a margin on energy efficiency operating expenses in that year for any
 670 programs the Commission has approved, to be recovered through a rate adjustment clause under this
 671 subdivision, which margin shall equal the general rate of return on common equity determined as described in
 672 subdivision 2. Any margin awarded pursuant to this subdivision shall be applied as part of the utility's next
 673 rate adjustment clause true-up proceeding. The Commission shall also award an additional 20 basis points for
 674 each additional incremental 0.1 percent in annual savings in any year achieved by the utility's energy
 675 efficiency programs approved by the Commission pursuant to this subdivision, beyond the annual
 676 requirements set forth in § 56-596.2, provided that the total performance incentive awarded in any year shall
 677 not exceed 10 percent of that utility's total energy efficiency program spending in that same year.

678 The Commission shall annually monitor and report to the General Assembly the performance of all
 679 programs approved pursuant to this subdivision, including each utility's compliance with the total annual

680 savings required by § 56-596.2, as well as the annual and lifecycle net and gross energy and capacity savings,
681 related emissions reductions, and other quantifiable benefits of each program; total customer bill savings that
682 the programs produce; utility spending on each program, including any associated administrative costs; and
683 each utility's avoided costs and cost-effectiveness results.

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

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

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

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

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

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

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

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

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

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

742 under this subdivision.

743 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
744 utility's projected native load obligations and to promote economic development, a utility may at any time,
745 after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment
746 clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
747 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in
748 § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii)
749 one or more other generation facilities, (iii) one or more major unit modifications of generation facilities,
750 including the costs of any system or equipment upgrade, system or equipment replacement, or other cost
751 reasonably appropriate to extend the combined operating license for or the operating life of one or more
752 generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or
753 more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v)
754 one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable
755 energy resources as all or a portion of their power source and such facilities and associated resources are
756 located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such
757 facility is located within or without the utility's service territory, or (vi) one or more electric distribution grid
758 transformation projects; however, subject to the provisions of the following sentence, the utility shall not file
759 a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual
760 incremental increase in the level of investments associated with such a petition that exceeds five percent of
761 such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month
762 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by final
763 order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings
764 regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery in such
765 proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery
766 in prior proceedings under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by
767 a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of
768 overhead distribution facilities to underground facilities that have been previously approved or are pending
769 approval by the Commission through a petition by the utility under this subdivision. Such a petition
770 concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that
771 are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed
772 before the expiration or termination of capped rates. A utility that constructs or makes modifications to any
773 such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy
774 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole
775 or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as
776 accrued against income, through its rates, including projected construction work in progress, and any
777 associated allowance for funds used during construction, planning, development and construction or
778 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new
779 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such
780 projects, an enhanced rate of return on common equity calculated as specified below; however, in
781 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the
782 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation
783 and maintenance costs attributable to either the overhead distribution facilities being replaced or the new
784 underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.
785 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
786 eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a
787 petition for approval to construct or purchase a facility consisting of at least one megawatt of generating
788 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or
789 services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment
790 clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval
791 to construct or purchase a generating facility that emits carbon dioxide shall demonstrate that it has already
792 met the energy savings goals identified in § 56-596.2 and that the identified need cannot be met more
793 affordably through the deployment or utilization of demand-side resources or energy storage resources and
794 that it has considered and weighed alternative options, including third-party market alternatives, in its
795 selection process.

796 The costs of the facility, other than return on projected construction work in progress and allowance for
797 funds used during construction, shall not be recovered prior to the date a facility constructed by the utility and
798 described in clause (i), (ii), (iii), or (v) begins commercial operation, the date the utility becomes the owner of
799 a purchased generation facility consisting of at least one megawatt of generating capacity using energy
800 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole
801 or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the
802 utility as plant in service. In any application to construct a new generating facility, the utility shall include,
803 and the Commission shall consider, the social cost of carbon, as determined by the Commission, as a benefit

804 or cost, whichever is appropriate. The Commission shall ensure that the development of new, or expansion of
805 existing, energy resources or facilities does not have a disproportionate adverse impact on historically
806 economically disadvantaged communities. The Commission may adopt any rules it deems necessary to
807 determine the social cost of carbon and shall use the best available science and technology, including the
808 Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis
809 Under Executive Order 12866, published by the Interagency Working Group on Social Cost of Greenhouse
810 Gases from the United States Government in August 2016, as guidance. The Commission shall include a
811 system to adjust the costs established in this section with inflation.

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

850 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local and
851 system-wide benefits and to be cost beneficial, and the costs associated with such new underground facilities
852 are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of subsection C or
853 D, shall be approved for recovery by the Commission pursuant to this subdivision, provided that the total
854 costs associated with the replacement of any subset of existing overhead distribution tap lines proposed by
855 the utility with new underground facilities, exclusive of financing costs, shall not exceed an average cost per
856 customer of \$20,000, with such customers, including those served directly by or downline of the tap lines
857 proposed for conversion, and, further, such total costs shall not exceed an average cost per mile of tap lines
858 converted, exclusive of financing costs, of \$750,000. A utility shall, without regard for whether it has
859 petitioned for any rate adjustment clause pursuant to clause (vi), petition the Commission, not more than once
860 annually, for approval of a plan for electric distribution grid transformation projects. Any plan for electric
861 distribution grid transformation projects shall include both measures to facilitate integration of distributed
862 energy resources and measures to enhance physical electric distribution grid reliability and security. In ruling
863 upon such a petition, the Commission shall consider whether the utility's plan for such projects, and the
864 projected costs associated therewith, are reasonable and prudent. Such petition shall be considered on a
865 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility; without

866 regard to whether the costs associated with such projects will be recovered through a rate adjustment clause
 867 under this subdivision or through the utility's rates for generation and distribution services; and without
 868 regard to whether such costs will be the subject of a customer credit offset, as applicable, pursuant to
 869 subdivision 8 d. The Commission's final order regarding any such petition for approval of an electric
 870 distribution grid transformation plan shall be entered by the Commission not more than six months after the
 871 date of filing such petition. The Commission shall likewise enter its final order with respect to any petition by
 872 a utility for a certificate to construct and operate a generating facility or facilities utilizing energy derived
 873 from sunlight, pursuant to subsection D of § 56-580, within six months after the date of filing such petition.
 874 The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on
 875 common equity, and the first portion of that facility's service life to which such enhanced rate of return shall
 876 be applied, shall vary by type of facility, as specified in the following table:

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

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

890 Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July
 891 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by
 892 the utility and recovered through a rate adjustment clause under this subdivision at such time as the
 893 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all
 894 costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be
 895 deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70
 896 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in
 897 the test periods under review in the utility's next review filed after July 1, 2014. Thirty percent of all costs of
 898 a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and
 899 December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility
 900 and recovered through a rate adjustment clause under this subdivision at such time as the Commission
 901 provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a
 902 facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for
 903 recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all
 904 costs shall be recovered ratably through existing base rates as determined by the Commission in the test
 905 periods under review in the utility's next review filed after July 1, 2014.

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

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

924 Electric distribution grid transformation projects are in the public interest. To the extent that a utility
 925 elects to recover the costs of such electric distribution grid transformation projects through its rates for
 926 generation and distribution services, and does not petition and receive approval from the Commission for
 927 recovery of such costs through a rate adjustment clause described in clause (vi), the Commission shall, upon

928 the request of the utility in a review proceeding, provide for a customer credit reinvestment offset, as
929 applicable, pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent by the
930 Commission in a proceeding for approval of a plan for electric distribution grid transformation projects
931 pursuant to subdivision 6 or in a review proceeding.

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

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

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

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

961 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from the
962 Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or demonstration
963 project involving a generation facility utilizing energy from offshore wind, and such utility has not, as of July
964 1, 2023, commenced construction as defined for federal income tax purposes of an offshore wind generation
965 facility or facilities with a minimum aggregate capacity of 250 megawatts, then the Commission, if it finds it
966 in the public interest, may direct that the costs associated with any such rate adjustment clause involving said
967 test or demonstration project shall thereafter no longer be recovered through a rate adjustment clause pursuant
968 to subdivision 6 and shall instead be recovered through the utility's rates for generation and distribution
969 services, with no change in such rates for generation and distribution services as a result of the combination
970 of such costs with the other costs, revenues, and investments included in the utility's rates for generation and
971 distribution services. Any such costs shall remain combined with the utility's other costs, revenues, and
972 investments included in its rates for generation and distribution services until such costs are fully recovered.

973 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
974 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs
975 incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
976 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are
977 related to facilities and projects described in clause (i) of subdivision 6, or that are related to new
978 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of
979 the utility until the Commission's final order in the matter, or until the implementation of any applicable
980 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs
981 prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the
982 consideration thereof by the Commission, that are proposed for recovery in such petition and that are related
983 to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or
984 coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be
985 built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final
986 order in the matter, or until the implementation of any applicable approved rate adjustment clauses,
987 whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to
988 other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or
989 termination of capped rates, provided, however, that no provision of this act shall affect the rights of any

990 parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC
 991 and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a
 992 regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation
 993 and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
 994 and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize
 995 such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in
 996 which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of
 997 time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a
 998 component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such
 999 outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to
 1000 any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the
 1001 Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs
 1002 for the purpose of proceedings conducted (a) with respect to filings under subdivision 3 made on and after
 1003 July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate increase
 1004 applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

1005 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be
 1006 entered not more than three months, eight months, and nine months, respectively, after the date of filing of
 1007 such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be
 1008 applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or
 1009 termination of capped rates, whichever is later, *provided that for a Phase I Utility such rate adjustment shall*
 1010 *not occur during the months of November through February. Orders issued between September 1 and*
 1011 *December 31 shall direct that the applicable rate adjustment clause be applied to customers' bills beginning*
 1012 *on March 1 of the following year.* At any time, the Commission may, in its discretion, for a Phase I Utility,
 1013 upon petition by such a utility or upon its own initiated proceeding, direct the consolidation of any one or
 1014 more subsets of rate adjustment clauses previously implemented pursuant to subdivision 5 or 6 in the interest
 1015 of judicial economy, customer transparency, or other factors the Commission determines to be appropriate.
 1016 Any subset of rate adjustment clauses so consolidated shall continue to be considered by the Commission
 1017 without regard to the other costs, revenues, investments, or earnings of the utility and remain as a cost
 1018 recovery mechanism independent from the utility's rates for generation and distribution services pursuant to §
 1019 56-585.8 and subdivisions 5 and 6, but will be combined as a single rate adjustment clause for cost recovery
 1020 and review purposes. Any rate adjustment clause or subset of rate adjustment clauses so consolidated shall be
 1021 named in a manner, as determined by the Commission, that reasonably informs customers as to the nature of
 1022 the costs recovered by the consolidated rate adjustment clause.

1023 At any time, the Commission may, in its discretion, for a Phase II Utility, upon petition by such a utility
 1024 or upon its own initiated proceeding, direct the consolidation of any one or more subsets of rate adjustment
 1025 clauses previously implemented pursuant to subdivision 5 or 6 in the interest of judicial economy, customer
 1026 transparency, or other factors the Commission determines to be appropriate. Any subset of rate adjustment
 1027 clauses so consolidated shall continue to be considered by the Commission without regard to the other costs,
 1028 revenues, investments, or earnings of the utility and remain as a cost recovery mechanism independent from
 1029 the utility's rates for generation and distribution services pursuant to this subdivision and subdivisions 5 and
 1030 6, but will be combined as a single rate adjustment clause for cost recovery and review purposes. Any rate
 1031 adjustment clause or subset of rate adjustment clauses so consolidated shall be named in a manner, as
 1032 determined by the Commission, that reasonably informs customers as to the nature of the costs recovered by
 1033 the consolidated rate adjustment clause.

1034 8. For a Phase I Utility in any triennial review proceeding filed on or before June 30, 2023 or for a Phase
 1035 II Utility in any biennial review proceeding, for the purposes of reviewing earnings on the utility's rates for
 1036 generation and distribution services, the following utility generation and distribution costs not proposed for
 1037 recovery under any other subdivision of this subsection, as recorded per books by the utility for financial
 1038 reporting purposes and accrued against income, shall be attributed to the test periods under review and
 1039 deemed fully recovered in the period recorded: costs associated with asset impairments related to early
 1040 retirement determinations made by the utility for utility generation facilities fueled by coal, natural gas, or oil
 1041 or for automated meter reading electric distribution service meters; costs associated with projects necessary to
 1042 comply with state or federal environmental laws, regulations, or judicial or administrative orders relating to
 1043 coal combustion by-product management that the utility does not petition to recover through a rate
 1044 adjustment clause pursuant to subdivision 5 e; costs associated with severe weather events; and costs
 1045 associated with natural disasters. Such costs shall be deemed to have been recovered from customers through
 1046 rates for generation and distribution services in effect during the test periods under review unless such costs,
 1047 individually or in the aggregate, together with the utility's other costs, revenues, and investments to be
 1048 recovered through rates for generation and distribution services, result in the utility's earned return on its
 1049 generation and distribution services for the combined test periods under review to fall more than 50 basis
 1050 points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test
 1051 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase

1052 I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision
1053 2 for such periods. In such cases, the Commission shall, in such review proceeding, authorize deferred
1054 recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as
1055 determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that
1056 would, together with the utility's other costs, revenues, and investments to be recovered through rates for
1057 generation and distribution services, cause the utility's earned return on its generation and distribution
1058 services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined
1059 test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility
1060 and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under
1061 subdivision 2 less 70 basis points. Notwithstanding the prior sentence, the aggregate amount of actual and
1062 reasonable costs associated with severe weather events eligible for such deferral shall not exceed an amount
1063 that would, together with the utility's other costs, revenues, and investments to be recovered through rates for
1064 generation and distribution services, cause the utility's earned return on its generation and distribution
1065 services to exceed the fair rate of return authorized for the combined test periods under review. For the
1066 purposes of determining any amount of costs that are associated with severe weather events, the Commission
1067 shall consider nationally recognized standards such as those published by the Institute of Electrical and
1068 Electronics Engineers (IEEE). Nothing in this section shall limit the Commission's authority, pursuant to the
1069 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of
1070 combined test period earnings of the utility in a review, for normalization of nonrecurring test period costs
1071 and annualized adjustments for future costs, in determining any appropriate increase or decrease in the
1072 utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

1073 If the Commission determines as a result of any triennial review initiated prior to July 1, 2023 that:

1074 a. Revenue reductions related to energy efficiency measures or programs approved and deployed since the
1075 utility's previous triennial review have caused the utility, as verified by the Commission, during the test
1076 period or periods under review, considered as a whole, to earn more than 50 basis points below a fair
1077 combined rate of return on its generation and distribution services or, for any test period commencing after
1078 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
1079 basis points below a fair combined rate of return on its generation and distribution services, as determined in
1080 subdivision 2, without regard to any return on common equity or other matters determined with respect to
1081 facilities described in subdivision 6, the Commission shall order increases to the utility's rates for generation
1082 and distribution services necessary to recover such revenue reductions. If the Commission finds, for reasons
1083 other than revenue reductions related to energy efficiency measures, that the utility has, during the test period
1084 or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate
1085 of return on its generation and distribution services or, for any test period commencing after December 31,
1086 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points
1087 below a fair combined rate of return on its generation and distribution services, as determined in subdivision
1088 2, without regard to any return on common equity or other matters determined with respect to facilities
1089 described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the
1090 opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair
1091 combined rate of return, using the most recently ended 12-month test period as the basis for determining the
1092 amount of the rate increase necessary. However, in the first triennial review proceeding conducted after
1093 January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all triennial
1094 reviews of a Phase I or Phase II utility, the Commission may not order such rate increase unless it finds that
1095 the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of
1096 providing its services and to earn not less than a fair combined rate of return on both its generation and
1097 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
1098 matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-
1099 month test period as the basis for determining the permissibility of any rate increase under the standards of
1100 this sentence, and the amount thereof; and provided that, solely in connection with making its determination
1101 concerning the necessity for such a rate increase or the amount thereof, the Commission shall, in any triennial
1102 review proceeding conducted prior to July 1, 2028, exclude from this most recently ended 12-month test
1103 period any remaining investment levels associated with a prior customer credit reinvestment offset pursuant
1104 to subdivision d.

1105 b. The utility has, during the test period or test periods under review, considered as a whole, earned more
1106 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any
1107 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
1108 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
1109 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
1110 matters determined with respect to facilities described in subdivision 6, the Commission shall, subject to the
1111 provisions of subdivisions 8 d and 9, direct that 60 percent of the amount of such earnings that were more
1112 than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and
1113 after December 31, 2013, for a Phase I Utility, that 70 percent of the amount of such earnings that were more

1114 than 70 basis points, above such fair combined rate of return for the test period or periods under review,
 1115 considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period
 1116 of six to 12 months, as determined at the discretion of the Commission, following the effective date of the
 1117 Commission's order, and shall be allocated among customer classes such that the relationship between the
 1118 specific customer class rates of return to the overall target rate of return will have the same relationship as the
 1119 last approved allocation of revenues used to design base rates; or

1120 c. The utility has, during the test period or test periods under review, considered as a whole, earned more
 1121 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any
 1122 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
 1123 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
 1124 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
 1125 matter determined with respect to facilities described in subdivision 6, and the combined aggregate level of
 1126 capital investment that the Commission has approved other than those capital investments that the
 1127 Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made
 1128 by the utility during the test periods under review in that triennial review proceeding in new utility-owned
 1129 generation facilities utilizing energy derived from sunlight, or from wind, and in electric distribution grid
 1130 transformation projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of
 1131 the earnings that are more than 70 basis points above the utility's fair combined rate of return on its
 1132 generation and distribution services for the combined test periods under review in that triennial review
 1133 proceeding, the Commission shall, subject to the provisions of subdivision 10 and in addition to the actions
 1134 authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, in the
 1135 first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the
 1136 utility's rates ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual
 1137 revenues, with any reduction allocated to the utility's rates for generation services, and in each triennial
 1138 review of a Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that
 1139 the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its
 1140 services and to earn not less than a fair combined rate of return on its generation and distribution services, as
 1141 determined in subdivision 2, without regard to any return on common equity or other matters determined with
 1142 respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the
 1143 basis for determining the permissibility of any rate reduction under the standards of this sentence, and the
 1144 amount thereof; and

1145 d. (Expires July 1, 2028) In any review proceeding conducted after December 31, 2017, upon the request
 1146 of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that are more
 1147 than 70 basis points above the utility's fair combined rate of return on its generation and distribution services
 1148 for the test period or periods under review be credited to customer bills pursuant to subdivision 8 b, the
 1149 aggregate level of prior capital investment that the Commission has approved other than those capital
 1150 investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant to
 1151 subdivision 6 made by the utility during the test period or periods under review in both (i) new utility-owned
 1152 generation facilities utilizing energy derived from sunlight, or from onshore or offshore wind, and (ii) electric
 1153 distribution grid transformation projects, as determined by the utility's plant in service and construction work
 1154 in progress balances related to such investments as recorded per books by the utility for financial reporting
 1155 purposes as of the end of the most recent test period under review. Any such combined capital investment
 1156 amounts shall offset any customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of
 1157 invested or committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or
 1158 committed capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit
 1159 reinvestment offset, which offsets the customer bill credit amount that the utility has invested or will invest in
 1160 new solar or wind generation facilities or electric distribution grid transformation projects for the benefit of
 1161 customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the utility's fair
 1162 rate of return on its generation and distribution services, and thereby reduce or eliminate otherwise
 1163 incremental rate adjustment clause charges and increases to customer bills, which is deemed to be in the
 1164 public interest. If 100 percent of the amount of earnings that are more than 70 basis points above the utility's
 1165 fair combined rate of return on its generation and distribution services, as determined in subdivision 2,
 1166 exceeds the aggregate level of invested capital in new utility-owned generation facilities utilizing energy
 1167 derived from sunlight, or from wind, and electric distribution grid transformation projects, as provided in
 1168 clauses (i) and (ii), during the test period or periods under review, then 70 percent of the amount of such
 1169 excess shall be credited to customer bills as provided in subdivision 8 b in connection with the review
 1170 proceeding. The portion of any costs associated with new utility-owned generation facilities utilizing energy
 1171 derived from sunlight, or from wind, or electric distribution grid transformation projects that is the subject of
 1172 any customer credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through
 1173 the utility's rates for generation and distribution services over the service life of such facilities and shall not
 1174 thereafter be included in the utility's costs, revenues, and investments in future review proceedings conducted

1175 pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to
1176 subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing
1177 energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is not the
1178 subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered through the
1179 utility's rates for generation and distribution services over the service life of such facilities and shall be
1180 included in the utility's costs, revenues, and investments in future review proceedings conducted pursuant to
1181 subdivision 2 until such costs are fully recovered, and if such costs are recovered through the utility's rates for
1182 generation and distribution services, they shall not be the subject of a rate adjustment clause petition pursuant
1183 to subdivision 6. Only the portion of such costs of new utility-owned generation facilities utilizing energy
1184 derived from sunlight, or from wind, or electric distribution grid transformation projects that has not been
1185 included in any customer credit reinvestment offset pursuant to this subdivision, and not otherwise recovered
1186 through the utility's rates for generation and distribution services, may be the subject of a rate adjustment
1187 clause petition by the utility pursuant to subdivision 6.

1188 e. In any biennial review of a Phase II Utility, the Commission's final order regarding such review shall be
1189 entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered
1190 shall take effect not more than 60 days after the date of the order. The fair combined rate of return on
1191 common equity determined pursuant to subdivision 2 in such review shall apply, for purposes of reviewing
1192 the utility's earnings on its rates for generation and distribution services, to the entire two or three, as
1193 applicable, successive 12-month test periods ending December 31 immediately preceding the year of the
1194 utility's subsequent review filing under subdivision 3 and shall apply to applicable rate adjustment clauses
1195 under subdivisions 5 and 6 prospectively from the date the Commission's final order in the review
1196 proceeding, utilizing rate adjustment clause true-up protocols as the Commission in its discretion may
1197 determine.

1198 9. a. In any biennial review for a Phase II Utility filed on or prior to December 31, 2023, if the
1199 Commission determines that the utility has during the test period or test periods under review, considered as a
1200 whole, earned more than 70 basis points above a fair combined rate of return on its generation and
1201 distribution services previously authorized by the Commission, as determined in subdivision 2, without
1202 regard to any return on common equity or other matters determined with respect to facilities described in
1203 subdivision 6, which have not been combined with the utility's costs, revenues, and investments for
1204 generation and distribution services, the Commission shall direct that 85 percent of the amount of such
1205 earnings that were more than 70 basis points above such fair combined rate of return for the test period or
1206 periods under review, considered as a whole, be credited to customers' bills. Any such credits shall be
1207 amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the
1208 effective date of the Commission's order, and shall be allocated among customer classes such that the
1209 relationship between the specific customer class rates of return to the overall target rate of return will have the
1210 same relationship as the last approved allocation of revenues used to design base rates.

1211 b. In any biennial review for a Phase II Utility filed on or after January 1, 2024, if the Commission
1212 determines that the utility has during the test period or test periods under review, considered as a whole,
1213 earned above its fair combined rate of return on its generation and distribution services previously authorized
1214 by the Commission, as determined in subdivision 2, without regard to any return on common equity or other
1215 matters determined with respect to facilities described in subdivision 6, which have not been combined with
1216 the utility's costs, revenues, and investments for generation and distribution services, the Commission shall
1217 direct that 85 percent of the amount of such earnings above such fair combined rate of return for the test
1218 period or periods under review, considered as a whole, be credited to customers' bills. Further, if the
1219 Commission determines that during the test period or test periods under review, considered as a whole, a
1220 Phase II Utility earned more than 150 basis points above a fair combined rate of return on its generation and
1221 distribution services previously authorized by the Commission, without regard to any return on common
1222 equity or other matters determined with respect to facilities described in subdivision 6, which have not been
1223 combined with the utility's costs, revenues, and investments for generation and distribution services, the
1224 Commission shall direct that all such earnings that were more than 150 basis points above such fair combined
1225 rate of return for the test period or periods under review, considered as a whole, be credited to customers'
1226 bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of
1227 the Commission, following the effective date of the Commission's order, and shall be allocated among
1228 customer classes such that the relationship between the specific customer class rates of return to the overall
1229 target rate of return will have the same relationship as the last approved allocation of revenues used to design
1230 base rates.

1231 10. If, as a result of a triennial review required under this subsection and conducted with respect to any
1232 test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected
1233 to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than
1234 December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission
1235 finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test

1236 period or periods under review, considered as a whole, earned more than 50 basis points above a fair
 1237 combined rate of return on its generation and distribution services or, for any test period commencing after
 1238 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
 1239 basis points above a fair combined rate of return on its generation and distribution services, as determined in
 1240 subdivision 2, without regard to any return on common equity or other matters determined with respect to
 1241 facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the
 1242 most recently ended 12-month test period exceeded the annual increases in the United States Average
 1243 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
 1244 Statistics of the United States Department of Labor, compounded annually, when compared to the total
 1245 aggregate regulated rates of such utility as determined pursuant to the review conducted for the base period,
 1246 the Commission shall, unless it finds that such action is not in the public interest or that the provisions of
 1247 subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test
 1248 period or periods under review, considered as a whole that were more than 50 basis points, or, for any test
 1249 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase
 1250 I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers'
 1251 bills, in lieu of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to
 1252 this subdivision in connection with any triennial review unless such bill credits would be payable pursuant to
 1253 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any
 1254 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized and
 1255 allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this
 1256 subdivision:

1257 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to
 1258 stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31,
 1259 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period
 1260 with respect to which credits have been applied to customers' bills under the provisions of this subdivision,
 1261 whichever is later.

1262 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for
 1263 any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010,
 1264 pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
 1265 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a;
 1266 (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
 1267 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July
 1268 1, 2009.

1269 11. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any
 1270 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and
 1271 cost of capital of such utility, excluding any debt associated with securitized bonds that are the obligation of
 1272 non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity ratio of such
 1273 capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity
 1274 ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions
 1275 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any
 1276 other entity with which such utility may be affiliated. In particular, and without limitation, the Commission
 1277 shall determine the federal and state income tax costs for any such utility that is part of a publicly traded,
 1278 consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated
 1279 according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates,
 1280 and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income
 1281 tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable
 1282 income or loss of its affiliates.

1283 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an
 1284 increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications;
 1285 however, in any such filing, a fair rate of return on common equity shall be determined pursuant to
 1286 subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power
 1287 costs as provided in § 56-249.6.

1288 C. Except as otherwise provided in this section, the Commission shall exercise authority over the rates,
 1289 terms and conditions of investor-owned incumbent electric utilities for the provision of generation,
 1290 transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions of
 1291 Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

1292 D. The Commission may determine, during any proceeding authorized or required by this section, the
 1293 reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with
 1294 the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence
 1295 of any such cost shall be consistent with the Commission's authority to determine the reasonableness or
 1296 prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining
 1297 the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable

1298 energy resources, the Commission shall consider the extent to which such renewable energy resources,
 1299 whether utility-owned or by contract, further the objectives of the Commonwealth Clean Energy Policy set
 1300 forth in § 45.2-1706.1, and shall also consider whether the costs of such resources is likely to result in
 1301 unreasonable increases in rates paid by customers.

1302 E. Notwithstanding any other provision of law, the Commission shall determine the amortization period
 1303 for recovery of any appropriate costs due to the early retirement of any electric generation facilities owned or
 1304 operated by any Phase I Utility or Phase II Utility. In making such determination, the Commission shall (i)
 1305 perform an independent analysis of the remaining undepreciated capital costs; (ii) establish a recovery period
 1306 that best serves ratepayers; and (iii) allow for the recovery of any carrying costs that the Commission deems
 1307 appropriate.

1308 F. The Commission shall include in its report required by subsection B of § 56-596 any information
 1309 concerning the reliability impacts of generation unit additions and retirement determinations by a Phase I or
 1310 Phase II Utility, along with the potential impact on the purchase of power from generation assets outside the
 1311 Virginia jurisdiction used to serve the utility's native load, utilizing information from the respective utility's
 1312 integrated resource plan or information from the respective utility's plan filed pursuant to subsection D of §
 1313 56-585.5.

1314 G. The Commission shall promulgate such rules and regulations as may be necessary to implement the
 1315 provisions of this section.

1316 **§ 56-585.8. Biennial rate reviews.**

1317 A. For the purposes of this section:

1318 "Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

1319 "*Storm recovery costs*" means expenses and investments incurred by a Phase I Utility since January 1,
 1320 2024, arising from or related to any major storm, severe or extraordinary weather-related event, consistent
 1321 with nationally recognized standards including those published by the Institute of Electrical and Electronics
 1322 Engineers, or national disaster, including costs of mobilization, staging, construction, reconstruction, repair,
 1323 or replacement of production, generation, transport, transmission, distribution, or general facilities.

1324 "Utility" means a Phase I Utility.

1325 B. ~~With~~ Notwithstanding the provisions of § 56-585.1, with the first review commencing on ~~March~~ May
 1326 31, 2024 2026, and biennially thereafter, the Commission shall conduct rate reviews of the rates, terms, and
 1327 conditions for the provision of generation and distribution services by a Phase I Utility that participated in
 1328 triennial review proceedings in 2020 and 2023, and such Phase I Utility shall no longer be subject to triennial
 1329 review proceedings pursuant to § 56-585.1.

1330 C. In each biennial review, the Commission shall conduct a proceeding to review all rates, terms, and
 1331 conditions for generation and distribution services ~~with such proceeding utilizing the two successive 12-~~
 1332 ~~month test periods ending December 31 immediately preceding the year in which, and such proceeding is~~
 1333 ~~conducted. Such~~ biennial review shall be conducted in a single, combined proceeding, except for review of
 1334 the following costs, which the utility shall continue to recover and the Commission shall continue to review
 1335 separately, pursuant to the applicable statutory provisions: costs that are recovered pursuant to (i) § 56-249.6,
 1336 (ii) ~~subdivisions~~ subdivision A 4, 5, and 6 of § 56-585.1, and (iii) § 56-585.5, and (iv) § ~~56-585.6~~
 1337 ~~56-585.1:15. In each biennial review, the Commission shall include all costs the utility has previously~~
 1338 ~~recovered pursuant to rate adjustment clauses established pursuant to subdivisions A 5 and 6 of § 56-585.1.~~
 1339 ~~After the conclusion of the first biennial review, all rate adjustment clauses that were in effect in 2025, except~~
 1340 ~~those listed in clauses (i) through (iv), shall be combined with all the rates, terms, and conditions for~~
 1341 ~~generation and distribution services. In the biennial review commencing May 31, 2026, the utility shall~~
 1342 ~~propose and the Commission shall consider (i) implementing residential seasonal rates and (ii) alternatives~~
 1343 ~~to budget billing.~~

1344 D. Each biennial rate review proceeding shall commence on ~~or before~~ ~~March~~ May 31 of the biennial
 1345 review year with the filing of a petition by each Phase I Utility subject to the provisions of this section. The
 1346 Commission, after providing notice and an opportunity for hearing, shall grant a final order on such petition
 1347 no later than ~~November 20. Any~~ January 15 of the subsequent year, with any revisions in rates ordered by the
 1348 Commission pursuant to the rate review ~~shall take~~ taking effect no ~~later~~ earlier than ~~January~~ March 1 of the
 1349 subsequent year.

1350 E. In the first biennial rate review, (i) the utility may recover storm recovery costs incurred after January
 1351 1, 2024, that are not currently included in rates or otherwise recovered through a securitization order; (ii)
 1352 the utility shall propose and the Commission shall consider the implementation of residential seasonal rates;
 1353 and (iii) the utility shall propose and the Commission shall consider alternatives to budget billing.

1354 F. In each final order, the Commission shall determine:

1355 1. The costs, including the allowed return as determined in its most recent rate of return equity
 1356 determination, that the utility has incurred in the previous calendar year to provide generation and
 1357 distribution services to its customers;

1358 2. The revenues that the utility has received in exchange for its services;

1359 3. The difference, if any, between the values determined pursuant to subdivisions 1 and 2; and

1360 4. *The projected costs, including the allowed return, that the utility expects to incur in the subsequent*
 1361 *calendar year to provide generation and distribution services to its customers.*

1362 G. [~~For the first biennial rate review, the Commission shall use the return authorized for the utility in~~
 1363 ~~2024 for the purposes of this section.~~] In each biennial review proceeding, the Commission shall set the fair
 1364 rate of return on common equity applicable to the generation and distribution services of the utility for the
 1365 two such services combined ~~and for any rate adjustment clauses approved under subdivision A 5 or 6 of §~~
 1366 ~~56-585-1.~~ The Commission may use any methodology it finds consistent with the public interest to determine
 1367 the Phase I Utility's fair rate of return on common equity. The Commission may increase or decrease the
 1368 combined rate of return for generation and distribution services by up to 50 basis points based on factors that
 1369 may include reliability, generating plant performance, customer service, and operating efficiency of a utility.
 1370 Any such adjustment to the combined rate of return for generation and distribution services shall include
 1371 consideration of nationally recognized standards determined by the Commission to be appropriate for such
 1372 purposes.

1373 F. In any biennial review for a Phase I Utility, if the Commission determines in its sole discretion that the
 1374 utility's existing rates for generation and distribution services will, on a going-forward basis, either produce
 1375 (i) revenues in excess of the utility's authorized rate of return or (ii) revenues below the utility's authorized
 1376 rate of return, then the Commission shall order any reductions or increases, as applicable and necessary, to
 1377 such rates for generation and distribution services that it deems appropriate to ensure the resulting rates for
 1378 generation and distribution services (a) are just and reasonable and (b) provide the utility an opportunity to
 1379 recover its costs of providing services over the rate period ending on December 31 of the year of the utility's
 1380 succeeding review and earn a fair rate of return authorized pursuant to this section. Such determination shall
 1381 be limited to the Phase I Utility's rates for generation and distribution services and shall not consider the costs
 1382 or revenues recovered in any rate adjustment clause authorized pursuant to this chapter.

1383 G. H. In any biennial review of rates for generation and distribution services, if the combined rate of
 1384 return on common equity earned is no more than 100 basis points above or below the fair combined rate of
 1385 return, as determined by the Commission, for the test period under review, then such combined return shall
 1386 not be considered either excessive or insufficient, respectively.

1387 1. If in any biennial review, the Commission finds that, during the test period under review, considered as
 1388 a whole, the utility has earned more than 100 basis points above the authorized fair combined rate of return
 1389 on its generation or distribution services, the Commission shall direct that 100 percent of the amount of such
 1390 earnings that were more than 100 basis points above such fair combined rate of return for the test period
 1391 under review, considered as a whole, be credited to customers' bills. Any such credits shall be applied to
 1392 customers' bills, as determined at the discretion of the Commission, following the effective date of the
 1393 Commission's order, and shall be allocated among customer classes such that the relationship between the
 1394 specific customer class rates of return to the overall target rate of return will have the same relationship as the
 1395 last approved allocation of revenues used to design base rates; or

1396 2. The Commission shall authorize deferred recovery for reasonable (i) actual costs associated with severe
 1397 weather events and (ii) actual costs associated with natural disasters, not currently in rates, and the
 1398 Commission shall allow the utility to amortize and recover such deferred costs over future periods as
 1399 determined by the Commission. The amount of any such deferral shall not exceed an amount that would,
 1400 together with the utility's other costs, revenues, and investments recovered through rates for generation and
 1401 distribution services for the test period under review, cause the utility's earned return on its generation and
 1402 distribution services to exceed 100 basis points above the fair combined rate of return applicable to the test
 1403 period under review. For the purposes of determining any amount of costs that are associated with severe
 1404 weather events, the Commission shall consider nationally recognized standards such as those published by
 1405 the Institute of Electrical and Electronics Engineers (IEEE).

1406 Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant
 1407 to this subsection shall not be considered for the purpose of determining the utility's earnings in any
 1408 subsequent biennial review.

1409 H. I. In any proceeding under this title, including each biennial review, to determine the prior two years'
 1410 excess or deficiency for the purposes of subsection F G, the Commission shall use an average rate base using
 1411 the actual starting and end-of-test period capital structure of the utility, excluding any debt associated with
 1412 any securitized bonds *that are the obligation of non-jurisdictional customers* and without regard to the cost of
 1413 capital, capital structure, or investments of any other entities with which the utility is affiliated. To determine
 1414 a revenue requirement in any proceeding under this title, the Commission shall use the utility's actual
 1415 end-of-test period capital structure and cost of capital without regard to the cost of capital, capital structure,
 1416 or investments of any other entities with which the utility is affiliated, including debt associated with any
 1417 securitized bonds, unless the Commission makes a finding, based on evidence in the record, that the debt to
 1418 equity ratio of the actual end-of-test period capital structure of such utility is unreasonable, in which case the
 1419 Commission may utilize a debt to equity ratio that it finds to be reasonable.

1420 In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the Commission
 1421 shall determine federal and state income tax costs as follows: (i) the utility's apportioned state income tax

1422 costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated
1423 return with its affiliates, and (ii) the utility's federal income tax costs shall be calculated according to the
1424 applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments
1425 originating from any taxable income or loss of its affiliates.

1426 ~~F. J.~~ The Commission is authorized to determine during any biennial review the reasonableness or
1427 prudence of any cost subject to the rate review incurred or projected to be incurred by the utility, ~~and a Phase~~
1428 ~~I Utility shall recover such costs that the Commission finds to be reasonable and prudent subject to the~~
1429 ~~following:~~

1430 *1. The projected and actual costs for the utility to design and operate fair and effective peak-shaving*
1431 *programs or pilot programs, if such programs are approved by the Commission.*

1432 *2. If approved by the Commission, the projected and actual costs for the utility to design, implement, and*
1433 *operate energy efficiency programs or pilot programs. The Commission's review of the utility's energy*
1434 *efficiency programs or pilot programs shall otherwise be governed by subdivision A 5 c of § 56-585.1.*

1435 *3. The projected and actual costs of projects necessary to comply with state or federal environmental laws*
1436 *or regulations applicable to generation facilities used to serve the utility's native load obligations, including*
1437 *the costs of allowances purchased through a market-based trading program for carbon dioxide emissions.*

1438 *4. The projected and actual costs, not currently in rates, for the utility to design, implement, and operate*
1439 *programs approved by the Commission that accelerate the vegetation management of distribution rights-of-*
1440 *way. No such costs shall be allocated to or recovered from the utility's customers that are served at*
1441 *subtransmission or transmission voltage, or that take delivery at a substation served from subtransmission or*
1442 *transmission voltage.*

1443 *5. The projected and actual costs, not currently in rates, for the utility to design, implement, and operate*
1444 *programs approved by the Commission to provide incentives to (i) low-income, elderly, and disabled*
1445 *individuals or (ii) organizations providing residential services to low-income, elderly, and disabled*
1446 *individuals for the installation of, or access to, equipment to generate electric energy derived from sunlight,*
1447 *provided the low-income, elderly, and disabled individuals, or organizations providing residential services to*
1448 *low-income, elderly, and disabled individuals, first participate in incentive programs for the installation of*
1449 *measures that reduce heating or cooling costs.*

1450 *No cost described in subdivisions 1 through 5 shall be recovered through a rate adjustment clause*
1451 *established pursuant to subdivision A 5 of § 56-585.1.*

1452 ~~F. K.~~ In any biennial review conducted pursuant to this section, a Phase I Utility or any other party may
1453 propose changes to its terms and conditions and the Commission may approve, reject, or amend any changes
1454 and may propose any special rates, contracts, or incentives pursuant to § 56-235.2.

1455 ~~K. Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ 56-585.5 and 56-596.2.~~

1456 *L. In any Phase I Utility rate proceeding, the Commission shall include an invitation to the public to*
1457 *comment on any Phase I Utility rate case. The Commission shall collect and aggregate all public submissions*
1458 *and shall consider public comments as part of each rate case.*

1459 *M. To the extent that the provisions of this section are inconsistent with the provisions of § 56-585.1, the*
1460 *provisions of this section shall control.*

1461 **2. That a Phase I Utility, as that term is defined in subdivision A 1 of § 56-585.1 of the Code of Virginia,**
1462 **as amended by this act, in connection with any financing order petition filed with the State**
1463 **Corporation Commission (the Commission) prior to December 31, 2023, pursuant to § 56-249.8 of the**
1464 **Code of Virginia, as created by this act, shall permit any retail customer that is receiving electricity**
1465 **supply service from the utility and whose demand exceeded five megawatts during the calendar year**
1466 **prior to such petition to opt out of financing its pro rata obligation for securitized asset cost charges**
1467 **through securitized asset cost bonds. The Phase I Utility shall notify such eligible customers of their**
1468 **eligibility to opt out of the securitized asset cost financing through its petition with the Commission,**
1469 **and any election to opt out of the securitized asset cost financing by an eligible customer shall be**
1470 **provided in writing to the utility within 30 days of the filing of such petition. Upon such election, the**
1471 **eligible customer shall fully satisfy such customer's pro rata obligation for the securitized asset cost**
1472 **charges subject to financing, as determined based on such customer's electric usage over the period**
1473 **that such charges were incurred. In the event of such election, any securitized asset cost charges**
1474 **approved for recovery through securitized asset cost bonds shall not include the obligations of eligible**
1475 **customers opting out of the securitized asset cost financing.**