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HOUSE BILL NO. 2537
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Governor
 on March 24, 2025)

(Patron Prior to Substitute—Delegate Sullivan)

A BILL to amend and reenact §§ 56-585.1, 56-585.8, 56-594.3, and 56-594.4 of the Code of Virginia and to repeal § 56-585.5 of the Code of Virginia, relating to electric utilities; renewable energy portfolio standard program; repeal.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.1, 56-585.8, 56-594.3, and 56-594.4 of the Code of Virginia are amended and reenacted as follows:

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

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

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

HOUSE SUBSTITUTE

HB2537H2

60 investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

167 As of July 1, 2023, a Phase II Utility shall select a subset of rate adjustment clauses previously
168 implemented pursuant to subdivision 5 or 6 having a combined annual revenue requirement, as of July 1,
169 2023, of at least \$350 million and combine such rate adjustment clauses with the utility's costs, revenues, and
170 investments for generation and distribution services. After such rate adjustment clauses are combined as
171 specified in this paragraph, such rate adjustment clauses shall be considered part of the utility's costs,
172 revenues, and investments for the purposes of future biennial review proceedings, and the combination of
173 such rate adjustment clauses shall be specifically subject to audit by the Commission in the utility's 2023
174 biennial review filing. Notwithstanding the provisions of subsection C of § 56-581, such combination shall
175 not serve as the basis for an increase in a Phase II Utility's rates for generation and distribution services in its
176 2023 biennial proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
 297 utility's projected native load obligations and to promote economic development, a utility may at any time,
 298 after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment
 299 clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation
 300 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in
 301 § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii)
 302 one or more other generation facilities, (iii) one or more major unit modifications of generation facilities,
 303 including the costs of any system or equipment upgrade, system or equipment replacement, or other cost
 304 reasonably appropriate to extend the combined operating license for or the operating life of one or more
 305 generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or
 306 more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, (v)
 307 one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable

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

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

365 Such enhanced rate of return on common equity shall be applied to allowance for funds used during
366 construction and to construction work in progress during the construction phase of the facility and shall
367 thereafter be applied to the entire facility during the first portion of the service life of the facility. The first
368 portion of the service life shall be as specified in the table below; however, the Commission shall determine
369 the duration of the first portion of the service life of any facility, within the range specified in the table below,

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

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

| 430 | Type of Generation Facility | Basis Points | First Portion of Service Life |
|-----|-----------------------------|--------------|-------------------------------|
| 431 | Nuclear-powered | 200 | Between 12 and 25 years |

| | | | |
|-----|--|-----|-------------------------|
| 432 | Carbon capture compatible, clean-coal powered | 200 | Between 10 and 20 years |
| 433 | Renewable powered, other than landfill gas powered | 200 | Between 5 and 15 years |
| 434 | Coalbed methane gas powered | 150 | Between 5 and 15 years |
| 435 | Landfill gas powered | 200 | Between 5 and 15 years |
| 436 | Conventional coal or combined-cycle combustion turbine | 100 | Between 10 and 20 years |

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

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

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

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

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

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

493 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility is

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

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

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

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

526 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
 527 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs
 528 incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
 529 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are
 530 related to facilities and projects described in clause (i) of subdivision 6, or that are related to new
 531 underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of
 532 the utility until the Commission's final order in the matter, or until the implementation of any applicable
 533 approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs
 534 prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the
 535 consideration thereof by the Commission, that are proposed for recovery in such petition and that are related
 536 to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or
 537 coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be
 538 built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final
 539 order in the matter, or until the implementation of any applicable approved rate adjustment clauses,
 540 whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to
 541 other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or
 542 termination of capped rates, provided, however, that no provision of this act shall affect the rights of any
 543 parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC
 544 and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a
 545 regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation
 546 and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
 547 and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize
 548 such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in
 549 which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of
 550 time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a
 551 component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such
 552 outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to
 553 any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the
 554 Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs
 555 for the purpose of proceedings conducted (a) with respect to filings under subdivision 3 made on and after

556 July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate increase
557 applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

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

573 At any time, the Commission may, in its discretion, for a Phase II Utility, upon petition by such a utility
574 or upon its own initiated proceeding, direct the consolidation of any one or more subsets of rate adjustment
575 clauses previously implemented pursuant to subdivision 5 or 6 in the interest of judicial economy, customer
576 transparency, or other factors the Commission determines to be appropriate. Any subset of rate adjustment
577 clauses so consolidated shall continue to be considered by the Commission without regard to the other costs,
578 revenues, investments, or earnings of the utility and remain as a cost recovery mechanism independent from
579 the utility's rates for generation and distribution services pursuant to this subdivision and subdivisions 5 and
580 6, but will be combined as a single rate adjustment clause for cost recovery and review purposes. Any rate
581 adjustment clause or subset of rate adjustment clauses so consolidated shall be named in a manner, as
582 determined by the Commission, that reasonably informs customers as to the nature of the costs recovered by
583 the consolidated rate adjustment clause.

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

618 Electronics Engineers (IEEE). Nothing in this section shall limit the Commission's authority, pursuant to the
619 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of
620 combined test period earnings of the utility in a review, for normalization of nonrecurring test period costs
621 and annualized adjustments for future costs, in determining any appropriate increase or decrease in the
622 utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

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

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

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

670 c. The utility has, during the test period or test periods under review, considered as a whole, earned more
671 than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any
672 test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
673 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
674 distribution services, as determined in subdivision 2, without regard to any return on common equity or other
675 matter determined with respect to facilities described in subdivision 6, and the combined aggregate level of
676 capital investment that the Commission has approved other than those capital investments that the
677 Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made
678 by the utility during the test periods under review in that triennial review proceeding in new utility-owned

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

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

738 e. In any biennial review of a Phase II Utility, the Commission's final order regarding such review shall be
739 entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered

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

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

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

781 10. If, as a result of a triennial review required under this subsection and conducted with respect to any
 782 test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected
 783 to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than
 784 December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission
 785 finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test
 786 period or periods under review, considered as a whole, earned more than 50 basis points above a fair
 787 combined rate of return on its generation and distribution services or, for any test period commencing after
 788 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70
 789 basis points above a fair combined rate of return on its generation and distribution services, as determined in
 790 subdivision 2, without regard to any return on common equity or other matters determined with respect to
 791 facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the
 792 most recently ended 12-month test period exceeded the annual increases in the United States Average
 793 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
 794 Statistics of the United States Department of Labor, compounded annually, when compared to the total
 795 aggregate regulated rates of such utility as determined pursuant to the review conducted for the base period,
 796 the Commission shall, unless it finds that such action is not in the public interest or that the provisions of
 797 subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test
 798 period or periods under review, considered as a whole that were more than 50 basis points, or, for any test
 799 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase
 800 I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers'

801 bills, in lieu of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to
802 this subdivision in connection with any triennial review unless such bill credits would be payable pursuant to
803 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any
804 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized and
805 allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this
806 subdivision:

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

812 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for
813 any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010,
814 pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
815 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a;
816 (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
817 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July
818 1, 2009.

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

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

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

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

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

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

863 ~~56-585.5.~~

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

866 **§ 56-585.8. Biennial rate reviews.**

867 A. For the purposes of this section:

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

869 "Utility" means a Phase I Utility.

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

874 C. In each biennial review, the Commission shall conduct a proceeding to review all rates, terms, and
875 conditions for generation and distribution services with such proceeding utilizing the two successive
876 12-month test periods ending December 31 immediately preceding the year in which such proceeding is
877 conducted. Such biennial review shall be conducted in a single, combined proceeding, except for review of
878 the following costs, which the utility shall continue to recover and the Commission shall continue to review
879 separately, pursuant to the applicable statutory provisions: costs that are recovered pursuant to (i) § 56-249.6,
880 (ii) subdivisions A 4, 5, and 6 of § 56-585.1, and (iii) § 56-585.6.

881 D. Each biennial rate review proceeding shall commence on or before March 31 of the biennial review
882 year with the filing of a petition by each Phase I Utility subject to the provisions of this section. The
883 Commission, after providing notice and an opportunity for hearing, shall grant a final order on such petition
884 no later than November 20. Any revisions in rates ordered by the Commission pursuant to the rate review
885 shall take effect no later than January 1 of the subsequent year.

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

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

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

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

918 2. The Commission shall authorize deferred recovery for reasonable (i) actual costs associated with severe
919 weather events and (ii) actual costs associated with natural disasters, not currently in rates, and the
920 Commission shall allow the utility to amortize and recover such deferred costs over future periods as
921 determined by the Commission. The amount of any such deferral shall not exceed an amount that would,
922 together with the utility's other costs, revenues, and investments recovered through rates for generation and
923 distribution services for the test period under review, cause the utility's earned return on its generation and
924 distribution services to exceed 100 basis points above the fair combined rate of return applicable to the test

925 period under review. For the purposes of determining any amount of costs that are associated with severe
 926 weather events, the Commission shall consider nationally recognized standards such as those published by
 927 the Institute of Electrical and Electronics Engineers (IEEE).

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

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

942 In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the Commission
 943 shall determine federal and state income tax costs as follows: (i) the utility's apportioned state income tax
 944 costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated
 945 return with its affiliates, and (ii) the utility's federal income tax costs shall be calculated according to the
 946 applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments
 947 originating from any taxable income or loss of its affiliates.

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

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

954 K. Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ ~~56-585.5~~ and §
 955 56-596.2.

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

958 **§ 56-594.3. Shared solar programs; Phase II Utility.**

959 A. As used in this section:

960 "Administrative cost" means the reasonable incremental cost to the investor-owned utility to process
 961 subscribers' bills for the program.

962 "Applicable bill credit rate" means the dollar-per-kilowatt-hour rate used to calculate the subscriber's bill
 963 credit.

964 "Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar
 965 facility allocated to a subscriber to offset that subscriber's electricity bill.

966 "Dual-use agricultural facility" means agricultural production and electricity production from solar
 967 photovoltaic panels occurring simultaneously on the same property.

968 "Gross bill" means the amount that a customer would pay to the utility based on the customer's monthly
 969 energy consumption before any bill credits are applied.

970 "Incremental cost" means any cost directly caused by the implementation of the shared solar program that
 971 would not have occurred absent the implementation of the shared solar program.

972 "Low-income customer" means any person or household whose income is no more than 80 percent of the
 973 median income of the locality in which the customer resides. The median income of the locality is determined
 974 by the U.S. Department of Housing and Urban Development.

975 "Low-income service organization" means a nonresidential customer of an investor-owned utility whose
 976 primary purpose is to serve low-income individuals and households.

977 "Low-income shared solar facility" means a shared solar facility at least 30 percent of the capacity of
 978 which is subscribed by low-income customers or low-income service organizations.

979 "Minimum bill" means an amount determined by the Commission under subsection D that a subscriber is
 980 required to, at a minimum, pay on the subscriber's utility bill each month after accounting for any bill credits.

981 "Net bill" means the resulting amount a customer must pay the utility after deducting the bill credit from
 982 the customer's monthly gross bill.

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

984 "Shared solar facility" means a facility that:

985 1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does
 986 not exceed 5,000 kilowatts of alternating current;

- 987 2. Is interconnected with a Phase II Utility's distribution system within the Commonwealth;
 988 3. Has at least three subscribers;
 989 4. Has at least 40 percent of its capacity subscribed by customers with subscriptions of 25 kilowatts or
 990 less; and

991 5. Is located on a single parcel of land.

992 "Shared solar program" or "program" means the program created through the adoption of rules to allow
 993 for the development of shared solar facilities.

994 "Subscriber" means a retail customer of a utility that (i) owns one or more subscriptions of a shared solar
 995 facility that is interconnected with the utility and (ii) receives service in the service territory of the same
 996 utility in whose service territory the shared solar facility is interconnected.

997 "Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more
 998 shared solar facilities. A subscriber organization shall not be considered a utility solely as a result of its
 999 ownership or operation of a shared solar facility. A subscriber organization licensed with the Commission
 1000 shall be eligible to own or operate shared solar facilities in more than one investor-owned utility service
 1001 territory.

1002 "Subscribed" means, in relation to a subscription, that a subscriber has made initial payments or provided
 1003 a deposit to the owner of a shared solar facility for such subscription.

1004 "Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar
 1005 facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's
 1006 average annual bill for the customer account to which the subscription is attributed.

1007 "Utility" means a Phase II Utility.

1008 B. The Commission shall establish by regulation a program that affords customers of a Phase II Utility the
 1009 opportunity to participate in shared solar projects. Under its shared solar program, a utility shall provide a bill
 1010 credit for the proportional output of a shared solar facility attributable to that subscriber. The shared solar
 1011 program shall be administered as follows:

1012 1. The value of the bill credit for the subscriber shall be calculated by multiplying the subscriber's portion
 1013 of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for
 1014 the subscriber. Any amount of the bill credit that exceeds the subscriber's monthly bill, minus the minimum
 1015 bill, shall be carried over and applied to the next month's bill.

1016 2. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years
 1017 from the date the shared solar facility becomes commercially operational.

1018 3. The subscriber organization shall, on a monthly basis and in a standardized electronic format, and
 1019 pursuant to guidelines established by the Commission, provide to the utility a subscriber list indicating the
 1020 kilowatt-hours of generation attributable to each of the subscribers participating in a shared solar facility in
 1021 accordance with the subscriber's portion of the output of the shared solar facility.

1022 4. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.
 1023 The utility shall apply bill credits to subscriber bills within two billing cycles following the cycle during
 1024 which the energy was generated by the shared solar facility.

1025 5. Each utility shall, on a monthly basis and in a standardized electronic format, provide to the subscriber
 1026 organization a report indicating the total value of bill credits generated by the shared solar facility in the prior
 1027 month, as well as the amount of the bill credit applied to each subscriber.

1028 6. A subscriber organization may accumulate bill credits in the event that all of the electricity generated
 1029 by a shared solar facility is not allocated to subscribers in a given month. On an annual basis and pursuant to
 1030 guidelines established by the Commission, the subscriber organization shall furnish to the utility allocation
 1031 instructions for distributing excess bill credits to subscribers.

1032 7. A subscriber organization that registers a shared solar facility in the program within the first 200
 1033 megawatts alternating current of awarded capacity shall own all environmental attributes associated with a
 1034 shared solar facility, including renewable energy certificates. At such subscriber organization's direction, such
 1035 environmental attributes may be distributed to subscribers, sold to load-serving entities with compliance
 1036 obligations or other buyers, accumulated, or retired. For a shared solar facility registered in the program after
 1037 the first 200 megawatts alternating current of awarded capacity, the registering subscriber organization shall
 1038 transfer renewable energy certificates to a Phase II Utility to be retired for compliance with such Phase II
 1039 Utility's renewable portfolio standard obligations pursuant to subsection C of § 56-585.5.

1040 8. Projects shall be entitled to receive incentives when they are located on rooftops, brownfields, or
 1041 landfills, are dual-use agricultural facilities, or meet the definition of another category established by the
 1042 Department of Energy pursuant to this section.

1043 C. Each subscriber shall pay a minimum bill, established pursuant to subsection D, and shall receive an
 1044 applicable bill credit based on the subscriber's customer class of residential, commercial, or industrial. Each
 1045 class's applicable credit rate shall be calculated by the Commission annually by dividing revenues to the class
 1046 by sales, measured in kilowatt-hours, to that class to yield a bill credit rate for the class (\$/kWh).

1047 D. The Commission shall establish a minimum bill, which shall include the costs of all utility
 1048 infrastructure and services used to provide electric service and administrative costs of the shared solar

1049 program. The Commission may modify the minimum bill over time. In establishing the minimum bill, the
1050 Commission shall (i) consider further costs the Commission deems relevant to ensure subscribing customers
1051 pay a fair share of the costs of providing electric services and generation sufficient to meet customer needs at
1052 all times, (ii) minimize the costs shifted to customers not in a shared solar program, and (iii) calculate the
1053 benefits of shared solar to the electric grid and to the Commonwealth and deduct such benefits from other
1054 costs. The Commission shall explicitly set forth its findings as to each cost and benefit, or other value used to
1055 determine such minimum bill. Low-income customers shall be exempt from the minimum bill.

1056 E. The Commission shall approve part one of a shared solar program with an aggregate capacity of 200
1057 megawatts. Upon a determination that at least 90 percent of the megawatts of the aggregate capacity of such
1058 program have been subscribed and that project construction is substantially complete, the Commission shall
1059 approve up to an additional 150 megawatts of capacity as part two of such program, 75 megawatts of which
1060 shall serve no more than 51 percent low-income customers. Subscriber organizations shall be allowed to
1061 demonstrate compliance with the low income requirement using either project capacity or project savings
1062 methodology. The Commission, in collaboration with the Department of Energy, may adopt mechanisms to
1063 ensure low-income customer participation.

1064 F. The Commission shall establish by regulation a shared solar program that complies with the provisions
1065 of subsections B, C, D, and E by March 1, 2025, and shall require each utility to file any tariffs, agreements,
1066 or forms necessary for implementation of the program by December 1, 2025. Any tariffs, agreements, and
1067 forms currently in effect at the time of enactment shall remain in effect until such revisions are approved by
1068 the Commission. Any rule or utility implementation filings approved by the Commission shall:

1069 1. Reasonably allow for the creation of shared solar facilities;

1070 2. Allow all customer classes to participate in the program;

1071 3. Create a stakeholder working group including low-income community representatives and community
1072 solar providers to facilitate low-income customer and low-income service organization participation in the
1073 program;

1074 4. Encourage public-private partnerships to further the Commonwealth's clean energy and equity goals,
1075 such as state agency and affordable housing provider participation as subscribers of a shared solar program;

1076 5. Not remove a customer from its otherwise applicable customer class in order to participate in a shared
1077 solar facility;

1078 6. Reasonably allow for the transferability and portability of subscriptions, including allowing a
1079 subscriber to retain a subscription to a shared solar facility if the subscriber moves within the same utility's
1080 service territory;

1081 7. Establish standards, fees, and processes for the interconnection of shared solar facilities that allow the
1082 utility to recover reasonable interconnection costs for each shared solar facility;

1083 8. Adopt standardized consumer disclosure forms;

1084 9. Allow the utility the opportunity to recover reasonable costs of administering the program;

1085 10. Ensure nondiscriminatory and efficient requirements and utility procedures for interconnecting
1086 projects;

1087 11. Address the co-location of two or more shared solar facilities on a single parcel of land and provide
1088 guidelines for determining when two or more such facilities are co-located;

1089 12. Include a program implementation schedule;

1090 13. Prohibit credit checks as a means of establishing eligibility for residential customers to become
1091 subscribers;

1092 14. Prohibit early termination fees and credit reporting for any low-income customer;

1093 15. Require a customer's affirmative consent by written or electronic signature before providing access to
1094 customer billing and usage data to a subscriber organization;

1095 16. Establish customer engagement rules and minimum rules for education, contract reviews, and
1096 continued engagement;

1097 17. Require net crediting functionality. Under net crediting, the utility shall include the shared solar
1098 subscription fee on the customer's utility bill and provide the customer with a net credit equivalent to the total
1099 bill credit value for that generation period minus the shared solar subscription fee as set by the subscriber
1100 organization. The net crediting fee shall not exceed one percent of the bill credit value. Net crediting shall be
1101 optional for subscriber organizations, and any shared solar subscription fees charged via the net crediting
1102 model shall be set to ensure that subscribers do not pay more in subscription fees than they receive in bill
1103 credits; and

1104 18. Allow the utility to recover as the cost of purchased power pursuant to § 56-249.6 any difference
1105 between the bill credit provided to the subscriber and the cost of energy injected into the grid by the
1106 subscriber organization.

1107 G. Within 180 days of finalization of the Commission's adoption of regulations for the shared solar
1108 program, a utility shall begin crediting subscriber accounts of each shared solar facility interconnected in its
1109 service territory, subject to the requirements of this section and regulations adopted thereto.

1110 **§ 56-594.4. Shared solar programs; Phase I Utility.**

1111 A. As used in this section:

1112 "Administrative cost" means the reasonable incremental cost to the investor-owned utility to process
1113 subscribers' bills for the program.

1114 "Applicable bill credit rate" means the dollar-per-kilowatt-hour rate used to calculate the subscriber's bill
1115 credit.

1116 "Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar
1117 facility allocated to a subscriber to offset that subscriber's electricity bill.

1118 "Dual-use agricultural facility" means agricultural production and electricity production from solar
1119 photovoltaic panels occurring simultaneously on the same property.

1120 "Gross bill" means the amount that a customer would pay to the utility based on the customer's monthly
1121 energy consumption before any bill credits are applied.

1122 "Incremental cost" means any cost directly caused by the implementation of the shared solar program that
1123 would not have occurred absent the implementation of the shared solar program.

1124 "Minimum bill" means an amount determined by the Commission under subsection D that a subscriber is
1125 required to, at a minimum, pay on the subscriber's utility bill each month after accounting for any bill credits.

1126 "Net bill" means the resulting amount a customer must pay the utility after deducting the bill credit from
1127 the customer's monthly gross bill.

1128 "Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

1129 "Shared solar facility" means a facility that:

1130 1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does
1131 not exceed 5,000 kilowatts of alternating current;

1132 2. Is interconnected with the distribution system of an investor-owned electric utility within the
1133 Commonwealth;

1134 3. Has at least three subscribers;

1135 4. Has at least 40 percent of its capacity subscribed by customers with subscriptions of 25 kilowatts or
1136 less; and

1137 5. Is located on a single parcel of land.

1138 "Shared solar program" or "program" means the program created through the adoption of rules to allow
1139 for the development of shared solar facilities.

1140 "Subscriber" means a retail customer of a utility that (i) owns one or more subscriptions of a shared solar
1141 facility that is interconnected with the utility and (ii) receives service in the service territory of the same
1142 utility in whose service territory the shared solar facility is interconnected.

1143 "Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more
1144 shared solar facilities. A subscriber organization shall not be considered a utility solely as a result of its
1145 ownership or operation of a shared solar facility. A subscriber organization licensed with the Commission
1146 shall be eligible to own or operate shared solar facilities in more than one investor-owned utility service
1147 territory.

1148 "Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar
1149 facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's
1150 average annual bill for the customer account to which the subscription is attributed.

1151 "Utility" means a Phase I Utility.

1152 B. The Commission shall establish by regulation a program that affords customers of a Phase I Utility the
1153 opportunity to participate in shared solar projects. Under its shared solar program, a utility shall provide a bill
1154 credit for the proportional output of a shared solar facility attributable to that subscriber. The shared solar
1155 program shall be administered as follows:

1156 1. The value of the bill credit for the subscriber shall be calculated by multiplying the subscriber's portion
1157 of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for
1158 the subscriber. Any amount of the bill credit that exceeds the subscriber's monthly bill, minus the minimum
1159 bill, shall be carried over and applied to the next month's bill.

1160 2. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years
1161 from the date the shared solar facility becomes commercially operational.

1162 3. The subscriber organization shall, on a monthly basis and in a standardized electronic format, and
1163 pursuant to guidelines established by the Commission, provide to the utility a subscriber list indicating the
1164 percentage of shared solar capacity attributable to each of the subscribers participating in a shared solar
1165 facility in accordance with the subscriber's portion of the output of the shared solar facility.

1166 4. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.
1167 The utility shall apply bill credits to subscriber bills within two billing cycles following the cycle during
1168 which the energy was generated by the shared solar facility.

1169 5. Each utility shall, on a monthly basis and in a standardized electronic format, provide to the subscriber
1170 organization a report indicating the total value of bill credits generated by the shared solar facility in the prior
1171 month, as well as the amount of the bill credit applied to each subscriber.

1172 6. A subscriber organization may accumulate bill credits in the event that all of the electricity generated

1173 by a shared solar facility is not allocated to subscribers in a given month. On an annual basis and pursuant to
 1174 guidelines established by the Commission, the subscriber organization shall furnish to the utility allocation
 1175 instructions for distributing excess bill credits to subscribers.

1176 7. Any renewable energy certificates associated with a shared solar facility shall be distributed to a Phase I
 1177 Utility to be retired for compliance with such Phase I Utility's renewable portfolio standard obligations
 1178 pursuant to subsection C of § 56-585.5.

1179 8. Projects shall be entitled to receive incentives when they are located on rooftops, brownfields, or
 1180 landfills, are dual-use agricultural facilities, or meet the definition of another category established by the
 1181 Department of Energy pursuant to this section.

1182 C. Each subscriber shall pay a minimum bill, established pursuant to subsection D, and shall receive an
 1183 applicable bill credit based on the subscriber's customer class of residential, commercial, or industrial. Each
 1184 class's applicable credit rate shall be calculated by the Commission annually by dividing revenues to the class
 1185 by sales, measured in kilowatt-hours, to that class to yield a bill credit rate for the class (\$/kWh).

1186 D. The Commission shall establish a minimum bill, which shall include the costs of all utility
 1187 infrastructure and services used to provide electric service and administrative costs of the shared solar
 1188 program. The Commission may modify the minimum bill over time. In establishing the minimum bill, the
 1189 Commission shall (i) consider further costs the Commission deems relevant to ensure subscribing customers
 1190 pay a fair share of the costs of providing electric services, (ii) minimize the costs shifted to customers not in a
 1191 shared solar program, and (iii) calculate the benefits of shared solar to the electric grid and to the
 1192 Commonwealth and deduct such benefits from other costs. The Commission shall explicitly set forth its
 1193 findings as to each cost and benefit, or other value used to determine such minimum bill.

1194 E. The Commission shall approve a shared solar program of 50 megawatts or six percent of peak load,
 1195 whichever is less.

1196 F. The Commission shall establish by regulation a shared solar program that complies with the provisions
 1197 of subsections B, C, D, and E by January 1, 2025, and shall require each utility to file any tariffs, agreements,
 1198 or forms necessary for implementation of the program by July 1, 2025. Any rule or utility implementation
 1199 filings approved by the Commission shall:

1200 1. Reasonably allow for the creation of shared solar facilities;

1201 2. Allow all customer classes to participate in the program;

1202 3. Encourage public-private partnerships to further the Commonwealth's clean energy and equity goals,
 1203 such as state agency and affordable housing provider participation as subscribers of a shared solar program;

1204 4. Not remove a customer from its otherwise applicable customer class in order to participate in a shared
 1205 solar facility;

1206 5. Reasonably allow for the transferability and portability of subscriptions, including allowing a
 1207 subscriber to retain a subscription to a shared solar facility if the subscriber moves within the same utility's
 1208 service territory;

1209 6. Establish standards, fees, and processes for the interconnection of shared solar facilities that allow the
 1210 utility to recover reasonable interconnection costs for each shared solar facility;

1211 7. Adopt standardized consumer disclosure forms;

1212 8. Allow the utility the opportunity to recover reasonable costs of administering the program;

1213 9. Ensure nondiscriminatory and efficient requirements and utility procedures for interconnecting projects;

1214 10. Allow for the co-location of two or more shared solar facilities on a single parcel of land and provide
 1215 guidelines for determining when two or more such facilities are co-located;

1216 11. Include a program implementation schedule;

1217 12. Prohibit credit checks as a means of establishing eligibility for residential customers to become
 1218 subscribers;

1219 13. Require a customer's affirmative consent by written or electronic signature before providing access to
 1220 customer billing and usage data to a subscriber organization;

1221 14. Establish customer engagement rules and minimum rules for education, contract reviews, and
 1222 continued engagement;

1223 15. Require net financial savings for low-income customers, as that term is defined in § 56-594.3, of at
 1224 least 10 percent, relative to the subscription fee throughout the life of the subscription; and

1225 16. Allow the utility to recover as the cost of purchased power pursuant to § 56-249.6 any difference
 1226 between the bill credit provided to the subscriber and the cost of energy injected into the grid by the
 1227 subscriber organization.

1228 G. Within 180 days of finalization of the Commission's adoption of regulations for the shared solar
 1229 program, a utility shall begin crediting subscriber accounts of each shared solar facility interconnected in its
 1230 service territory, subject to the requirements of this section and regulations adopted thereto.

1231 **2. That § 56-585.5 of the Code of Virginia is repealed.**