

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 56-576 and 56-585.1 of the Code of Virginia, relating to rate recovery
2 for demand side management programs.

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

4 **1. That §§ 56-576 and 56-585.1 of the Code of Virginia are amended and reenacted as follows:**

5 § 56-576. Definitions.

6 As used in this chapter:

7 "Affiliate" means any person that controls, is controlled by, or is under common control with an
8 electric utility.

9 "Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or
10 purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy,
11 for sale to, or on behalf of, two or more retail customers not controlled by or under common control with
12 such person. The following activities shall not, in and of themselves, make a person an aggregator under
13 this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii)
14 furnishing educational, informational, or analytical services to two or more retail customers, unless
15 direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy;
16 (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators;
17 (iv) providing default service under § 56-585; (v) engaging in activities of a retail electric energy
18 supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi)
19 engaging in actions of a retail customer, in common with one or more other such retail customers, to
20 issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail
21 customers.

22 "Combined heat and power" means a method of using waste heat from electrical generation to
23 offset traditional processes, space heating, air conditioning, or refrigeration.

24 "Commission" means the State Corporation Commission.

25 "Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) of this
26 title.

27 "Covered entity" means a provider in the Commonwealth of an electric service not subject to
28 competition but shall not include default service providers.

29 "Covered transaction" means an acquisition, merger, or consolidation of, or other transaction
30 involving stock, securities, voting interests or assets by which one or more persons obtains control of a
31 covered entity.

32 "Curtailment" means inducing retail customers to reduce load during times of peak demand so as
33 to ease the burden on the electrical grid.

34 "Customer choice" means the opportunity for a retail customer in the Commonwealth to
35 purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

36 "Demand response" means measures aimed at shifting time of use of electricity from peak-use
37 periods to times of lower demand by inducing retail customers to curtail electricity usage during periods
38 of congestion and higher prices in the electrical grid.

39 "Distribute," "distributing," or "distribution of" electric energy means the transfer of electric
40 energy through a retail distribution system to a retail customer.

41 "Distributor" means a person owning, controlling, or operating a retail distribution system to
42 provide electric energy directly to retail customers.

43 "Electric utility" means any person that generates, transmits, or distributes electric energy for use
44 by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative
45 electric utility, or electric utility owned or operated by a municipality.

46 "Energy efficiency program" means a program that reduces the total amount of electricity that is
47 required for the same process or activity implemented after the expiration of capped rates. Energy
48 efficiency programs include equipment, physical, or program change designed to produce measured and
49 verified reductions in the amount of electricity required to perform the same function and produce the
50 same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs
51 that result in improvements in lighting design, heating, ventilation, and air conditioning systems,

52 appliances, building envelopes, and industrial and commercial processes; and (ii) measures, such as but
53 not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel
54 use or losses of electricity and otherwise improve internal operating efficiency in generation,
55 transmission, and distribution systems. Energy efficiency programs include demand response, combined
56 heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce
57 electricity consumption so long as they reduce the total amount of electricity that is required for the
58 same process or activity. Utilities shall be authorized to install and operate such advanced metering
59 technology and equipment on a customer's premises; however, nothing in this chapter establishes a
60 requirement that an energy efficiency program be implemented on a customer's premises and be
61 connected to a customer's wiring on the customer's side of the inter-connection without the customer's
62 expressed consent.

63 "Generate," "generating," or "generation of" electric energy means the production of electric
64 energy.

65 "Generator" means a person owning, controlling, or operating a facility that produces electric
66 energy for sale.

67 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
68 1999, supplied electric energy to retail customers located in an exclusive service territory established by
69 the Commission.

70 "Independent system operator" means a person that may receive or has received, by transfer
71 pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the
72 transmission systems in the Commonwealth.

73 "Measured and verified" means a process determined pursuant to methods accepted for use by
74 utilities and industries to measure, verify, and validate energy savings and peak demand savings. This
75 may include the protocol established by the United States Department of Energy, Office of Federal
76 Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects,
77 measurement and verification standards developed by the American Society of Heating, Refrigeration

78 and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand
79 savings associated with specific energy efficiency measures, as determined by the Commission.

80 "Municipality" means a city, county, town, authority, or other political subdivision of the
81 Commonwealth.

82 "Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use
83 periods to times of lower demand by inducing retail customers to curtail electricity usage during periods
84 of congestion and higher prices in the electrical grid.

85 "Person" means any individual, corporation, partnership, association, company, business, trust,
86 joint venture, or other private legal entity, and the Commonwealth or any municipality.

87 "Renewable energy" means energy derived from sunlight, wind, falling water, biomass,
88 sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste,
89 municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived
90 from coal, oil, natural gas or nuclear power. Renewable energy shall also include the proportion of the
91 thermal or electric energy from a facility that results from the co-firing of biomass.

92 "Retail customer" means any person that purchases retail electric energy for its own consumption
93 at one or more metering points or nonmetered points of delivery located in the Commonwealth.

94 "Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

95 ~~"Revenue reductions related to energy efficiency programs" means reductions in the collection of~~
96 ~~total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a~~
97 ~~utility, that occur due to measured and verified decreased consumption of electricity caused by energy~~
98 ~~efficiency programs approved by the Commission and implemented by the utility, less the amount by~~
99 ~~which such non-fuel reductions in total revenues have been mitigated through other program-related~~
100 ~~factors, including reductions in variable operating expenses.~~

101 "Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who
102 offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but
103 it does not mean a generator that produces electric energy exclusively for its own consumption or the
104 consumption of an affiliate.

105 "Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a
106 retail customer.

107 "Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric
108 energy through the Commonwealth's interconnected transmission grid from a generator to either a
109 distributor or a retail customer.

110 "Transmission system" means those facilities and equipment that are required to provide for the
111 transmission of electric energy.

112 § 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or
113 expire.

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

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

150 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled
151 basis, and such reviews shall be conducted in a single, combined proceeding. The first such review shall
152 utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission
153 may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive 12-
154 month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive 12-
155 month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings
156 utilizing the two successive 12-month test periods ending December 31 immediately preceding the year
157 in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-
158 owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement

159 adopted by the Commission that extended in its application beyond January 1, 2002, and a Phase II
160 Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

161 2. Subject to the provisions of subdivision 6, fair rates of return on common equity applicable
162 separately to the generation and distribution services of such utility, and for the two such services
163 combined, shall be determined by the Commission during each such biennial review, as follows:

164 a. The Commission may use any methodology to determine such return it finds consistent with
165 the public interest, but such return shall not be set lower than the average of the returns on common
166 equity reported to the Securities and Exchange Commission for the three most recent annual periods for
167 which such data are available by not less than a majority, selected by the Commission as specified in
168 subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such
169 biennial review, nor shall the Commission set such return more than 300 basis points higher than such
170 average.

171 b. In selecting such majority of peer group investor-owned electric utilities, the Commission
172 shall first remove from such group the two utilities within such group that have the lowest reported
173 returns of the group, as well as the two utilities within such group that have the highest reported returns
174 of the group, and the Commission shall then select a majority of the utilities remaining in such peer
175 group. In its final order regarding such biennial review, the Commission shall identify the utilities in
176 such peer group it selected for the calculation of such limitation. For purposes of this subdivision, an
177 investor-owned electric utility shall be deemed part of such peer group if (i) its principal operations are
178 conducted in the southeastern United States east of the Mississippi River in either the states of West
179 Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a
180 vertically-integrated electric utility providing generation, transmission and distribution services whose
181 facilities and operations are subject to state public utility regulation in the state where its principal
182 operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of
183 at least Baa at the end of the most recent test period subject to such biennial review, and (iv) it is not an
184 affiliate of the utility subject to such biennial review.

185 c. The Commission may increase or decrease such combined rate of return by up to 100 basis
186 points based on the generating plant performance, customer service, and operating efficiency of a utility,
187 as compared to nationally recognized standards determined by the Commission to be appropriate for
188 such purposes, such action being referred to in this section as a Performance Incentive. If the
189 Commission adopts such Performance Incentive, it shall remain in effect without change until the next
190 biennial review for such utility is concluded and shall not be modified pursuant to any provision of the
191 remainder of this subsection.

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

212 Department of Labor, since the date on which the Commission determined the Initial Return. For
213 purposes of this subdivision:

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

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

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

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

227 f. The determination of such returns, including the determination of whether to adopt a
228 Performance Incentive and the amount thereof, shall be made by the Commission on a stand-alone basis,
229 and specifically without regard to any return on common equity or other matters determined with regard
230 to facilities described in subdivision 6.

231 g. If the combined rate of return on common equity earned by both the generation and
232 distribution services is no more than 50 basis points above or below the return as so determined, such
233 combined return shall not be considered either excessive or insufficient, respectively.

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

237 3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in
238 2011, consisting of the schedules contained in the Commission's rules governing utility rate increase

239 applications (20 VAC 5-200-30); however, if the Commission elects to stagger the dates of the biennial
240 reviews of utilities as provided in subdivision 1, then Phase I utilities shall commence biennial filings in
241 2011 and Phase II utilities shall commence biennial filings in 2012. Such filing shall encompass the two
242 successive 12-month test periods ending December 31 immediately preceding the year in which such
243 proceeding is conducted, and in every such case the filing for each year shall be identified separately and
244 shall be segregated from any other year encompassed by the filing. If the Commission determines that
245 rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate
246 adjustment clauses previously implemented pursuant to subdivision 4 or 5 or those related to facilities
247 utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the
248 utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment
249 clauses are fully recovered. The Commission shall combine such clauses with the utility's costs,
250 revenues and investments only after it makes its initial determination with regard to necessary rate
251 revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as
252 herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments
253 for the purposes of future biennial review proceedings.

254 4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs
255 for transmission services provided to the utility by the regional transmission entity of which the utility is
256 a member, as determined under applicable rates, terms and conditions approved by the Federal Energy
257 Regulatory Commission and (ii) costs charged to the utility that are associated with demand response
258 programs approved by the Federal Energy Regulatory Commission and administered by the regional
259 transmission entity of which the utility is a member. Upon petition of a utility at any time after the
260 expiration or termination of capped rates, but not more than once in any 12-month period, the
261 Commission shall approve a rate adjustment clause under which such costs, including, without
262 limitation, costs for transmission service, charges for new and existing transmission facilities,
263 administrative charges, and ancillary service charges designed to recover transmission costs, shall be
264 recovered on a timely and current basis from customers. Retail rates to recover these costs shall be
265 designed using the appropriate billing determinants in the retail rate schedules.

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

269 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
270 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
271 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of § 56-
272 582. The Commission shall approve such a petition allowing the recovery of such costs that comply with
273 the requirements of clause (vi) of subsection B of § 56-582;

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

277 c. Projected and actual costs for the utility to design, implement, and operate energy efficiency
278 programs, ~~including a margin to be recovered on operating expenses, which margin for the purposes of~~
279 ~~this section shall be equal to the general rate of return on common equity determined as described in~~
280 ~~subdivision A 2 of this section.~~ The Commission shall only approve such a petition if it finds that the
281 program will result in a net cost savings to customers after a reasonable period of time and such program
282 is in the public interest. ~~As part of such cost recovery, the Commission, if requested by the utility, shall~~
283 ~~allow for the recovery of revenue reductions related to energy efficiency programs. The Commission~~
284 ~~shall only allow such recovery to the extent that the Commission determines such revenue has not been~~
285 ~~recovered through margins from incremental off-system sales as defined in § 56-249.6 that are directly~~
286 ~~attributable to energy efficiency programs.~~

287 None of the costs of new energy efficiency programs of an electric utility, ~~including recovery of~~
288 ~~revenue reductions,~~ shall be assigned to any customer that has a verifiable history of having used more
289 than 10 megawatts of demand from a single meter of delivery. Nor shall any of the costs of new energy
290 efficiency programs of an electric utility, ~~including recovery of revenue reductions,~~ be incurred by any
291 large general service customer as defined herein that has notified the utility of non-participation in such
292 energy efficiency program or programs. A large general service customer is a customer that has a

293 verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery.
294 Non-participation in energy efficiency programs shall be allowed by the Commission if the large general
295 service customer has, at the customer's own expense, implemented energy efficiency programs that have
296 produced or will produce measured and verified results consistent with industry standards and other
297 regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009,
298 promulgate rules and regulations to accommodate the process under which such large general service
299 customers shall file notice for such an exemption and (i) establish the administrative procedures by
300 which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied
301 by an applicant in order to notify the utility. In promulgating such rules and regulations, the Commission
302 may also specify the timing as to when a utility shall accept and act on such notice, taking into
303 consideration the utility's integrated resource planning process as well as its administration of energy
304 efficiency programs that are approved for cost recovery by the Commission. The notice of non-
305 participation by a large general service customer, to be given by March 1 of a given year, shall be for the
306 duration of the service life of the customer's energy efficiency program. The Commission on its own
307 motion may initiate steps necessary to verify such non-participants' achievement of energy efficiency if
308 the Commission has a body of evidence that the non-participant has knowingly misrepresented its
309 energy efficiency achievement. A utility shall not charge such large general service customer, as defined
310 by the Commission, for the costs of installing energy efficiency equipment beyond what is required to
311 provide electric service and meter such service on the customer's premises if the customer provides, at
312 the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings pursuant to
313 this section, the Commission shall take into consideration the goals of economic development, energy
314 efficiency and environmental protection in the Commonwealth;

315 d. Projected and actual costs of participation in a renewable energy portfolio standard program
316 pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such
317 a petition allowing the recovery of such costs as are provided for in a program approved pursuant to §
318 56-585.2; and

319 e. Projected and actual costs of projects that the Commission finds to be necessary to comply
320 with state or federal environmental laws or regulations applicable to generation facilities used to serve
321 the utility's native load obligations. The Commission shall approve such a petition if it finds that such
322 costs are necessary to comply with such environmental laws or regulations. If the Commission
323 determines it would be just, reasonable, and in the public interest, the Commission may include the
324 enhanced rate of return on common equity prescribed in subdivision 6 in a rate adjustment clause
325 approved hereunder for a project whose purpose is to reduce the need for construction of new generation
326 facilities by enabling the continued operation of existing generation facilities. In the event the
327 Commission includes such enhanced return in such rate adjustment clause, the project that is the subject
328 of such clause shall be treated as a facility described in subdivision 6 for the purposes of this section.

329 The Commission shall have the authority to determine the duration or amortization period for
330 any adjustment clause approved under this subdivision.

331 6. To ensure a reliable and adequate supply of electricity, to meet the utility's projected native
332 load obligations and to promote economic development, a utility may at any time, after the expiration or
333 termination of capped rates, petition the Commission for approval of a rate adjustment clause for
334 recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility
335 that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as described in §
336 15.2-6002, regardless of whether such facility is located within or without the utility's service territory,
337 (ii) one or more other generation facilities, or (iii) one or more major unit modifications of generation
338 facilities; however, such a petition concerning facilities described in clause (ii) that utilize nuclear
339 power, facilities described in clause (ii) that are coal-fueled and will be built by a Phase I utility, or
340 facilities described in clause (i) may also be filed before the expiration or termination of capped rates. A
341 utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued
342 against income, through its rates, including projected construction work in progress, and any associated
343 allowance for funds used during construction, planning, development and construction costs, life-cycle
344 costs, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects,
345 an enhanced rate of return on common equity calculated as specified below. The costs of the facility,

346 other than return on projected construction work in progress and allowance for funds used during
347 construction, shall not be recovered prior to the date the facility begins commercial operation. Such
348 enhanced rate of return on common equity shall be applied to allowance for funds used during
349 construction and to construction work in progress during the construction phase of the facility and shall
350 thereafter be applied to the entire facility during the first portion of the service life of the facility. The
351 first portion of the service life shall be as specified in the table below; however, the Commission shall
352 determine the duration of the first portion of the service life of any facility, within the range specified in
353 the table below, which determination shall be consistent with the public interest and shall reflect the
354 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
355 the citizens of the Commonwealth and the risks involved in the development of the facility. After the
356 first portion of the service life of the facility is concluded, the utility's general rate of return shall be
357 applied to such facility for the remainder of its service life. As used herein, the service life of the facility
358 shall be deemed to begin on the date the facility begins commercial operation, and such service life shall
359 be deemed equal in years to the life of that facility as used to calculate the utility's depreciation expense.
360 Such enhanced rate of return on common equity shall be calculated by adding the basis points specified
361 in the table below to the utility's general rate of return, and such enhanced rate of return shall apply only
362 to the facility that is the subject of such rate adjustment clause. No change shall be made to any
363 Performance Incentive previously adopted by the Commission in implementing any rate of return under
364 this subdivision. Allowance for funds used during construction shall be calculated for any such facility
365 utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of
366 return on common equity as determined pursuant to this subdivision, until such construction work in
367 progress is included in rates. The construction of any facility described in clause (i) is in the public
368 interest, and in determining whether to approve such facility, the Commission shall liberally construe the
369 provisions of this title. The basis points to be added to the utility's general rate of return to calculate the
370 enhanced rate of return on common equity, and the first portion of that facility's service life to which
371 such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following
372 table:

373
374 Type of Generation Facility Basis Points First Portion of
375 Service Life
376 Nuclear-powered 200 Between 12 and 25
377 years
378 Carbon capture compatible,
379 clean-coal powered 200 Between 10 and 20
380 years
381 Renewable powered 200 Between 5 and 15
382 years
383 Conventional coal or combined-
384 cycle combustion turbine 100 Between 10 and 20
385 years

386 Generation facilities described in clause (ii) that utilize simple-cycle combustion turbines shall
387 not receive an enhanced rate of return on common equity as described herein, but instead shall receive
388 the utility's general rate of return during the construction phase of the facility and, thereafter, for the
389 entire service life of the facility.

390 For purposes of this subdivision, "general rate of return" means the fair combined rate of return
391 on common equity as it is determined by the Commission from time to time for such utility pursuant to
392 subdivision 2. In any proceeding under this subdivision conducted prior to the conclusion of the first
393 biennial review for such utility, the Commission shall determine a general rate of return for such utility
394 in the same manner as it would in a biennial review proceeding.

395 Notwithstanding any other provision of this subdivision, if the Commission finds during the
396 biennial review conducted for a Phase II utility in 2018 that such utility has not filed applications for all
397 necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-
398 fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount of
399 the utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals
400 have been received, that the utility has not made reasonable and good faith efforts to construct one or
401 more such facilities that will provide such additional total capacity within a reasonable time after
402 obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a
403 prospective basis any enhanced rate of return on common equity previously applied to any such facility
404 to no less than the general rate of return for such utility and may apply no less than the utility's general
405 rate of return to any such facility for which the utility seeks approval in the future under this subdivision.

406 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on
407 a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility.
408 Any costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by
409 the Commission, that are proposed for recovery in such petition and that are related to clause (a) of
410 subdivision 5, or that are related to facilities and projects described in clause (i) of subdivision 6, shall
411 be deferred on the books and records of the utility until the Commission's final order in the matter, or
412 until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any
413 costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during
414 the consideration thereof by the Commission, that are proposed for recovery in such petition and that are
415 related to facilities and projects described in clause (ii) of subdivision 6 that utilize nuclear power, or
416 coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities
417 will be built by a Phase I Utility, shall be deferred on the books and records of the utility until the
418 Commission's final order in the matter, or until the implementation of any applicable approved rate
419 adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination
420 of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning
421 only upon the expiration or termination of capped rates, provided, however, that no provision of this act
422 shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory
423 Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P
424 61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or
425 6 shall be entered not more than three months, eight months, and nine months, respectively, after the
426 date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate
427 adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or
428 upon the expiration or termination of capped rates, whichever is later.

429 8. If the Commission determines as a result of such biennial review that:

430 (i) The utility has, during the test period or periods under review, considered as a whole, earned
431 more than 50 basis points below a fair combined rate of return on both its generation and distribution
432 services, as determined in subdivision 2, without regard to any return on common equity or other matters

433 determined with respect to facilities described in subdivision 6, the Commission shall order increases to
434 the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's
435 services and to earn not less than such fair combined rate of return, using the most recently ended 12-
436 month test period as the basis for determining the amount of the rate increase necessary. However, the
437 Commission may not order such rate increase unless it finds that the resulting rates will provide the
438 utility with the opportunity to fully recover its costs of providing its services and to earn not less than a
439 fair combined rate of return on both its generation and distribution services, as determined in subdivision
440 2, without regard to any return on common equity or other matters determined with respect to facilities
441 described in subdivision 6, using the most recently ended 12-month test period as the basis for
442 determining the permissibility of any rate increase under the standards of this sentence, and the amount
443 thereof;

444 (ii) The utility has, during the test period or test periods under review, considered as a whole,
445 earned more than 50 basis points above a fair combined rate of return on both its generation and
446 distribution services, as determined in subdivision 2, without regard to any return on common equity or
447 other matters determined with respect to facilities described in subdivision 6, the Commission shall,
448 subject to the provisions of subdivision 9, direct that 60 percent of the amount of such earnings that were
449 more than 50 basis points above such fair combined rate of return for the test period or periods under
450 review, considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized
451 over a period of six to 12 months, as determined at the discretion of the Commission, following the
452 effective date of the Commission's order, and shall be allocated among customer classes such that the
453 relationship between the specific customer class rates of return to the overall target rate of return will
454 have the same relationship as the last approved allocation of revenues used to design base rates; or

455 (iii) Such biennial review is the second consecutive biennial review in which the utility has,
456 during the test period or test periods under review, considered as a whole, earned more than 50 basis
457 points above a fair combined rate of return on both its generation and distribution services, as
458 determined in subdivision 2, without regard to any return on common equity or other matter determined
459 with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of

460 subdivision 9 and in addition to the actions authorized in clause (ii) of this subdivision, also order
461 reductions to the utility's rates it finds appropriate. However, the Commission may not order such rate
462 reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully
463 recover its costs of providing its services and to earn not less than a fair combined rate of return on both
464 its generation and distribution services, as determined in subdivision 2, without regard to any return on
465 common equity or other matters determined with respect to facilities described in subdivision 6, using
466 the most recently ended 12-month test period as the basis for determining the permissibility of any rate
467 reduction under the standards of this sentence, and the amount thereof.

468 The Commission's final order regarding such biennial review shall be entered not more than nine
469 months after the end of the test period, and any revisions in rates or credits so ordered shall take effect
470 not more than 60 days after the date of the order.

471 9. If, as a result of a biennial review required under this subsection and conducted with respect to
472 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
473 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
474 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
475 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
476 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
477 points above a fair combined rate of return on both its generation and distribution services, as
478 determined in subdivision 2, without regard to any return on common equity or other matters determined
479 with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such
480 utility at the end of the most recently-ended 12-month test period exceeded the annual increases in the
481 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
482 by the Bureau of Labor Statistics of the United States Department of Labor, compounded annually,
483 when compared to the total aggregate regulated rates of such utility as determined pursuant to the
484 biennial review conducted for the base period, the Commission shall, unless it finds that such action is
485 not in the public interest or that the provisions of clauses (ii) and (iii) of subdivision 8 are more
486 consistent with the public interest, direct that any or all earnings for such test period or periods under

487 review, considered as a whole that were more than 50 basis points above such fair combined rate of
488 return shall be credited to customers' bills, in lieu of the provisions of clauses (ii) and (iii) of subdivision
489 8. Any such credits shall be amortized and allocated among customer classes in the manner provided by
490 clause (ii) of subdivision 8. For purposes of this subdivision:

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

496 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6,
497 except for any increases in fuel tariffs deferred by the Commission for recovery in periods after
498 December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate
499 adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates
500 pursuant to clause (i) of subdivision 8; (iv) revisions to the utility's rates pursuant to the Commission's
501 rules governing utility rate increase applications (20 VAC 5-200-30), as permitted by subsection B,
502 occurring after July 1, 2009; and (v) base rates in effect as of July 1, 2009.

503 10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of
504 any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital
505 structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of
506 such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt
507 to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant
508 to clauses (i) and (iii) of subdivision 8, and without regard to the cost of capital, capital structure,
509 revenues, expenses or investments of any other entity with which such utility may be affiliated. In
510 particular, and without limitation, the Commission shall determine the federal and state income tax costs
511 for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's
512 apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the
513 utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs

514 shall be calculated according to the applicable federal income tax rate and shall exclude any
515 consolidated tax liability or benefit adjustments originating from any taxable income or loss of its
516 affiliates.

517 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from
518 applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate
519 increase applications (20 VAC 5-200-30); however, in any such filing, a fair rate of return on common
520 equity shall be determined pursuant to subdivision 2. Nothing in this section shall preclude such utility's
521 recovery of fuel and purchased power costs as provided in § 56-249.6.

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

526 D. Nothing in this section shall preclude the Commission from determining, during any
527 proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or
528 projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of
529 the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the
530 Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to
531 the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

532 E. The Commission shall promulgate such rules and regulations as may be necessary to
533 implement the provisions of this section.

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