

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 **SJR-91 Electric Utility Restructuring Draft—January 13, 1999.**

2

3 **Please note:** *This draft consolidates the (i) Structure & Transition, (ii) Structure*  
4 *& Transition Supplement (iii) Stranded Costs, and (iv) Consumer Environment &*  
5 *Education drafts. However, this draft is broken into these four sections for ease of*  
6 *reference in comparing current language to earlier versions. The draft revisions*  
7 *(shown in strike & add format) incorporate all drafting group work through Monday,*  
8 *January 11. FYI, The italicized revisions are those made at the January 11 drafting*  
9 *group meeting.*

10 *While the capped rate, stranded costs and nonbypassable wires charge sections*  
11 *are included in this draft, the drafting group has not formally reviewed or modified*  
12 *them. Thus, these sections remain as submitted by staff. It is anticipated that they will*  
13 *be taken up by the full joint subcommittee at its meeting on Thursday, January 14.*

14 *This draft has been posted to the joint subcommittee’s Internet site in PDF*  
15 *format to ensure that everyone present at the January 14 meeting will be using uniform*  
16 *page and line numbers. However, electronic copies of this draft in Word format are*  
17 *available upon request from staff.*

18 **Structure & Transition**

19

20 §56-579. Schedule for transition to retail competition; **Commission** authority. [pp. 1-6,  
21 generally]

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

1           1. On or before January 1, 2001, each incumbent electric utility owning, operating,  
2 controlling, or having an entitlement to transmission capacity shall join or establish an  
3 independent system operator (see SCC definition on pg. 4 of SCC proposal), or ISO a  
4 regional transmission entity, which entity may be an intrastate independent system operator,  
5 to which such utility shall transfer the management and control of its transmission system,  
6 subject to the provisions of §56-581.

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

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

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

18           c. The Commission shall also ensure that residential and small business retail  
19 customers are permitted to select suppliers (i) ~~in advance of any other retail customers, or (ii)~~  
20 ~~in the alternative,~~ in proportions at least equal to that of other customer classes permitted to  
21 select suppliers during the period of transition to retail competition [pg. 1, column 3, bullet  
22 3].

23           3. On and after January 1, 2004, all retail customers of electric energy within the  
24 Commonwealth, regardless of customer class, shall be permitted to purchase electric energy  
25 from any supplier of electric energy licensed to sell retail electric energy within the  
26 Commonwealth.

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

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

6 2. Any such delay shall be limited to the period of time required to resolve the issues  
7 necessitating the delay, but in no event shall any such delay extend the implementation of  
8 customer choice for all customers beyond January 1, 2005.

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

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

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

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

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

22 § 56-580. Nondiscriminatory access to transmission and distribution system [pp. 7,8].

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

26 B. Except as otherwise provided in this chapter, every distributor shall provide  
27 distribution service within its service territory on a basis which is just, reasonable, and not

1 unduly discriminatory to suppliers of electric energy, as the Commission may determine. The  
 2 distribution services provided to each supplier of electric energy shall be at least equal in  
 3 quality to those provided by the distribution utility to itself or to any affiliate. The Commission  
 4 shall establish rates, terms and conditions for distribution service under Chapter 10 of Title 56  
 5 (§§ 56-232 et seq.) **[pg. 7, column 1, bullet 2].**

6 C. The Commission shall establish interconnection standards to ensure transmission  
 7 and distribution safety and reliability. In adopting standards pursuant to this subsection the  
 8 Commission shall seek to prevent barriers to new technology and shall not make compliance  
 9 unduly burdensome and expensive. The Commission shall determine questions about the  
 10 ability of specific equipment to meet interconnection standards.

11 D. The Commission shall consider developing expedited permitting processes for small  
 12 generation facilities of 50 MW or less.

13 ~~G~~E. Upon the separation and deregulation of the generation function and services of  
 14 incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric  
 15 transmission function and services, to the extent not preempted by federal law. Nothing in this  
 16 section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 of  
 17 this title with respect to the construction of electric transmission facilities **[pg. 7, column 1,**  
 18 **bullet 2].**

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

25 1. Expand the capacity of transmission systems; **[SCC amendments, pg. 2, question**  
 26 **1]**

27 2. File applications and tariffs with the Federal Energy Regulatory Commission which

1 (i) make transmission systems capacity available to retail sellers or buyers of electric  
 2 energy under terms and conditions described by the Commission, and (ii) require owners of  
 3 generation capacity located in the Commonwealth to bear an appropriate share of the cost of  
 4 transmission facilities, to the extent such cost is attributable to such generation capacity;  
 5 **[SCC amendments, pg. 2, question 2]**

6 3. Enter into a contract with, or provide information to, ~~an independent system operator~~  
 7 a regional transmission entity; or **[SCC amendments, pg. 2, question 3]**

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

10 E. If the Commission determines, after notice and opportunity for hearing, that a person  
 11 has or will have, as a result of such person's control of electric generating capacity or energy  
 12 within a transmission constrained area, **market power** (see **SCC definition on pg. 5 of the**  
 13 **SCC statutory proposal**) over the direct or indirect sale of electric generating capacity or  
 14 energy to buyers located within the Commonwealth, the Commission may, within such  
 15 transmission constrained area, regulate such person's rates pursuant to Chapter 10 (§ 56-232  
 16 et seq.) of this title. Such rates shall remain regulated until the Commission, after notice and  
 17 opportunity for hearing, determines that the ~~transmission constraint~~ market power has been  
 18 ~~relieved~~ mitigated **[pg. 8, column 1, bullet 2]**.

19 § 56-581. ~~Independent System Operators~~ Regional transmission entities. [pp. 3, 9-12  
 20 of decision tree; pg. 1 of SCC amendments, responses to bolded questions under "ISO  
 21 requirement."]

22 A. As set forth in § 56-579, on or before January 1, 2001, each incumbent electric  
 23 utility owning, operating, controlling, or having an entitlement to transmission capacity shall  
 24 join or establish an ~~independent system operator~~, or RTE to which such utility shall transfer  
 25 the management and control of its transmission assets to, subject to the following:

26 1. No such incumbent electric utility shall transfer to any person any ownership or  
 27 control of, or any responsibility to operate, any portion of any transmission system located in

1 the Commonwealth without obtaining the prior approval of the Commission, as hereinafter  
2 provided **[pg. 1 of SCC Decision tree amendments under “ISO requirements,” questions**  
3 **1 and 3.]**.

4 2. The Commission shall develop rules and regulations under which any such  
5 incumbent electric utility ~~having any ownership or control of, or any responsibility to operate, a~~  
6 ~~transmission system in the Commonwealth, or any portion thereof~~ owning, operating,  
7 controlling, or having an entitlement to transmission capacity within the Commonwealth, may  
8 transfer all or part of such control, ownership or responsibility to an ~~independent system~~  
9 ~~operator~~ RTE, upon such terms and conditions that the Commission determines will **[pg. 1 of**  
10 **SCC Decision tree amendments under “ISO requirements,” question 2.]**:

11 (a) Promote:

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

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

17 (b) Be consistent with lawful requirements of the Federal Energy Regulatory  
18 Commission;

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

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

24 B. The Commission shall also adopt rules and regulations, with appropriate public  
25 input, establishing elements of RTE structures essential to the public interest, which elements  
26 shall be applied by the Commission in determining whether to authorize transfer of ownership

1 or control from an incumbent electric utility to an RTE implementing the following requirements  
2 concerning ISO governance:

3 1. ~~No incumbent electric utility shall be authorized by the Commission to establish or~~  
4 ~~join any ISO unless the majority of such ISO's governing board shall have no ownership~~  
5 ~~interest in any transmission asset owned, managed or controlled by such ISO [pg. 9, column~~  
6 ~~2, bullet 1].~~

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

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

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

18 1. The Commission's authority over transmission line or facility construction,  
19 enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-  
20 265.1, et seq.) of this title [pg. 11, column 2, bullet 2];

21 2. The laws of this Commonwealth concerning the exercise of the right of eminent  
22 domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et  
23 seq.) of Chapter 10 of this title provided, however, that on and after January 1, 2004, the right  
24 of eminent domain may not be exercised in conjunction with the construction or enlargement  
25 of any utility facility whose purpose is the generation of electric energy. [pg. 13, column 1,  
26 bullet 2]; or

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

4           § 56-582. Regional power exchanges. [Mandatory not approved; permissive not  
5 discussed].

6           § 56-583. Transmission and Distribution of Electric energy. **[pp. 15, 16, and 17]**

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

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

14           C. The Commission shall develop codes of conduct governing ~~conduct between~~  
15 ~~affiliated and nonaffiliated suppliers of generation services~~ the conduct of incumbent electric  
16 utilities and affiliates thereof when any such affiliates provide, or control any entity that  
17 provides, generation, distribution or transmission services, to the extent necessary to prevent  
18 impairment of competition. **[pg. 15, column 1, bullet 1]**.

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



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

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

12 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility  
13 owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter  
14 apply to any such electric utility unless (i) that municipality elects to have this chapter apply to  
15 that utility, or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric  
16 energy ~~to any retail customer in Virginia outside of the utility's electric distribution territory as it~~  
17 ~~existed on January 1, 1999 or to a supplier or distributor of electric energy—retail customer~~  
18 ~~outside the geographic area that was served by such municipality as of July 1, 1999.~~[pg. 17,  
19 column 1, bullet 2].

20 § 56-584. Regulation of rates subject to Commission's jurisdiction [pg. 18].

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

26 B. No later than September 1, 1999 and annually thereafter, the Commission shall  
27 submit a report to the General Assembly evaluating the advantages and disadvantages of

1 competition for metering, billing and other services which have not been made subject to  
2 competition, and making recommendations as to when, and for whom, such other services  
3 should be made subject to competition **[pg. 18, column 1, bullet 1, additional language as**  
4 **suggested by drafting group]**.

5 § 56-585. Licensure of retail electric energy suppliers **[pg. 19]**.

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

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

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

25 C. 1. The Commission shall establish a reasonable period within which any retail  
26 customer may cancel any contract entered into with a supplier licensed pursuant to this  
27 section.

1           2. The Commission may adopt other rules and regulations governing the requirements  
 2 for obtaining, retaining, and renewing a license to supply electric energy to retail customers,  
 3 and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew  
 4 the license of, any person that does not meet those requirements **[pg. 19, column 1, bullet**  
 5 **7].**

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

13           A. The Commission shall, after notice and opportunity for hearing, (i) determine the  
 14 components of default services ~~supplier of last resort (should be defined)~~ and ~~default~~  
 15 ~~(should be defined)~~ services **[SCC question 1]**, and (ii) establish one or more programs  
 16 making such services available to retail customers requiring them commencing with the date  
 17 of customer choice for all retail customers established pursuant to § 56-579, ~~during the period~~  
 18 ~~of transition to customer choice.~~ For purposes of this chapter, “default service” means service  
 19 made available under this section to retail customers who (i) do not select an alternative  
 20 provider, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted  
 21 with an alternative supplier who fails to perform.

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

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

1           2. May designate one or more willing providers to provide one or more components of  
 2 such services, in one or more regions of the Commonwealth, to one or more classes of  
 3 customers **[SCC question 2]**; and

4           3. May require an incumbent electric utility or distribution utility to provide one or more  
 5 components of such services, or to form an affiliate to do so, in one or more regions of the  
 6 Commonwealth, at rates which ~~afford the entity a reasonable opportunity to earn a fair rate of~~  
 7 ~~return~~ are fairly compensatory to the utility and which reflect any cost of energy prudently  
 8 procured, including energy procured from the competitive market; provided that the  
 9 Commission may not require an incumbent electric utility or distribution utility, or affiliate  
 10 thereof, to provide any such services outside the territory in which such utility provides service  
 11 **[SCC question 4]**.

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

19           D. On or before July 1, ~~2003~~ 2004, and annually thereafter, the Commission shall  
 20 determine, after notice and opportunity for hearing, whether there is a sufficient degree of  
 21 competition such that the elimination of ~~supplier of last resort~~ default service for particular  
 22 customers, particular classes of customers or particular geographic areas of the  
 23 Commonwealth will not be contrary to the public interest. The Commission shall report its  
 24 findings and recommendations concerning modification or termination of ~~supplier of last resort~~  
 25 default service to the General Assembly and to the Legislative Transition Task Force, not later  
 26 than December 1, ~~2003~~ 2004, and annually thereafter **[SCC question 7]**.

1 E. A distribution electric cooperative, or one or more affiliates thereof, shall have the  
2 obligation and right to be the supplier of default services in its certificated service territory. If a  
3 distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be a  
4 default supplier of another electric utility, then the Commission shall designate the default  
5 supplier for that distribution electric cooperative, or any affiliate thereof, pursuant to subsection  
6 B.

7 § 56-586.1. Emergency Services Provider.

8 On and after January 1, 2001, if any supplier fails to fulfill its obligation to deliver  
9 electricity scheduled into the control area provide electricity to a retail customer, the entity  
10 fulfilling the control area function, or, if applicable, the regional transmission entity or other  
11 entity as designated by the Commission, shall be responsible for charging the defaulting  
12 supplier for the full cost of replacement energy, including the cost of energy, the cost incurred  
13 by others as a result of the default, and the assessment of penalties as may be approved  
14 either by the Commission, to the extent not precluded by federal law, or by the Federal Energy  
15 Regulatory Commission. The Commission, as part of the rules established under section  
16 56-585, shall determine the circumstances under which failures to deliver electricity will result  
17 in the revocation of the supplier's license.

18 § 56-593. Divestiture, functional separation and other corporate relationships.

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

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

25 2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a  
26 plan for such functional separation which may be accomplished through the creation of

1 affiliates or through such other means as may be acceptable to the Commission *[This*  
2 *language drawn from § 56-593 in SB-688]*.

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

6 1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;

7 2. Prohibiting functionally separate units from engaging in anticompetitive behavior or  
8 self-dealing;

9 3. Prohibiting affiliated entities from engaging in discriminatory behavior towards  
10 nonaffiliated units; and

11 4. Establishing codes of conduct detailing permissible relations between functionally  
12 separate units.

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

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

23 ~~E.D.~~ Neither a **covered entity** **[defined in SCC draft proposal]** nor an affiliate thereof  
24 may be a party to a **covered transaction** **[defined in SCC draft proposal]** without the prior  
25 approval of the Commission. Any such person proposing to be a party to such transaction  
26 shall file an application with the Commission. The Commission shall approve or disapprove  
27 such transaction within sixty days after the filing of a completed application; however, the sixty

1 day period may be extended by Commission order for a period not to exceed an additional  
 2 120 days. The application shall be deemed approved if the Commission fails to act within such  
 3 initial or extended period. The Commission shall approve such application if it finds, after  
 4 notice and opportunity for hearing, that the transaction will comply with the requirements of  
 5 subsection ~~F~~E, and may, as a part of its approval, establish such conditions or limitations on  
 6 such transaction as it finds necessary to ensure compliance with said subsection ~~F~~E.

7 FE. A transaction described in subsection ~~E~~D of this section shall not:

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

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

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

22 § 56-593.1. Application of antitrust laws.

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

27

1 § 56-594. Legislative Transition Task Force established [ S & T pg. 29, column 2,  
2 **bullets 1-4, plus additional language adopted, in concept, by drafting group on 12/17**  
3 **and 12/29**].

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

7 B. The transition task force shall consist of ten members, with six members from the  
8 House of Delegates and four members from the Senate. Appointments shall be made and  
9 vacancies filled by the Speaker of the House of Delegates and the Senate Committee on  
10 Privileges and Elections, as appropriate.

11 C. The task force members shall be appointed to begin service on and after July 1,  
12 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the  
13 Virginia State Corporation Commission in implementing this chapter, receiving such reports as  
14 the Commission may be required to make pursuant thereto; (ii) examine utility worker  
15 protection during the transition to retail competition; generation, transmission and distribution  
16 systems reliability concerns; energy assistance programs for low-income households;  
17 renewable energy programs; and energy efficiency programs; and (iii) annually report to the  
18 Governor and each session of the General Assembly during their tenure concerning the  
19 progress of each stage of the phase-in of retail competition, offering such recommendations  
20 as may be appropriate for legislative and administrative consideration.

21 \_\_\_\_\_  
22 **Structure & Transition Supplement**

23 § 56-579.1 Rate caps. [S & T pg. 5, generally].

24 A. The Commission shall establish ***capped rates [should be defined]***, effective  
25 January 1, 2001 and, unless extended as provided hereafter, expiring on January 1, 2005 for  
26 each service territory of every incumbent utility as follows:



1           1. A capped rate shall be established for bundled electric transmission, distribution  
2 and generation services applicable to customers receiving (i) default service, or (ii) supplier of  
3 last resort service.

4           2. A capped rate for electric generation services, only, shall also be established for the  
5 purpose of effecting customer choice for those retail customers authorized and opting to  
6 purchase generation services from a supplier other than the incumbent utility during this  
7 period, and any extensions thereof.

8           B. The Commission may adjust such capped rates in connection with (i) utilities'  
9 recovery of fuel costs pursuant to § 56-249.6, and (ii) emergency conditions as provided in §  
10 56-245.

11           C. 1. The Commission may, by order, annually extend any capped rate authorized  
12 under this section beyond January 1, 2005, in any incumbent utility's service territory if the  
13 Commission determines that **effective competition** **[should be defined]** for the sale of  
14 electric generation services does not exist within such service territory.

15           2. The Commission shall report any capped rate extension orders made pursuant to  
16 this section and the reasons therefor, to the Legislative Transition Task Force within thirty  
17 days of any such order.

18           §56-592. Nonbypassable wires charges **[S & T, pg. 22, generally]**.

19           A. The Commission shall develop appropriate mechanisms maximizing and promoting  
20 competition pursuant to this chapter, for assessing per kWh-based charges against retail  
21 customers in conjunction with allocating (i) such stranded costs as may be determined  
22 pursuant to § 56-591.1, or (ii) any **transition costs** **[should be defined]** allocated to retail  
23 customers under any other provision of this chapter.

24           B. **[S & T, pg. 22, generally; language suggested in concept by drafting group]**  
25 The Commission shall also develop such alternative costs-allocating mechanisms as may be  
26 required to permit any retail customer to pay its appropriate share of any just and reasonable  
27 net stranded costs or transition costs, if any, on an accelerated basis upon a finding that such

1 method of payment is not (i) prejudicial to the incumbent utility or its ratepayers, or (ii)  
2 inconsistent with the development of effective competition.

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4 **Stranded Costs.**

5 § 56-591. Stranded Costs.

6 A. **[p. 2, column 1, bullets 1-4 plus language suggested by drafting group]** The  
7 Commission shall, after notice and opportunity for hearing, determine for each incumbent  
8 electric utility the just and reasonable net **stranded costs** (need definition) associated with all  
9 assets and obligations used to provide regulated service within the service territory of such  
10 incumbent electric utility as of January 1, 2002. Such determination shall include, but not be  
11 limited to, consideration of stranded costs associated with **power production assets** (need  
12 definition), **regulatory assets (as defined in SB 688)**, **power purchase contracts** (need  
13 definition), **nuclear decommissioning costs** (need definition), and **environmental**  
14 **compliance costs** (need definition). Such stranded costs shall be recovered via a  
15 nonbypassable wires charge, in accordance with the provisions of § 56-592, from persons  
16 who purchase any transmission or distribution service after the date of **customer choice (as**  
17 **defined in SB 688)**, within the territory served by such electric utility as of the date of  
18 customer choice **[p. 4, column 4, bullet 1]**.

19 B. **[p. 3 generally, language suggested by drafting group]** A recovery period for the  
20 amounts determined under subsection A shall be established by the Commission for each  
21 incumbent electric utility. Such recovery period shall continue for each incumbent electric  
22 utility until the Commission determines that such utility has recovered all stranded costs. No  
23 further stranded costs shall be recovered by an electric utility after the Commission makes  
24 such determination.

25 C. **[Structure and Transition p. 22, bullet 5]** The Commission shall permit any  
26 customer to pay its appropriate share of any stranded costs due to the incumbent electric  
27 utility on an accelerated basis upon a finding that such method of payment is not (i) prejudicial

1 to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of  
2 effective competition.

3 D. [p. 4, column 2, bullet 2] Except as provided in subsection C, customers that do not  
4 change suppliers of electric energy during the stranded cost recovery period established by  
5 the Commission under subsection B shall not pay the nonbypassable wires charge pursuant  
6 to this section but shall pay the capped rate as determined under § 56-579.1.

7 E. [p. 4, column 3, bullet 2] Customers that elect to change suppliers of electric  
8 energy during the stranded cost recovery period established by the Commission under  
9 subsection B shall pay such nonbypassable wires charge as the Commission may determine  
10 pursuant to subsection A.

11 \_\_\_\_\_

12

13 **Consumer, Environment & Education**

14 § 56-587. Licensing of Aggregators. [CEE pg. 3, bullets 1 & 6 mandatory; bullets 2-  
15 5 permissive, subject to SCC development of licensing and regulatory scheme.]

16 A. As a condition of doing business in the Commonwealth, each person seeking to  
17 aggregate electric energy within this Commonwealth on and after January 1, 2002, shall  
18 obtain a license from the Commission to do so. The license shall authorize that person to act  
19 as an **aggregator** [should be defined] until the license is otherwise terminated, suspended  
20 or revoked. Licensing pursuant to this section, however, shall not relieve any person seeking  
21 to act as a supplier of electric energy from their obligation to obtain a license as a supplier  
22 pursuant to § 56-585.

23 B. As a condition of obtaining, retaining and renewing any license issued pursuant to  
24 this section, a person shall satisfy such reasonable and nondiscriminatory requirements as  
25 may be specified by the Commission, which may include requirements that such person (i)  
26 provide background information; (ii) demonstrate, in a manner satisfactory to the Commission,  
27 financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure

1 that financial responsibility; (iv) pay an annual license fee to be determined by the  
 2 Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any  
 3 municipality or other political subdivision of the Commonwealth. In addition, as a condition of  
 4 obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy  
 5 such reasonable and nondiscriminatory requirements as may be specified by the Commission,  
 6 including, but not limited to, requirements that such person demonstrate ~~(i)~~ technical  
 7 capabilities as the Commission may deem appropriate, ~~and (ii) access to generation and~~  
 8 ~~generation reserves, if acting as a supplier.~~ Any license issued by the Commission pursuant to  
 9 this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the  
 10 Commission prior to the provision of electricity to consumer proof of adequate access to  
 11 generation and generation reserves.

12 C. In establishing aggregator licensing schemes and requirements applicable to the  
 13 same, the Commission may differentiate between (i) those aggregators representing retail  
 14 customers only, (ii) those aggregators representing suppliers only, and (iii) those aggregators  
 15 representing both retail customers and suppliers.

16 D. 1. The Commission shall establish a reasonable period within which any retail  
 17 customer may cancel any contract entered into with a supplier licensed pursuant to this  
 18 section.

19 2. The Commission may adopt other rules and regulations governing the requirements  
 20 for obtaining, retaining, and renewing a license to aggregate electric energy to retail  
 21 customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or  
 22 refuse to renew the license of, any person that does not meet those requirements.

23 § 56-587.1. Municipal aggregation. **[CEE pg. 5, bullets 1-3, as modified by the**  
 24 **drafting group. CEE, pg. 6, bullet 2].**

25 Counties, cities and towns (hereafter "municipalities") may, at their election and upon  
 26 authorization by majority votes of their governing bodies, aggregate electrical energy and

1 demand requirements for the purpose of negotiating the purchase of electrical energy  
2 requirements from any licensed supplier within this Commonwealth, as follows:

3 ~~1. Any municipality may aggregate the electric energy load of residential, commercial  
4 and industrial retail customers within its boundaries on a voluntary, opt-in basis in which each  
5 such customer must affirmatively select such municipality as its aggregator.~~

6 2.1. Any municipality may aggregate the electric energy load of its governmental  
7 buildings, facilities and any other governmental operations requiring the consumption of  
8 electric energy.

9 3.2. Two or more municipalities within this Commonwealth may aggregate the electric  
10 energy load of their governmental buildings, facilities and any other governmental operations  
11 requiring the consumption of electric energy.

12 ~~4. Any municipality within this Commonwealth may aggregate (i) the electric energy  
13 load of its governmental buildings, facilities and any other governmental operations requiring  
14 the consumption of electric energy, together with (ii) the electric energy load of any  
15 nongovernmental person or entity within this Commonwealth.~~

16 § 56-588. Metering and billing, etc. **[incorporated into § 56-584 in Structure &  
17 Transition draft dated 12/26/98]**

18 § 56-589. Consumer education and protection; Commission report to legislative task  
19 force.

20 A. **[CEE pg. 7, column 2, bullets 1-3 and language suggested, in concept, by  
21 drafting group on 12/29/98]** The Commission shall develop a consumer education program  
22 designed to provide the following information to retail customers during the period of transition  
23 to retail competition and thereafter:

24 1. Opportunities and options in choosing (i) suppliers and aggregators of electric  
25 energy, and (ii) any other service made competitive pursuant to this chapter;

26 2. Marketing and billing information suppliers and aggregators of electric energy will be  
27 required to furnish retail customers;

1           3. Retail customers' rights and obligations concerning the purchase of electric energy  
2 and related services; and

3           4. Such other information as the Commission may deem necessary and appropriate in  
4 the public interest.

5           B. The Commission shall complete the development of the consumer education  
6 program described in subsection A, and report its findings and recommendations to the  
7 Legislative Transition Task Force on or before December 1, 1999, and as frequently thereafter  
8 as may be required by such task force concerning:

9           1. The scope of such recommended program consistent with the requirements of  
10 subsection A;

11           2. Materials and media required to effectuate any such program;

12           3. State agency and nongovernmental entity participation;

13           4. Program duration;

14           5. Funding requirements and mechanisms for any such program; and

15           6. Such other findings and recommendations the Commission deems appropriate in  
16 the public interest.

17           C. **[CEE pg. 9, generally; CEE pg. 10, generally; CEE page 12, column 2, bullet 5].**

18 The Commission shall develop regulations governing marketing practices by public service  
19 companies, licensed suppliers, aggregators or any other providers of services made  
20 competitive by this chapter. The Commission shall also establish standardized marketing  
21 information to be furnished by licensed suppliers, aggregators or any other providers of  
22 services made competitive by this chapter during the period of transition to retail competition,  
23 and thereafter, which information ~~may~~ shall include:

24           1. Pricing and other key contract terms and conditions;

25           2. To the extent feasible, fuel mix and emissions data on at least an annualized basis.

26           3. Consumers' rights of cancellation following execution of any contract.

27           4. Toll-free telephone number for customer assistance.

1           5. Such other and further marketing information as the Commission may deem  
2 necessary and appropriate in the public interest.

3           D. **[CEE pg. 11, bullets 1, 2 and 5-7]** The Commission shall also establish  
4 standardized billing information to be furnished by public service companies, suppliers,  
5 aggregators or any other providers of services made competitive by this chapter during the  
6 period of transition to retail competition, and thereafter. Such billing information shall:

7           1. Distinguish between charges for regulated services and unregulated services.

8           2. Itemize any and all nonbypassable wires charges.

9           3. Be presented in a standardized format to be established by the Commission.

10          4. Disclose, to the extent feasible, fuel mix and emissions data on at least an  
11 annualized basis.

12          5. Include such other billing information as the Commission deems necessary and  
13 appropriate in the public interest.

14          E. **[CEE, pg. 14]** The Commission shall establish or maintain a complaint bureau for  
15 the purpose of receiving, reviewing and investigating complaints by retail customers against  
16 public service companies, licensed suppliers, aggregators and other providers of any services  
17 made competitive under this chapter. ~~The~~ Upon the request of any interested person or the  
18 Attorney General, or upon its own motion, the Commission shall be authorized to inquire into  
19 possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its  
20 authority under this chapter, this title, and under Title 12.1 (§ 12.1-1 et seq.). The Attorney  
21 General shall have a right to participate in such proceedings consistent with the Commission's  
22 Rules of Practice and Procedure.

23          F. **[CEE, pg. 15, bullets 1 & 4]** The Commission shall establish reasonable limits on  
24 customer security deposits required by public service companies, suppliers, aggregators or  
25 any other persons providing competitive services pursuant to this chapter.

1 § 56-589.1. [CEE, pg. 12, column 2, bullet 4; and column 4, bullet 4, as modified  
2 by the drafting group on 12/29/98] Retail customers private right of action; marketing  
3 practices.

4 A. No entity subject to this chapter shall use any deception, fraud, false pretense,  
5 misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing  
6 electric service.

7 A\_B 1. Any person who suffers loss as the result of any violation of subsection A, or as  
8 the result of marketing practices, including telemarketing practices, (i) engaged in by any  
9 public service company, licensed supplier, aggregator or any other provider of any service  
10 made competitive under this chapter, and (ii) in violation of subsection C of § 56-589,  
11 including any rule or regulation adopted by the Commission pursuant thereto, shall be entitled  
12 to initiate an action to recover actual damages, or \$500, whichever is greater. If the trier of fact  
13 finds that the violation was willful, it may increase damages to an amount not exceeding three  
14 times the actual damages sustained, or \$1,000, whichever is greater.

15 2. Upon referral from the Commission, the Attorney General, the attorney for the  
16 Commonwealth, or the attorney for any city, county, or town may cause an action to be  
17 brought in the appropriate circuit court for relief of violations within the scope of subsection A.

18 B\_C. Notwithstanding any other provision of law to the contrary, in addition to any  
19 damages awarded, such person, or any governmental agency initiating such action, also may  
20 be awarded reasonable attorney's fees and court costs.

21 G\_D. Any action pursuant to this section shall be commenced within two years after its  
22 accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the  
23 Commission initiates proceedings, or any other governmental agency files suit for the purpose  
24 of enforcing subsection A or the provisions of subsection C of § 56-589, the time during which  
25 such proceeding or governmental suit and all appeals therefrom is pending shall not be  
26 counted as any part of the period within which an action under this section shall be brought.



1 D. The circuit court may make such additional orders or decrees as may be necessary  
 2 to restore to any identifiable person any money or property, real, personal, or mixed, tangible  
 3 or intangible, which may have been acquired from such person by means of any act or  
 4 practice violative of subsection A or subsection C of § 56-589, provided, that such person  
 5 shall be identified by order of the court within 180 days from the date of any order  
 6 permanently enjoining the unlawful act or practice.

7 E. In any case arising under this section, no liability shall be imposed upon any  
 8 licensed supplier, aggregator or any other provider of any service made competitive under this  
 9 chapter, who shows by a preponderance of the evidence that (i) the act or practice alleged to  
 10 be in violation of subsection A or subsection C of § 56-589 was an act or practice over which  
 11 the same had no control, or (ii) the alleged violation resulted from a bona fide error  
 12 notwithstanding the maintenance of procedures reasonably adopted to avoid a violation.  
 13 However, nothing in this section shall prevent the court from ordering restitution and payment  
 14 of reasonable attorney's fees and court costs pursuant to subsection ~~B-C~~ to individuals  
 15 aggrieved as a result of an unintentional violation of subsection A or subsection C of § 56-  
 16 589.

17 § 56-590. Public purpose programs. **[CEE pp. 1 & 2]. At its 12/29 meeting, the**  
 18 **Drafting group recommended further study of this issue by Legislative Transition Task**  
 19 **Force. See Structure & Transition Draft Supplement--additions to § 56-594.**

20 ~~§ 56-590.1. [CEE, pg. 16, bullet 4] Environment and Renewable energy; net energy~~  
 21 ~~metering provisions.~~

22 ~~A. The Commission shall establish net energy metering provisions designed to~~  
 23 ~~encourage private investment in renewable energy resources, stimulate economic growth~~  
 24 ~~within the Commonwealth, enhance the continued diversification of Virginia's energy resource~~  
 25 ~~mix, and reduce interconnection and administrative costs for electric service providers.~~

26 ~~B. For the purpose of this section "net energy metering" means measuring the~~  
 27 ~~difference between electricity supplied to an eligible customer-generator, and the electricity~~

1 ~~generated and fed back to the electric grid by the eligible customer-generator over an annual~~  
2 ~~period, with corresponding billing or crediting of the customer-generator retail customer~~  
3 ~~account by such customer-generator's supplier of electric energy.~~

4 § 56-590.2. Energy efficiency. **At its 12/29 meeting, the Drafting group**  
5 **recommended further study of this issue by the Legislative Transition Task Force. See**  
6 **Structure & Transition Draft Supplement--additions to § 56-594.**

7 § 56-590.3. Utility worker protection. **At its 12/29 meeting, the Drafting group**  
8 **recommended further study of this and related reliability issues by the Legislative**  
9 **Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-**  
10 **594.**

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