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SENATE BILL NO. 1076
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)
(Patron Prior to Substitute—Senator Peake)

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;

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

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

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

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

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

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

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

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

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

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

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; and

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*
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 *P. The provisions of this section shall not apply to any customer that has chosen to purchase electric*
460 *energy from a licensed supplier other than the incumbent electric utility serving the exclusive territory in*
461 *which such customer is located pursuant to § 56-577 prior to February 1, 2019.*

462 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire.**

463 *A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing,*
464 *initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and*
465 *transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed*

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

495 generation, distribution and transmission services by each investor-owned incumbent electric utility, subject
496 to the following provisions:

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

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

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

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

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

545 d. In any Current Proceeding, the Commission shall determine whether the Current Return has increased,
546 on a percentage basis, above the Initial Return by more than the increase, expressed as a percentage, in the
547 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the
548 Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission
549 determined the Initial Return. If so, the Commission may conduct an additional analysis of whether it is in the
550 public interest to utilize such Current Return for the Current Proceeding then pending. A finding of whether
551 the Current Return justifies such additional analysis shall be made without regard to any enhanced rate of
552 return on common equity awarded pursuant to the provisions of subdivision 6. Such additional analysis shall

553 include, but not be limited to, a consideration of overall economic conditions, the level of interest rates and
554 cost of capital with respect to business and industry, in general, as well as electric utilities, the current level of
555 inflation and the utility's cost of goods and services, the effect on the utility's ability to provide adequate
556 service and to attract capital if less than the Current Return were utilized for the Current Proceeding then
557 pending, and such other factors as the Commission may deem relevant. If, as a result of such analysis, the
558 Commission finds that use of the Current Return for the Current Proceeding then pending would not be in the
559 public interest, then the lower limit imposed by subdivision 2 a on the return to be determined by the
560 Commission for such utility shall be calculated, for that Current Proceeding only, by increasing the Initial
561 Return by a percentage at least equal to the increase, expressed as a percentage, in the United States Average
562 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
563 Statistics of the United States Department of Labor, since the date on which the Commission determined the
564 Initial Return. For purposes of this subdivision:

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

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

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

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

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

580 g. If the combined rate of return on common equity earned by the generation and distribution services is
581 no more than 50 basis points above or below the return as so determined or, for any test period commencing

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

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

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

608 If the Commission determines that rates should be revised or credits be applied to customers' bills
609 pursuant to subdivision 8 or 10, any rate adjustment clauses previously implemented related to facilities
610 utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's

611 costs, revenues, and investments until the amounts that are the subject of such rate adjustment clauses are
612 fully recovered. The Commission shall combine such clauses with the utility's costs, revenues, and
613 investments only after it makes its initial determination with regard to necessary rate revisions or credits to
614 customers' bills, and the amounts thereof, but after such clauses are combined as specified in this paragraph,
615 they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of
616 future review proceedings.

617 As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously
618 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,
619 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues, and
620 investments for generation and distribution services. After such rate adjustment clauses are combined as
621 specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,
622 revenues, and investments for the purposes of future biennial review proceedings, and the combination of
623 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023
624 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination shall
625 not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution services in its
626 2023 biennial proceeding.

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

640 recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

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

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

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

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

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

664 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses for
665 energy efficiency programs and pilot programs, which margin shall be equal to the general rate of return on
666 common equity determined as described in subdivision 2. Beginning January 1, 2022, and thereafter, if the
667 Commission determines that the utility meets in any year the annual energy efficiency standards set forth in §
668 56-596.2, in the following year, the Commission shall award a margin on energy efficiency program

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

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

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

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

696 Large general service customers shall be exempt from requirements that they participate in energy
697 efficiency programs if the Commission finds that the large general service customer has, at the customer's

708 own expense, implemented energy efficiency programs that have produced or will produce measured and
709 verified results consistent with industry standards and other regulatory criteria stated in this section. The
710 Commission shall, no later than June 30, 2021, adopt rules or regulations (a) establishing the process for large
711 general service customers to apply for such an exemption, (b) establishing the administrative procedures by
712 which eligible customers will notify the utility, and (c) defining the standard criteria that shall be satisfied by
713 an applicant in order to notify the utility, including means of evaluation measurement and verification and
714 confidentiality requirements. At a minimum, such rules and regulations shall require that each exempted large
715 general service customer certify to the utility and Commission that its implemented energy efficiency
716 programs have delivered measured and verified savings within the prior five years. In adopting such rules or
717 regulations, the Commission shall also specify the timing as to when a utility shall accept and act on such
718 notice, taking into consideration the utility's integrated resource planning process, as well as its
719 administration of energy efficiency programs that are approved for cost recovery by the Commission. Savings
720 from large general service customers shall be accounted for in utility reporting in the standards in § 56-596.2.

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

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

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

724 e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate impacts to
725 marine life caused by construction of offshore wind generating facilities, as described in § 56-585.1:11, or to
726 comply with state or federal environmental laws or regulations applicable to generation facilities used to

727 serve the utility's native load obligations, including the costs of allowances purchased through a market-based
728 trading program for carbon dioxide emissions. The Commission shall approve such a petition if it finds that
729 such costs are necessary to comply with such environmental laws or regulations;

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

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

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

746 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
747 utility's projected native load obligations and to promote economic development, a utility may at any time,
748 after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment
749 clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
750 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in
751 § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii)
752 one or more other generation facilities, (iii) one or more major unit modifications of generation facilities,
753 including the costs of any system or equipment upgrade, system or equipment replacement, or other cost
754 reasonably appropriate to extend the combined operating license for or the operating life of one or more
755 generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or

756 more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v)
757 one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable
758 energy resources as all or a portion of their power source and such facilities and associated resources are
759 located in the coalfield region of the Commonwealth as described in § 15.2-6002, regardless of whether such
760 facility is located within or without the utility's service territory, or (vi) one or more electric distribution grid
761 transformation projects; however, subject to the provisions of the following sentence, the utility shall not file
762 a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual
763 incremental increase in the level of investments associated with such a petition that exceeds five percent of
764 such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month
765 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by final
766 order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings
767 regarding petitions filed under clause (iv) or (vi), the level of investments approved for recovery in such
768 proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery
769 in prior proceedings under clause (iv) or (vi), as applicable. As of December 1, 2028, any costs recovered by
770 a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of
771 overhead distribution facilities to underground facilities that have been previously approved or are pending
772 approval by the Commission through a petition by the utility under this subdivision. Such a petition
773 concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that
774 are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed
775 before the expiration or termination of capped rates. A utility that constructs or makes modifications to any
776 such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy
777 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole
778 or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as
779 accrued against income, through its rates, including projected construction work in progress, and any
780 associated allowance for funds used during construction, planning, development and construction or
781 acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new
782 underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such
783 projects, an enhanced rate of return on common equity calculated as specified below; however, in
784 determining the amounts recoverable under a rate adjustment clause for new underground facilities, the

785 Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation
786 and maintenance costs attributable to either the overhead distribution facilities being replaced or the new
787 underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.
788 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
789 eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a
790 petition for approval to construct or purchase a facility consisting of at least one megawatt of generating
791 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or
792 services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment
793 clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval
794 to construct or purchase a generating facility that emits carbon dioxide shall demonstrate that it has already
795 met the energy savings goals identified in § 56-596.2 and that the identified need cannot be met more
796 affordably through the deployment or utilization of demand-side resources or energy storage resources and
797 that it has considered and weighed alternative options, including third-party market alternatives, in its
798 selection process.

799 The costs of the facility, other than return on projected construction work in progress and allowance for
800 funds used during construction, shall not be recovered prior to the date a facility constructed by the utility and
801 described in clause (i), (ii), (iii), or (v) begins commercial operation, the date the utility becomes the owner of
802 a purchased generation facility consisting of at least one megawatt of generating capacity using energy
803 derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole
804 or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the
805 utility as plant in service. In any application to construct a new generating facility, the utility shall include,
806 and the Commission shall consider, the social cost of carbon, as determined by the Commission, as a benefit
807 or cost, whichever is appropriate. The Commission shall ensure that the development of new, or expansion of
808 existing, energy resources or facilities does not have a disproportionate adverse impact on historically
809 economically disadvantaged communities. The Commission may adopt any rules it deems necessary to
810 determine the social cost of carbon and shall use the best available science and technology, including the
811 Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis
812 Under Executive Order 12866, published by the Interagency Working Group on Social Cost of Greenhouse
813 Gases from the United States Government in August 2016, as guidance. The Commission shall include a

814 system to adjust the costs established in this section with inflation.

815 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
816 construction and to construction work in progress during the construction phase of the facility and shall
817 thereafter be applied to the entire facility during the first portion of the service life of the facility. The first
818 portion of the service life shall be as specified in the table below; however, the Commission shall determine
819 the duration of the first portion of the service life of any facility, within the range specified in the table below,
820 which determination shall be consistent with the public interest and shall reflect the Commission's
821 determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the
822 Commonwealth and the risks involved in the development of the facility. After the first portion of the service
823 life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the
824 remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the
825 date a facility constructed by the utility and described in clause (i), (ii), (iii), or (v) begins commercial
826 operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one
827 megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and
828 that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date
829 new underground facilities or new electric distribution grid transformation projects are classified by the
830 utility as plant in service, and such service life shall be deemed equal in years to the life of that facility as
831 used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be
832 calculated by adding the basis points specified in the table below to the utility's general rate of return, and
833 such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause.
834 Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's
835 actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as
836 determined pursuant to this subdivision, until such construction work in progress is included in rates. The
837 construction of any facility described in clause (i) or (v) is in the public interest, and in determining whether
838 to approve such facility, the Commission shall liberally construe the provisions of this title. The construction
839 or purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity,
840 and with an aggregate rated capacity that does not exceed 16,100 megawatts, including rooftop solar
841 installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 100 megawatts,
842 that use energy derived from sunlight or from onshore wind and are located in the Commonwealth or off the

843 Commonwealth's Atlantic shoreline, regardless of whether any of such facilities are located within or without
844 the utility's service territory, is in the public interest, and in determining whether to approve such facility, the
845 Commission shall liberally construe the provisions of this title. A utility may enter into short-term or long-
846 term power purchase contracts for the power derived from sunlight generated by such generation facility prior
847 to purchasing the generation facility. The replacement of any subset of a utility's existing overhead
848 distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-
849 per-mile over a preceding 10-year period with new underground facilities in order to improve electric service
850 reliability is in the public interest. In determining whether to approve petitions for rate adjustment clauses for
851 such new underground facilities that meet this criteria, and in determining the level of costs to be recovered
852 thereunder, the Commission shall liberally construe the provisions of this title.

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

872 subdivision 8 d. The Commission's final order regarding any such petition for approval of an electric
 873 distribution grid transformation plan shall be entered by the Commission not more than six months after the
 874 date of filing such petition. The Commission shall likewise enter its final order with respect to any petition by
 875 a utility for a certificate to construct and operate a generating facility or facilities utilizing energy derived
 876 from sunlight, pursuant to subsection D of § 56-580, within six months after the date of filing such petition.
 877 The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on
 878 common equity, and the first portion of that facility's service life to which such enhanced rate of return shall
 879 be applied, shall vary by type of facility, as specified in the following table:

880	a	Type of Generation Facility	Basis Points	First Portion of Service Life
881	b	Nuclear-powered	200	Between 12 and 25 years
882	c	Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
883	d	Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
884	e	Coalbed methane gas powered	150	Between 5 and 15 years
885	f	Landfill gas powered	200	Between 5 and 15 years
886	g	Conventional coal or combined-cycle combustion	100	Between 10 and 20 years
887		turbine		

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

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

905 facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for
906 recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all
907 costs shall be recovered ratably through existing base rates as determined by the Commission in the test
908 periods under review in the utility's next review filed after July 1, 2014.

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

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

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

934 pursuant to subdivision 6 or in a review proceeding.

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

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

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

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

963 the future under this subdivision.

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

976 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
977 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs
978 incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
979 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are
980 related to facilities and projects described in clause (i) of subdivision 6, or that are related to new
981 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of
982 the utility until the Commission's final order in the matter, or until the implementation of any applicable
983 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs
984 prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the
985 consideration thereof by the Commission, that are proposed for recovery in such petition and that are related
986 to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or
987 coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be
988 built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final
989 order in the matter, or until the implementation of any applicable approved rate adjustment clauses,
990 whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to
991 other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or

992 termination of capped rates, provided, however, that no provision of this act shall affect the rights of any
993 parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC
994 and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a
995 regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation
996 and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
997 and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize
998 such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in
999 which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of
1000 time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a
1001 component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such
1002 outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to
1003 any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the
1004 Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs
1005 for the purpose of proceedings conducted (a) with respect to filings under subdivision 3 made on and after
1006 July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate increase
1007 applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

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

1021 recovery mechanism independent from the utility's rates for generation and distribution services pursuant to §
1022 56-585.8 and subdivisions 5 and 6, but will be combined as a single rate adjustment clause for cost recovery
1023 and review purposes. Any rate adjustment clause or subset of rate adjustment clauses so consolidated shall be
1024 named in a manner, as determined by the Commission, that reasonably informs customers as to the nature of
1025 the costs recovered by the consolidated rate adjustment clause.

1026 At any time, the Commission may, in its discretion, for a Phase II Utility, upon petition by such a utility
1027 or upon its own initiated proceeding, direct the consolidation of any one or more subsets of rate adjustment
1028 clauses previously implemented pursuant to subdivision 5 or 6 in the interest of judicial economy, customer
1029 transparency, or other factors the Commission determines to be appropriate. Any subset of rate adjustment
1030 clauses so consolidated shall continue to be considered by the Commission without regard to the other costs,
1031 revenues, investments, or earnings of the utility and remain as a cost recovery mechanism independent from
1032 the utility's rates for generation and distribution services pursuant to this subdivision and subdivisions 5 and
1033 6, but will be combined as a single rate adjustment clause for cost recovery and review purposes. Any rate
1034 adjustment clause or subset of rate adjustment clauses so consolidated shall be named in a manner, as
1035 determined by the Commission, that reasonably informs customers as to the nature of the costs recovered by
1036 the consolidated rate adjustment clause.

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

1050 individually or in the aggregate, together with the utility's other costs, revenues, and investments to be
1051 recovered through rates for generation and distribution services, result in the utility's earned return on its
1052 generation and distribution services for the combined test periods under review to fall more than 50 basis
1053 points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test
1054 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase
1055 I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision
1056 2 for such periods. In such cases, the Commission shall, in such review proceeding, authorize deferred
1057 recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as
1058 determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that
1059 would, together with the utility's other costs, revenues, and investments to be recovered through rates for
1060 generation and distribution services, cause the utility's earned return on its generation and distribution
1061 services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined
1062 test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility
1063 and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under
1064 subdivision 2 less 70 basis points. Notwithstanding the prior sentence, the aggregate amount of actual and
1065 reasonable costs associated with severe weather events eligible for such deferral shall not exceed an amount
1066 that would, together with the utility's other costs, revenues, and investments to be recovered through rates for
1067 generation and distribution services, cause the utility's earned return on its generation and distribution
1068 services to exceed the fair rate of return authorized for the combined test periods under review. For the
1069 purposes of determining any amount of costs that are associated with severe weather events, the Commission
1070 shall consider nationally recognized standards such as those published by the Institute of Electrical and
1071 Electronics Engineers (IEEE). Nothing in this section shall limit the Commission's authority, pursuant to the
1072 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of
1073 combined test period earnings of the utility in a review, for normalization of nonrecurring test period costs
1074 and annualized adjustments for future costs, in determining any appropriate increase or decrease in the
1075 utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

1076 If the Commission determines as a result of any triennial review initiated prior to July 1, 2023 that:

1077 a. Revenue reductions related to energy efficiency measures or programs approved and deployed since the
1078 utility's previous triennial review have caused the utility, as verified by the Commission, during the test

1079 period or periods under review, considered as a whole, to earn more than 50 basis points below a fair
1080 combined rate of return on its generation and distribution services or, for any test period commencing after
1081 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
1082 basis points below a fair combined rate of return on its generation and distribution services, as determined in
1083 subdivision 2, without regard to any return on common equity or other matters determined with respect to
1084 facilities described in subdivision 6, the Commission shall order increases to the utility's rates for generation
1085 and distribution services necessary to recover such revenue reductions. If the Commission finds, for reasons
1086 other than revenue reductions related to energy efficiency measures, that the utility has, during the test period
1087 or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate
1088 of return on its generation and distribution services or, for any test period commencing after December 31,
1089 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points
1090 below a fair combined rate of return on its generation and distribution services, as determined in subdivision
1091 2, without regard to any return on common equity or other matters determined with respect to facilities
1092 described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the
1093 opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair
1094 combined rate of return, using the most recently ended 12-month test period as the basis for determining the
1095 amount of the rate increase necessary. However, in the first triennial review proceeding conducted after
1096 January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all triennial
1097 reviews of a Phase I or Phase II utility, the Commission may not order such rate increase unless it finds that
1098 the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of
1099 providing its services and to earn not less than a fair combined rate of return on both its generation and
1100 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
1101 matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-
1102 month test period as the basis for determining the permissibility of any rate increase under the standards of
1103 this sentence, and the amount thereof; and provided that, solely in connection with making its determination
1104 concerning the necessity for such a rate increase or the amount thereof, the Commission shall, in any triennial
1105 review proceeding conducted prior to July 1, 2028, exclude from this most recently ended 12-month test
1106 period any remaining investment levels associated with a prior customer credit reinvestment offset pursuant
1107 to subdivision d.

1108 b. The utility has, during the test period or test periods under review, considered as a whole, earned more
1109 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any
1110 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
1111 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
1112 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
1113 matters determined with respect to facilities described in subdivision 6, the Commission shall, subject to the
1114 provisions of subdivisions 8 d and 9, direct that 60 percent of the amount of such earnings that were more
1115 than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and
1116 after December 31, 2013, for a Phase I Utility, that 70 percent of the amount of such earnings that were more
1117 than 70 basis points, above such fair combined rate of return for the test period or periods under review,
1118 considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period
1119 of six to 12 months, as determined at the discretion of the Commission, following the effective date of the
1120 Commission's order, and shall be allocated among customer classes such that the relationship between the
1121 specific customer class rates of return to the overall target rate of return will have the same relationship as the
1122 last approved allocation of revenues used to design base rates; or

1123 c. The utility has, during the test period or test periods under review, considered as a whole, earned more
1124 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any
1125 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
1126 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
1127 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
1128 matter determined with respect to facilities described in subdivision 6, and the combined aggregate level of
1129 capital investment that the Commission has approved other than those capital investments that the
1130 Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made
1131 by the utility during the test periods under review in that triennial review proceeding in new utility-owned
1132 generation facilities utilizing energy derived from sunlight, or from wind, and in electric distribution grid
1133 transformation projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of
1134 the earnings that are more than 70 basis points above the utility's fair combined rate of return on its
1135 generation and distribution services for the combined test periods under review in that triennial review
1136 proceeding, the Commission shall, subject to the provisions of subdivision 10 and in addition to the actions

1137 authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, in the
1138 first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the
1139 utility's rates ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual
1140 revenues, with any reduction allocated to the utility's rates for generation services, and in each triennial
1141 review of a Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that
1142 the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its
1143 services and to earn not less than a fair combined rate of return on its generation and distribution services, as
1144 determined in subdivision 2, without regard to any return on common equity or other matters determined with
1145 respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the
1146 basis for determining the permissibility of any rate reduction under the standards of this sentence, and the
1147 amount thereof; and

1148 d. (Expires July 1, 2028) In any review proceeding conducted after December 31, 2017, upon the request
1149 of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that are more
1150 than 70 basis points above the utility's fair combined rate of return on its generation and distribution services
1151 for the test period or periods under review be credited to customer bills pursuant to subdivision 8 b, the
1152 aggregate level of prior capital investment that the Commission has approved other than those capital
1153 investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant to
1154 subdivision 6 made by the utility during the test period or periods under review in both (i) new utility-owned
1155 generation facilities utilizing energy derived from sunlight, or from onshore or offshore wind, and (ii) electric
1156 distribution grid transformation projects, as determined by the utility's plant in service and construction work
1157 in progress balances related to such investments as recorded per books by the utility for financial reporting
1158 purposes as of the end of the most recent test period under review. Any such combined capital investment
1159 amounts shall offset any customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of
1160 invested or committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or
1161 committed capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit
1162 reinvestment offset, which offsets the customer bill credit amount that the utility has invested or will invest in
1163 new solar or wind generation facilities or electric distribution grid transformation projects for the benefit of
1164 customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the utility's fair
1165 rate of return on its generation and distribution services, and thereby reduce or eliminate otherwise

1166 incremental rate adjustment clause charges and increases to customer bills, which is deemed to be in the
1167 public interest. If 100 percent of the amount of earnings that are more than 70 basis points above the utility's
1168 fair combined rate of return on its generation and distribution services, as determined in subdivision 2,
1169 exceeds the aggregate level of invested capital in new utility-owned generation facilities utilizing energy
1170 derived from sunlight, or from wind, and electric distribution grid transformation projects, as provided in
1171 clauses (i) and (ii), during the test period or periods under review, then 70 percent of the amount of such
1172 excess shall be credited to customer bills as provided in subdivision 8 b in connection with the review
1173 proceeding. The portion of any costs associated with new utility-owned generation facilities utilizing energy
1174 derived from sunlight, or from wind, or electric distribution grid transformation projects that is the subject of
1175 any customer credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through
1176 the utility's rates for generation and distribution services over the service life of such facilities and shall not
1177 thereafter be included in the utility's costs, revenues, and investments in future review proceedings conducted
1178 pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to
1179 subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing
1180 energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is not the
1181 subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered through the
1182 utility's rates for generation and distribution services over the service life of such facilities and shall be
1183 included in the utility's costs, revenues, and investments in future review proceedings conducted pursuant to
1184 subdivision 2 until such costs are fully recovered, and if such costs are recovered through the utility's rates for
1185 generation and distribution services, they shall not be the subject of a rate adjustment clause petition pursuant
1186 to subdivision 6. Only the portion of such costs of new utility-owned generation facilities utilizing energy
1187 derived from sunlight, or from wind, or electric distribution grid transformation projects that has not been
1188 included in any customer credit reinvestment offset pursuant to this subdivision, and not otherwise recovered
1189 through the utility's rates for generation and distribution services, may be the subject of a rate adjustment
1190 clause petition by the utility pursuant to subdivision 6.

1191 e. In any biennial review of a Phase II Utility, the Commission's final order regarding such review shall be
1192 entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered
1193 shall take effect not more than 60 days after the date of the order. The fair combined rate of return on
1194 common equity determined pursuant to subdivision 2 in such review shall apply, for purposes of reviewing

1195 the utility's earnings on its rates for generation and distribution services, to the entire two or three, as
1196 applicable, successive 12-month test periods ending December 31 immediately preceding the year of the
1197 utility's subsequent review filing under subdivision 3 and shall apply to applicable rate adjustment clauses
1198 under subdivisions 5 and 6 prospectively from the date the Commission's final order in the review
1199 proceeding, utilizing rate adjustment clause true-up protocols as the Commission in its discretion may
1200 determine.

1201 9. a. In any biennial review for a Phase II Utility filed on or prior to December 31, 2023, if the
1202 Commission determines that the utility has during the test period or test periods under review, considered as a
1203 whole, earned more than 70 basis points above a fair combined rate of return on its generation and
1204 distribution services previously authorized by the Commission, as determined in subdivision 2, without
1205 regard to any return on common equity or other matters determined with respect to facilities described in
1206 subdivision 6, which have not been combined with the utility's costs, revenues, and investments for
1207 generation and distribution services, the Commission shall direct that 85 percent of the amount of such
1208 earnings that were more than 70 basis points above such fair combined rate of return for the test period or
1209 periods under review, considered as a whole, be credited to customers' bills. Any such credits shall be
1210 amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the
1211 effective date of the Commission's order, and shall be allocated among customer classes such that the
1212 relationship between the specific customer class rates of return to the overall target rate of return will have the
1213 same relationship as the last approved allocation of revenues used to design base rates.

1214 b. In any biennial review for a Phase II Utility filed on or after January 1, 2024, if the Commission
1215 determines that the utility has during the test period or test periods under review, considered as a whole,
1216 earned above its fair combined rate of return on its generation and distribution services previously authorized
1217 by the Commission, as determined in subdivision 2, without regard to any return on common equity or other
1218 matters determined with respect to facilities described in subdivision 6, which have not been combined with
1219 the utility's costs, revenues, and investments for generation and distribution services, the Commission shall
1220 direct that 85 percent of the amount of such earnings above such fair combined rate of return for the test
1221 period or periods under review, considered as a whole, be credited to customers' bills. Further, if the
1222 Commission determines that during the test period or test periods under review, considered as a whole, a
1223 Phase II Utility earned more than 150 basis points above a fair combined rate of return on its generation and

1224 distribution services previously authorized by the Commission, without regard to any return on common
1225 equity or other matters determined with respect to facilities described in subdivision 6, which have not been
1226 combined with the utility's costs, revenues, and investments for generation and distribution services, the
1227 Commission shall direct that all such earnings that were more than 150 basis points above such fair combined
1228 rate of return for the test period or periods under review, considered as a whole, be credited to customers'
1229 bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of
1230 the Commission, following the effective date of the Commission's order, and shall be allocated among
1231 customer classes such that the relationship between the specific customer class rates of return to the overall
1232 target rate of return will have the same relationship as the last approved allocation of revenues used to design
1233 base rates.

1234 10. If, as a result of a triennial review required under this subsection and conducted with respect to any
1235 test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected
1236 to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than
1237 December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission
1238 finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test
1239 period or periods under review, considered as a whole, earned more than 50 basis points above a fair
1240 combined rate of return on its generation and distribution services or, for any test period commencing after
1241 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
1242 basis points above a fair combined rate of return on its generation and distribution services, as determined in
1243 subdivision 2, without regard to any return on common equity or other matters determined with respect to
1244 facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the
1245 most recently ended 12-month test period exceeded the annual increases in the United States Average
1246 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
1247 Statistics of the United States Department of Labor, compounded annually, when compared to the total
1248 aggregate regulated rates of such utility as determined pursuant to the review conducted for the base period,
1249 the Commission shall, unless it finds that such action is not in the public interest or that the provisions of
1250 subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test
1251 period or periods under review, considered as a whole that were more than 50 basis points, or, for any test
1252 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase

1253 I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers'
1254 bills, in lieu of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to
1255 this subdivision in connection with any triennial review unless such bill credits would be payable pursuant to
1256 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any
1257 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized and
1258 allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this
1259 subdivision:

1260 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to
1261 stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31,
1262 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period
1263 with respect to which credits have been applied to customers' bills under the provisions of this subdivision,
1264 whichever is later.

1265 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for
1266 any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010,
1267 pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
1268 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a;
1269 (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
1270 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July
1271 1, 2009.

1272 11. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any
1273 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and
1274 cost of capital of such utility, excluding any debt associated with securitized bonds that are the obligation of
1275 non-Virginia jurisdictional customers, unless the Commission finds that the debt to equity ratio of such
1276 capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity
1277 ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions
1278 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any
1279 other entity with which such utility may be affiliated. In particular, and without limitation, the Commission
1280 shall determine the federal and state income tax costs for any such utility that is part of a publicly traded,
1281 consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated

1282 according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates,
1283 and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income
1284 tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable
1285 income or loss of its affiliates.

1286 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an
1287 increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications;
1288 however, in any such filing, a fair rate of return on common equity shall be determined pursuant to
1289 subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power
1290 costs as provided in § 56-249.6.

1291 C. Except as otherwise provided in this section, the Commission shall exercise authority over the rates,
1292 terms and conditions of investor-owned incumbent electric utilities for the provision of generation,
1293 transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions of
1294 Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

1295 D. The Commission may determine, during any proceeding authorized or required by this section, the
1296 reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with
1297 the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence
1298 of any such cost shall be consistent with the Commission's authority to determine the reasonableness or
1299 prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining
1300 the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable
1301 energy resources, the Commission shall consider the extent to which such renewable energy resources,
1302 whether utility-owned or by contract, further the objectives of the Commonwealth Clean Energy Policy set
1303 forth in § 45.2-1706.1, and shall also consider whether the costs of such resources is likely to result in
1304 unreasonable increases in rates paid by customers.

1305 E. Notwithstanding any other provision of law, the Commission shall determine the amortization period
1306 for recovery of any appropriate costs due to the early retirement of any electric generation facilities owned or
1307 operated by any Phase I Utility or Phase II Utility. In making such determination, the Commission shall (i)
1308 perform an independent analysis of the remaining undepreciated capital costs; (ii) establish a recovery period
1309 that best serves ratepayers; and (iii) allow for the recovery of any carrying costs that the Commission deems
1310 appropriate.

1311 F. The Commission shall include in its report required by subsection B of § 56-596 any information
1312 concerning the reliability impacts of generation unit additions and retirement determinations by a Phase I or
1313 Phase II Utility, along with the potential impact on the purchase of power from generation assets outside the
1314 Virginia jurisdiction used to serve the utility's native load, utilizing information from the respective utility's
1315 integrated resource plan or information from the respective utility's plan filed pursuant to subsection D of §
1316 56-585.5.

1317 G. The Commission shall promulgate such rules and regulations as may be necessary to implement the
1318 provisions of this section.

1319 **§ 56-585.8. Biennial rate reviews.**

1320 A. For the purposes of this section:

1321 "Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

1322 "Utility" means a Phase I Utility.

1323 B. With the first review commencing on March 31, 2024, and *on May 31* biennially thereafter, the
1324 Commission shall conduct rate reviews of the rates, terms, and conditions for the provision of generation and
1325 distribution services by a Phase I Utility that participated in triennial review proceedings in 2020 and 2023,
1326 and such Phase I Utility shall no longer be subject to triennial review proceedings pursuant to § 56-585.1.

1327 C. In each biennial review, the Commission shall conduct a proceeding to review all rates, terms, and
1328 conditions for generation and distribution services with such proceeding utilizing the two successive
1329 12-month test periods ending December 31 immediately preceding the year in which such proceeding is
1330 conducted. Such biennial review shall be conducted in a single, combined proceeding, except for review of
1331 the following costs, which the utility shall continue to recover and the Commission shall continue to review
1332 separately, pursuant to the applicable statutory provisions: costs that are recovered pursuant to (i) § 56-249.6,
1333 (ii) subdivisions A 4, 5, and 6 of § 56-585.1, and (iii) § 56-585.6.

1334 D. ~~Each~~ *Beginning in 2026, each* biennial rate review proceeding shall commence on ~~or before March~~
1335 *May 31* of the biennial review year with the filing of a petition by each Phase I Utility subject to the
1336 provisions of this section. The Commission, after providing notice and an opportunity for hearing, shall grant
1337 a final order on such petition no later than ~~November 20. Any~~ *January 15 of the subsequent year, with any*
1338 revisions in rates ordered by the Commission pursuant to the rate review ~~shall take~~ *taking* effect no ~~later~~
1339 *earlier than January March 1 of the subsequent year.*

1340 E. In each biennial review proceeding, the Commission shall set the fair rate of return on common equity
1341 applicable to the generation and distribution services of the utility for the two such services combined and for
1342 any rate adjustment clauses approved under subdivision A 5 or 6 of § 56-585.1. The Commission may use
1343 any methodology it finds consistent with the public interest to determine the Phase I Utility's fair rate of
1344 return on common equity. The Commission may increase or decrease the combined rate of return for
1345 generation and distribution services by up to 50 basis points based on factors that may include reliability,
1346 generating plant performance, customer service, and operating efficiency of a utility. Any such adjustment to
1347 the combined rate of return for generation and distribution services shall include consideration of nationally
1348 recognized standards determined by the Commission to be appropriate for such purposes.

1349 F. In any biennial review for a Phase I Utility, if the Commission determines in its sole discretion that the
1350 utility's existing rates for generation and distribution services will, on a going-forward basis, either produce
1351 (i) revenues in excess of the utility's authorized rate of return or (ii) revenues below the utility's authorized
1352 rate of return, then the Commission shall order any reductions or increases, as applicable and necessary, to
1353 such rates for generation and distribution services that it deems appropriate to ensure the resulting rates for
1354 generation and distribution services (a) are just and reasonable and (b) provide the utility an opportunity to
1355 recover its costs of providing services over the rate period ending on December 31 of the year of the utility's
1356 succeeding review and earn a fair rate of return authorized pursuant to this section. Such determination shall
1357 be limited to the Phase I Utility's rates for generation and distribution services and shall not consider the costs
1358 or revenues recovered in any rate adjustment clause authorized pursuant to this chapter.

1359 G. In any biennial review of rates for generation and distribution services, if the combined rate of return
1360 on common equity earned is no more than 100 basis points above or below the fair combined rate of return,
1361 as determined by the Commission, for the test period under review, then such combined return shall not be
1362 considered either excessive or insufficient, respectively.

1363 1. If in any biennial review, the Commission finds that, during the test period under review, considered as
1364 a whole, the utility has earned more than 100 basis points above the authorized fair combined rate of return
1365 on its generation or distribution services, the Commission shall direct that 100 percent of the amount of such
1366 earnings that were more than 100 basis points above such fair combined rate of return for the test period
1367 under review, considered as a whole, be credited to customers' bills. Any such credits shall be applied to
1368 customers' bills, as determined at the discretion of the Commission, following the effective date of the

1369 Commission's order, and shall be allocated among customer classes such that the relationship between the
1370 specific customer class rates of return to the overall target rate of return will have the same relationship as the
1371 last approved allocation of revenues used to design base rates; or

1372 2. The Commission shall authorize deferred recovery for reasonable (i) actual costs associated with severe
1373 weather events and (ii) actual costs associated with natural disasters, not currently in rates, and the
1374 Commission shall allow the utility to amortize and recover such deferred costs over future periods as
1375 determined by the Commission. The amount of any such deferral shall not exceed an amount that would,
1376 together with the utility's other costs, revenues, and investments recovered through rates for generation and
1377 distribution services for the test period under review, cause the utility's earned return on its generation and
1378 distribution services to exceed 100 basis points above the fair combined rate of return applicable to the test
1379 period under review. For the purposes of determining any amount of costs that are associated with severe
1380 weather events, the Commission shall consider nationally recognized standards such as those published by
1381 the Institute of Electrical and Electronics Engineers (IEEE).

1382 Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant
1383 to this subsection shall not be considered for the purpose of determining the utility's earnings in any
1384 subsequent biennial review.

1385 H. In any proceeding under this title, including each biennial review, to determine the prior two years'
1386 excess or deficiency for the purposes of subsection F, the Commission shall use an average rate base using
1387 the actual starting and end-of-test period capital structure of the utility, excluding any debt associated with
1388 any securitized bonds and without regard to the cost of capital, capital structure, or investments of any other
1389 entities with which the utility is affiliated. To determine a revenue requirement in any proceeding under this
1390 title, the Commission shall use the utility's actual end-of-test period capital structure and cost of capital
1391 without regard to the cost of capital, capital structure, or investments of any other entities with which the
1392 utility is affiliated, including debt associated with any securitized bonds, unless the Commission makes a
1393 finding, based on evidence in the record, that the debt to equity ratio of the actual end-of-test period capital
1394 structure of such utility is unreasonable, in which case the Commission may utilize a debt to equity ratio that
1395 it finds to be reasonable.

1396 In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the Commission
1397 shall determine federal and state income tax costs as follows: (i) the utility's apportioned state income tax

1398 costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated
1399 return with its affiliates, and (ii) the utility's federal income tax costs shall be calculated according to the
1400 applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments
1401 originating from any taxable income or loss of its affiliates.

1402 I. The Commission is authorized to determine during any biennial review the reasonableness or prudence
1403 of any cost subject to the rate review incurred or projected to be incurred by the utility, and a Phase I Utility
1404 shall recover such costs that the Commission finds to be reasonable and prudent.

1405 J. In any biennial review conducted pursuant to this section, a Phase I Utility or any other party may
1406 propose changes to its terms and conditions and the Commission may approve, reject, or amend any changes
1407 and may propose any special rates, contracts, or incentives pursuant to § 56-235.2.

1408 K. Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ 56-585.5 and 56-596.2.

1409 L. To the extent that the provisions of this section are inconsistent with the provisions of § 56-585.1, the
1410 provisions of this section shall control.

1411 **2. That a Phase I Utility, as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, as**
1412 **amended by this act, in connection with any financing order petition filed with the State Corporation**
1413 **Commission (the Commission) prior to December 31, 2023, pursuant to § 56-249.8 of the Code of**
1414 **Virginia, as created by this act, shall permit any retail customer that is receiving electricity supply**
1415 **service from the utility and whose demand exceeded five megawatts during the calendar year prior to**
1416 **such petition to opt out of financing its pro rata obligation for securitized asset cost charges through**
1417 **securitized asset cost bonds. The Phase I Utility shall notify such eligible customers of their eligibility to**
1418 **opt out of the securitized asset cost financing through its petition with the Commission, and any**
1419 **election to opt out of the securitized asset cost financing by an eligible customer shall be provided in**
1420 **writing to the utility within 30 days of the filing of such petition. Upon such election, the eligible**
1421 **customer shall fully satisfy such customer's pro rata obligation for the securitized asset cost charges**
1422 **subject to financing, as determined based on such customer's electric usage over the period that such**
1423 **charges were incurred. In the event of such election, any securitized asset cost charges approved for**
1424 **recovery through securitized asset cost bonds shall not include the obligations of eligible customers**
1425 **opting out of the securitized asset cost financing.**

1426 **3. That a Phase I Utility, as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, as**

1427 amended by this act, shall not be required to file for a review of fuel and purchased power costs
1428 pursuant to § 56-249.6 of the Code of Virginia, as created by this act, in 2025. Commencing in 2026, or
1429 2027 if the Phase I Utility files for a review of fuel and purchased power costs in 2025, annual filings
1430 shall be made by January 15 with interim rates effective March 1 of each year.

1431 4. That, during the biennial rate review commencing on May 31, 2026, and conducted pursuant to §
1432 56-585.8 of the Code of Virginia, as amended by this act, for a Phase I Utility, as defined in subdivision
1433 A 1 of § 56-585.1 of the Code of Virginia, as amended by this act, the Phase I Utility shall propose and
1434 the State Corporation Commission shall consider implementing (i) residential seasonal rates and (ii)
1435 alternatives to budget billing.

1436 5. That in any rate proceeding for a Phase I Utility, as defined in subdivision A 1 of § 56-585.1 of the
1437 Code of Virginia, as amended by this act, the State Corporation Commission (the Commission) shall
1438 include an invitation to the public to comment on the Phase I Utility rate case. The Commission shall
1439 collect and aggregate all public submissions and shall consider public comments as part of each rate
1440 proceeding.