

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 **SJR-91 Electric Utility Restructuring Draft---January 20, 1999**

2

3 This draft consolidates SJR-91 Joint Subcommittee legislative drafting activity
4 through and including the subcommittee’s January 18, 1999 meeting. The draft is a
5 combination of (i) the “substitute” prepared and offered by Virginia Power, ALERT,
6 Office of the Attorney General, and the Committee for Fair Utility Rates, adopted by the
7 joint subcommittee at the January 18 meeting, and (ii) the amendments to that
8 “substitute” subsequently adopted by the joint subcommittee. This draft addresses (i)
9 Structure & Transition, (ii) Structure & Transition Supplement (iii) Stranded Costs, and
10 (iv) Consumer Environment & Education drafts. It contains no taxation provisions.

11

12 **Structure & Transition**

13

14 §56-579. Schedule for transition to retail competition; **Commission** authority. [pp. 1-6,
15 generally]

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

- 18 1. On or before January 1, 2001, each **incumbent electric utility** owning, operating,
19 controlling, or having an entitlement to transmission capacity shall join or establish an
20 **independent system operator** (see SCC definition on pg. 4 of SCC proposal), or ISO a
21 regional transmission entity, which entity may be an intrastate independent system operator,
22 to which such utility shall transfer the management and control of its **transmission system**,
23 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 and after the period
4 of 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 at least equal to that of other customer classes permitted to
15 select suppliers during the period of transition to retail competition [pg. 1, column 3, bullet
16 3].

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

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

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

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

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

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

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

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

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

17 § 56-580. Nondiscriminatory access to transmission and distribution system [pp. 7,8].

18 A. All **distributors** shall have the obligation to connect any retail customer including
19 those using distributed generation located within its service territory to those facilities of the
20 distributor that are used for delivery of retail electric energy, subject to Commission rules and
21 regulations and approved tariff provisions relating to connection of service [pg. 7, column 2,
22 **bullet 1**].

23 B. Except as otherwise provided in this chapter, every distributor shall provide
24 distribution service within its service territory on a basis which is just, reasonable, and not
25 unduly discriminatory to suppliers of electric energy including distributed generation, as the
26 Commission may determine. The distribution services provided to each supplier of electric
27 energy shall be at least equal in quality to those provided by the distribution utility to itself or

1 to any affiliate. The Commission shall establish rates, terms and conditions for distribution
2 service under Chapter 10 of Title 56 (§§ 56-232 et seq.) [pg. 7, column 1, bullet 2].

3 C. The Commission shall establish interconnection standards to ensure transmission
4 and distribution safety and reliability, which standards shall not exceed or be inconsistent with
5 nationally recognized standards acceptable to the Commission. In adopting standards
6 pursuant to this subsection the Commission shall seek to prevent barriers to new technology
7 and shall not make compliance unduly burdensome and expensive. The Commission shall
8 determine questions about the ability of specific equipment to meet interconnection standards.

9 D. The Commission shall consider developing expedited permitting processes for small
10 generation facilities of 50 MW or less. The Commission shall also consider developing a
11 standardized permitting process and interconnection arrangements for those power systems
12 less than 500 kW which have demonstrated approval from a nationally recognized testing
13 laboratory acceptable to the Commission.

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

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

26 1. Expand the capacity of transmission systems; [SCC amendments, pg. 2, question
27 1]

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

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

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

11 E. If the Commission determines, after notice and opportunity for hearing, that a person
 12 has or will have, as a result of such person's control of electric generating capacity or energy
 13 within a transmission constrained area, **market power** (see **SCC definition on pg. 5 of the**
 14 **SCC statutory proposal**) over the direct or indirect sale of electric generating capacity or
 15 energy to buyers retail customers located within the Commonwealth, the Commission may, to
 16 the extent not preempted by federal law and only to the extent that the Commission
 17 determines market power is not adequately mitigated by rules and practices of the applicable
 18 RTE having responsibility for management and control of transmission assets within the
 19 Commonwealth, within such transmission constrained area, regulate such person's rates
 20 pursuant to Chapter 10 (§ 56-232 et seq.) of this title adjust such person's retail generation
 21 asset-rates for generation services to the extent necessary to protect retail customers from
 22 such market power. Such rates shall remain regulated until the Commission, after notice and
 23 opportunity for hearing, determines that the ~~transmission constraint~~ market power has been
 24 ~~relieved~~ mitigated **[pg. 8, column 1, bullet 2]**.

25 § 56-581. ~~Independent System Operators~~ Regional transmission entities. [pp. 3, 9-12
 26 of decision tree; pg. 1 of SCC amendments, responses to bolded questions under "ISO
 27 requirement."]

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

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

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

17 (a) Promote:

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

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

23 (b) Be consistent with lawful requirements of the Federal Energy Regulatory
24 Commission;

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

26 (d) Generally promote the public interest, and are consistent with (i) ensuring the
27 successful development of interstate ~~ISOs~~ RTEs, and (ii) meeting the transmission needs of

1 electric generation suppliers both within and without this Commonwealth [pg. 10; language
2 suggested, in concept, by drafting group].

3 B. The Commission shall also adopt rules and regulations, with appropriate public
4 input, establishing elements of RTE structures essential to the public interest, which elements
5 shall be applied by the Commission in determining whether to authorize transfer of ownership
6 or control from an incumbent electric utility to an RTE implementing the following requirements
7 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~~ RTEs 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~~
20 ~~any ISO of which an incumbent electric utility is or proposes to be a member [pg. 11, column~~
21 ~~2, 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~~ the conduct of incumbent electric
20 utilities and affiliates thereof when any such affiliates provide, or control any entity that
21 provides, generation, distribution or transmission services, to the extent necessary to prevent
22 impairment of competition. [pg. 15, column 1, **bullet 1**].

23 D. The Commission may permit the construction and operation of electrical generating
24 facilities upon a finding that such generating facility and associated facilities including
25 transmission lines and equipment ~~(i) will have no material adverse effect upon any regulated~~
26 ~~rates paid by retail customers in the Commonwealth;~~ ~~(ii)~~ (i) will have no material adverse
27 effect upon reliability of electric service provided by any regulated public utility; and ~~(iii)~~ (ii)

1 are not otherwise contrary to the public interest. In review of its petition for a certificate to
 2 construct and operate a generating facility described in this subsection, the Commission shall
 3 give consideration to the effect of the facility and associated facilities, including transmission
 4 lines and equipment, on the environment and establish such conditions as may be desirable
 5 or necessary to minimize adverse environmental impact as provided in §56-46.1. ~~Facilities~~
 6 ~~authorized by a certificate issued pursuant to this subsection may be exempted by the~~
 7 ~~Commission from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56~~ [pg. 16, column
 8 1, bullet 1, additional language as suggested by drafting group].

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

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

24 § 56-584. Regulation of rates subject to Commission's jurisdiction [pg. 18].

25 A. Subject to the provisions of § 56-579.1, the Commission shall regulate the rates for
 26 the transmission of electric energy, to the extent not prohibited by federal law, and for the
 27 distribution of electric energy to such retail customers on an unbundled basis, but, subject to

1 the provisions of this chapter after the date of customer choice, the Commission no longer
2 shall regulate rates for the generation component of retail electric energy sold to retail
3 customers **[pg. 18, column 1, bullet 1]**.

4 B. No later than September 1, 1999 and annually thereafter, the Commission shall
5 submit a report to the General Assembly evaluating the advantages and disadvantages of
6 competition for metering, billing and other services which have not been made subject to
7 competition, and making recommendations as to when, and for whom, such other services
8 should be made subject to competition **[pg. 18, column 1, bullet 1, additional language as
9 suggested by drafting group]**.

10 § 56-585. Licensure of retail electric energy suppliers **[pg. 19]**.

11 A. As a condition of doing business in the Commonwealth each person seeking to sell,
12 offering to sell, or selling electric energy to any retail customer in the Commonwealth, on and
13 after January 1, 2002, shall obtain a license from the Commission to do so. A license shall
14 not be required solely for the leasing or financing of property used in the sale of electricity to
15 any retail customer in the Commonwealth.

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

18 B. As a condition of obtaining, retaining and renewing any license issued pursuant to
19 this section, a person shall satisfy such reasonable and nondiscriminatory requirements as
20 may be specified by the Commission, which may include requirements that such person (i)
21 demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a
22 bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay
23 an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees
24 lawfully imposed by the Commonwealth or by any municipality or other political subdivision of
25 the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any
26 license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory
27 requirements as may be specified by the Commission, including but not limited to

1 requirements that such person demonstrate (i) technical capabilities as the Commission may
 2 deem appropriate; (ii) access to generation and generation reserves; and (iii) adherence to
 3 minimum market conduct standards [pg. 19, column 1, bullets 2-6, additional language as
 4 suggested by the drafting group].

5 C. 1. The Commission shall establish a reasonable period within which any retail
 6 customer may cancel, without penalty or cost, any contract entered into with a supplier
 7 licensed pursuant to this section.

8 2. The Commission may adopt other rules and regulations governing the requirements
 9 for obtaining, retaining, and renewing a license to supply electric energy to retail customers,
 10 and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew
 11 the license of, any person that does not meet those requirements [pg. 19, column 1, bullet
 12 7].

13 § 56-586. ~~Suppliers of last resort, default suppliers and backstop providers~~ Default
 14 Services [pg. 20 of decision tree; pg. 4 of SCC proposed amendments to decision tree.
 15 Drafting group did not adopt any of the options listed on the decision tree, adopting
 16 instead the 7 bolded items on pg. 4 of the SCC's amendments, answering questions 1-5
 17 in the affirmative; stipulating that questions 3 and 6 should be subject to "public
 18 interest" criteria; and requiring the SCC to review and report on question 7 at the end of
 19 the transition period.].

20 A. The Commission shall, after notice and opportunity for hearing, (i) determine the
 21 components of default services ~~supplier of last resort (should be defined)~~ and default
 22 ~~(should be defined)~~ services [SCC question 1], and (ii) establish one or more programs
 23 making such services available to retail customers requiring them commencing with the date
 24 of customer choice for all retail customers established pursuant to § 56-579, during the period
 25 of transition to customer choice. For purposes of this chapter, "default service" means service
 26 made available under this section to retail customers who (i) do not select an alternative

1 provider, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted
2 with an alternative supplier who fails to perform.

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

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

9 2. May, upon a finding that the public interest will be served, designate one or more
10 willing providers to provide one or more components of such services, in one or more regions
11 of the Commonwealth, to one or more classes of customers **[SCC question 2]**; and

12 3. ~~May~~ In the absence of a finding under subdivision 2, may require an incumbent
13 electric utility or distribution utility to provide one or more components of such services, or to
14 form an affiliate to do so, in one or more regions of the Commonwealth, at rates which ~~afford~~
15 ~~the entity a reasonable opportunity to earn a fair rate of return~~ are fairly compensatory to the
16 utility and which reflect any cost of energy prudently procured, including energy procured from
17 the competitive market; provided that the Commission may not require an incumbent electric
18 utility or distribution utility, or affiliate thereof, to provide any such services outside the territory
19 in which such utility provides service **[SCC question 4]**.

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

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

9 E. A distribution electric cooperative, or one or more affiliates thereof, shall have the
 10 obligation and right to be the supplier of default services in its certificated service
 11 territory. If a distribution electric cooperative, or one or more affiliates thereof, elects
 12 or seeks to be a default supplier of another electric utility, then the Commission shall
 13 designate the default supplier for that distribution electric cooperative, or any affiliate
 14 thereof, pursuant to subsection B.

15 F. In the event the the Commission designates a provider of default service other than
 16 the incumbent electric utility to provide default service in the territory of such utility
 17 the Commission shall establish a wires charge pursuant to § 56-592, which wires
 18 charge shall terminate on July 1, 2007.

19 § 56-586.1. Emergency Services Provider.

20 On and after January 1, 2001, if any supplier fails to fulfill its obligation to deliver
 21 electricity scheduled into the control area provide electricity to a retail customer, the entity
 22 fulfilling the control area function, or, if applicable, the regional transmission entity or other
 23 entity as designated by the Commission, shall be responsible for charging the defaulting
 24 supplier for the full cost of replacement energy, including the cost of energy, the cost incurred
 25 by others as a result of the default, and the assessment of penalties as may be approved
 26 either by the Commission, to the extent not precluded by federal law, or by the Federal Energy
 27 Regulatory Commission. The Commission, as part of the rules established under section

1 56-585, shall determine the circumstances under which failures to deliver electricity will result
2 in the revocation of the supplier's license.

3 § 56-593. Divestiture, functional separation and other corporate relationships.

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

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

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

14 C. The Commission shall, to the extent necessary to promote effective competition in
15 the Commonwealth, promulgate rules and regulates regulations to carry out the provisions of
16 this section, which rules and regulations shall include provisions **[pg. 24, column 2, bullets**
17 **1-5; pg. 25, column 2, bullet 1]**:

- 18 1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
- 19 2. Prohibiting functionally separate units from engaging in anticompetitive behavior or
20 self-dealing;
- 21 3. Prohibiting affiliated entities from engaging in discriminatory behavior towards
22 nonaffiliated units; and
- 23 4. Establishing codes of conduct detailing permissible relations between functionally
24 separate units.

25 ~~D. Nothing in this chapter shall be construed to exempt or immunize from punishment~~
26 ~~or prosecution, conduct (i) engaged in by functionally separate generation, transmission or~~

1 distribution, or any of their affiliates, and (ii) violative of federal antitrust laws, or the antitrust
2 laws of this Commonwealth [pg. 25, column 2, bullet 2]:

3 ***[Note: Subsections E-D & F-E were adopted, in concept, by the drafting group in***
4 ***response to questions raised about mergers and acquisitions on pg. 26 of the decision***
5 ***tree. The drafting group directed staff to incorporate language in § 56-591 {SCC***
6 ***numbering} of the SCC draft proposal. The language that follows is identical to the***
7 ***provisions of the SCC draft language, except that references to “basic electric service”***
8 ***have been deleted; that concept has not been adopted by the drafting group. The***
9 ***definitions of covered entity and covered transaction are proposed to be amended to***
10 ***read as follows: 1) “Covered entity” means a provider of an electric service not subject***
11 ***to competition within the Commonwealth but shall not include default service***
12 ***providers; 2) “Covered transaction” means an acquisition, merger, or consolidation of,***
13 ***or other transaction involving, stock, securities, voting interests or assets, by which***
14 ***one or more persons obtains control of a covered entity.]***

15 E.D. Neither a **covered entity** [defined in SCC draft proposal] nor an affiliate thereof
16 may be a party to a **covered transaction** [defined in SCC draft proposal] without the prior
17 approval of the Commission. Any such person proposing to be a party to such transaction
18 shall file an application with the Commission. The Commission shall approve or disapprove
19 such transaction within sixty days after the filing of a completed application; however, the sixty
20 day period may be extended by Commission order for a period not to exceed an additional
21 120 days. The application shall be deemed approved if the Commission fails to act within such
22 initial or extended period. The Commission shall approve such application if it finds, after
23 notice and opportunity for hearing, that the transaction will comply with the requirements of
24 subsection F.E., and may, as a part of its approval, establish such conditions or limitations on
25 such transaction as it finds necessary to ensure compliance with said subsection F.E.

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

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

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

6 G.F. Nothing in this chapter shall be deemed to abrogate or modify the Commission's
7 authority under Chapters 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (56-88 et seq.) of this
8 title **[Note: the first sentence was incorporated to reflect frequent drafting group and
9 interest group references to the continuing application of the Utilities Facilities Act
10 during the transition period, and possibly thereafter. The SCC language that follows,
11 however, may eliminate the need for its reference here]**. However, any person subject to
12 the requirements of subsection E-D that is also subject to the requirements of Chapter 5 (§
13 56-88 et seq.) of Title 56 may, in the discretion of the Commission, may be exempted from
14 compliance with some or all of the requirements of said Chapter 5 of Title 56.

15 § 56-593.1. Application of antitrust laws.

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

20

21 § 56-594. Legislative Transition Task Force established [**S & T pg. 29, column 2,**
22 **bullets 1-4, plus additional language adopted, in concept, by drafting group on 12/17**
23 **and 12/29]**.

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

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

5 C. The task force members shall be appointed to begin service on and after July 1,
 6 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the
 7 Virginia State Corporation Commission in implementing this chapter, receiving such reports as
 8 the Commission may be required to make pursuant thereto; (ii) examine utility worker
 9 protection during the transition to retail competition; generation, transmission and distribution
 10 systems reliability concerns; energy assistance programs for low-income households;
 11 renewable energy programs; and energy efficiency programs; and (iii) annually report to the
 12 Governor and each session of the General Assembly during their tenure concerning the
 13 progress of each stage of the phase-in of retail competition, offering such recommendations
 14 as may be appropriate for legislative and administrative consideration.

16 **Structure & Transition Supplement**

17 § 56-579.1 Rate caps. [S & T pg. 5, generally].

18 A. The Commission shall establish ***capped rates [should be defined]***, effective
 19 January 1, 2001 and unless extended as provided hereafter, expiring on January 1, 2005
 20 July 1, 2007 for each service territory of every incumbent utility as follows:

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

24 2. 1. A capped rate for electric generation services, only, shall also be established for
 25 the purpose of effecting customer choice for those retail customers authorized under this
 26 chapter and opting to purchase generation services from a supplier other than the incumbent
 27 utility during this period, and any extensions thereof.

1 2. The capped rates established under this section shall be the rates in effect for each
 2 incumbent utility as of the effective date of this chapter, or rates subsequently placed into
 3 effect pursuant to a rate application made by an incumbent electric utility filed with and
 4 approved by the Commission prior to January 1, 2001, and made by an incumbent electric
 5 utility that is not currently bound by a rate case settlement adopted by the Commission that
 6 extends in its application beyond January 1, 2002. made by an incumbent electric utility. The
 7 capped rates established under this section, which include rates, tariffs, electric service
 8 contracts, and rate programs (including experimental rates, regardless of whether they
 9 otherwise would expire), shall be such rates, tariffs, contracts, and programs in effect for each
 10 incumbent utility as of the date of this chapter rprovided however, that experimental rates and
 11 rate programs may be closed to new customer upon application to the Commission.

12 B. The Commission may adjust such capped rates in connection with (i) utilities'
 13 recovery of fuel costs pursuant to § 56-249.6, and (ii) emergency conditions as provided in §
 14 56-245. (ii) any changes in the taxation by the Commonwealth of incumbent electric utiilty
 15 revenues made by this chapter or chapter ____ of title ____, and-(iii) notwithstanding the
 16 provisions of § 56-249.6, the Commission may authorize tariffs that include incentives
 17 designed to encourage an incumbent electric utility to reduce its fuel costs by permitting
 18 retention of a portion of cost savings resulting from fuel cost reductions or by other methods
 19 determined by the Commission to be fair and reasonable to the utility and its customers, and
 20 (iv) electric cooperatives' recovery of energy costs, through the wholesale power cost
 21 adjustment pursuant to § 56-266.

22 C. 1. The Commission may, by order, annually extend any capped rate authorized
 23 under this section beyond January 1, 2005, in any incumbent utility's service territory if the
 24 Commission determines that **effective competition [should be defined]** for the sale of
 25 electric generation services does not exist within such service territory. A utility may petition
 26 the Commission to terminate the capped rates to all customers anytime after January 1, 2004
 27 and such capped rates may be terminated upon the Commission finding of a competitive

1 market for generation services within the service territory of that utility to the extent that
2 capped rates are no longer necessary to protect retail consumers.

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

6 §56-592. Nonbypassable wires charges [S & T, pg. 22, generally].

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

12 B. [S & T, pg. 22, generally; language suggested in concept by drafting group]
13 The Commission shall also develop such alternative costs-allocating mechanisms as may be
14 required to permit any retail customer to pay its appropriate share of any just and reasonable
15 net stranded costs or transition costs, if any, on an accelerated basis upon a finding that such
16 method of payment is not (i) prejudicial to the incumbent utility or its ratepayers, or (ii)
17 inconsistent with the development of effective competition.

18 A. The Commission shall establish a wires charge for each incumbent electric utility
19 which shall be the sum (i) of the difference between the incumbent utilities capped
20 unbundled rates for generation and **the market rate for generation-(a) costs avoided**
21 **by the incumbent utilities, or (b) the market rate for generation,** as determined by
22 the Commission and, (ii) any transition costs incurred by the incumbent utility
23 determined by the Commission; **subject** however, **to** such wires charge and the
24 market rate for generation **shall** not exceeding the capped rate applicable to such
25 incumbent utility.

26 B. Customers that choose suppliers of electric energy, other than the incumbent utility,
27 or are subject to Default service, prior to the expiration of the period for capped

1 rates, as provided for in § 56-579.1, shall pay a wires charge determined pursuant
 2 to subsection A hereof based upon actual usage of electricity distributed by the
 3 incumbent utility to the customer during the period from the time they it chooses a
 4 supplier of electric energy other than the incumbent electric utility, until July 1, 2007.

5 C. The Commission shall permit any customer, at its option, to pay the wires charge
 6 due to the incumbent electric utility on an accelerated basis upon a finding that such
 7 method is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii)
 8 inconsistent with the development of effective competition.

9 **Stranded Costs.**

10 § 56-591. Stranded Costs.

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

24 B. **[p. 3 generally, language suggested by drafting group]** A recovery period for the
 25 amounts determined under subsection A shall be established by the Commission for each
 26 incumbent electric utility. Such recovery period shall continue for each incumbent electric
 27 utility until the Commission determines that such utility has recovered all stranded costs. No

1 further stranded costs shall be recovered by an electric utility after the Commission makes
2 such determination.

3 C. [Structure and Transition p. 22, bullet 5] The Commission shall permit any
4 customer to pay its appropriate share of any stranded costs due to the incumbent electric
5 utility on an accelerated basis upon a finding that such method of payment is not (i) prejudicial
6 to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of
7 effective competition.

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

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

16
17 **56-591 Stranded Costs**

18 Just and reasonable net stranded costs, to the extent that they exceed zero value in
19 total for the incumbent electric utility, shall be recoverable by each incumbent electric utility
20 provided each incumbent ~~electeie~~ electric utility shall only recover its just and reasonable net
21 stranded costs thru either capped rates provided in Sec. 56-579.1 or a wires charge as
22 provided in Sec. 56-592. In determining total stranded costs for a distribution electric
23 cooperative, the Commission shall use a methodology that ensures that the cooperative and
24 any power supply cooperative of which the cooperative is or was a member will be able to
25 continue to meet their required financial obligations, commitments and covenants. For
26 cooperatives, stranded costs will be measured by the amount of cash necessary to reduce the

1 average cost of wholesale power to the distribution cooperative to the cost the competitive
 2 market would charge for equivalent service upon the commencement of customer choice. For
 3 cooperatives that are members of a power supply cooperative, the average cost of wholesale
 4 power shall be determined by taking the total expense for delivered kilowatt-hours, adding
 5 indenture or mortgage net margin requirements, and dividing that amount by the total kilowatt-
 6 hours.

7

8

9 **Consumer, Environment & Education**

10 § 56-587. Licensing of Aggregators. **[CEE pg. 3, bullets 1 & 6 mandatory; bullets 2-**
 11 **5 permissive, subject to SCC development of licensing and regulatory scheme.]**

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

19 B. As a condition of obtaining, retaining and renewing any license issued pursuant to
 20 this section, a person shall satisfy such reasonable and nondiscriminatory requirements as
 21 may be specified by the Commission, which may include requirements that such person (i)
 22 provide background information; (ii) demonstrate, in a manner satisfactory to the Commission,
 23 financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure
 24 that financial responsibility; (iv) pay an annual license fee to be determined by the
 25 Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any
 26 municipality or other political subdivision of the Commonwealth. In addition, as a condition of
 27 obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy

1 such reasonable and nondiscriminatory requirements as may be specified by the Commission,
2 including, but not limited to, requirements that such person demonstrate ~~(i)~~ technical
3 capabilities as the Commission may deem appropriate, ~~and (ii) access to generation and~~
4 ~~generation reserves, if acting as a supplier.~~ Any license issued by the Commission pursuant to
5 this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the
6 Commission prior to the provision of electricity to consumer proof of adequate access to
7 generation and generation reserves.

8 C. In establishing aggregator licensing schemes and requirements applicable to the
9 same, the Commission may differentiate between (i) those aggregators representing retail
10 customers only, (ii) those aggregators representing suppliers only, and (iii) those aggregators
11 representing both retail customers and suppliers.

12 D. 1. The Commission shall establish a reasonable period within which any retail
13 customer may cancel, ~~without penalty or cost,~~ any contract entered into with a supplier
14 licensed pursuant to this section.

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

19 § 56-587.1. Municipal aggregation. **[CEE pg. 5, bullets 1-3, as modified by the**
20 **drafting group. CEE, pg. 6, bullet 2].**

21 Counties, cities and towns (hereafter "municipalities") and other political subdivisions of
22 the Commonwealth may, at their election and upon authorization by majority votes of their
23 governing bodies, aggregate electrical energy and demand requirements for the purpose of
24 negotiating the purchase of electrical energy requirements from any licensed supplier within
25 this Commonwealth, as follows:

26 ~~1. Any municipality may aggregate the electric energy load of residential, commercial~~
27 ~~and industrial retail customers within its boundaries on a voluntary, opt-in basis in which each~~

~~1 such customer must affirmatively select such municipality as its aggregator. Any municipality
 2 may aggregate the electric energy load of residential, commercial and industrial retail
 3 customers within its boundaries on a voluntary, opt in basis in which each such customer must
 4 affirmatively select such municipality as its aggregator. The municipality may not earn a profit
 5 but must recover the actual costs incurred in such aggregation.~~

6 2~~_~~1. Any municipality or other political subdivision of the Commonwealth may aggregate
 7 the electric energy load of its governmental buildings, facilities and any other governmental
 8 operations requiring the consumption of electric energy.

9 3~~_~~2. Two or more municipalities or other political subdivisions within this
 10 Commonwealth may aggregate the electric energy load of their governmental buildings,
 11 facilities and any other governmental operations 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 ~~Any person who suffers loss (i) as the result of marketing practices, including
19 telemarketing practices, engaged in by any public service company, licensed supplier,
20 aggregator or any other provider of any service made competitive under this chapter, and in
21 violation of subsection C of § 56-589, including any rule or regulation adopted by the
22 Commission pursuant thereto, or (ii) as the result of any violation of subsection A, shall be
23 entitled to initiate an action to recover actual damages, or \$500, whichever is greater. If the
24 trier of fact finds that the violation was willful, it may increase damages to an amount not
25 exceeding three times the actual damages sustained, or \$1,000, whichever is greater.~~

26 ~~2. Upon referral from the Commission, the Attorney General, the attorney for the
27 Commonwealth, or the attorney for any city, county, or town may cause an action to be~~

1 brought in the appropriate circuit court for relief of violations within the scope of (i) subsection
2 C of § 56-589, including any rule or regulation adopted by the Commission pursuant thereto,
3 or (ii) subsection A.

4 B_C. Notwithstanding any other provision of law to the contrary, in addition to any
5 damages awarded, such person, or any governmental agency initiating such action, also may
6 be awarded reasonable attorney's fees and court costs.

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

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

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

1 aggrieved as a result of an unintentional violation of subsection A or subsection C of § 56-
2 589.

3 § 56-590. Public purpose programs. [CEE pp. 1 & 2]. At its 12/29 meeting, the
4 Drafting group recommended further study of this issue by Legislative Transition Task
5 Force. See Structure & Transition Draft Supplement--additions to § 56-594.

6 ~~§ 56-590.1. [CEE, pg. 16, bullet 4] Environment and Renewable energy; net energy~~
7 ~~metering provisions.~~

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

12 ~~B. For the purpose of this section "net energy metering" means measuring the~~
13 ~~difference between electricity supplied to an eligible customer-generator, and the electricity~~
14 ~~generated and fed back to the electric grid by the eligible customer-generator over an annual~~
15 ~~period, with corresponding billing or crediting of the customer-generator retail customer~~
16 ~~account by such customer-generator's supplier of electric energy.~~

17 § 56-590.1. Net energy metering provisions.

18 A. The Commission shall establish by regulation a program, to begin no later than July
19 1, 2000, which affords eligible customer-generators the opportunity to participate in net
20 energy metering. The regulations may include, but need not be limited to, requirements for (i)
21 retail sellers; (ii) owners and/or operators of distribution or transmission facilities; (iii)
22 providers of default service; (iv) eligible customer-generators; or (v) any combination of the
23 foregoing, as the commission determines will facilitate the provision of net energy metering,
24 provided that the Commission determines that such requirements do not adversely affect the
25 public interest.

26 B. For the purpose of this section,

1 “net energy metering” means measuring the difference, over a 12-month period,
2 between (a) electricity supplied to an eligible customer-generator from the electric grid, and
3 (b) the electricity generated and fed back to the electric grid by the eligible customer-
4 generator.

5 “eligible customer-generator” means a customer that is a residential or small
6 commercial customer; and owns and operates an electrical generating facility that (i) has a
7 capacity of not more than 25 kilowatts; (ii) uses as its primary source of fuel solar, wind, or
8 hydro energy; (iii) is located on the customer’s premises; (iv) is interconnected and operated
9 in parallel with an electric company’s transmission and distribution facilities; and (v) is
10 intended primarily to offset all or part of the customer’s own electricity requirements.

11 C. The Commission’s regulations shall ensure that the metering equipment installed for
12 net metering shall be capable of measuring the flow of electricity in two directions, and shall
13 allocate fairly the cost of such equipment and any necessary interconnection. An eligible
14 customer-generator’s solar electrical generating system shall meet all applicable safety and
15 performance standards established by the National Electrical Code, the Institute of Electrical
16 and Electronics Engineers, and accredited testing laboratories such as Underwriters
17 Laboratories. Beyond the requirements set forth in this section, a customer-generator whose
18 solar electrical generating system meets those standards and rules shall not be required to
19 bear the cost to (i) install additional controls, (ii) perform or pay for additional tests, or (iii) to
20 purchase additional liability insurance.

21 D. The Commission shall establish minimum requirements for contracts to be entered
22 into by the parties to net metering arrangements. Such requirements shall protect the
23 customer-generator against discrimination by virtue of its status as a customer-generator.
24 Where electricity generated by the customer-generator over a twelve-month period exceeds
25 the electricity consumed by the customer-generator, the customer-generator shall not be
26 compensated for the excess electricity unless the entity contracting to receive such electric
27 energy and the customer-generator enter into a power purchase agreement for such excess

1 electricity. The net metering standard contract or tariff shall be available to eligible customer-
2 generators on a first-come, first-served basis in each electric distribution company's service
3 area until the rated generating capacity owned and operated by eligible customer-generators
4 in the state reached 0.1% of each electric distribution company's adjusted peak-load forecast
5 for the previous year.

6 E. The Commission may establish regulations authorizing net energy metering by
7 persons who meet the definition of "eligible customer-generator" other than the criterion set
8 forth in clause (ii) of subdivision B 2 b, provided that such regulations are otherwise consistent
9 with this section, and provided further that the total amount of generating capacity owned and
10 operated by eligible customer-generators authorized by this subsection shall not exceed 0.1
11 percent of each electric distribution company's adjusted peak-load forecast for the previous
12 year.

13 § 56-590.2. Energy efficiency. **At its 12/29 meeting, the Drafting group**
14 **recommended further study of this issue by the Legislative Transition Task Force. See**
15 **Structure & Transition Draft Supplement--additions to § 56-594.**

16 § 56-590.3. Utility worker protection. **At its 12/29 meeting, the Drafting group**
17 **recommended further study of this and related reliability issues by the Legislative**
18 **Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-**
19 **594.**

20