

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 56-585.8 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-249.8 and by adding in Chapter 23 of Title 56 a section numbered 56-596.5, relating to Phase I Utilities; securitized asset costs; biennial rate reviews; rate increases in certain months prohibited.

[H 2621]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.8 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-249.8 and by adding in Chapter 23 of Title 56 a section numbered 56-596.5 as follows:

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

A. As used in this section:

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

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

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

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

"Financing costs" means:

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

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

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

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

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

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

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

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

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

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

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

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securitized asset cost property.

"Securitized asset cost bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued in one or more series or tranches by an electric utility or its assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved securitized asset costs and financing costs, and that are secured by or payable from securitized asset cost property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

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

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

"Storm recovery costs" means investments and expenses incurred by an electric utility on or after January 1, 2024, arising from or related to any major storm, extraordinary weather event, or natural disaster affecting Phase I Utility ratepayers in Virginia, including costs of the mobilization, staging, construction, reconstruction, repair, or replacement of production, generation, transport, transmission, general, or distribution facilities and the costs of any other activity by or on behalf of an electric utility in connection with the restoration of service associated with outages impacting its customers as a result of such major storm, extraordinary weather event, or natural disaster.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A requirement that the electric utility's base rates, exclusive of the cost of securitized asset cost bonds, reflect the reduction of rates associated with securitization effective on the date on which proceeds from the issuance of the securitized asset cost bonds are received by the electric utility. Such requirement may be met through the use of a temporary tracker to credit customers until such reduction is reflected in the base rates established through the electric utility's next base rate case;

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

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

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

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

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

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

d. If the Commission issues a financing order, the Commission shall establish a protocol for the electric utility to annually file a petition or, in the Commission's discretion, a letter setting out application of the

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

e. Subsequent to the transfer of securitized asset cost property to an assignee or the issuance of securitized asset cost bonds authorized thereby, whichever is earlier, a financing order shall be irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this section, the Commission shall not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized asset cost charges approved in the financing order. After the issuance of a financing order, the electric utility shall retain sole discretion regarding whether to assign, sell, or otherwise transfer securitized asset cost property or to cause securitized asset cost bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.

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

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

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

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

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

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

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

must indicate the securitized asset cost charge and the ownership of the charge; and

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

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

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

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

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

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

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

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

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

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

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

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

c. A security interest shall attach without any physical delivery of collateral or other act and, upon the

305 filing of a financing statement with the Commission, the lien of the security interest shall be valid, binding,
 306 and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person
 307 granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a
 308 transfer of an interest in the securitized asset cost property shall be perfected against all parties having
 309 claims of any kind, including any judicial lien or other lien creditors or any claims of the transferor or
 310 creditors of the transferor, and shall have priority over all competing claims other than any prior security
 311 interest, ownership interest, or assignment in the property previously perfected in accordance with this
 312 section;

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

317 e. The priority of a security interest in securitized asset cost property shall not be affected by the
 318 commingling of securitized asset cost charges with other amounts. Any pledgee or secured party shall have a
 319 perfected security interest in the amount of all securitized asset cost charges that are deposited in any cash or
 320 deposit account of the qualifying utility in which securitized asset cost charges have been commingled with
 321 other funds and any other security interest that may apply to those funds shall be terminated when they are
 322 transferred to a segregated account for the assignee or a financing party;

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

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

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

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

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

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

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

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

357 (5) Any indemnification obligations of the seller;

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

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

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

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

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

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

d. The Commission shall maintain any financing statement filed to perfect any sale, assignment, or transfer of securitized asset cost property under this section in the same manner that the Commission maintains financing statements filed by transmitting utilities under the Uniform Commercial Code. The filing of any financing statement under this section shall be governed by the provisions regarding the filing of financing statements in the Uniform Commercial Code. The filing of such a financing statement shall be the only method of perfecting a transfer of securitized asset cost property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 56-585.8. Biennial rate reviews.

A. For the purposes of this section:

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

"Utility" means a Phase I Utility.

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

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

D. ~~Each~~ Beginning in 2026, each biennial rate review proceeding shall commence on or before March

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

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

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

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

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

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

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

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

In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the Commission

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

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

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

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

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

§ 56-596.5. Rate increases in certain months prohibited; Phase I Utility.

A. Notwithstanding any other provision of law, the rates for electric generation and distribution services by a Phase I Utility, as defined in subdivision A 1 of § 56-585.1, shall not be increased during the months of November through February.

B. Notwithstanding any other provision of law, during the months of November through February, no new rate adjustment clause shall be applied to a Phase I Utility's residential customers' bills and no existing rate adjustment clause applicable to such customers' bills shall be increased. The Commission's final order regarding any petition for a rate adjustment clause that results in an increase to residential customer rates, including any petition filed pursuant to subdivision A 4, 5, or 6 of § 56-585.1 or § 56-585.1:15, 56-585.5, or 56-585.6, issued between September 1 and December 31 shall direct that the applicable rate adjustment clause be applied to customers' bills beginning on March 1 of the following year.

2. That a Phase I Utility, as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, in connection with any financing order petition filed with the State Corporation Commission (the Commission) prior to December 31, 2025, pursuant to § 56-249.8 of the Code of Virginia, as created by this act, shall permit any retail customer that is receiving electricity supply service from the utility and whose demand exceeded five megawatts during the calendar year prior to such petition to opt out of financing its pro rata obligation for securitized asset cost charges through securitized asset cost bonds. The Phase I Utility shall notify such eligible customers of their eligibility to opt out of the securitized asset cost financing through its petition with the Commission, and any election to opt out of the securitized asset cost financing by an eligible customer shall be provided in writing to the utility within 30 days of the filing of such petition. Upon such election, the eligible customer shall fully satisfy such customer's pro rata obligation for the securitized asset cost charges as determined in the financing order. In the event of such election, any securitized asset cost charges approved for recovery through securitized asset cost bonds shall not include the obligations of eligible customers opting out of the securitized asset cost financing.

3. That notwithstanding any other provision of law, including any tariff approved by the State Corporation Commission, no Phase I Utility, as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, shall charge a residential customer any interest or late fees between July 1, 2025, and December 31, 2025 or charge a residential customer any reconnection fees between July 1, 2025, and March 1, 2026.

4. That a Phase I Utility, as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, shall only file for an annual review of fuel and purchased power costs pursuant to § 56-249.6 of the Code of Virginia in 2025 if the filing reflects a deduction in tariff provisions designed to recover fuel costs.

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

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