

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 **Introductory Drafting note.** *The draft statutory language that follows is intended*
2 *to reflect the Drafting Group’s responses to questions in the Structure & Transition*
3 *Decision Tree (12/8/98 revision). Decision tree page numbers corresponding to the*
4 *statutory language are set out in brackets. Additionally, references will be found to the*
5 *SCC’s proposed amendments to the Decision Tree (dated 12/6/98) which were*
6 *considered by the Drafting Group at its 12/17/98 meeting. Terms which are likely to be*
7 *defined in a final, comprehensive bill are underscored and bolded at their initial*
8 *appearance in the draft. Unless otherwise indicated, they are presently defined in SB-*
9 *688.*

10 *Additionally, please note the following: (i) The language set forth in this draft*
11 *has not been adopted or approved by the Drafting Group, (ii) the definitions were not*
12 *adopted by the drafting group, but were incorporated by staff for working purposes,*
13 *and (iii) the draft contains no language concerning rate caps or rate freezes (decision*
14 *tree, pg.5), or nonbypassable wires charges (decision tree, pg. 22) since the Drafting*
15 *Group deferred decisions on these two issues).*

16
17 §56-579. Schedule for transition to retail competition; **Commission** authority. [pp. 1-6,
18 **generally]**

19 A. The transition to retail competition for the purchase and sale of electric energy shall
20 be implemented as follows [pg. 1, column 2, bullet 2]:

- 21 1. On or before January 1, 2001, each **incumbent electric utility** shall join or
22 establish an **independent system operator** (see SCC definition on pg. 4 of SCC
23 **proposal**), or ISO to which such utility shall transfer the management and control of its
24 **transmission system**, subject to the provisions of §56-581.

1 2. On and after January 1, 2002, retail customers of electric energy within the
2 Commonwealth shall be permitted to purchase energy from any supplier of electric energy
3 licensed to sell retail electric energy within the Commonwealth during the period of
4 transition to retail competition, subject to the following:

5 a. The Commission shall establish a phase-in schedule for customers by class, and by
6 percentages of class, to ensure that by January 1, 2004, all retail customers are permitted to
7 purchase electric energy from any supplier of electric energy licensed to sell retail electric
8 energy within the Commonwealth [pg. 1, column 3, bullet 4].

9 b. The Commission shall ensure that during such phase-in, equal percentages of the
10 loads of each retail customer class are concurrently permitted to purchase electric energy
11 from any supplier [pg. 2, column 3, bullet 2].

12 c. The Commission shall also ensure that residential and small business retail
13 customers are permitted to select suppliers (i) in advance of any other retail customers, or (ii)
14 in the alternative, in proportions equal to that of other customer classes permitted to select
15 suppliers during the period of transition to retail competition [pg. 1, column 3, bullet 3].

16 3. On and after January 1, 2004, all retail customers of electric energy within the
17 Commonwealth, regardless of customer class, shall be permitted to purchase electric energy
18 from any supplier of electric energy licensed to sell retail electric energy within the
19 Commonwealth.

20 B. The Commission may delay or accelerate the implementation of any of the
21 provisions of this section, subject to the following [pg. 1, column 4, bullet 1. **Note:**
22 **subdivision B3 suggested by drafting group**]:

23 1. Any such delay or acceleration shall be based on considerations of reliability,
24 safety, communications or market power; and

25 2. Any such delay shall be limited to the period of time required to resolve the issues
26 necessitating the delay.

1 3. The Commission shall, within a reasonable time, report to the General Assembly or
2 any legislative entity monitoring the restructuring of Virginia’s electric industry, any such
3 delays and the reasons therefor.

4 C. Except as may be otherwise provided in this chapter, prior to and during the period
5 of transition to retail competition, the Commission may:

6 1. Examine the rates of electric utilities pursuant to and in accordance with the
7 provisions of Chapters 9 (§ 56-209 et seq.) and 10 (§ 56-234 et seq.) of this title **[pg. 4;**
8 **language suggested by drafting group]**, and

9 2. Conduct pilot programs encompassing retail customer choice of electric energy
10 suppliers, consistent with its authority otherwise provided in this title, and the provisions of this
11 chapter **[pg. 6, column 1, bullet 1 plus language suggested by drafting group]**.

12 D. The Commission shall promulgate such rules and regulations as may be necessary
13 to implement the provisions of this section.

14 § 56-580. Nondiscriminatory access to transmission and distribution system **[pp. 7,8]**.

15 A. All **distributors** shall have the obligation to connect any retail customer located
16 within its service territory to those facilities of the distributor that are used for delivery of retail
17 electric energy **[pg. 7, column 2, bullet 1]**.

18 B. Except as otherwise provided in this chapter, every distributor shall provide
19 distribution service within its service territory on a basis which is just, reasonable, and not
20 unduly discriminatory to suppliers of electric energy, as the Commission may determine. The
21 distribution services provided to each supplier of electric energy shall be at least equal in
22 quality to those provided by the distribution utility to itself or to any affiliate. The Commission
23 shall establish rates, terms and conditions for distribution service under Chapter 10 of Title 56
24 (§§ 56-232 et seq.) **[pg. 7, column 1, bullet 2]**.

25 C. Upon the separation and deregulation of the generation function and services of
26 incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric
27 transmission function and services, to the extent not preempted by federal law. Nothing in this

1 section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 of
2 this title with respect to the construction of electric transmission facilities [pg. 7, column 1,
3 bullet 2].

4 D. If the Commission determines that increases in the capacity of the transmission
5 systems in the Commonwealth, or modifications in how such systems are planned, operated,
6 maintained, used, financed or priced, will promote the efficient development of competition in
7 the sale of electric energy, the Commission may, to the extent not preempted by federal law,
8 require one or more persons having any ownership or control of, or responsibility to operate,
9 all or part of such transmission systems to: [SCC amendments, pg. 2, questions 1, 2, 3]

10 1. Expand the capacity of transmission systems; [SCC amendments, pg. 2, question
11 1]

12 2. File applications and tariffs with the Federal Energy Regulatory Commission which
13 (i) make transmission systems capacity available to retail sellers or buyers of electric
14 energy under terms and conditions described by the Commission, and (ii) require owners of
15 generation capacity located in the Commonwealth to bear an appropriate share of the cost of
16 transmission facilities, to the extent such cost is attributable to such generation capacity;
17 [SCC amendments, pg. 2, question 2]

18 3. Enter into a contract with, or provide information to, an independent system operator;
19 or [SCC amendments, pg. 2, question 3]

20 4. Take such other actions as the Commission determines to be necessary to carry out
21 the purposes of this chapter.

22 E. If the Commission determines, after notice and opportunity for hearing, that a person
23 has or will have, as a result of such person's control of electric generating capacity or energy
24 within a transmission constrained area, market power (see SCC definition on pg. 5 of the
25 SCC statutory proposal) over the direct or indirect sale of electric generating capacity or
26 energy to buyers located within the Commonwealth, the Commission may, within such
27 transmission constrained area, regulate such person's rates pursuant to Chapter 10 (§ 56-232

1 et seq.) of this title. Such rates shall remain regulated until the Commission, after notice and
2 opportunity for hearing, determines that the transmission constraint has been relieved **[pg. 8,**
3 **column 1, bullet 2].**

4 § 56-581. Independent System Operators **[pp. 3, 9-12 of decision tree; pg. 1 of SCC**
5 **amendments, responses to bolded questions under “ISO requirement.”]**

6 A. As set forth in § 56-579, on or before January 1, 2001, each incumbent electric
7 utility shall join or establish an independent system operator, or ISO to which such utility shall
8 transfer the management and control of its transmission assets to, subject to the following:

9 1. No incumbent electric utility shall transfer to any person any ownership or control of,
10 or any responsibility to operate, any portion of any transmission system located in the
11 Commonwealth without obtaining the prior approval of the Commission, as hereinafter
12 provided **[pg. 1 of SCC Decision tree amendments under “ISO requirements,” questions**
13 **1 and 3.]**.

14 2. The Commission shall develop rules and regulations under which any incumbent
15 electric utility having any ownership or control of, or any responsibility to operate, a
16 transmission system in the Commonwealth, or any portion thereof, may transfer all or part of
17 such control, ownership or responsibility to an independent system operator, upon such terms
18 and conditions that the Commission determines will **[pg. 1 of SCC Decision tree**
19 **amendments under “ISO requirements,” question 2.]**:

20 (a) Promote:

21 (1) Practices for the reliable planning, operating, maintaining, and upgrading of the
22 transmission systems and any necessary additions thereto, and

23 (2) Policies for the pricing and access for service over such systems, which are safe,
24 reliable, efficient, not unduly discriminatory and consistent with the orderly development of
25 competition in the Commonwealth;

26 (b) Be consistent with lawful requirements of the Federal Energy Regulatory
27 Commission;

1 (c) Be effectuated on terms that fairly compensate the transferor;

2 (d) Generally promote the public interest, and are consistent with (i) ensuring the
3 successful development of interstate ISOs, and (ii) meeting the transmission needs of electric
4 generation suppliers both within and without this Commonwealth **[pg. 10; language**
5 **suggested, in concept, by drafting group]**.

6 B. The Commission shall also adopt rules and regulations implementing the following
7 requirements concerning ISO governance:

8 1. No incumbent electric utility shall be authorized by the Commission to establish or
9 join any ISO unless the majority of such ISO's governing board shall have no ownership
10 interest in any transmission asset owned, managed or controlled by such ISO **[pg. 9, column**
11 **2, bullet 1]**.

12 2. No incumbent electric utility shall be authorized by the Commission to establish or
13 join any ISO unless residential retail customers are represented on the ISO's governing board
14 **[pg. 9, column 2, bullet 3]**.

15 C. The Commission shall, to the fullest extent permitted under federal law, participate
16 in any and all proceedings concerning ISOs furnishing transmission services within the
17 Commonwealth, before the Federal Energy Regulatory Commission ("FERC"). Such
18 participation may include such intervention as is permitted state utility regulators under FERC
19 rules and procedures whenever such proceedings concern the approval or modification of any
20 ISO of which an incumbent electric utility is or proposes to be a member **[pg. 11, column 2,**
21 **bullet 1]**.

22 D. Nothing in this section shall be deemed to abrogate or modify:

23 1. The Commission's authority over transmission line or facility construction,
24 enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-
25 265.1, et seq.) of this title **[pg. 11, column 2, bullet 2]**;

26 2. The laws of this Commonwealth concerning the exercise of the right of eminent
27 domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et

1 seq.) of Chapter 10 of this title provided, however, that on and after January 1, 2004, the right
2 of eminent domain may not be exercised in conjunction with the construction or enlargement
3 of any utility facility whose purpose is the **generation of electric energy**. [pg. 13, column 1,
4 **bullet 2**]; or

5 3. The Commission's authority over retail electric energy sold to retail customers within
6 the Commonwealth by licensed suppliers of electric service, including necessary reserve
7 requirements, all as specified in § 56-585 [pg. 12, column 2, **bullets 1 and 2**].

8 § 56-582. Regional power exchanges. [Mandatory not approved; permissive not
9 discussed].

10 § 56-583. Transmission and Distribution of Electric energy. [pp. 15, 16, and 17]

11 A. The Commission shall continue to regulate pursuant to this title the distribution of
12 retail electric energy to retail customers in the Commonwealth, and to the extent not prohibited
13 by federal law, the transmission of electric energy in the Commonwealth [pg. 15, column 1,
14 **bullet 1**].

15 B. The Commission shall continue to regulate, to the extent not prohibited by federal
16 law, the reliability, quality and maintenance by transmitters and distributors of their
17 transmission and retail distribution systems [pg. 15, column 1, **bullet 1**].

18 C. The Commission shall develop codes of conduct governing conduct between
19 affiliated and nonaffiliated suppliers of generation services [pg. 15, column 1, **bullet 1**].

20 D. The Commission may permit the construction and operation of electrical generating
21 facilities upon a finding that such generating facility and associated facilities including
22 transmission lines and equipment (i) will have no material adverse effect upon any regulated
23 rates paid by retail customers in the Commonwealth; (ii) will have no material adverse effect
24 upon reliability of electric service provided by any regulated public utility; and (iii) are not
25 otherwise contrary to the public interest. In review of its petition for a certificate to construct
26 and operate a generating facility described in this subsection, the Commission shall give
27 consideration to the effect of the facility and associated facilities, including transmission lines

1 and equipment, on the environment and establish such conditions as may be desirable or
2 necessary to minimize adverse environmental impact as provided in §56-46.1. Facilities
3 authorized by a certificate issued pursuant to this subsection may be exempted by the
4 Commission from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56 **[pg. 16, column**
5 **1, bullet 1, additional language as suggested by drafting group].**

6 E. Nothing in this section shall impair the distribution service territorial rights of
7 incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution
8 services within their exclusive service territories as established by the Commission. Nothing in
9 this chapter shall impair the Commission's existing authority over the provision of electric
10 distribution services to retail customers in the Commonwealth including, but not limited to, the
11 authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title
12 **[pg. 17, column 1, bullet 1, additional language as suggested by drafting group].**

13 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility
14 owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter
15 apply to any such electric utility unless (i) that municipality elects to have this chapter apply to
16 that utility, or (ii) that utility sells, offers to sell or seeks to sell electric energy to a supplier or
17 distributor of electric energy **[pg. 17, column 1, bullet 2].**

18 § 56-584. Regulation of rates subject to Commission's jurisdiction **[pg. 18].**

19 A. The Commission shall regulate the rates for the transmission of electric energy, to
20 the extent not prohibited by federal law, and for the distribution of electric energy to such retail
21 customers on an unbundled basis, but, subject to the provisions of this chapter, the
22 Commission no longer shall regulate rates for the generation component of retail electric
23 energy sold to retail customers **[pg. 18, column 1, bullet 1].**

24 B. No later than September 1, 1999 and annually thereafter, the Commission shall
25 submit a report to the General Assembly evaluating the advantages and disadvantages of
26 competition for metering, billing and other services which have not been made subject to
27 competition, and making recommendations as to when, and for whom, such other services

1 should be made subject to competition **[pg. 18, column 1, bullet 1, additional language as**
2 **suggested by drafting group]**.

3 § 56-585. Licensure of retail electric energy suppliers **[pg. 19]**.

4 A. As a condition of doing business in the Commonwealth each person seeking to sell,
5 offering to sell, or selling electric energy to any retail customer in the Commonwealth, on and
6 after January 1, 2002, shall obtain a license from the Commission to do so.

7 The license shall authorize that person to act as a supplier until the license is otherwise
8 terminated, suspended or revoked **[pg. 19, column 1, bullet 1]**.

9 B. As a condition of obtaining, retaining and renewing any license issued pursuant to
10 this section, a person shall satisfy such reasonable and nondiscriminatory requirements as
11 may be specified by the Commission, which may include requirements that such person (i)
12 demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a
13 bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay
14 an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees
15 lawfully imposed by the Commonwealth or by any municipality or other political subdivision of
16 the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any
17 license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory
18 requirements as may be specified by the Commission, including but not limited to
19 requirements that such person demonstrate (i) technical capabilities as the Commission may
20 deem appropriate; (ii) access to generation and generation reserves; and (iii) adherence to
21 minimum market conduct standards **[pg. 19, column 1, bullets 2-6, additional language as**
22 **suggested by the drafting group]**.

23 C. The Commission may adopt other rules and regulations governing the requirements
24 for obtaining, retaining, and renewing a license to supply electric energy to retail customers,
25 and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew
26 the license of, any person that does not meet those requirements **[pg. 19, column 1, bullet**
27 **7]**.

1 § 56-586. Suppliers of last resort, default suppliers and backstop providers [pg. 20 of
2 decision tree; pg. 4 of SCC proposed amendments to decision tree. Drafting group did
3 not adopt any of the options listed on the decision tree, adopting instead the 7 bolded
4 items on pg. 4 of the SCC’s amendments, answering questions 1-5 in the affirmative;
5 stipulating that questions 3 and 6 should be subject to “public interest” criteria; and
6 requiring the SCC to review and report on question 7 at the end of the transition
7 period.]

8 A. The Commission shall, after notice and opportunity for hearing, (i) determine the
9 components of supplier of last resort (should be defined) and default (should be defined)
10 services [SCC question 1], and (ii) establish one or more programs making such services
11 available to retail customers requiring them, during the period of transition to customer choice.

12 B. The Commission shall designate providers of supplier of last resort and default
13 services. In doing so, the Commission:

14 1. Shall take into account the characteristics and qualifications of prospective
15 providers, including cost, experience, safety, reliability, corporate structure, access to electric
16 energy resources necessary to serve customers requiring such services, and other factors
17 deemed necessary to protect the public interest;

18 2. May designate one or more providers to provide one or more components of such
19 services, in one or more regions of the Commonwealth, to one or more classes of customers
20 [SCC question 2]; and

21 3. May require an incumbent electric utility or distribution utility to provide one or more
22 components of such services, or to form an affiliate to do so, in one or more regions of the
23 Commonwealth, at rates which afford the entity a reasonable opportunity to earn a fair rate of
24 return; provided that the Commission may not require an incumbent electric utility or
25 distribution utility, or affiliate thereof, to provide any such services outside the territory in
26 which such utility provides service [SCC question 4].

1 C. The Commission shall, after notice and opportunity for hearing, determine the rates,
2 terms and conditions for such services consistent with the provisions of Chapter 10 (§ 56-232
3 et seq.) of this title and shall establish such requirements for providers and customers as it
4 finds necessary to promote the reliable and economic provision of such services and to
5 prevent the inefficient use of such services. The Commission may use any rate method that
6 promotes the public interest, and may establish different rates, terms and conditions for
7 different classes of customers **[SCC questions 5 and 6]**.

8 D. On or before July 1, 2003, the Commission shall determine, after notice and
9 opportunity for hearing, whether there is a sufficient degree of competition such that the
10 elimination of supplier of last resort service for particular customers, particular classes of
11 customers or particular geographic areas of the Commonwealth will not be contrary to the
12 public interest. The Commission shall report its findings and recommendations concerning
13 modification or termination of supplier of last resort service to the General Assembly and to
14 the Legislative Transition Task Force, not later than December 1, 2003 **[SCC question 7]**.

15 § 56-593. Divestiture, functional separation and other corporate relationships.

16 A. The Commission shall not order any incumbent electric utility, nor shall it require
17 any such utility to divest itself of any generation, transmission or distribution assets pursuant
18 to any provision of this chapter **[pg. 23, generally]**.

19 B. 1. The Commission shall, however, direct the functional separation of generation,
20 retail transmission and distribution of all incumbent electric utilities in connection with the
21 provisions of this chapter to be completed by January 1, 2002 **[pg. 24, generally]**.

22 2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a
23 plan for such functional separation which may be accomplished through the creation of
24 affiliates or through such other means as may be acceptable to the Commission **[This**
25 **language drawn from § 56-593 in SB-688]**.

1 C. The Commission shall promulgate rules and regulates to carry out the provisions of
2 this section, which rules and regulations shall include provisions [pg. 24, column 2, bullets
3 1-5; pg. 25, column 2, bullet 1]:

- 4 1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
- 5 2. Prohibiting functionally separate units from engaging in anticompetitive behavior or
6 self-dealing;
- 7 3. Prohibiting affiliated entities from engaging in discriminatory behavior towards
8 nonaffiliated units; and
- 9 3. Establishing codes of conduct detailing permissible relations between functionally separate
10 units.

11 D. Nothing in this chapter shall be construed to exempt or immunize from punishment
12 or prosecution, conduct (i) engaged in by functionally separate generation, transmission or
13 distribution, or any of their affiliates, and (ii) violative of federal antitrust laws, or the antitrust
14 laws of this Commonwealth [pg. 25, column 2, bullet 2]:.

15 *[Note: Subsections E & F were adopted, in concept, by the drafting group in*
16 *response to questions raised about mergers and acquisitions on pg. 26 of the decision*
17 *tree. The drafting group directed staff to incorporate language in § 56-591 {SCC*
18 *numbering} of the SCC draft proposal. The language that follows is identical to the*
19 *provisions of the SCC draft language, except that references to “basic electric service”*
20 *have been deleted; that concept has not been adopted by the drafting group.]*

21 E. Neither a covered entity [defined in SCC draft proposal] nor an affiliate thereof
22 may be a party to a covered transaction [defined in SCC draft proposal] without the prior
23 approval of the Commission. Any such person proposing to be a party to such transaction
24 shall file an application with the Commission. The Commission shall approve or disapprove
25 such transaction within sixty days after the filing of a completed application; however, the sixty
26 day period may be extended by Commission order for a period not to exceed an additional
27 120 days. The application shall be deemed approved if the Commission fails to act within such

1 initial or extended period. The Commission shall approve such application if it finds, after
2 notice and opportunity for hearing, that the transaction will comply with the requirements of
3 subsection F, and may, as a part of its approval, establish such conditions or limitations on
4 such transaction as it finds necessary to ensure compliance with said subsection F.

5 F. A transaction described in subsection E of this section shall not:

6 1. Substantially lessen competition among the actual or prospective providers of
7 noncompetitive electric service or of a service which is, or is likely to become, a competitive
8 electric service; or

9 2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth,
10 or the provision of any noncompetitive electric service at just and reasonable rates.

11 G. Nothing in this chapter shall be deemed to abrogate or modify the Commission's
12 authority under Chapter 5 (56-88 et seq.) of this title **[Note: the first sentence was**
13 **incorporated to reflect frequent drafting group and interest group references to the**
14 **continuing application of the Utilities Facilities Act during the transition period, and**
15 **possibly thereafter. The SCC language that follows, however, may eliminate the need**
16 **for its reference here]**. However, any person subject to the requirements of subsection E
17 that is also subject to the requirements of Chapter 5 (§ 56-88 et seq.) of Title 56 may, in the
18 discretion of the Commission, be exempted from compliance with some or all of the
19 requirements of said Chapter 5 of Title 56.

20 § 56-594. Legislative Transition Task Force established **[pg. 29, column 2, bullets 1-**
21 **4, plus additional language adopted, in concept, by drafting group.**

22 A. A legislative transition task force is hereby established to work collaboratively with
23 the Commission in conjunction with the phase-in of retail competition within the
24 Commonwealth.

25 B. The transition task force shall consist of ten members, with six members from the
26 House of Delegates and four members from the Senate. Appointments shall be made and

1 vacancies filled by the Speaker of the House of Delegates and the Senate Committee on
2 Privileges and Elections, as appropriate.

3 C. The task force members shall be appointed to begin service on and after July 1,
4 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the
5 Virginia State Corporation Commission in implementing this chapter and (ii) annually report to
6 the Governor and each session of the General Assembly during their tenure concerning the
7 progress of each stage of the phase-in of retail competition, offering such recommendations
8 as may be appropriate for legislative and administrative consideration.

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