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HOUSE BILL NO. 1526

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Labor and Commerce)
 (Patron Prior to Substitute—Delegate Sullivan)
 House Amendments in [] - February 10, 2020

A BILL to amend and reenact §§ 10.1-603.24, 10.1-603.25, 56-576, 56-585.1, 56-594, and 56-596.2 of the Code of Virginia and § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017; to amend the Code of Virginia by adding in Chapter 13 of Title 10.1 an article numbered 4, consisting of sections numbered 10.1-1329 and 10.1-1330, by adding sections numbered 56-585.1:11, 56-585.5, and 56-585.6, and by adding in Chapter 8 of Title 63.2 a section numbered 63.2-806; and to repeal §§ 56-585.1:2 and 56-585.2 of the Code of Virginia, relating to the regulation of electric utilities; ending carbon dioxide emissions; renewable portfolio standards for electric utilities and suppliers; energy efficiency programs and standards; incremental annual energy storage deployment targets; net energy metering; third-party power purchase agreements; and the Manufacturing and Commercial Competitiveness Retention Credit.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-603.24, 10.1-603.25, 56-576, 56-585.1, 56-594, and 56-596.2 of the Code of Virginia and § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 10.1 an article numbered 4, consisting of sections numbered 10.1-1329 and 10.1-1330, by adding sections numbered 56-585.1:11, 56-585.5, and 56-585.6, and by adding in Chapter 8 of Title 63.2 a section numbered 63.2-806 as follows:

Article 1.3.

Virginia Shoreline Resiliency Community Flood Preparedness Fund.

§ 10.1-603.24. Definitions.

As used in this article, unless the context requires a different meaning:

"Authority" means the Virginia Resources Authority.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.

"Department" means the Virginia Department of Emergency Management Conservation and Recreation.

"Flood prevention or protection" means the construction of hazard mitigation projects, acquisition of land, or implementation of land use controls that reduce or mitigate damage from coastal or riverine flooding.

"Flood prevention or protection study" means the conduct of a hydraulic or hydrologic study of a flood plain with historic and predicted floods, the assessment of flood risk, and the development of strategies to prevent or mitigate damage from coastal or riverine flooding.

"Fund" means the Virginia Shoreline Resiliency Community Flood Preparedness Fund created pursuant to § 10.1-603.25.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution of Virginia or laws of the Commonwealth.

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Nature-based solution" means an approach that reduces the impacts of flood and storm events through the use of environmental processes and natural systems. A nature-based solution may provide additional benefits beyond flood control, including recreational opportunities and improved water quality.

§ 10.1-603.25. Virginia Community Flood Preparedness Fund; loan and grant program.

There shall be set apart a permanent and perpetual fund, to be known as the A. The Virginia Shoreline Resiliency Fund; ~~consisting of such~~ is hereby continued in the state treasury as a special nonreverting fund to be known as the Virginia Community Flood Preparedness Fund. The Fund shall be established on the books of the Comptroller. All sums that are designated for deposit in the Fund from revenue generated by the sale of emissions allowances pursuant to subdivision C 1 of § 10.1-1330, all

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60 sums that may be appropriated to the Fund by the General Assembly, all receipts by the Fund from the
 61 *repayment of loans made by it to local governments, all income from the investment of moneys held in*
 62 *the Fund, and any other sums designated for deposit to the Fund from any source, public or private,*
 63 *including any federal grants and awards or other forms of assistance received by the Commonwealth*
 64 *that are eligible for deposit in the Fund under federal law, shall be paid into the state treasury and*
 65 *credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited*
 66 *to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall*
 67 *not revert to the general fund but shall remain in the Fund. The Fund shall be administered by the*
 68 *Department as prescribed in this article. The Department shall establish guidelines regarding the*
 69 *distribution of loans from the Fund and prioritization of such loans.*

70 *B. Moneys in the Fund shall be used solely for the purposes of enhancing flood protection and*
 71 *coastal resilience as required by this article. Expenditures and disbursements from the Fund shall be*
 72 *made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the*
 73 *Executive Director of the Authority. The Authority shall manage the Fund and shall establish interest*
 74 *rates and repayment terms of such loans as provided in this article. The Authority may disburse from*
 75 *the Fund its reasonable costs and expenses incurred in the management of the Fund.*

76 *C. The Fund shall be administered by the Department as prescribed in this article. The Department,*
 77 *in consultation with the Secretary of Natural Resources and the Special Assistant to the Governor for*
 78 *Coastal Adaptation and Protection, shall establish guidelines regarding the distribution and*
 79 *prioritization of loans and grants, including loans and grants that support flood protection studies of*
 80 *statewide or regional significance.*

81 *D. Localities shall use moneys from the Fund primarily for the purpose of creating a low-interest*
 82 *loan program to help residents and businesses implementing flood prevention and protection projects and*
 83 *studies in areas that are subject to recurrent flooding as confirmed by a locality-certified floodplain*
 84 *manager. Moneys in the Fund may be used to mitigate future flood damage and to assist inland and*
 85 *coastal communities across the Commonwealth that are subject to recurrent or repetitive flooding. No*
 86 *less than 25 percent of the moneys disbursed from the Fund each year shall be used for projects in*
 87 *low-income geographic areas. Priority shall be given to projects that implement community-scale hazard*
 88 *mitigation activities and projects that use nature-based solutions to reduce flood risk.*

89 *E. Any locality is authorized to secure a loan made through such a low-interest loan program by*
 90 *placing a lien up to the value of the loan against any property that benefits from the loan. Such a lien*
 91 *shall be subordinate to each prior lien on such property, except prior liens for which the prior lienholder*
 92 *executes a written subordination agreement, in a form and substance acceptable to the prior lienholder in*
 93 *its sole and exclusive discretion, that is recorded in the land records where the property is located.*

94 *Article 4.*

95 *Clean Energy and Community Flood Preparedness Act.*

96 **§ 10.1-1329. Definitions.**

97 *As used in this article, unless the context requires a different meaning:*

98 *"Allowance" means an authorization to emit a fixed amount of carbon dioxide.*

99 *"Allowance auction" means an auction in which the Department or its agent offers allowances for*
 100 *sale.*

101 *"DHCD" means the Department of Housing and Community Development.*

102 *"DMME" means the Department of Mines, Minerals and Energy.*

103 *"Energy efficiency program" has the same meaning as provided in § 56-576.*

104 *"Fund" means the Virginia Community Flood Preparedness Fund created pursuant to § 10.1-603.25.*

105 *"Housing development" means the same as that term is defined in § 36-141.*

106 *"Regional Greenhouse Gas Initiative" or "RGGI" means the program to implement the memorandum*
 107 *of understanding between signatory states dated December 20, 2005, and as may be amended, and the*
 108 *corresponding model rule that established a regional carbon dioxide electric power sector cap and trade*
 109 *program.*

110 *"Secretary" means the Secretary of Natural Resources.*

111 **§ 10.1-1330. Clean Energy and Community Flood Preparedness.**

112 *A. The provisions of this article shall be incorporated by the Department, without further action by*
 113 *the Board, into the final regulation adopted by the Board on April 19, 2019, and published in the*
 114 *Virginia Register on May 27, 2019. Such incorporation by the Department shall be exempt from the*
 115 *provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq.).*

116 *B. The Director is hereby authorized to establish, implement, and manage an auction program to sell*
 117 *allowances into a market-based trading program consistent with the RGGI program and this article. The*
 118 *Director shall seek to sell 100 percent of all allowances issued each year through the allowance*
 119 *auction, unless the Department finds that doing so will have a negative impact on the value of*
 120 *allowances and result in a net loss of consumer benefit or is otherwise inconsistent with the RGGI*
 121 *program.*

122 C. To the extent permitted by Article X, Section 7 of the Constitution of Virginia, the Department
123 shall (i) hold the proceeds recovered from the allowance auction in an interest-bearing account with all
124 interest directed to the account to carry out the purposes of this article and (ii) use the proceeds
125 without further appropriation for the following purposes:

126 1. Forty-five percent of the revenue shall be credited to the account established pursuant to the Fund
127 for the purpose of assisting localities and their residents affected by recurrent flooding, sea level rise,
128 and flooding from severe weather events.

129 2. Fifty percent of the revenue shall be credited to an account administered by DHCD to support
130 low-income energy efficiency programs, including programs for eligible housing developments. DHCD
131 shall review and approve funding proposals for such energy efficiency programs, and DMME shall
132 provide technical assistance upon request. Any sums remaining within the account administered by
133 DHCD, including interest thereon, at the end of each fiscal year shall not revert to the general fund but
134 shall remain in such account to support low-income energy efficiency programs.

135 3. Three percent of the revenue shall be used to (i) cover reasonable administrative expenses of the
136 Department in the administration of the revenue allocation, carbon dioxide emissions cap and trade
137 program, and auction and (ii) carry out statewide climate change planning and mitigation activities.

138 4. Two percent of the revenue shall be used by DHCD, in partnership with DMME, to administer
139 and implement low-income energy efficiency programs pursuant to subdivision 2.

140 D. The Department, the Department of Conservation and Recreation, DHCD, and DMME shall
141 prepare a joint annual written report describing the Commonwealth's participation in RGGI, the annual
142 reduction in greenhouse gas emissions, the revenues collected and deposited in the interest-bearing
143 account maintained by the Department pursuant to this article, and a description of each way in which
144 money was expended during the fiscal year. The report shall be submitted to the Governor and General
145 Assembly by January 1, 2022, and annually thereafter.

146 E. Notwithstanding any other provision of law, the Board shall adopt regulations to reduce, for the
147 period of 2031 to 2050, the carbon dioxide emissions from any electricity generating unit in the
148 Commonwealth, regardless of fuel type, that serves an electricity generator with a nameplate capacity
149 equal to or greater than 25 megawatts that supplies (i) 10 percent or more of its annual net electrical
150 generation to the electric grid or (ii) more than 15 percent of its annual total useful energy to any
151 entity other than the manufacturing facility to which the generating source is interconnected (covered
152 unit).

153 The Board may establish, implement, and manage an auction program to sell allowances to carry
154 out the purposes of such regulations or may in its discretion utilize an existing multistate trading
155 system.

156 To determine the initial allocation amount and rate of reduction in allowance allocations from year
157 to year, the Board shall utilize, and amend as necessary, its existing regulations to reduce carbon
158 dioxide emissions from electric power generating facilities; however, the regulations shall provide that
159 no allowances be issued for covered units in [~~2050~~ 2045] or any year beyond [~~2050~~ 2045] . The
160 Board may establish rules for trading, the use of banked allowances, and other auction or market
161 mechanisms as it may find appropriate to control allowance costs and otherwise carry out the purpose
162 of this subsection.

163 In adopting such regulations, the Board shall consider only the carbon dioxide emissions from the
164 covered units. The Board shall not provide for emission offsetting or netting based on fuel type.

165 Regulations adopted by the Board under this subsection shall be subject to the requirements set out
166 in §§ 2.2-4007.03, 2.2-4007.04, 2.2-4007.05, and 2.2-4026 through 2.2-4030 of the Administrative
167 Process Act (§ 2.2-4000 et seq.) and shall be published in the Virginia Register of Regulations.

168 The Board shall promulgate and make effective this regulation no later than July 31, 2025, but shall
169 have authority for subsequent revisions in its discretion and subject to the provisions of this subsection.

170 **§ 56-576. Definitions.**

171 As used in this chapter:

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

174 "Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases,
175 electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to,
176 or on behalf of, two or more retail customers not controlled by or under common control with such
177 person. The following activities shall not, in and of themselves, make a person an aggregator under this
178 chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii)
179 furnishing educational, informational, or analytical services to two or more retail customers, unless direct
180 or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii)
181 furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv)
182 providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier,

183 licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in
184 actions of a retail customer, in common with one or more other such retail customers, to issue a request
185 for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

186 (Expires December 31, 2023) "Business park" means a land development containing a minimum of
187 100 contiguous acres classified as a Tier 4 site under the Virginia Economic Development Partnership's
188 Business Ready Sites Program that is developed and constructed by an industrial development authority,
189 or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of
190 the General Assembly, in order to promote business development and that is located in an area of the
191 Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his
192 delegation of authority to the Internal Revenue Service.

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

195 "Commission" means the State Corporation Commission.

196 "Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.).

197 "Covered entity" means a provider in the Commonwealth of an electric service not subject to
198 competition but ~~shall~~ *does* not include default service providers.

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

202 "*Cumulative energy savings*" means the total combined kilowatt-hour savings achieved by deployed
203 energy efficiency and demand response measures.

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

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

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

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

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

215 "Electric distribution grid transformation project" means a project associated with electric distribution
216 infrastructure, including related data analytics equipment, that is designed to accommodate or facilitate
217 the integration of utility-owned or customer-owned renewable electric generation resources with the
218 utility's electric distribution grid or to otherwise enhance electric distribution grid reliability, electric
219 distribution grid security, customer service, or energy efficiency and conservation, including advanced
220 metering infrastructure; intelligent grid devices for real time system and asset information; automated
221 control systems for electric distribution circuits and substations; communications networks for service
222 meters; intelligent grid devices and other distribution equipment; distribution system hardening projects
223 for circuits, other than the conversion of overhead tap lines to underground service, and substations
224 designed to reduce service outages or service restoration times; physical security measures at key
225 distribution substations; cyber security measures; energy storage systems and microgrids that support
226 circuit-level grid stability, power quality, reliability, or resiliency or provide temporary backup energy
227 supply; electrical facilities and infrastructure necessary to support electric vehicle charging systems; LED
228 street light conversions; and new customer information platforms designed to provide improved customer
229 access, greater service options, and expanded access to energy usage information.

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

233 "Energy efficiency program" means a program that reduces the total amount of electricity that is
234 required for the same process or activity implemented after the expiration of capped rates. Energy
235 efficiency programs include equipment, physical, or program change designed to produce measured and
236 verified reductions in the amount of electricity required to perform the same function and produce the
237 same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs
238 that result in improvements in lighting design, heating, ventilation, and air conditioning systems,
239 appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not
240 limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use
241 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,
242 and distribution systems; and (iii) customer engagement programs that result in measurable and
243 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs
244 include demand response, combined heat and power and waste heat recovery, curtailment, or other

245 programs that are designed to reduce electricity consumption so long as they reduce the total amount of
 246 electricity that is required for the same process or activity. Utilities shall be authorized to install and
 247 operate such advanced metering technology and equipment on a customer's premises; however, nothing
 248 in this chapter establishes a requirement that an energy efficiency program be implemented on a
 249 customer's premises and be connected to a customer's wiring on the customer's side of the
 250 inter-connection without the customer's expressed consent.

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

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

254 "*Historically economically disadvantaged community*" means a community that is (i) a community in
 255 which a majority of the population are people of color [~~and~~ or] (ii) [~~is~~] a low-income geographic
 256 area.

257 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
 258 1999, supplied electric energy to retail customers located in an exclusive service territory established by
 259 the Commission.

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

263 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy
 264 efficiency program if the Commission determines that the net present value of the benefits exceeds the
 265 net present value of the costs as determined by not less than any three of the following four tests: (i) the
 266 Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test);
 267 (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include
 268 an analysis of all four tests, and a program or portfolio of programs shall be approved if the net present
 269 value of the benefits exceeds the net present value of the costs as determined by not less than any three
 270 of the four tests. If the Commission determines that an energy efficiency program or portfolio of
 271 programs is not in the public interest, its final order shall include all work product and analysis
 272 conducted by the Commission's staff in relation to that program, including testimony relied upon by the
 273 Commission's staff, that has bearing upon the Commission's decision. If the Commission reduces the
 274 proposed budget for a program or portfolio of programs, its final order shall include an analysis of the
 275 impact such budget reduction has upon the cost-effectiveness of such program or portfolio of programs.
 276 An order by the Commission (a) finding that a program or portfolio of programs is not in the public
 277 interest or (b) reducing the proposed budget for any program or portfolio of programs shall adhere to
 278 existing protocols for extraordinarily sensitive information. In addition, an energy efficiency program
 279 may be deemed to be "in the public interest" if the program (i) provides measurable and verifiable
 280 energy savings to low-income customers or elderly customers or (ii) is a pilot program of limited scope,
 281 cost, and duration, that is intended to determine whether a new or substantially revised program or
 282 technology would be cost-effective.

283 "*Low-income*" means any person or household whose annual income is equal to or less than 80
 284 percent of the lesser of either the state median income as set forth by U.S. Census Bureau's annual
 285 "*American Community Survey*" or the area median income as determined by the US Department of
 286 Housing and Community Development.

287 "Measured and verified" means a process determined pursuant to methods accepted for use by
 288 utilities and industries to measure, verify, and validate energy savings and peak demand savings. This
 289 may include the protocol established by the United States Department of Energy, Office of Federal
 290 Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects,
 291 measurement and verification standards developed by the American Society of Heating, Refrigeration
 292 and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand
 293 savings associated with specific energy efficiency measures, as determined by the Commission.

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

296 "New underground facilities" means facilities to provide underground distribution service. "New
 297 underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-mounted
 298 devices, connections at customer meters, and transition terminations from existing overhead distribution
 299 sources.

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

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

305 "Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or

306 otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas,
307 municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived
308 from coal, oil, natural gas, or nuclear power. "Renewable energy" also includes the
309 proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

310 "Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined
311 heat and power generation facility that is (a) constructed, or renovated and improved, after January 1,
312 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined
313 heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the
314 Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or
315 renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water
316 or air for residential, commercial, institutional, or industrial purposes.

317 "Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of
318 renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units
319 (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial,
320 institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per
321 megawatt hour.

322 "Renovated and improved facility" means a facility the components of which have been upgraded to
323 enhance its operating efficiency.

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

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

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

333 "Rooftop solar installation" means a distributed electric generation facility, storage facility, or
334 generation and storage facility utilizing energy derived from sunlight, with a rated capacity of not less
335 than 50 kilowatts, that is installed on the roof structure of an incumbent electric utility's commercial or
336 industrial class customer, including host sites on commercial buildings, multifamily residential buildings,
337 school or university buildings, and buildings of a church or religious body.

338 "Solar energy system" means a system of components that produces heat or electricity, or both, from
339 sunlight.

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

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

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

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

351 **§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or**
352 **expire.**

353 A. During the first six months of 2009, the Commission shall, after notice and opportunity for
354 hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation,
355 distribution and transmission services of each investor-owned incumbent electric utility. Such
356 proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified
357 herein. In such proceedings the Commission shall determine fair rates of return on common equity
358 applicable to the generation and distribution services of the utility. In so doing, the Commission may use
359 any methodology to determine such return it finds consistent with the public interest, but such return
360 shall not be set lower than the average of the returns on common equity reported to the Securities and
361 Exchange Commission for the three most recent annual periods for which such data are available by not
362 less than a majority, selected by the Commission as specified in subdivision 2 b, of other
363 investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return
364 more than 300 basis points higher than such average. The peer group of the utility shall be determined
365 in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined
366 rate of return by up to 100 basis points based on the generating plant performance, customer service,
367 and operating efficiency of a utility, as compared to nationally recognized standards determined by the

368 Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine
369 the rates that the utility may charge until such rates are adjusted. If the Commission finds that the
370 utility's combined rate of return on common equity is more than 50 basis points below the combined
371 rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to
372 provide the opportunity to fully recover the costs of providing the utility's services and to earn not less
373 than such combined rate of return. If the Commission finds that the utility's combined rate of return on
374 common equity is more than 50 basis points above the combined rate of return as so determined, it shall
375 be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the
376 Commission may not order such rate reduction unless it finds that the resulting rates will provide the
377 utility with the opportunity to fully recover its costs of providing its services and to earn not less than
378 the fair rates of return on common equity applicable to the generation and distribution services; or (ii) to
379 direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above
380 the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event
381 such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the
382 Commission, following the effective date of the Commission's order and be allocated among customer
383 classes such that the relationship between the specific customer class rates of return to the overall target
384 rate of return will have the same relationship as the last approved allocation of revenues used to design
385 base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall
386 conduct reviews of the rates, terms and conditions for the provision of generation, distribution and
387 transmission services by each investor-owned incumbent electric utility, subject to the following
388 provisions:

389 1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis,
390 and such reviews shall be conducted in a single, combined proceeding. Pursuant to subsection A of
391 § 56-585.1:1, the Commission shall conduct a review for a Phase I Utility in 2020, utilizing the three
392 successive 12-month test periods beginning January 1, 2017, and ending December 31, 2019. Thereafter,
393 reviews for a Phase I Utility will be on a triennial basis with subsequent proceedings utilizing the three
394 successive 12-month test periods ending December 31 immediately preceding the year in which such
395 review proceeding is conducted. Pursuant to subsection A of § 56-585.1:1, the Commission shall conduct
396 a review for a Phase II Utility in 2021, utilizing the four successive 12-month test periods beginning
397 January 1, 2017, and ending December 31, 2020, with subsequent reviews on a triennial basis utilizing
398 the three successive 12-month test periods ending December 31 immediately preceding the year in which
399 such review proceeding is conducted. All such reviews occurring after December 31, 2017, shall be
400 referred to as triennial reviews. For purposes of this section, a Phase I Utility is an investor-owned
401 incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by
402 the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an
403 investor-owned incumbent electric utility that was bound by such a settlement.

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

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

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

429 c. The Commission may, consistent with its precedent for incumbent electric utilities prior to the
430 enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease the utility's
431 combined rate of return based on the Commission's consideration of the utility's performance.

432 d. In any Current Proceeding, the Commission shall determine whether the Current Return has
433 increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a
434 percentage, in the United States Average Consumer Price Index for all items, all urban consumers
435 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since
436 the date on which the Commission determined the Initial Return. If so, the Commission may conduct an
437 additional analysis of whether it is in the public interest to utilize such Current Return for the Current
438 Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall
439 be made without regard to any enhanced rate of return on common equity awarded pursuant to the
440 provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration
441 of overall economic conditions, the level of interest rates and cost of capital with respect to business and
442 industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of
443 goods and services, the effect on the utility's ability to provide adequate service and to attract capital if
444 less than the Current Return were utilized for the Current Proceeding then pending, and such other
445 factors as the Commission may deem relevant. If, as a result of such analysis, the Commission finds that
446 use of the Current Return for the Current Proceeding then pending would not be in the public interest,
447 then the lower limit imposed by subdivision 2 a on the return to be determined by the Commission for
448 such utility shall be calculated, for that Current Proceeding only, by increasing the Initial Return by a
449 percentage at least equal to the increase, expressed as a percentage, in the United States Average
450 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
451 Statistics of the United States Department of Labor, since the date on which the Commission determined
452 the Initial Return. For purposes of this subdivision:

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

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

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

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

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

468 g. If the combined rate of return on common equity earned by the generation and distribution
469 services is no more than 50 basis points above or below the return as so determined or, for any test
470 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
471 Phase I Utility, such return is no more than 70 basis points above or below the return as so determined,
472 such combined return shall not be considered either excessive or insufficient, respectively. However, for
473 any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31,
474 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned
475 below the return as so determined, whether or not such combined return is within 70 basis points of the
476 return as so determined, the utility may petition the Commission for approval of an increase in rates in
477 accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a
478 fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the
479 provisions of this section. The provisions of this subdivision are subject to the provisions of subdivision
480 8.

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

484 3. Each such utility shall make a triennial filing by March 31 of every third year, with such filings
485 commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021,
486 consisting of the schedules contained in the Commission's rules governing utility rate increase
487 applications. Such filing shall encompass the three successive 12-month test periods ending December
488 31 immediately preceding the year in which such proceeding is conducted, except that the filing for a
489 Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31,
490 2020, and in every such case the filing for each year shall be identified separately and shall be

591 segregated from any other year encompassed by the filing. If the Commission determines that rates
 592 should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate
 593 adjustment clauses previously implemented related to facilities utilizing simple-cycle combustion turbines
 594 described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the
 595 amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall
 596 combine such clauses with the utility's costs, revenues and investments only after it makes its initial
 597 determination with regard to necessary rate revisions or credits to customers' bills, and the amounts
 598 thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part
 599 of the utility's costs, revenues, and investments for the purposes of future triennial review proceedings.
 500 In a triennial filing under this subdivision that does not result in an overall rate change a utility may
 501 propose an adjustment to one or more tariffs that are revenue neutral to the utility.

502 4. (Expires December 31, 2023) The following costs incurred by the utility shall be deemed
 503 reasonable and prudent: (i) costs for transmission services provided to the utility by the regional
 504 transmission entity of which the utility is a member, as determined under applicable rates, terms and
 505 conditions approved by the Federal Energy Regulatory Commission; (ii) costs charged to the utility that
 506 are associated with demand response programs approved by the Federal Energy Regulatory Commission
 507 and administered by the regional transmission entity of which the utility is a member; and (iii) costs
 508 incurred by the utility to construct, operate, and maintain transmission lines and substations installed in
 509 order to provide service to a business park. Upon petition of a utility at any time after the expiration or
 510 termination of capped rates, but not more than once in any 12-month period, the Commission shall
 511 approve a rate adjustment clause under which such costs, including, without limitation, costs for
 512 transmission service; charges for new and existing transmission facilities, including costs incurred by the
 513 utility to construct, operate, and maintain transmission lines and substations installed in order to provide
 514 service to a business park; administrative charges; and ancillary service charges designed to recover
 515 transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to
 516 recover these costs shall be designed using the appropriate billing determinants in the retail rate
 517 schedules.

518 4. (Effective January 1, 2024) The following costs incurred by the utility shall be deemed reasonable
 519 and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity
 520 of which the utility is a member, as determined under applicable rates, terms and conditions approved
 521 by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility that are associated
 522 with demand response programs approved by the Federal Energy Regulatory Commission and
 523 administered by the regional transmission entity of which the utility is a member. Upon petition of a
 524 utility at any time after the expiration or termination of capped rates, but not more than once in any
 525 12-month period, the Commission shall approve a rate adjustment clause under which such costs,
 526 including, without limitation, costs for transmission service, charges for new and existing transmission
 527 facilities, administrative charges, and ancillary service charges designed to recover transmission costs,
 528 shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall
 529 be designed using the appropriate billing determinants in the retail rate schedules.

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

533 a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1,
 534 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring
 535 such costs consistent with an order of the Commission entered under clause (vi) of subsection B of
 536 § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that
 537 comply with the requirements of clause (vi) of subsection B of § 56-582;

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

542 c. Projected and actual costs for the utility to design, implement, and operate energy efficiency
 543 programs, ~~including a margin to be recovered on operating expenses, which margin for the purposes of~~
 544 ~~this section shall be equal to the general rate of return on common equity determined as described in~~
 545 ~~subdivision 2 or pilot programs~~. Any such petition shall include a proposed budget for the design,
 546 implementation, and operation of the energy efficiency program, *including anticipated savings from and*
 547 *spending on each program, and the Commission shall grant a final order on such petitions within eight*
 548 *months of initial filing*. The Commission shall only approve such a petition if it finds that the program
 549 is in the public interest. If the Commission determines that an energy efficiency program or portfolio of
 550 programs is not in the public interest, its final order shall include all work product and analysis
 551 conducted by the Commission's staff in relation to that program that has bearing upon the Commission's

552 determination. Such order shall adhere to existing protocols for extraordinarily sensitive information. As
553 part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of
554 revenue reductions related to energy efficiency programs. The Commission shall only allow such
555 recovery to the extent that the Commission determines such revenue has not been recovered through
556 margins from incremental off-system sales as defined in § 56-249.6 that are directly attributable to
557 energy efficiency programs.

558 None of the costs of new energy efficiency programs of an electric utility, including recovery of
559 revenue reductions, shall be assigned to any large general service customer. A large general service
560 customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand
561 from a single meter of delivery. A utility shall not charge such large general service customer, as
562 defined by the Commission, for the costs of installing energy efficiency equipment beyond what is
563 required to provide electric service and meter such service on the customer's premises if the customer
564 provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings
565 pursuant to this section, the Commission shall take into consideration the goals of economic
566 development, energy efficiency and environmental protection in the Commonwealth; Energy efficiency
567 pilot programs are in the public interest provided the pilot program is (i) of limited scope, cost, and
568 duration and (ii) [~~is~~] intended to determine [~~whether~~ whether] a new or substantially revised program
569 would be cost-effective.

570 Prior to January 1, 2022, the Commission shall award a margin for recovery on operating expenses
571 for energy efficiency programs and pilot programs, which margin shall be equal to the general rate of
572 return on common equity determined as described in subdivision 2. Beginning January 1, 2022 and
573 thereafter, if the Commission determines that the utility meets in any year the annual energy efficiency
574 standards set forth in § 56-596.2, in the following year, the Commission shall award a margin on
575 energy efficiency program operating expenses in that year, to be recovered through a rate adjustment
576 clause, which margin shall be equal to the general rate of return on common equity determined as
577 described in subdivision 2. If the Commission does not approve energy efficiency programs that, in the
578 aggregate, can achieve the annual energy efficiency standards, the Commission shall award a margin on
579 energy efficiency operating expenses in that year for any programs the Commission has approved, to be
580 recovered through a rate adjustment clause under this subdivision, which margin shall equal the general
581 rate of return on common equity determined as described in subdivision 2. Any margin awarded
582 pursuant to this subdivision shall be applied as part of the utility's next rate adjustment clause true-up
583 proceeding. The Commission shall also award an additional 20 basis points for each additional
584 incremental 0.1 percent in annual savings in any year, beyond the annual requirements set forth in
585 § 56-596.2, provided that the total performance incentive awarded in any year shall not exceed 10
586 percent of that utility's total energy efficiency program spending in that same year.

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

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

600 As used in this subdivision, "large general service customer" means a customer that has a verifiable
601 history of having used more than one megawatt of demand from a single site. Large general service
602 customers shall be exempt from requirements that they participate in energy efficiency programs if the
603 Commission finds that the large general service customer has, at the customer's own expense,
604 implemented energy efficiency programs that have produced or will produce measured and verified
605 results consistent with industry standards and other regulatory criteria stated in this section. The
606 Commission shall, no later than June 30, 2021, adopt rules or regulations (i) establishing the process
607 for large general service customers to apply for such an exemption, (ii) establishing the administrative
608 procedures by which eligible customers will notify the utility, (iii) establishing an energy savings
609 account where individual customer fees for efficiency are collected and earmarked for energy efficiency
610 instead of allocated to the general rider for utility-administered programs, and (iv) defining the standard
611 criteria that shall be satisfied by an applicant in order to notify the utility, including means of
612 evaluation measurement and verification and confidentiality requirements. At a minimum, such rules and
613 regulations shall require that each exempted large general service customer certify to the utility and

614 Commission that its implemented energy efficiency programs have delivered measured and verified
 615 savings within the prior five years. A customer shall establish an account into which payments in lieu of
 616 the energy efficiency rider shall be deposited for use by the customer in implementing energy efficiency
 617 measures at its facility. Any energy savings account shall allow year-to-year flexibility but should sunset
 618 on a rolling basis after five years, with funds unused for energy efficiency subject to forfeiture to the
 619 utility for use in support of other energy efficiency programs. In adopting such rules or regulations, the
 620 Commission shall also specify the timing as to when a utility shall accept and act on such notice, taking
 621 into consideration the utility's integrated resource planning process as well as its administration of
 622 energy efficiency programs that are approved for cost recovery by the Commission. Savings from large
 623 general service customers shall be accounted for in utility reporting in the standards in § 56-596.2.

624 The notice of nonparticipation by a large general service customer shall be for the duration of the
 625 service life of the customer's energy efficiency measures. The Commission may on its own motion initiate
 626 steps necessary to verify such nonparticipant's achievement of energy efficiency if the Commission has a
 627 body of evidence that the non-participant has knowingly misrepresented its energy efficiency
 628 achievement. A utility shall not charge such large general service customer for the costs of installing
 629 energy efficiency equipment beyond what is required to provide electric service and meter such service
 630 on the customer's premises if the customer provides, at the customer's expense, equivalent energy
 631 efficiency equipment. In all relevant proceedings pursuant to this section, the Commission shall take into
 632 consideration the goals of economic development, energy efficiency, and environmental protection in the
 633 Commonwealth;

634 d. Projected and actual costs of ~~participation in compliance with~~ a renewable energy portfolio
 635 standard ~~program requirements~~ pursuant to § 56-585.2 56-585.5 that are not recoverable under
 636 subdivision 6. The Commission shall approve such a petition allowing the recovery of such costs
 637 incurred as required by ~~are provided for in a program approved pursuant to § 56-585.2 56-585.5;~~

638 e. Projected and actual costs of projects that the Commission finds to be necessary to mitigate
 639 impacts to marine life caused by construction of offshore wind generating facilities, as described in
 640 § 56-585.1:11, or to comply with state or federal environmental laws or regulations applicable to
 641 generation facilities used to serve the utility's native load obligations. The Commission shall approve
 642 such a petition if it finds that such costs are necessary to comply with such environmental laws or
 643 regulations; ~~and~~

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

650 g. Reasonable administrative and operational costs, as reviewed and approved by the Commission,
 651 incurred to comply with percentage of income payment programs as established in § 63.2-806.

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

656 6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the
 657 utility's projected native load obligations and to promote economic development, a utility may at any
 658 time, after the expiration or termination of capped rates, petition the Commission for approval of a rate
 659 adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a
 660 coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the
 661 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
 662 without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major
 663 unit modifications of generation facilities, including the costs of any system or equipment upgrade,
 664 system or equipment replacement, or other cost reasonably appropriate to extend the combined operating
 665 license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or
 666 more new underground facilities to replace one or more existing overhead distribution facilities of 69
 667 kilovolts or less located within the Commonwealth, (v) one or more pumped hydroelectricity generation
 668 and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their
 669 power source and such facilities and associated resources are located in the coalfield region of the
 670 Commonwealth as described in § 15.2-6002, regardless of whether such facility is located within or
 671 without the utility's service territory, or (vi) one or more electric distribution grid transformation
 672 projects; however, subject to the provisions of the following sentence, the utility shall not file a petition
 673 under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental
 674 increase in the level of investments associated with such a petition that exceeds five percent of such

675 utility's distribution rate base, as such rate base was determined for the most recently ended 12-month
676 test period in the utility's latest review proceeding conducted pursuant to subdivision 3 and concluded by
677 final order of the Commission prior to the date of filing of such petition under clause (iv). In all
678 proceedings regarding petitions filed under clause (iv) or (vi), the level of investments approved for
679 recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously
680 approved for recovery in prior proceedings under clause (iv) or (vi), as applicable. As of December 1,
681 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any remaining costs
682 associated with conversions of overhead distribution facilities to underground facilities that have been
683 previously approved or are pending approval by the Commission through a petition by the utility under
684 this subdivision. Such a petition concerning facilities described in clause (ii) that utilize nuclear power,
685 facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities
686 described in clause (i) may also be filed before the expiration or termination of capped rates. A utility
687 that constructs or makes modifications to any such facility, or purchases any facility consisting of at
688 least one megawatt of generating capacity using energy derived from sunlight and located in the
689 Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more
690 Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income,
691 through its rates, including projected construction work in progress, and any associated allowance for
692 funds used during construction, planning, development and construction or acquisition costs, life-cycle
693 costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs
694 of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate
695 of return on common equity calculated as specified below; however, in determining the amounts
696 recoverable under a rate adjustment clause for new underground facilities, the Commission shall not
697 consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance
698 costs attributable to either the overhead distribution facilities being replaced or the new underground
699 facilities or (b) any other costs attributable to the overhead distribution facilities being replaced.
700 Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain
701 eligible for recovery from customers through the utility's base rates for distribution service. A utility
702 filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of
703 generating capacity using energy derived from sunlight and located in the Commonwealth and that
704 utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may
705 propose a rate adjustment clause based on a market index in lieu of a cost of service model for such
706 facility. A utility seeking approval to construct or purchase a generating facility ~~described in clause (i)~~
707 ~~or (ii)~~ that emits carbon dioxide shall demonstrate that it has *already met the energy savings goals*
708 *identified in § 56-596.2 and the identified need cannot be met more affordably through the deployment*
709 *or utilization of demand-side resources or energy storage resources and that it has considered and*
710 *weighed alternative options, including third-party market alternatives, in its selection process. In*
711 *constructing any facility contemplated in subsection A of § 56-585.1:11, the utility shall (a) identify*
712 *options for utilizing local workers; (b) identify the economic development benefits of the project for the*
713 *Commonwealth, including capital investments and job creation; (c) consult with relevant governmental*
714 *entities, including the Commonwealth's Chief Workforce Development Officer on opportunities to*
715 *advance the Commonwealth's workforce and economic development goals, including furtherance of*
716 *apprenticeship and other workforce training programs, and give priority to the hiring of local workers,*
717 *including workers from historically economically disadvantaged communities. For the purposes of this*
718 *subsection, "historically economically disadvantaged community" means a community that is (i) a*
719 *community in which a majority of the population are people of color [and or] (ii) [is] a low-income*
720 *geographic area. Relevant state agencies shall identify historically economically disadvantaged*
721 *communities utilizing geographic information systems, U.S. Census tract demographic and poverty*
722 *threshold data for the Commonwealth, and zip code areas.*

723 The costs of the facility, other than return on projected construction work in progress and allowance
724 for funds used during construction, shall not be recovered prior to the date a facility constructed by the
725 utility and described in clause (i), (ii), (iii) or (v) begins commercial operation, the date the utility
726 becomes the owner of a purchased generation facility consisting of at least one megawatt of generating
727 capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or
728 services sourced, in whole or in part, from one or more Virginia businesses, or the date new
729 underground facilities are classified by the utility as plant in service. *In any application to construct a*
730 *new generating facility, the utility shall include, and the Commission shall consider, the social cost of*
731 *carbon, as determined by the Commission, as a benefit or cost, whichever is appropriate. The*
732 *Commission shall ensure that the development of new or expansion of existing, energy resources or*
733 *facilities does not have a [disproportionate disproportionate] adverse impact on historically*
734 *economically disadvantaged communities or low-income geographic areas. The Commission may adopt*
735 *any rules it deems necessary to determine the social cost of [carbon-y carbon.]*

736 Such enhanced rate of return on common equity shall be applied to allowance for funds used during

737 construction and to construction work in progress during the construction phase of the facility and shall
 738 thereafter be applied to the entire facility during the first portion of the service life of the facility. The
 739 first portion of the service life shall be as specified in the table below; however, the Commission shall
 740 determine the duration of the first portion of the service life of any facility, within the range specified in
 741 the table below, which determination shall be consistent with the public interest and shall reflect the
 742 Commission's determinations regarding how critical the facility may be in meeting the energy needs of
 743 the citizens of the Commonwealth and the risks involved in the development of the facility. After the
 744 first portion of the service life of the facility is concluded, the utility's general rate of return shall be
 745 applied to such facility for the remainder of its service life. As used herein, the service life of the
 746 facility shall be deemed to begin on the date a facility constructed by the utility and described in clause
 747 (i), (ii), (iii) or (v) begins commercial operation, the date the utility becomes the owner of a purchased
 748 generation facility consisting of at least one megawatt of generating capacity using energy derived from
 749 sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in
 750 part, from one or more Virginia businesses, or the date new underground facilities or new electric
 751 distribution grid transformation projects are classified by the utility as plant in service, and such service
 752 life shall be deemed equal in years to the life of that facility as used to calculate the utility's
 753 depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the
 754 basis points specified in the table below to the utility's general rate of return, and such enhanced rate of
 755 return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for
 756 funds used during construction shall be calculated for any such facility utilizing the utility's actual
 757 capital structure and overall cost of capital, including an enhanced rate of return on common equity as
 758 determined pursuant to this subdivision, until such construction work in progress is included in rates.
 759 The construction of any facility described in clause (i) or (v) is in the public interest, and in determining
 760 whether to approve such facility, the Commission shall liberally construe the provisions of this title. The
 761 construction or purchase by a utility of one or more generation facilities with at least one megawatt of
 762 generating capacity, and with an aggregate rated capacity that does not exceed ~~5,000~~ 16,100 megawatts,
 763 including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate
 764 capacity of ~~50~~ 100 megawatts, that use energy derived from sunlight or from wind and are located in
 765 the Commonwealth or off the Commonwealth's Atlantic shoreline, regardless of whether any of such
 766 facilities are located within or without the utility's service territory, is in the public interest, and in
 767 determining whether to approve such facility, the Commission shall liberally construe the provisions of
 768 this title. A utility may enter into short-term or long-term power purchase contracts for the power
 769 derived from sunlight generated by such generation facility prior to purchasing the generation facility.
 770 The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the
 771 aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year
 772 period with new underground facilities in order to improve electric service reliability is in the public
 773 interest. In determining whether to approve petitions for rate adjustment clauses for such new
 774 underground facilities that meet this criteria, and in determining the level of costs to be recovered
 775 thereunder, the Commission shall liberally construe the provisions of this title.
 776 The conversion of any such facilities on or after September 1, 2016, is deemed to provide local and
 777 system-wide benefits and to be cost beneficial, and the costs associated with such new underground
 778 facilities are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of
 779 subsection C or D, shall be approved for recovery by the Commission pursuant to this subdivision,
 780 provided that the total costs associated with the replacement of any subset of existing overhead
 781 distribution tap lines proposed by the utility with new underground facilities, exclusive of financing
 782 costs, shall not exceed an average cost per customer of \$20,000, with such customers, including those
 783 served directly by or downline of the tap lines proposed for conversion, and, further, such total costs
 784 shall not exceed an average cost per mile of tap lines converted, exclusive of financing costs, of
 785 \$750,000. A utility shall, without regard for whether it has petitioned for any rate adjustment clause
 786 pursuant to clause (vi), petition the Commission, not more than once annually, for approval of a plan for
 787 electric distribution grid transformation projects. Any plan for electric distribution grid transformation
 788 projects shall include both measures to facilitate integration of distributed energy resources and measures
 789 to enhance physical electric distribution grid reliability and security. In ruling upon such a petition, the
 790 Commission shall consider whether the utility's plan for such projects, and the projected costs associated
 791 therewith, are reasonable and prudent. Such petition shall be considered on a stand-alone basis without
 792 regard to the other costs, revenues, investments, or earnings of the utility; without regard to whether the
 793 costs associated with such projects will be recovered through a rate adjustment clause under this
 794 subdivision or through the utility's rates for generation and distribution services; and without regard to
 795 whether such costs will be the subject of a customer credit offset, as applicable, pursuant to subdivision
 796 8 d. The Commission's final order regarding any such petition for approval of an electric distribution
 797 grid transformation plan shall be entered by the Commission not more than six months after the date of

798 filing such petition. The Commission shall likewise enter its final order with respect to any petition by a
 799 utility for a certificate to construct and operate a generating facility or facilities utilizing energy derived
 800 from sunlight, pursuant to subsection D of § 56-580, within six months after the date of filing such
 801 petition. The basis points to be added to the utility's general rate of return to calculate the enhanced rate
 802 of return on common equity, and the first portion of that facility's service life to which such enhanced
 803 rate of return shall be applied, shall vary by type of facility, as specified in the following table:

804	Type of Generation Facility	Basis Points	First Portion of Service Life
805	Nuclear-powered	200	Between 12 and 25 years
806	Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
807	Renewable powered, other than landfill gas	200	Between 5 and 15 years
808	powered		
809	Coalbed methane gas powered	150	Between 5 and 15 years
810	Landfill gas powered	200	Between 5 and 15 years
811	Conventional coal or combined-cycle	100	Between 10 and 20 years
812	combustion turbine		

813 For generating facilities other than those utilizing nuclear power constructed pursuant to clause (ii) or
 814 those utilizing energy derived from offshore wind, as of July 1, 2013, only *Only* those facilities as to
 815 which a rate adjustment clause under this subdivision has been previously approved by the Commission,
 816 or as to which a petition for approval of such rate adjustment clause was filed with the Commission, on
 817 or before January 1, 2013 2019, shall be entitled to the enhanced rate of return on common equity as
 818 specified in the above table during the construction phase of the facility and the approved first portion
 819 of its service life.

820 For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy
 821 derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such
 822 facilities shall continue to be eligible for an enhanced rate of return on common equity during the
 823 construction phase of the facility and the approved first portion of its service life of between 12 and 25
 824 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in
 825 the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1,
 826 2013, the enhanced return for such facilities constructed pursuant to clause (ii) shall be 100 basis points,
 827 which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty
 828 percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1,
 829 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred
 830 by the utility and recovered through a rate adjustment clause under this subdivision at such time as the
 831 Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of
 832 all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall
 833 not be deferred for recovery through a rate adjustment clause under this subdivision; however, such
 834 remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by
 835 the Commission in the test periods under review in the utility's next review filed after July 1, 2014.
 836 Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility
 837 incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December
 838 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this
 839 subdivision at such time as the Commission provides in an order approving such a rate adjustment
 840 clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1,
 841 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under
 842 this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through
 843 existing base rates as determined by the Commission in the test periods under review in the utility's next
 844 review filed after July 1, 2014.

845 In connection with planning to meet forecasted demand for electric generation supply and assure the
 846 adequate and sufficient reliability of service, consistent with ~~§ 56-598~~, planning and development
 847 activities for a new nuclear generation facility or facilities are in the public interest.

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

852 Construction, purchasing, or leasing activities for a new utility-owned and utility-operated generating
 853 facility or facilities utilizing energy derived from sunlight or from wind with an aggregate capacity of
 854 ~~5,000~~ 16,100 megawatts, including rooftop solar installations with a capacity of not less than 50
 855 kilowatts, and with an aggregate capacity of ~~50~~ 100 megawatts, together with a new test or
 856 demonstration project for a utility-owned and utility-operated generating facility or facilities utilizing
 857 energy derived from offshore wind with an aggregate capacity of not more than ~~16~~ 5000 megawatts, are
 858 in the public interest. To the extent that a utility elects to recover the costs of any such new generation
 859 facility or facilities through its rates for generation and distribution services and does not petition and

860 receive approval from the Commission for recovery of such costs through a rate adjustment clause
861 described in clause (ii), the Commission shall, upon the request of the utility in a triennial review
862 proceeding, provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d
863 with respect to all costs deemed reasonable and prudent by the Commission in a proceeding pursuant to
864 subsection D of § 56-580 or in a triennial review proceeding.

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

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

881 As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility
882 is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.1-361.1, produced
883 from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired by
884 methane or other combustible gas produced by the anaerobic digestion or decomposition of
885 biodegradable materials in a solid waste management facility licensed by the Waste Management Board.
886 A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used
887 in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from
888 the solid waste management facility where it is collected to the generation facility where it is
889 combusted.

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

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

904 Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from
905 the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or
906 demonstration project involving a generation facility utilizing energy from offshore wind, and such
907 utility has not, as of July 1, 2023, commenced construction as defined for federal income tax purposes
908 of an offshore wind generation facility or facilities with a minimum aggregate capacity of 250
909 megawatts, then the Commission, if it finds it in the public interest, may direct that the costs associated
910 with any such rate adjustment clause involving said test or demonstration project shall thereafter no
911 longer be recovered through a rate adjustment clause pursuant to subdivision 6 and shall instead be
912 recovered through the utility's rates for generation and distribution services, with no change in such rates
913 for generation and distribution services as a result of the combination of such costs with the other costs,
914 revenues, and investments included in the utility's rates for generation and distribution services. Any
915 such costs shall remain combined with the utility's other costs, revenues, and investments included in its
916 rates for generation and distribution services until such costs are fully recovered.

917 7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a
918 stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any
919 costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the
920 Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or

921 that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to
922 new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and
923 records of the utility until the Commission's final order in the matter, or until the implementation of any
924 applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in
925 subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of
926 such petition, or during the consideration thereof by the Commission, that are proposed for recovery in
927 such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of
928 subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of
929 subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the
930 books and records of the utility until the Commission's final order in the matter, or until the
931 implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs
932 prudently incurred after the expiration or termination of capped rates related to other matters described
933 in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped
934 rates, provided, however, that no provision of this act shall affect the rights of any parties with respect
935 to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia
936 Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset
937 for regulatory accounting and ratemaking purposes under which it shall defer its operation and
938 maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant
939 and (ii) other work at such plant normally performed during a refueling outage. The utility shall
940 amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning
941 with the month in which such plant resumes operation after such refueling. The refueling cycle shall be
942 the applicable period of time between planned refueling outages for such plant. As of January 1, 2014,
943 such amortized costs are a component of base rates, recoverable in base rates only ratably over the
944 refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable
945 in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage
946 commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs
947 of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with
948 respect to triennial filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant to
949 § 56-245 or the Commission's rules governing utility rate increase applications as provided in subsection
950 B. This provision shall not be deemed to change or reset base rates.

951 The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be
952 entered not more than three months, eight months, and nine months, respectively, after the date of filing
953 of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment
954 clause be applied to customers' bills not more than 60 days after the date of the order, or upon the
955 expiration or termination of capped rates, whichever is later.

956 8. In any triennial review proceeding, for the purposes of reviewing earnings on the utility's rates for
957 generation and distribution services, the following utility generation and distribution costs not proposed
958 for recovery under any other subdivision of this subsection, as recorded per books by the utility for
959 financial reporting purposes and accrued against income, shall be attributed to the test periods under
960 review and deemed fully recovered in the period recorded: costs associated with asset impairments
961 related to early retirement determinations made by the utility for utility generation facilities fueled by
962 coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs
963 associated with projects necessary to comply with state or federal environmental laws, regulations, or
964 judicial or administrative orders relating to coal combustion by-product management that the utility does
965 not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated
966 with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to
967 have been recovered from customers through rates for generation and distribution services in effect
968 during the test periods under review unless such costs, individually or in the aggregate, together with the
969 utility's other costs, revenues, and investments to be recovered through rates for generation and
970 distribution services, result in the utility's earned return on its generation and distribution services for the
971 combined test periods under review to fall more than 50 basis points below the fair combined rate of
972 return authorized under subdivision 2 for such periods or, for any test period commencing after
973 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall
974 more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for
975 such periods. In such cases, the Commission shall, in such triennial review proceeding, authorize
976 deferred recovery of such costs and allow the utility to amortize and recover such deferred costs over
977 future periods as determined by the Commission. The aggregate amount of such deferred costs shall not
978 exceed an amount that would, together with the utility's other costs, revenues, and investments to be
979 recovered through rates for generation and distribution services, cause the utility's earned return on its
980 generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less
981 50 basis points, for the combined test periods under review or, for any test period commencing after
982 December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed

983 the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in this section shall
 984 limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including
 985 specifically § 56-235.2, following the review of combined test period earnings of the utility in a triennial
 986 review, for normalization of nonrecurring test period costs and annualized adjustments for future costs,
 987 in determining any appropriate increase or decrease in the utility's rates for generation and distribution
 988 services pursuant to subdivision 8 a or 8 c.

989 If the Commission determines as a result of such triennial review that:

990 a. The Revenue reductions related to energy efficiency measures or programs approved and deployed
 991 since the utility's previous triennial review have caused the utility, as verified by the Commission,
 992 during the test period or periods under review, considered as a whole, to earn more than 50 basis points
 993 below a fair combined rate of return on its generation and distribution services or, for any test period
 994 commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I
 995 Utility, more than 70 basis points below a fair combined rate of return on its generation and distribution
 996 services, as determined in subdivision 2, without regard to any return on common equity or other
 997 matters determined with respect to facilities described in subdivision 6, the Commission shall order
 998 increases to the utility's rates for generation and distribution services necessary to recover such revenue
 999 reductions. If the Commission finds, for reasons other than revenue reductions related to energy
 1000 efficiency measures, that the utility has, during the test period or periods under review, considered as a
 1001 whole, earned more than 50 basis points below a fair combined rate of return on its generation and
 1002 distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility
 1003 and after December 31, 2013, for a Phase I Utility, more than 70 basis points below a fair combined
 1004 rate of return on its generation and distribution services, as determined in subdivision 2, without regard
 1005 to any return on common equity or other matters determined with respect to facilities described in
 1006 subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the
 1007 opportunity to fully recover the costs of providing the utility's services and to earn not less than such
 1008 fair combined rate of return, using the most recently ended 12-month test period as the basis for
 1009 determining the amount of the rate increase necessary. However, in the first triennial review proceeding
 1010 conducted after January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase,
 1011 and in all triennial reviews of a Phase I or Phase II utility, the Commission may not order such rate
 1012 increase unless it finds that the resulting rates are necessary to provide the utility with the opportunity to
 1013 fully recover its costs of providing its services and to earn not less than a fair combined rate of return
 1014 on both its generation and distribution services, as determined in subdivision 2, without regard to any
 1015 return on common equity or other matters determined with respect to facilities described in subdivision
 1016 6, using the most recently ended 12-month test period as the basis for determining the permissibility of
 1017 any rate increase under the standards of this sentence, and the amount thereof; and provided that, solely
 1018 in connection with making its determination concerning the necessity for such a rate increase or the
 1019 amount thereof, the Commission shall, in any triennial review proceeding conducted prior to July 1,
 1020 2028, exclude from this most recently ended 12-month test period any remaining investment levels
 1021 associated with a prior customer credit reinvestment offset pursuant to subdivision d.

1022 b. The utility has, during the test period or test periods under review, considered as a whole, earned
 1023 more than 50 basis points above a fair combined rate of return on its generation and distribution
 1024 services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after
 1025 December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of
 1026 return on its generation and distribution services, as determined in subdivision 2, without regard to any
 1027 return on common equity or other matters determined with respect to facilities described in subdivision
 1028 6, the Commission shall, subject to the provisions of subdivisions 8 d and 9, direct that 60 percent of
 1029 the amount of such earnings that were more than 50 basis points, or, for any test period commencing
 1030 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that
 1031 70 percent of the amount of such earnings that were more than 70 basis points, above such fair
 1032 combined rate of return for the test period or periods under review, considered as a whole, shall be
 1033 credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as
 1034 determined at the discretion of the Commission, following the effective date of the Commission's order,
 1035 and shall be allocated among customer classes such that the relationship between the specific customer
 1036 class rates of return to the overall target rate of return will have the same relationship as the last
 1037 approved allocation of revenues used to design base rates; or

1038 c. In any triennial review proceeding conducted after January 1, 2020, for a Phase I Utility or after
 1039 January 1, 2021, for a Phase II Utility in which the utility has, during the test period or test periods
 1040 under review, considered as a whole, earned more than 50 basis points above a fair combined rate of
 1041 return on its generation and distribution services or, for any test period commencing after December 31,
 1042 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis
 1043 points above a fair combined rate of return on its generation and distribution services, as determined in

1044 subdivision 2, without regard to any return on common equity or other matter determined with respect
1045 to facilities described in subdivision 6, and the combined aggregate level of capital investment that the
1046 Commission has approved other than those capital investments that the Commission has approved for
1047 recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the
1048 test periods under review in that triennial review proceeding in new utility-owned generation facilities
1049 utilizing energy derived from sunlight, or from wind, and in electric distribution grid transformation
1050 projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of the
1051 earnings that are more than 70 basis points above the utility's fair combined rate of return on its
1052 generation and distribution services for the combined test periods under review in that triennial review
1053 proceeding, the Commission shall, subject to the provisions of subdivision 9 and in addition to the
1054 actions authorized in subdivision b, also order reductions to the utility's rates it finds appropriate.
1055 However, in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility,
1056 any reduction to the utility's rates ordered by the Commission pursuant to this subdivision shall not
1057 exceed \$50 million in annual revenues, with any reduction allocated to the utility's rates for generation
1058 services, and in each triennial review of a Phase I or Phase II Utility, the Commission may not order
1059 such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to
1060 fully recover its costs of providing its services and to earn not less than a fair combined rate of return
1061 on its generation and distribution services, as determined in subdivision 2, without regard to any return
1062 on common equity or other matters determined with respect to facilities described in subdivision 6,
1063 using the most recently ended 12-month test period as the basis for determining the permissibility of any
1064 rate reduction under the standards of this sentence, and the amount thereof; and

1065 d. (Expires July 1, 2028) In any triennial review proceeding conducted after December 31, 2017,
1066 upon the request of the utility, the Commission shall determine, prior to directing that 70 percent of
1067 earnings that are more than 70 basis points above the utility's fair combined rate of return on its
1068 generation and distribution services for the test period or periods under review be credited to customer
1069 bills pursuant to subdivision 8 b, the aggregate level of prior capital investment that the Commission has
1070 approved other than those capital investments that the Commission has approved for recovery pursuant
1071 to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test period or
1072 periods under review in both (i) new utility-owned generation facilities utilizing energy derived from
1073 sunlight, or from onshore or offshore wind, and (ii) electric distribution grid transformation projects, as
1074 determined by the utility's plant in service and construction work in progress balances related to such
1075 investments as recorded per books by the utility for financial reporting purposes as of the end of the
1076 most recent test period under review. Any such combined capital investment amounts shall offset any
1077 customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or
1078 committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or committed
1079 capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit reinvestment
1080 offset, which offsets the customer bill credit amount that the utility has invested or will invest in new
1081 solar or wind generation facilities or electric distribution grid transformation projects for the benefit of
1082 customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the
1083 utility's fair rate of return on its generation and distribution services, and thereby reduce or eliminate
1084 otherwise incremental rate adjustment clause charges and increases to customer bills, which is deemed to
1085 be in the public interest. If 100 percent of the amount of earnings that are more than 70 basis points
1086 above the utility's fair combined rate of return on its generation and distribution services, as determined
1087 in subdivision 2, exceeds the aggregate level of invested capital in new utility-owned generation
1088 facilities utilizing energy derived from sunlight, or from wind, and electric distribution grid
1089 transformation projects, as provided in clauses (i) and (ii), during the test period or periods under
1090 review, then 70 percent of the amount of such excess shall be credited to customer bills as provided in
1091 subdivision 8 b in connection with the triennial review proceeding. The portion of any costs associated
1092 with new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or
1093 electric distribution grid transformation projects that is the subject of any customer credit reinvestment
1094 offset pursuant to this subdivision shall not thereafter be recovered through the utility's rates for
1095 generation and distribution services over the service life of such facilities and shall not thereafter be
1096 included in the utility's costs, revenues, and investments in future triennial review proceedings conducted
1097 pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to
1098 subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing
1099 energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is
1100 not the subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered
1101 through the utility's rates for generation and distribution services over the service life of such facilities
1102 and shall be included in the utility's costs, revenues, and investments in future triennial review
1103 proceedings conducted pursuant to subdivision 2 until such costs are fully recovered, and if such costs
1104 are recovered through the utility's rates for generation and distribution services, they shall not be the
1105 subject of a rate adjustment clause petition pursuant to subdivision 6. Only the portion of such costs of

1106 new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or electric
 1107 distribution grid transformation projects that has not been included in any customer credit reinvestment
 1108 offset pursuant to this subdivision, and not otherwise recovered through the utility's rates for generation
 1109 and distribution services, may be the subject of a rate adjustment clause petition by the utility pursuant
 1110 to subdivision 6.

1111 The Commission's final order regarding such triennial review shall be entered not more than eight
 1112 months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more
 1113 than 60 days after the date of the order. The fair combined rate of return on common equity determined
 1114 pursuant to subdivision 2 in such triennial review shall apply, for purposes of reviewing the utility's
 1115 earnings on its rates for generation and distribution services, to the entire three successive 12-month test
 1116 periods ending December 31 immediately preceding the year of the utility's subsequent triennial review
 1117 filing under subdivision 3 and shall apply to applicable rate adjustment clauses under subdivisions 5 and
 1118 6 prospectively from the date the Commission's final order in the triennial review proceeding, utilizing
 1119 rate adjustment clause true-up protocols as the Commission in its discretion may determine.

1120 9. If, as a result of a triennial review required under this subsection and conducted with respect to
 1121 any test period or periods under review ending later than December 31, 2010 (or, if the Commission has
 1122 elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later
 1123 than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the
 1124 Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility
 1125 has, during the test period or periods under review, considered as a whole, earned more than 50 basis
 1126 points above a fair combined rate of return on its generation and distribution services or, for any test
 1127 period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a
 1128 Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and
 1129 distribution services, as determined in subdivision 2, without regard to any return on common equity or
 1130 other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate
 1131 regulated rates of such utility at the end of the most recently ended 12-month test period exceeded the
 1132 annual increases in the United States Average Consumer Price Index for all items, all urban consumers
 1133 (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor,
 1134 compounded annually, when compared to the total aggregate regulated rates of such utility as
 1135 determined pursuant to the review conducted for the base period, the Commission shall, unless it finds
 1136 that such action is not in the public interest or that the provisions of subdivisions 8 b and c are more
 1137 consistent with the public interest, direct that any or all earnings for such test period or periods under
 1138 review, considered as a whole that were more than 50 basis points, or, for any test period commencing
 1139 after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more
 1140 than 70 basis points, above such fair combined rate of return shall be credited to customers' bills, in lieu
 1141 of the provisions of subdivisions 8 b and c, provided that no credits shall be provided pursuant to this
 1142 subdivision in connection with any triennial review unless such bill credits would be payable pursuant to
 1143 the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any
 1144 customer credit reinvestment offset amounts under subdivision 8 d. Any such credits shall be amortized
 1145 and allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this
 1146 subdivision:

1147 "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected
 1148 to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December
 1149 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test
 1150 period with respect to which credits have been applied to customers' bills under the provisions of this
 1151 subdivision, whichever is later.

1152 "Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except
 1153 for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31,
 1154 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses
 1155 implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8
 1156 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase
 1157 applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as
 1158 of July 1, 2009.

1159 10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any
 1160 utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital
 1161 structure and cost of capital of such utility, excluding any debt associated with securitized bonds that are
 1162 the obligation of non-Virginia jurisdictional customers, unless the Commission finds that the debt to
 1163 equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may
 1164 utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate
 1165 adjustment pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure,
 1166 revenues, expenses or investments of any other entity with which such utility may be affiliated. In

1167 particular, and without limitation, the Commission shall determine the federal and state income tax costs
 1168 for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's
 1169 apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the
 1170 utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax
 1171 costs shall be calculated according to the applicable federal income tax rate and shall exclude any
 1172 consolidated tax liability or benefit adjustments originating from any taxable income or loss of its
 1173 affiliates.

1174 B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying
 1175 for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase
 1176 applications; however, in any such filing, a fair rate of return on common equity shall be determined
 1177 pursuant to subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and
 1178 purchased power costs as provided in § 56-249.6.

1179 C. Except as otherwise provided in this section, the Commission shall exercise authority over the
 1180 rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation,
 1181 transmission and distribution services to retail customers in the Commonwealth pursuant to the
 1182 provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

1183 D. The Commission may determine, during any proceeding authorized or required by this section, the
 1184 reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection
 1185 with the subject of the proceeding. A determination of the Commission regarding the reasonableness or
 1186 prudence of any such cost shall be consistent with the Commission's authority to determine the
 1187 reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et
 1188 seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its
 1189 customers from renewable energy resources, the Commission shall consider the extent to which such
 1190 renewable energy resources, whether utility-owned or by contract, further the objectives of the
 1191 Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and shall also consider whether the
 1192 costs of such resources is likely to result in unreasonable increases in rates paid by customers.

1193 E. The Commission shall promulgate such rules and regulations as may be necessary to implement
 1194 the provisions of this section.

1195 **§ 56-585.1:11. Development of offshore wind capacity.**

1196 A. *In order to meet the Commonwealth's clean energy goals, prior to December 31, 2034, the*
 1197 *construction or purchase by a public utility of one or more offshore wind generation facilities located*
 1198 *off the Commonwealth's shoreline or in federal waters and interconnected directly into the*
 1199 *Commonwealth with an aggregate capacity of up to 5,200 megawatts is in the public interest and the*
 1200 *Commission shall so find, provided that no customers of the utility shall be responsible for costs of any*
 1201 *such facility in a proportion greater than the utility's share of the facility.*

1202 B. 1. *Pursuant to subsection A, construction by a Phase II Utility, as defined in subdivision A 1 of*
 1203 *§ 56-585.1, of one or more new utility-owned and utility-operated generating facilities utilizing energy*
 1204 *derived from offshore wind and located off the Commonwealth's Atlantic shoreline, with an aggregate*
 1205 *rated capacity of not less than 2,500 megawatts and not more than 3,000 megawatts, along with*
 1206 *electrical transmission or distribution facilities associated therewith for interconnection is in the public*
 1207 *interest. In acting upon any request for cost recovery by a Phase II Utility for costs associated with*
 1208 *such a facility, the Commission shall determine the reasonableness and prudence of any such costs,*
 1209 *provided that such costs shall be presumed to be reasonably and prudently incurred if the Commission*
 1210 *determines that (i) the utility has complied with the competitive solicitation and procurement*
 1211 *requirements pursuant to subsection D; (ii) the project's projected total levelized cost of energy,*
 1212 *including any tax credit, on a cost per megawatt basis inclusive of the costs of transmission and*
 1213 *distribution facilities associated with the facility's connection, does not exceed 1.6 times the comparable*
 1214 *cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating*
 1215 *facility as most recently estimated by the U.S. Energy Information Administration in its Annual Outlook*
 1216 *at the time of the utility's initial cost recovery request; and (iii) the utility has commenced construction*
 1217 *of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan for any*
 1218 *such facility to be in service prior to January 1, 2028. The Commission shall disallow any costs, or any*
 1219 *portion thereof, only if they are otherwise unreasonably and imprudently incurred. In its review, the*
 1220 *Commission shall give great weight to the public interest determination in this subsection.*

1221 *Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate of*
 1222 *return to a Phase II Utility construction one or more new utility-owned and utility-operated generating*
 1223 *facilities utilizing energy derived from offshore wind and located off the Commonwealth's Atlantic*
 1224 *shoreline pursuant to this section.*

1225 2. *Any such costs proposed for recovery through a rate adjustment clause pursuant to subdivision A*
 1226 *6 of § 56-585.1 shall be allocated to all customers of the utility, other than low-income residential*
 1227 *customers, in the Commonwealth as a non-bypassable charge, irrespective of the generation supplier of*
 1228 *any such customer. No electric cooperative customer of the utility shall be assigned, nor shall the utility*

1229 collect from any such cooperative, any of the costs of such facilities, including electrical transmission or
 1230 distribution facilities associated therewith for interconnection. The Commission may promulgate such
 1231 rules, regulations, or other directives necessary to administer the eligibility for this exemption.

1232 3. For purposes of this subsection, (i) "low-income residential customer" includes any residential
 1233 customer household of a Phase II Utility where the customer or a dependent is a recipient of a
 1234 state-funded or federally funded public assistance program for the indigent and requests exemption from
 1235 the utility from such charges and (ii) "aggregate load" means the combined electrical load associated
 1236 with selected non-residential customer accounts with the same entity name or in the name of affiliated
 1237 entities under a common parent company.

1238 C. In constructing any such facility described in subsection A, the utility shall (i) identify options for
 1239 utilizing local workers; (ii) identify the economic development benefits of the project for the
 1240 Commonwealth, including capital investments and job creation; (iii) consult with relevant governmental
 1241 entities, including the Commonwealth's Chief Workforce Development Officer and the Virginia Economic
 1242 Development Partnership, on opportunities to advance the Commonwealth's workforce and economic
 1243 development goals, including furtherance of apprenticeship and other workforce training programs; and
 1244 (iv) give priority to the hiring of local workers, including workers from historically economically
 1245 disadvantaged communities. For the purposes of this subsection, "historically economically
 1246 disadvantaged community" means a community that is (i) a community in which a majority of the
 1247 population are people of color [~~and~~ or] (ii) a low-income geographic area. Relevant state agencies
 1248 shall identify historically economically disadvantaged communities utilizing geographic information
 1249 systems, U.S. Census tract demographic and poverty threshold data for the Commonwealth, and zip code
 1250 areas.

1251 D. Any project constructed or purchased pursuant to subsection A shall (i) be subject to competitive
 1252 procurement or solicitation for a substantial majority of the services and equipment, exclusive of
 1253 interconnection costs, associated with the facility's construction; (ii) involve at least one experienced
 1254 developer; and (iii) demonstrate the economic development benefits within the Commonwealth, including
 1255 capital investments and job creation. A utility may give appropriate consideration to suppliers and
 1256 developers that have demonstrated successful experience in offshore wind.

1257 E. Any project shall include an environmental and fisheries mitigation plan for the construction and
 1258 operation of such offshore wind facilities, provided that such plan includes an explicit description of the
 1259 best management practices the bidder will employ, that considers the latest science at the time the
 1260 proposal is made to mitigate adverse impacts to wildlife, natural resources, ecosystems, and traditional
 1261 or existing water-dependent uses. The plan shall include a summary of pre-construction assessment
 1262 activities, consistent with federal requirements, to determine the spatial and temporal presence and
 1263 abundance of marine mammals, sea turtles, birds, bats, in the offshore wind lease area.

1264 **§ 56-585.5. Generation of electricity from renewable and zero carbon sources.**

1265 A. As used in this section:

1266 "Low-income qualifying projects" means a project that serves a low-income customer, as that term is
 1267 defined in § 56-594.

1268 "Previously developed project site" means any property, including related buffer areas, if any, that
 1269 has been previously disturbed or developed for non-single-family residential, non-agricultural, or [~~non-silvicultural~~
 1270 ~~non-silvicultural~~ non-silvicultural] use, regardless of whether such property currently is being used for
 1271 any purpose. "Previously developed project site" includes a brownfield as defined in § 10.1-1230 or any
 1272 parcel that has been previously used (i) for a retail, commercial, or industrial purpose; (ii) as a parking
 1273 lot; (iii) as the site of a parking lot canopy or structure; (iv) for mining or quarrying; or (v) as a
 1274 landfill.

1275 "Retail suppliers" shall include a Phase I or Phase II Utility, as those terms are defined in
 1276 subdivision A 1 of § 56-585.1, as well as other electric energy suppliers as defined by § 56-576.

1277 "Total electric energy" means total electric energy sold to a Virginia jurisdictional retail customer by
 1278 an incumbent electric utility or other retail supplier of electric energy in the previous calendar year,
 1279 excluding an amount equivalent to the annual percentages of the electric energy that was supplied to
 1280 such customer from nuclear generating plants located within the Commonwealth in the previous
 1281 calendar year, provided such nuclear units were operating by July 1, 2020.

1282 "Zero-carbon electricity" means electricity generated by any generating unit that does not emit
 1283 carbon dioxide as a byproduct of combusting fuel to generate electricity.

1284 B. 1. [By December 31, 2024, except for any coal-fired electric generating units (i) jointly owned
 1285 with a cooperative utility or (ii) owned and operated by a Phase II utility located in the coalfield region
 1286 of the Commonwealth that co-fires with biomass, any Phase I and Phase II Utility shall retire all
 1287 generating units principally fueled by oil with a rated capacity in excess of 500 megawatts and all
 1288 coal-fired electric generating units operating in the Commonwealth.

1289 2.] By December 31, 2028, each Phase I and II Utility shall retire all biomass-fired electric

1290 generating units that do not co-fire with coal.

1291 [~~2~~ 3. By December 31, 2030, any Phase II Utility shall retire any coal-fired electric generating
1292 units located in the coalfield region of the Commonwealth that co-fires with biomass, unless such facility
1293 can demonstrate at least 83 percent reduction in carbon emissions through capture and sequestration.

1294 4.] By December 31, [~~2050~~ 2045] , each Phase I and II Utility shall retire all other electric
1295 generating units located in the Commonwealth that emit carbon as a byproduct of combusting fuel to
1296 generate electricity.

1297 [~~3~~ 5.] A Phase I or Phase II Utility may petition the Commission for relief from the requirements
1298 of this subsection on the basis that the requirement would threaten the reliability or security of electric
1299 service to customers. The Commission shall consider in-state and regional transmission entity resources
1300 and shall evaluate the reliability of each proposed retirement on a case-by-case basis in ruling upon
1301 any such petition.

1302 C. Each retail [~~supplier~~ supplier] of electric energy in the Commonwealth shall participate in a
1303 renewable energy portfolio standard program ("RPS Program") that establishes annual goals for the
1304 sale of renewable energy to retail customers. To comply with the RPS program, every retail supplier of
1305 electricity shall procure Renewable Energy Certificates ("RECs") originating from renewable energy
1306 standard eligible sources ("RPS eligible sources"). For purposes of complying with the RPS Program,
1307 from 2021 to 2024, a retail supplier may [~~uses~~ use RECs from any renewable energy facility, as
1308 defined in § 56-576. However, at no time during this period or thereafter may any retail supplier use]
1309 RECs from (i) renewable thermal energy facilities, (ii) renewable thermal energy equivalent facilities,
1310 (iii) biomass-fired facilities that are outside the Commonwealth, or (iv) biomass-fired facilities operating
1311 in the Commonwealth as of January 1, 2020, that supply 10 percent or more of their annual net
1312 electrical generation to the electric grid or more than 15 percent of their annual total useful energy to
1313 any entity other than the manufacturing facility to which the generating source is interconnected. From
1314 compliance year 2025 and all years after, retail suppliers may only use RECs from RPS eligible sources
1315 for compliance with the RPS Program.

1316 In order to qualify as RPS eligible sources for retail suppliers, such sources must be (i)
1317 electric-generating resources that generate electric energy derived from solar, wind, or falling water,
1318 provided such resources are located in the Commonwealth or are physically located within the PJM
1319 Interconnection, LLC ("PJM") region; (ii) waste-to-energy or landfill gas-fired generating resources
1320 located in the Commonwealth and in operation as of January 1, 2020, provided such resources do not
1321 use forest or woody biomass as fuel; (iii) non-utility-owned resources from falling water that (a) are
1322 less than 654 megawatts, (b) began commercial operation after December 31, 1979, or (c) added
1323 incremental generation representing greater than 50 percent of the original nameplate capacity after
1324 December 31, 1979; or (iv) are biomass-fired facilities in operation in the Commonwealth in operation
1325 as of January 1, 2020, that supply no more than 10 percent of their annual net electrical generation to
1326 the electric grid or no more than 15 percent of their annual total useful energy to any entity other than
1327 the manufacturing facility to which the generating source is interconnected. The total amount of
1328 renewable energy credits that may be sold by any RPS eligible source using biomass in any calendar
1329 year shall be no more than the number of megawatt hours of electricity produced by that facility in
1330 calendar year 2019. Any biomass-fired facility qualifying as an RPS eligible source shall cease to
1331 qualify as an RPS eligible source if it undertakes any maintenance, refurbishment, or other type of
1332 project that increases its annual output by more than five percent. In order to comply with the RPS
1333 program, each Phase I and Phase II Utility may use and retire the environmental attributes associated
1334 with any existing owned or contracted solar, wind, or falling water electric generating resources in
1335 operation, or proposed for operation, in the Commonwealth or physically located within the PJM
1336 region, with such resource qualifying as a Commonwealth-located resource for purposes of this
1337 subdivision, as of January 1, 2020, provided such renewable attributes are verified as RECs consistent
1338 with the PJM-EIS Generation Attribute Tracking System.

1339 The RPS Program requirements shall be a percentage of the total electric energy sold in the [~~the~~]
1340 previous calendar year and shall be implemented in accordance with the following schedule:

1341 Phase I Utilities and Other Retail Suppliers Phase II Utilities and Other Retail Suppliers
1342 Operating in the Service Territory of a Phase I [Operating in the Service Territory of a Phase II
1343 ~~Utility~~ Utility] Utility
1344

1345	RPS Program		RPS Program	
1346	Year	Requirement	Year	Requirement
1347	2021	6%	2021	14%
1348	2022	7%	2022	17%
1349	2023	8%	2023	20%
1350	2024	10%	2024	23%
1351	2025	14%	2025	26%
1352	2026	17%	2026	29%

1353	2027	20%	2027	32%
1354	2028	24%	2028	35%
1355	2029	27%	2029	38%
1356	2030	30%	2030	41%
1357	2031	33%	2031	45%
1358	2032	36%	2032	49%
1359	2033	39%	2033	52%
1360	2034	42%	2034	55%
1361	2035	45%	2035	59%
1362	2036	53%	2036	63%
1363	2037	53%	2037	67%
1364	2038	57%	2038	71%
1365	2039	61%	2039	75%
1366	2040	65%	2040	79%
1367	2041	68%	2041	83%
1368	2042	71%	2042	87%
1369	2043	74%	2043	91%
1370	2044	100%	2044	95%
1371	2045	80%	2045 and thereafter	100%
1372	2046	84%		
1373	2047	88%		
1374	2048	92%		
1375	2049	96%		
1376	2050 and thereafter	100%		

1377 *Retail suppliers, except for a Phase I Utility, shall meet one percent of the RPS Program*
 1378 *requirement in any given compliance year with solar, wind, or anaerobic digestion resources of one*
 1379 *megawatt or less located in the Commonwealth, with no less than 25 percent of such one percent*
 1380 *composed of low-income qualifying projects.*

1381 *Beginning with the 2025 compliance year and thereafter, at least 75 percent of all RECs used by a*
 1382 *retail [~~supplier~~ supplier], except for a Phase I Utility, in a compliance period shall come from*
 1383 *resources located in Virginia.*

1384 *A retail supplier of electricity may apply renewable energy sales achieved or RECs acquired in*
 1385 *excess of the sales requirement for that RPS Program to the sales requirements for future RPS Program*
 1386 *requirements in the year in which it was generated and the five calendar years after the renewable*
 1387 *energy was generated or the RECs were created. To the extent a retail supplier of electricity is a Phase*
 1388 *I or Phase II Utility that procures RECs for RPS Program compliance from resources the utility does*
 1389 *not own, the utility shall be entitled to recover the costs of such certificates, at its election pursuant to*
 1390 *§ 56-249.6 or subdivision A 5 d of § 56-585.1. A retail [~~supplier~~ supplier] of electricity other than a*
 1391 *Phase I or Phase II Utility may only use RECs from facilities that produce electricity via falling water*
 1392 *equal to or less than 2.9 percent of their total electric energy sold in each year from 2021 through*
 1393 *2035, equal to or less than 3.5 percent of their total electric energy sold in each year from 2036*
 1394 *through 2042 and equal to or less than four percent of their total electric energy sold in each year from*
 1395 *2043 through 2050, and shall not exceed these amounts to comply with the RPS Program requirements.*
 1396 *The limitations in this subsection shall apply only to facilities that produce electricity via falling water*
 1397 *that is less than 65 megawatts, or that began commercial operation or added incremental generation*
 1398 *representing the majority of nameplate capacity after December 31, 1979.*

1399 *D. Notwithstanding the provisions of subsection C or D of § 56-585.1 or any other provision of law,*
 1400 *each Phase I or Phase II Utility shall procure zero-carbon electricity generating capacity as set forth in*
 1401 *this subdivision and energy storage resources as set forth in subdivision E. To the extent a Phase I or*
 1402 *Phase II Utility constructs or acquires new zero-carbon generating facilities or energy storage*
 1403 *resources, the utility shall recover the costs of such facilities, at the utility's election, either through its*
 1404 *rates for generation and distribution services or through a rate adjustment clause pursuant to*
 1405 *subdivision A 6 of § 56-585.1. All costs not sought for recovery through a rate adjustment clause*
 1406 *pursuant to subdivision A 6 of § 56-585.1 associated with generating facilities provided by sunlight or*
 1407 *onshore or offshore wind are also eligible to be applied by the utility as a customer credit reinvestment*
 1408 *offset as provided in subdivision A 8 of § 56-585.1. Costs associated with the purchase of energy,*
 1409 *capacity, or environmental attributes from facilities owned by the persons other than the utility required*
 1410 *by the subsection shall be recovered by the utility either through its rates for generation and distribution*
 1411 *services or pursuant to § 56-249.6.*

1412 *1. Each Phase I Utility shall construct, acquire, or enter into agreements to purchase the energy,*
 1413 *capacity, and environmental attributes of 600 megawatts of generating capacity using energy derived*
 1414 *from sunlight or onshore wind.*

1415 *a. By December 31, 2023, each Phase I Utility shall construct or acquire at least 200 megawatts of*
 1416 *generating capacity located in the Commonwealth using energy derived from sunlight or onshore wind,*

1417 and approximately 35 percent of such generating capacity procured shall be from the purchase of
1418 energy, capacity, and environmental attributes from solar or onshore wind facilities owned by persons
1419 other than the utility, with the remainder, in the aggregate, being from construction or acquisition by
1420 such Phase I Utility.

1421 b. By December 31, 2027, each Phase I Utility shall construct or acquire at least 200 megawatts of
1422 additional generating capacity located in the Commonwealth using energy derived from sunlight or
1423 onshore wind, and approximately 35 percent of such generating capacity procured shall be from the
1424 purchase of energy, capacity, and environmental attributes from solar or onshore wind facilities owned
1425 by persons other than the utility, with the remainder, in the aggregate, being from construction or
1426 acquisition by such Phase I Utility.

1427 c. By December 31, 2030, each Phase I Utility shall construct or acquire at least 200 megawatts of
1428 additional generating capacity located in the Commonwealth using energy derived from sunlight or
1429 onshore wind, and approximately 35 percent of such generating capacity procured shall be from the
1430 purchase of energy, capacity, and environmental attributes from solar or onshore wind facilities owned
1431 by persons other than the utility, with the remainder, in the aggregate, being from construction or
1432 acquisition by such Phase I Utility.

1433 d. Nothing in this subdivision 1 shall prohibit such Phase I Utility from construction or acquiring, or
1434 entering into agreements to purchase the energy, capacity, and environmental attributes of more than
1435 600 megawatts of generating capacity located in the Commonwealth using energy derived from sunlight
1436 or onshore wind, provided the utility receives approval from the Commission pursuant to §§ 56-580 and
1437 56-585.1.

1438 2. By December 31, 2035, each Phase II Utility shall construct or acquire, or enter into agreements
1439 to purchase the energy, capacity, and environmental attributes of, 16,100 megawatts of generating
1440 capacity located in the Commonwealth using energy derived from sunlight or onshore wind, which shall
1441 include 1,100 megawatts of solar generation of a nameplate capacity not to exceed three megawatts per
1442 individual project. At least 200 megawatts of the 16,100 megawatts shall be placed on previously
1443 developed project sites.

1444 a. By December 31, 2024, each Phase II Utility shall construct or acquire at least 3,000 megawatts
1445 of generating capacity located in the Commonwealth using energy derived from sunlight or onshore
1446 wind, and approximately 35 percent of such generating capacity procured shall be from the purchase of
1447 energy, capacity, and environmental attributes from solar or onshore wind facilities owned by persons
1448 other than the utility, with the remainder, in the aggregate, being from construction or acquisition by
1449 such Phase II Utility.

1450 b. By December 31, 2027, each Phase II Utility shall construct or acquire at least 3,000 megawatts
1451 of additional generating capacity located in the Commonwealth using energy derived from sunlight or
1452 onshore wind, and approximately 35 percent of such generating capacity procured shall be from the
1453 purchase of energy, capacity, and environmental attributes from solar or onshore wind facilities owned
1454 by persons other than the utility, with the remainder, in the aggregate, being from construction or
1455 acquisition by such Phase II Utility.

1456 c. By December 31, 2030, each Phase II Utility shall construct or acquire at least 4,000 megawatts
1457 of additional generating capacity located in the Commonwealth using energy derived from sunlight or
1458 onshore wind, and approximately 35 percent of such generating capacity procured shall be from the
1459 purchase of energy, capacity, and environmental attributes from solar or onshore wind facilities owned
1460 by persons other than the utility, with the remainder, in the aggregate, being from construction or
1461 acquisition by such Phase II Utility.

1462 d. By December 31, 2035, each Phase II Utility shall construct or acquire at least 7,300 megawatts
1463 of additional generating capacity located in the Commonwealth using energy derived from sunlight or
1464 onshore wind, and approximately 35 percent of such generating capacity procured shall be from the
1465 purchase of energy, capacity, and environmental attributes from solar or onshore wind facilities owned
1466 by persons other than the utility, with the remainder, in the aggregate, being from construction or
1467 acquisition by such Phase II Utility.

1468 e. Nothing in this subdivision 2 shall prohibit such Phase II Utility from construction or acquiring,
1469 or entering into agreements to purchase the energy, capacity, and environmental attributes of more than
1470 16,100 megawatts of generating capacity located in the Commonwealth using energy derived from
1471 sunlight or onshore wind, provided the utility receives approval from the Commission pursuant to
1472 §§ 56-580 and 56-585.1.

1473 3. Nothing in this section shall prohibit a utility from petitioning the Commission to construct or
1474 acquire zero-carbon electricity or from entering into contracts to procure the energy, capacity, and
1475 environmental attributes of zero-carbon electricity generating resources in excess of the requirements in
1476 subsection B. The Commission shall determine whether to approve such petitions on a standalone basis
1477 pursuant to § 56-580 and 56-585.1, provided that the Commission's review shall also consider whether
1478 the proposed generating capacity (i) is necessary to meet the utility's native load, (ii) is likely to lower

1479 customer fuel costs, (iii) will provide economic development opportunities in the Commonwealth, and
 1480 (iv) serves a need that cannot be more affordably met with demand-side or energy storage resources.

1481 Each Phase I and Phase II Utility shall, at least once every year, conduct a request for proposals for
 1482 new solar and wind resources. Such requests shall quantify and describe the utility's need for energy,
 1483 capacity, or renewable energy certificates. The requests for proposals shall be publicly announced and
 1484 made available for public review on the utility's website at least 45 days prior to the closing of such
 1485 request for proposals. The requests for proposals shall provide, at a minimum, the following
 1486 information: (i) the size, type, and timing of resources for which the utility anticipates contracting; (ii)
 1487 any minimum thresholds that must be met by respondents; (iii) major assumptions to be used by the
 1488 utility in the bid evaluation process, including environmental emission standards; (iv) detailed
 1489 instructions for preparing bids so that bids can be evaluated on a consistent basis; (v) the preferred
 1490 general location of additional capacity; and (vi) specific information concerning the factors involved in
 1491 determining the price and non-price criteria used for selecting winning bids. A utility may evaluate
 1492 responses to requests for proposals based on any criteria that it deems reasonable but shall at a
 1493 minimum consider the following in its selection process: (a) the status of a particular project's
 1494 development; (b) the age of existing generation facilities; (c) the demonstrated financial viability of a
 1495 project and the developer; (d) a developer's prior experience in the field; (e) the location and effect on
 1496 the transmission grid of a generation facility; (f) benefits to the Commonwealth that are associated with
 1497 particular projects, including regional economic development and the use of goods and services from
 1498 Virginia businesses; and (g) the environmental impacts of particular resources, including impacts on air
 1499 quality within the Commonwealth and the carbon intensity of the utility's generation portfolio.

1500 4. In connection with the requirements of this subsection, each Phase I and Phase II Utility shall,
 1501 commencing in 2020 and concluding in 2030, submit annually a plan and petition for approval for the
 1502 development of new solar and onshore wind generation capacity. Such plan shall reflect, in the
 1503 aggregate and over its duration, the requirements of subdivision D concerning the allocation
 1504 percentages for construction or purchase of such capacity. Such petition may contain a request for
 1505 approval to construct such facilities pursuant to subsection D of § 56-580 and a request for approval or
 1506 update of a rate adjustment clause pursuant to subdivision A 6 of § 56-585.1 to recover the costs of
 1507 such facilities. Such plan shall also include the utility's plan to meet the energy storage project targets
 1508 of subdivision E, including the goal of installing at least 10 percent of such energy storage projects
 1509 behind the meter. Notwithstanding any other provision of this title, the Commission's final order
 1510 regarding any such petition and associated requests shall be entered by the Commission not more than
 1511 six months after the date of the filing of such petition.

1512 5. If, in any year, a retail supplier of electricity is unable to meet the compliance obligation of the
 1513 RPS Program requirements or if the cost of RECs necessary to comply with RPS Program requirements
 1514 exceeds \$45 per megawatt hour, such supplier shall be obligated to make a deficiency payment equal to
 1515 \$45 for each megawatt-hour shortfall for the year of noncompliance, except that the deficiency payment
 1516 for any shortfall in procuring RECs for solar, wind, or anaerobic digesters located in the
 1517 Commonwealth shall be \$75 per megawatts hour for resources one megawatt and lower. The amount of
 1518 any deficiency payment shall increase by one percent annually after 2021. A Phase I or Phase II Utility
 1519 shall be entitled to recover the costs of such payments as a cost of compliance with the requirements of
 1520 this subsection pursuant to subdivision A 5 d of § 56-585.1. All proceeds from the deficiency payments
 1521 shall be deposited into an interest-bearing account administered by the Department of Mines, Minerals
 1522 and Energy. In administering this account, the Department of Mines, Minerals and Energy shall manage
 1523 the account as follows: (i) 50 percent of total revenue shall be directed to job training programs in
 1524 historically economically disadvantaged communities; (ii) 16 percent of total revenue shall be directed
 1525 to energy efficiency measures for public facilities; (iii) 30 percent of total revenue shall be directed to
 1526 renewable energy programs located in historically economically disadvantaged communities; and (iv)
 1527 four percent of total revenue shall be directed to administrative costs.

1528 E. To enhance reliability and performance of the utility's generation and distribution system, each
 1529 Phase I and Phase II Utility shall construct or acquire new, utility-owned energy storage resources.

1530 1. By December 31, 2035, each Phase I Utility shall construct or acquire 400 megawatts of energy
 1531 storage capacity. Nothing shall prohibit a Phase I Utility from constructing or acquiring more than 400
 1532 megawatts of energy storage, provided the utility receives approval from the Commission pursuant to
 1533 §§ 56-580 and 56-585.1.

1534 2. By December 31, 2035, each Phase II Utility shall construct or acquire 2,700 megawatts of
 1535 energy storage capacity. Nothing shall prohibit a Phase II Utility from constructing or acquiring more
 1536 than 2,700 megawatts of energy storage, provided the utility receives approval from the Commission
 1537 pursuant to §§ 56-580 and 56-585.1.

1538 3. No single energy storage project shall exceed 500 megawatts in size, except that a Phase II Utility
 1539 may procure a single energy storage project up to 800 megawatts.

1540 4. All energy storage projects procured pursuant to this subsection shall meet the competitive
1541 procurement protocols established in subdivision D 3.

1542 5. Approximately 35 percent of the energy storage projects shall be owned and operated by third
1543 parties. By January 1, 2021, the Commission shall adopt regulations to achieve the deployment of
1544 energy storage for the Commonwealth required in subdivisions E 1 and E 2, including regulations that
1545 set interim targets and update existing utility planning and procurement rules. The regulations shall
1546 include programs and mechanisms to deploy energy storage, including competitive solicitations,
1547 behind-the-meter incentives, non-wires alternatives programs, and peak demand reduction programs.

1548 F. Nothing in this section shall apply to any entity organized under Chapter 9.1 [of Title 56
1549 (§ 56-231.15 et seq.)] .

1550 G. The Commission shall adopt such rules and regulations as may be necessary to implement the
1551 provisions of this section, including a requirement that participants verify whether the RPS Program
1552 requirements are met in accordance with this section.

1553 § [~~56-585.5~~ 56-585.6] . **Universal service fee; Percentage of Income Payment Program.**

1554 A. The Commission shall set the rate of a non-bypassable universal service fee to fund the
1555 Percentage of Income Payment Program established pursuant to § 63.2-806. Such universal service fee
1556 shall be allocated to retail electric customers on the basis of the amount of kilowatt-hours used.

1557 B. An investor-owned electric utility shall collect such universal service fee and remit such funds to
1558 the Percentage of Income Payment Fund established pursuant to § 63.2-806.

1559 C. The Commission shall assist the Department of Housing and Community Development (the
1560 Department) in the administration of the Percentage of Income Payment Program as requested by the
1561 Department.

1562 **§ 56-594. Net energy metering provisions.**

1563 A. The Commission shall establish by regulation a program that affords eligible customer-generators
1564 the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014,
1565 for customers of investor-owned utilities and to begin no later than July 1, 2015, and to end July 1,
1566 2019, for customers of electric cooperatives as provided in subsection G, to afford eligible agricultural
1567 customer-generators the opportunity to participate in net energy metering. The regulations may include,
1568 but need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or
1569 transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible
1570 agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission
1571 determines will facilitate the provision of net energy metering, provided that the Commission determines
1572 that such requirements do not adversely affect the public interest. On and after July 1, 2017, small
1573 agricultural generators or eligible agricultural customer-generators may elect to interconnect pursuant to
1574 the provisions of this section or as small agricultural generators pursuant to § 56-594.2, but not both.
1575 Existing eligible agricultural customer-generators may elect to become small agricultural generators, but
1576 may not revert to being eligible agricultural customer-generators after such election. On and after July 1,
1577 2019, interconnection of eligible agricultural customer-generators shall cease for electric cooperatives
1578 only, and such facilities shall interconnect solely as small agricultural generators. For electric
1579 cooperatives, eligible agricultural customer-generators whose renewable energy generating facilities were
1580 interconnected before July 1, 2019, may continue to participate in net energy metering pursuant to this
1581 section for a period not to exceed 25 years from the date of their renewable energy generating facility's
1582 original interconnection.

1583 B. For the purpose of this section:

1584 "Eligible agricultural customer-generator" means a customer that operates a renewable energy
1585 generating facility as part of an agricultural business, which generating facility (i) uses as its sole energy
1586 source solar power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an aggregate
1587 generation capacity of more than 500 kilowatts, (iii) is located on land owned or controlled by the
1588 agricultural business, (iv) is connected to the customer's wiring on the customer's side of its
1589 interconnection with the distributor; (v) is interconnected and operated in parallel with an electric
1590 company's transmission and distribution facilities, and (vi) is used primarily to provide energy to
1591 metered accounts of the agricultural business. An eligible agricultural customer-generator may be served
1592 by multiple meters that are located at separate but contiguous sites, such that the eligible agricultural
1593 customer-generator may aggregate in a single account the electricity consumption and generation
1594 measured by the meters, provided that the same utility serves all such meters. The aggregated load shall
1595 be served under the appropriate tariff.

1596 "Eligible customer-generator" means a customer that owns and operates, or contracts with other
1597 persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than
1598 20 kilowatts for residential customers and not more than ~~one megawatt~~ three megawatts for
1599 nonresidential customers on an electrical generating facility placed in service after July 1, 2015; (ii) uses
1600 as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's
1601 premises and is connected to the customer's wiring on the customer's side of its interconnection with the

1602 distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and
 1603 distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity
 1604 requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of
 1605 any generating facility installed under this section after July 1, 2015 2020, shall not exceed 100 percent
 1606 for a Phase I utility and 150 percent for a Phase II facility of the expected annual energy consumption
 1607 based on the previous 12 months of billing history or an annualized calculation of billing history if 12
 1608 months of billing history is not available.

1609 *"Low-income customer" means a person or household that is an existing participant or eligible to*
 1610 *participate in any of the following programs: the Home Energy Assistance Program, the state plan for*
 1611 *medical assistance, the Supplemental Nutrition Assistance Program, the Special Supplemental Nutrition*
 1612 *Program for Women, Infants, and Children, the Housing Choice Voucher Program, the Family Access to*
 1613 *Medical Insurance Security Plan, or Temporary Assistance for Needy Families.*

1614 "Net energy metering" means measuring the difference, over the net metering period, between (i)
 1615 electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the
 1616 electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible
 1617 customer-generator or eligible agricultural customer-generator.

1618 "Net metering period" means the 12-month period following the date of final interconnection of the
 1619 eligible customer-generator's or eligible agricultural customer-generator's system with an electric service
 1620 provider, and each 12-month period thereafter.

1621 "Small agricultural generator" has the same meaning that is ascribed to that term in § 56-594.2.

1622 C. The Commission's regulations shall ensure that (i) the metering equipment installed for net
 1623 metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible
 1624 customer-generator seeking to participate in net energy metering shall notify its supplier and receive
 1625 approval to interconnect prior to installation of an electrical generating facility. The electric distribution
 1626 company shall have 30 days from the date of notification for residential facilities, and 60 days from the
 1627 date of notification for nonresidential facilities, to determine whether the interconnection requirements
 1628 have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary
 1629 interconnection. An eligible customer-generator's electrical generating system, and each electrical
 1630 generating system of an eligible agricultural customer-generator, shall meet all applicable safety and
 1631 performance standards established by the National Electrical Code, the Institute of Electrical and
 1632 Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the
 1633 requirements set forth in this section and to ensure public safety, power quality, and reliability of the
 1634 supplier's electric distribution system, an eligible customer-generator or eligible agricultural
 1635 customer-generator whose electrical generating system meets those standards and rules shall bear all
 1636 reasonable costs of equipment required for the interconnection to the supplier's electric distribution
 1637 system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests,
 1638 and (c) purchase additional liability insurance.

1639 D. The Commission shall establish minimum requirements for contracts to be entered into by the
 1640 parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or
 1641 eligible agricultural customer-generator against discrimination by virtue of its status as an eligible
 1642 customer-generator or eligible agricultural customer-generator, and permit customers that are served on
 1643 time-of-use tariffs that have electricity supply demand charges contained within the electricity supply
 1644 portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural
 1645 customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible
 1646 customer-generators or eligible agricultural customer-generators served on demand charge-based
 1647 time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

1648 E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator
 1649 over the net metering period exceeds the electricity consumed by the eligible customer-generator or
 1650 eligible agricultural customer-generator, the customer-generator or eligible agricultural
 1651 customer-generator shall be compensated for the excess electricity if the entity contracting to receive
 1652 such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter
 1653 into a power purchase agreement for such excess electricity. Upon the written request of the eligible
 1654 customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible
 1655 customer-generator or eligible agricultural customer-generator shall enter into a power purchase
 1656 agreement with the requesting eligible customer-generator or eligible agricultural customer-generator that
 1657 is consistent with the minimum requirements for contracts established by the Commission pursuant to
 1658 subsection D. The power purchase agreement shall obligate the supplier to purchase such excess
 1659 electricity at the rate that is provided for such purchases in a net metering standard contract or tariff
 1660 approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator
 1661 or eligible agricultural customer-generator owns any renewable energy certificates associated with its
 1662 electrical generating facility; however, at the time that the eligible customer-generator or eligible

1663 agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible
1664 customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the
1665 renewable energy certificates associated with such electrical generating facility to its supplier and be
1666 compensated at an amount that is established by the Commission to reflect the value of such renewable
1667 energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible
1668 agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale
1669 and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the
1670 eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell
1671 its renewable energy certificates to its supplier at Commission-approved prices at the time that the
1672 eligible customer-generator or eligible agricultural customer-generator enters into a power purchase
1673 agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and
1674 renewable energy certificates from eligible customer-generators or eligible agricultural
1675 customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate
1676 adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be
1677 recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall
1678 be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator
1679 for the purchase of excess electricity and renewable energy certificates and any administrative costs
1680 incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power
1681 purchase arrangements. The net metering standard contract or tariff shall be available to eligible
1682 customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in
1683 each electric distribution company's Virginia service area until the rated generating capacity owned and
1684 operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural
1685 generators in the Commonwealth reaches ~~one~~ six percent, *in the aggregate, five percent of which is*
1686 *available to all customers and one percent of which is available only to low-income customers* of each
1687 electric distribution company's adjusted Virginia peak-load forecast for the previous year (~~the~~
1688 ~~systemwide cap~~), and shall require the supplier to pay the eligible customer-generator or eligible
1689 agricultural customer-generator for such excess electricity in a timely manner at a rate to be established
1690 by the Commission.

1691 *On and after the earlier of (i) 2024 for a Phase I Utility or 2025 for a Phase II Utility or (ii) when*
1692 *the aggregate rated generating capacity owned and operated by eligible customer-generators, eligible*
1693 *agricultural customer-generators, and small agricultural generators in the Commonwealth reaches 3*
1694 *percent of a Phase I or Phase II Utility's adjusted Virginia peak-load forecast for the previous year, the*
1695 *Commission shall conduct a net energy metering proceeding.*

1696 *In any net energy metering proceeding, the Commission shall, after notice and opportunity for*
1697 *hearing, evaluate and establish (i) an amount customers shall pay on their utility bills each month for*
1698 *the costs of using the utility's infrastructure; (ii) an amount the utility shall pay to appropriately*
1699 *compensate the customer, as determined by the Commission, for the total benefits such facilities provide;*
1700 *(iii) the direct and indirect economic impact of net metering to the Commonwealth; and (iv) any other*
1701 *information the Commission deems relevant. The Commission shall establish an appropriate rate*
1702 *structure related thereto, which shall govern compensation related to all eligible customer-generators,*
1703 *eligible agricultural customer-generators, and small agricultural generators, except low-income*
1704 *customers, that interconnect after the effective date established in the Commission's final order. Nothing*
1705 *in the Commission's final order shall affect any eligible customer-generators, eligible agricultural*
1706 *customer-generators, and small agricultural generators who interconnect before the effective date of*
1707 *such final order. As part of the net energy metering proceeding, the Commission shall evaluate the six*
1708 *percent aggregate net metering cap and may, if appropriate, raise or remove such cap. The Commission*
1709 *shall enter its final order in such a proceeding no later than 12 months after it commences such*
1710 *proceeding, and such final order shall establish a date by which the new terms and conditions shall*
1711 *apply for interconnection and shall also provide that, if the terms and conditions of compensation in the*
1712 *final order differ from the terms and conditions available to customers before the proceeding,*
1713 *low-income customers may interconnect under whichever terms are most favorable to them.*

1714 F. Any residential eligible customer-generator or eligible agricultural customer-generator who owns
1715 and operates, or contracts with other persons to own, operate, or both, an electrical generating facility
1716 with a capacity that exceeds ~~40~~ 15 kilowatts shall pay to its supplier, in addition to any other charges
1717 authorized by law, a monthly standby charge. The amount of the standby charge and the terms and
1718 conditions under which it is assessed shall be in accordance with a methodology developed by the
1719 supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby
1720 charge methodology if it finds that the standby charges collected from all such eligible
1721 customer-generators and eligible agricultural customer-generators allow the supplier to recover only the
1722 portion of the supplier's infrastructure costs that are properly associated with serving such eligible
1723 customer-generators or eligible agricultural customer-generators. Such an eligible customer-generator or
1724 eligible agricultural customer-generator shall not be liable for a standby charge until the date specified in

1725 an order of the Commission approving its supplier's methodology.

1726 G. On and after the later of July 1, 2019, or the effective date of regulations that the Commission is
 1727 required to adopt pursuant to § 56-594.01, (i) net energy metering in the service territory of each electric
 1728 cooperative shall be conducted as provided in a program implemented pursuant to § 56-594.01 and (ii)
 1729 the provisions of this section shall not apply to net energy metering in the service territory of an electric
 1730 cooperative except as provided in § 56-594.01.

1731 H. The Commission may adopt such rules or establish such guidelines as may be necessary for its
 1732 general administration of this section.

1733 I. When any electric utility notifies the Commission that it has received sufficient applications to
 1734 satisfy 60 percent of available nameplate capacity under the net metering program, the Commission
 1735 shall open a generic docket to:

1736 1. Investigate and determine the costs and benefits of the current net energy metering program;

1737 2. Establish an appropriate netting measurement interval for a successor tariff that is just and
 1738 reasonable in light of the costs and benefits of the net metering program in aggregate, and applicable to
 1739 new requests for net energy metering service submitted after the limit in § 56-594 is reached; and

1740 3. Determine a specific avoided cost for customer-generators, a different types of customer-generator
 1741 technologies where the Commission deems it appropriate, and to establish the methodology for
 1742 determining the compensation rate for any net excess generation determined according to the applicable
 1743 net measurement interval for any new tariff.

1744 J. In evaluating the costs and benefits of the net energy metering program, the Commission shall
 1745 consider:

1746 1. The aggregate impact of customer-generators on the electric utility's long-run marginal costs of
 1747 generation, distribution, and transmission;

1748 2. The cost of service implications of customer-generators on other customers within the same class,
 1749 including an evaluation of whether customer-generators provide an adequate rate of return to the
 1750 electrical utility compared to the otherwise applicable rate class when, for analytical purposes only,
 1751 examined as a separate class within a cost of service study;

1752 3. The direct and indirect economic impact of the net energy metering program to the
 1753 Commonwealth; and

1754 4. Any other information it deems relevant, including environmental and resilience benefits of
 1755 customer-generator facilities.

1756 **§ 56-596.2. Energy efficiency programs; financial assistance for low-income customers;
 1757 Percentage of Income Payment Plan weatherization program.**

1758 A. For purposes of this section, "net annual savings" means (i) the total combined energy savings
 1759 achieved by deployed energy efficiency and demand response measures, net of free rider savings from
 1760 customers who would have implemented a measure in absence of utility-delivered energy efficiency
 1761 programs and net of spillover savings from customers who implement an efficiency measure not directly
 1762 targeted by utility-delivered energy efficiency programs and (ii) savings attributable to newly installed
 1763 combined heat and power facilities, including waste heat-to-power facilities, either as a demand-side
 1764 energy efficiency measure or a supply-side generation alternative, including any associated reduction in
 1765 transmission line losses, provided that biomass is not a fuel and the total efficiency, including the use of
 1766 thermal energy, for eligible combined heat and power facilities must meet or exceed 65 percent and
 1767 have a nameplate capacity rating of less than 25 megawatts.

1768 "Qualified waste heat resource" means (i) exhaust heat or flared gas from an industrial process that
 1769 does not have, as its primary purpose, the production of electricity and (ii) a pressure drop in any gas
 1770 for an industrial or commercial process.

1771 "Waste heat to power" means a system that generates electricity through the recovery of a qualified
 1772 waste heat resource.

1773 Each Phase I Utility and Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1,

1774 B. Notwithstanding subsection G of § 56-580, or any other provision of law, each incumbent
 1775 investor-owned electric utility shall develop a proposed program of energy conservation measures. Any
 1776 program shall provide for the submission of a petition or petitions for approval to design, implement,
 1777 and operate energy efficiency programs pursuant to subdivision A 5 c of § 56-585.1. At least five 15
 1778 percent of such proposed costs of energy efficiency programs shall be allocated to programs designed to
 1779 benefit low-income, elderly, and or disabled individuals or veterans.

1780 C. Notwithstanding any other provision of law, each investor-owned incumbent electric utility shall
 1781 implement energy efficiency programs and measures to achieve the following annual energy efficiency
 1782 savings, as measured by the total combined kilowatt-hour savings achieved by deployed efficiency and
 1783 demand response measures:

1784 1. For Phase I electric utilities:

1785 a. In calendar year 2022, at least 0.25 percent of the average annual energy jurisdictional retail

1786 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1787 b. In calendar year 2023, at least 0.50 percent of the average annual energy jurisdictional retail

1788 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1789 c. In calendar year 2024, at least 0.75 percent of the average annual energy jurisdictional retail

1790 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1791 d. In calendar year 2025, at least [~~1.00~~ 2.00] percent of the average annual energy jurisdictional

1792 retail sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1793 2. For Phase II electric utilities:

1794 a. In calendar year 2022, at least 0.25 percent of the average annual energy jurisdictional retail

1795 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1796 b. In calendar year 2023, at least 0.75 percent of the average annual energy jurisdictional retail

1797 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1798 c. In calendar year 2024, at least 1.75 percent of the average annual energy jurisdictional retail

1799 sales by that utility in 2019, adjusted for any supply service customer loss since that time;

1800 d. In calendar year 2025, at least [~~2.5~~ 5.0] percent of the average annual energy jurisdictional

1801 retail sales by that utility in 2019, adjusted for any supply service customer loss since that time.

1802 3. Beginning in 2026, and every three years thereafter, in each utility's annual energy efficiency rate

1803 adjustment clause proceeding the Commission shall adjust the utility's required energy efficiency savings

1804 goals for the successive three-year period. As part of such proceeding, the Commission may consider the

1805 feasibility of achieving energy efficiency goals and future energy efficiency savings through cost-effective

1806 programs and measures.

1807 D. The projected costs for the utility to design, implement, and operate such energy efficiency

1808 programs, ~~including a margin to be recovered on operating expenses,~~ shall be no less than an aggregate

1809 amount of \$140 million for a Phase I Utility and \$870 million for a Phase II Utility for the period

1810 beginning July 1, 2018, and ending July 1, 2028, including any existing approved energy efficiency

1811 programs. In developing such portfolio of energy efficiency programs, each utility shall utilize a

1812 stakeholder process, to be facilitated by an independent monitor compensated under the funding provided

1813 pursuant to subdivision E of § 56-592.1, to provide input and feedback on (i) the development of such

1814 energy efficiency programs and portfolios of programs; (ii) compliance with the annual energy

1815 efficiency savings set forth in this subsection and how such savings affect utility integrated resource

1816 plans; (iii) recommended policy reforms by which the General Assembly or the Commission can ensure

1817 maximum and cost-effective deployment of energy efficiency technology across the Commonwealth, and

1818 (iv) best practices for evaluation, measurement, and verification for the purposes of assessing

1819 compliance with the annual energy efficiency savings set forth in subsection C. Utilities shall utilize the

1820 services of a third party to perform evaluation, measurement, and verification services to determine a

1821 utility's cumulative annual savings as required by this subdivision, as well as the annual and lifecycle

1822 net and gross energy and capacity savings, related emissions reductions, and other quantifiable benefits

1823 of each program; total customer bill savings that the programs and portfolios produce; and utility

1824 spending on each program, including any associated administrative costs. The third-party evaluator

1825 shall include and review each utility's avoided costs and cost-benefit analyses. The findings and reports

1826 of such third parties shall be concurrently provided to both the Commission and the utility, and the

1827 Commission shall make each such final annual report easily and publicly accessible online. Such

1828 stakeholder process shall include the participation of representatives from each utility, relevant directors,

1829 deputy directors, and staff members of the ~~State Corporation~~ Commission who participate in approval

1830 and oversight of utility efficiency programs, the office of Consumer Counsel of the Attorney General,

1831 the Department of Mines, Minerals and Energy, energy efficiency program implementers, energy

1832 efficiency providers, residential and small business customers, and any other interested stakeholder who

1833 the independent monitor deems appropriate for inclusion in such process. The independent monitor shall

1834 convene meetings of the participants in the stakeholder process not less frequently than twice in each

1835 calendar year during the period beginning July 1, 2019, and ending July 1, 2028. The independent

1836 monitor shall report on the status of the energy efficiency stakeholder process, including (i) the

1837 objectives established by the stakeholder group during this process related to programs to be proposed,

1838 (ii) recommendations related to programs to be proposed that result from the stakeholder process, and

1839 (iii) the status of those recommendations, in addition to the petitions filed and the determination thereon,

1840 to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate

1841 Commerce and Labor Committees on July 1, 2019, and annually thereafter through July 1, 2028.

1842 E. Nothing in this section shall apply to any entity organized under Chapter 9.1 (§ 56-231.15 et seq.)

1843 of Title 56.

1844 **§ 63.2-806. Percentage of Income Payment Program and Fund; report; survey.**

1845 A. The General Assembly declares that it is the policy of the Commonwealth to ensure that the

1846 residential energy burden on low-income families is affordable and sustainable and to educate such

1847 families about energy conservation. To this end, the Percentage of Income Payment Program (PIPP) is

1848 hereby created, and the Department of Housing and Community Development is designated as the state
1849 agency responsible for administering such program.

1850 B. The monthly electric utility payment of any person participating in PIPP shall be capped at six
1851 percent, or, if the participant's home uses electric heat, 10 percent, of the participant's household
1852 income. A participant may further reduce his monthly electric utility payment through a conservation
1853 program incentive. Under this program incentive, if a participant lowers his monthly electricity usage
1854 below his historical baseline average, the participant's electric utility bill for such month shall be
1855 reduced by 50 percent of the monetary amount by which such participant lowered his usage.

1856 After a person participates in PIPP for 12 months, the electric utility provider shall transition the
1857 participant to a budget billing system if such transition would lower such participant's monthly electric
1858 utility payment. If transition to a budget billing system would not lower the participant's monthly electric
1859 utility payment, a comprehensive audit shall be conducted on the participant's home to identify energy
1860 inefficiencies, and the participant's home shall be retrofitted with any energy-saving equipment or
1861 measures necessary to ensure that the participant's energy burden is affordable and sustainable.
1862 Participants who transition to a budget billing system in accordance with this subsection shall be
1863 forgiven of any arrearages on electric utility bills accrued prior to participation in PIPP upon making
1864 timely and full PIPP payments to the electric utility provider for 12 consecutive months; all other PIPP
1865 participants shall be forgiven of arrearages accrued prior to participation in PIPP after making timely
1866 and full PIPP payments to the electric utility provider for 12 consecutive months.

1867 C. A person shall be eligible to participate in PIPP if:

1868 1. Such person or his household is an existing participant or is eligible to participate in any of the
1869 following: the Home Energy Assistance Program, the state plan for medical assistance, the Supplemental
1870 Nutrition Assistance Program, the Special Supplemental Nutrition Program for Women, Infants, and
1871 Children, the Housing Choice Voucher Program, the Family Access to Medical Insurance Security Plan,
1872 or Temporary Assistance for Needy Families; and

1873 2. Such person (i) participates in an energy efficiency and weatherization program established by
1874 regulations of the Department of Housing and Community Development, which shall include an annual
1875 audit of energy usage; (ii) complies with any energy education and training requirements set forth in
1876 regulations of the Department of Housing and Community Development, including annual energy usage
1877 and behavioral assessments; and (iii) agrees to any data access and sharing policies necessary to
1878 provide the Department of Housing and Community Development with information regarding the
1879 applicant's energy usage and payment activities with the electric utility provider both at the time of
1880 application and throughout his participation in PIPP.

1881 D. There is hereby created in the state treasury a special nonreverting fund to be known as the
1882 Percentage of Income Payment Fund, hereinafter "the Fund." Moneys in the Fund shall be used to:

1883 1. Pay to electric utility providers the monthly account balances of PIPP participants that remain
1884 after such participants' percentage-of-income payment less any earned conservation program incentive
1885 deductions; and

1886 2. Fund the energy efficiency, weatherization, and educational and training programs and initiatives
1887 established by the Department of Housing and Community Development for the implementation of PIPP.

1888 The Fund shall be established on the books of the Comptroller. The Fund shall consist of moneys
1889 contributed by electric utility providers collected through a non-bypassable universal service fee
1890 pursuant to § 56-585.5. Interest earned on moneys in the Fund shall remain in the Fund and be credited
1891 to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall
1892 not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for
1893 the purposes set forth in this section. The State Treasurer shall make expenditures and disbursements
1894 from the Fund on warrants issued by the Comptroller upon written request signed by the Director of the
1895 Department of Housing and Community Development. Up to 12 percent of the Fund may be used to pay
1896 the Department of Housing and Community Development's expenses in administering PIPP.

1897 E. In administering PIPP, it shall be the responsibility of the Department of Housing and Community
1898 Development to:

1899 1. Administer distributions from the Fund;

1900 2. Lead and facilitate meetings with electric utility providers for the purpose of sharing information
1901 and implementing the program;

1902 3. Collect and analyze data regarding the amounts of energy assistance provided through PIPP;

1903 4. Develop and maintain a statewide list of available private and governmental resources for
1904 low-income Virginians in need of energy assistance; and

1905 5. Report annually to the Governor and the General Assembly on or before October 1 of each year
1906 on the effectiveness of PIPP in meeting the energy needs of low-income Virginians. In preparing the
1907 report, the Department shall:

1908 a. Conduct a survey each year that collects information regarding the extent to which the

1909 Commonwealth's PIPP efforts are adequate and are not duplicative of similar services provided by
 1910 utility services providers, charitable organizations, or local governments;

1911 b. Obtain information on energy programs in other states; and

1912 c. Obtain any information necessary to complete the required annual survey and report.

1913 F. Actions of the Department relating to the review, allocation, and awarding of benefits and grants
 1914 shall be exempt from the provisions of Articles 3 (§ 2.2-4018 et seq.) and 4 (§ 2.2-4024 et seq.) of the
 1915 Administrative Process Act.

1916 G. No employee or former employee of the Department of Housing and Community Development
 1917 shall divulge any information acquired by him in the performance of his duties with respect to the
 1918 income or assistance eligibility of any individual or household obtained in the course of administering
 1919 PIPP, except in accordance with a proper judicial order. The provisions of this subsection shall not
 1920 apply to (i) acts performed or words spoken or published in the line of duty under law; (ii) inquiries
 1921 and investigations to obtain information as to the implementation of this section by a duly constituted
 1922 committee of the General Assembly, or when such inquiry or investigation is relevant to its study,
 1923 provided that any such information shall be privileged; or (iii) the publication of statistics so classified
 1924 as to prevent the identification of any individual or household.

1925 H. This section shall not apply to any entity organized pursuant to Chapter 9.1 of Title 56.

1926 **2. That § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, as**
 1927 **amended by Chapter 803 of the Acts of Assembly of 2017, is amended and reenacted as follows:**

1928 § 1. That the State Corporation Commission (Commission) shall conduct a pilot program programs
 1929 under which a person that owns or operates a solar-powered or wind-powered electricity generation
 1930 facility located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of
 1931 the Code of Virginia, shall be permitted to sell the electricity generated from such facility exclusively to
 1932 such eligible customer-generator under a power purchase agreement used to provide third party financing
 1933 of the costs of such a renewable generation facility (third party power purchase agreement), subject to
 1934 the following terms, conditions, and restrictions:

1935 a. A pilot program shall be conducted within the certificated service territory of an each
 1936 investor-owned electric utility other than a utility described in subsection G of § 56-580 of the Code of
 1937 Virginia ("Pilot Utility"); provided that within the certificated service territory of an investor-owned
 1938 utility that was not bound by a rate case settlement adopted by the Commission that extended in its
 1939 application beyond January 1, 2002, nonprofit, private institutions of higher education as defined in
 1940 § 23.1-100 of the Code of Virginia that are not being served by generation provided under subdivision A
 1941 5 of § 56-577 of the Code of Virginia shall be deemed to be customer-generators eligible to participate
 1942 in the pilot program;

1943 b. The aggregated capacity of all generation facilities that are subject to such third party power
 1944 purchase agreements at any time during the pilot program shall not exceed 50 [~~500~~ 1000] megawatts
 1945 for an investor-owned utility that was bound by a rate case settlement adopted by the Commission that
 1946 extended in its application beyond January 1, 2002, or seven 30 megawatts for an investor-owned utility
 1947 that was not bound by a rate case settlement adopted by the Commission that extended in its application
 1948 beyond January 1, 2002. Such limitation on the aggregated capacity of such facilities shall constitute a
 1949 portion of the existing limit of ~~one~~ six percent of each Pilot Utility's adjusted Virginia peak-load forecast
 1950 for the previous year that is available to eligible customer-generators pursuant to subsection E of
 1951 § 56-594 of the Code of Virginia. Notwithstanding any provision of this act that incorporates provisions
 1952 of § 56-594, the seller and the customer shall elect either to (i) enter into their third party power
 1953 purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering
 1954 program under § 56-594 or (ii) provide that electricity generated from the generation facilities subject to
 1955 the third party power purchase agreement will not be net metered under § 56-594, provided that an
 1956 election not to net meter under § 56-594 shall not exempt the third party power purchase agreement and
 1957 the parties thereto from the requirements of this act that incorporate provisions of § 56-594;

1958 c. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts
 1959 and no more than ~~one megawatt~~ three megawatts shall be eligible for a third party power purchase
 1960 agreement under ~~the~~ a pilot program; however, if the customer under such agreement is a low-income
 1961 customer, as defined in § 56-576 of the Code of Virginia or is an entity with tax-exempt status in
 1962 accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then such facility is
 1963 eligible for the pilot program even if it does not meet the 50 kilowatts minimum size requirement. The
 1964 maximum generation capacity of ~~one megawatt~~ three megawatts shall not affect the limits on the
 1965 capacity of electrical generating capacities of 20 kilowatts for residential customers and 500 kilowatts
 1966 for nonresidential customers set forth in subsection B of § 56-594 of the Code of Virginia, which
 1967 limitations shall continue to apply to net energy metering generation facilities regardless of whether they
 1968 are the subject of a third party power purchase agreement under the pilot program;

1969 d. A generation facility that is the subject of a third party power purchase agreement under the pilot
 1970 program shall serve only one customer, and a third party power purchase agreement shall not serve

1971 multiple customers;

1972 e. The customer under a third party power purchase agreement under the pilot program shall be
 1973 subject to the interconnection and other requirements imposed on eligible customer-generators pursuant
 1974 to subsection C of § 56-594 of the Code of Virginia, including the requirement that the customer bear
 1975 the reasonable costs, as determined by the Commission, of the items described in clauses (i), (ii), and
 1976 (iii) of such subsection;

1977 f. A third party power purchase agreement under the pilot program shall not be valid unless it
 1978 conforms in all respects to the requirements of the pilot program conducted under the provisions of this
 1979 act and unless the Commission and the Pilot Utility are provided written notice of the parties' intent to
 1980 enter into a third party power purchase agreement not less than 30 days prior to the agreement's
 1981 proposed effective date; and

1982 g. An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power
 1983 purchase arrangements on the same basis as may any other person that satisfies the requirements of
 1984 being a seller under a third party power purchase agreement under the pilot program.

1985 **3. That §§ 56-585.1:2 and 56-585.2 of the Code of Virginia are repealed.**

1986 **4. That any moneys in the Virginia Shoreline Resiliency Fund, as created by Chapter 762 of the**
 1987 **Acts of Assembly of 2016, shall remain in the Virginia Community Flood Preparedness Fund**
 1988 **pursuant to § 10.1-603.25 of the Code of Virginia, as amended by this act.**

1989 **5. That each investor-owned utility shall consult with the Clean Energy Advisory Board**
 1990 **established by Chapter 554 of the Acts of Assembly of 2019 in how best to inform low-income**
 1991 **customers of opportunities to lower electric bills through access to solar energy.**

1992 **6. That the Department of Mines, Minerals and Energy, in consultation with the Council on**
 1993 **Environmental Justice and appropriate stakeholders, shall report to the House and Committee on**
 1994 **Labor and Commerce and the Senate Committee on Commerce and Labor and to the Council on**
 1995 **Environmental Justice that ensures that the implementation of this act does not impose a**
 1996 **disproportionate burden on minority or historically disadvantaged communities.**

1997 **7. That in developing a plan to reduce carbon dioxide emissions from covered units described in**
 1998 **§ 10.1-1308 of the Code of Virginia, the Secretary of Natural Resources and the Secretary of**
 1999 **Commerce and Trade, in consultation with the State Corporation Commission and the Council on**
 2000 **Environmental Justice and appropriate stakeholders, shall report to the General Assembly by**
 2001 **January 1, 2022, any recommendations on how to achieve 100 percent carbon free electric energy**
 2002 **generation by 2050 at least cost for ratepayers. Such report shall include a recommendation on**
 2003 **whether the General Assembly should permanently repeal the ability to obtain a certificate of**
 2004 **public convenience and necessity for any electric generating unit that emits carbon as a byproduct**
 2005 **of combusting fuel to generate electricity. Until the General Assembly receives such report, the**
 2006 **Commission shall not issue a certificate for public convenience and necessity for any**
 2007 **investor-owned utility to own, operate, or construct any electric generating unit that emits carbon**
 2008 **as a byproduct of combusting fuel to generate electricity.**

2009 **8. That it shall be the policy of the Commonwealth that the State Corporation Commission,**
 2010 **Department of Environmental Quality, Department of Mines, Minerals and Energy, Virginia**
 2011 **Council on Environmental Justice, and other applicable state agencies, in the development of**
 2012 **energy programs, job training programs, and placement of renewable energy facilities, shall**
 2013 **consider those facilities and programs being to the benefit of [local workers,] low-income**
 2014 **geographic areas and historically economically disadvantaged communities that are located near**
 2015 **previously and presently permitted fossil fuel facilities or coal mines.**

2016 **9. That should the State Corporation Commission amend rules pursuant to the provisions of**
 2017 **§ 56-594 of the Code of Virginia, as amended by this act, it shall set forth rules for net energy**
 2018 **metering at electric cooperatives in a new and separate chapter of the Virginia Administrative**
 2019 **Code.**

2020 **10. That nothing in this act shall require the State Corporation Commission to take any action**
 2021 **that, in its discretion and after consideration of all in-state and regional transmission entity**
 2022 **resources, threatens the reliability or security of electric service to the utility's customers.**

2023 **11. That the investor-owned utility constructing a facility pursuant to § 56-585.1:11 of the Code of**
 2024 **Virginia, as created by this act, shall provide the State Corporation Commission with reports on**
 2025 **the facility's construction progress, including performance to construction timeline and budget, on**
 2026 **no less than a quarterly basis throughout the construction period. The State Corporation**
 2027 **Commission shall retain ongoing authority to review the reasonableness and prudence of any**
 2028 **increases in the total projected cost of [the RPS Program and] the facility during its construction**
 2029 **period.**

2030 **12. That this bill shall be referred to as the Virginia Clean Economy Act.**

2031 **[13. That by January 1, 2028, if the Secretary of Natural Resources and the Secretary of**

2032 Commerce and Trade determine that the greenhouse gas reduction targets are not met pursuant
2033 to § 10.1-1330, then there shall be a moratorium on the issuance of permits for new fossil fuel
2034 fired generating facilities by January 1, 2030.]