

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 729 of the Regular Session

As Engrossed: H3/16/09 S3/23/09

A Bill

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

HOUSE BILL 1712

4
5 By: Representative Williams
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO AUTHORIZE ELECTRIC UTILITIES TO RECOVER
10 THE COST OF RESTORATION OF DAMAGES CAUSED BY
11 STORMS AND RELATED PERILS THROUGH SECURITIZATION
12 OF SUCH STORM RESTORATION AND RELATED COSTS; TO
13 PRESCRIBE THE MEANS AND MANNER IN WHICH SUCH
14 SECURITIZATION SHALL BE AUTHORIZED; AND MATTERS
15 RELATED THERETO.
16

17 **Subtitle**

18 TO AUTHORIZE ELECTRIC UTILITIES TO
19 RECOVER THE COST OF RESTORATION OF
20 DAMAGES CAUSED BY STORMS AND RELATED
21 PERILS THROUGH SECURITIZATION OF SUCH
22 STORM RESTORATION AND RELATED COSTS.
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 23 is amended to add the following
28 additional chapter:

29 CHAPTER 20

30 23-20-101. Short title; purpose.

31 (a) This Act shall be known and may be cited as the "Arkansas Electric
32 Utility Storm Recovery Securitization Act".

33 (b) The purpose of this Act is to enable Arkansas electric utilities,
34 if authorized by a financing order issued by the commission, to use
35 securitization financing for storm recovery costs, which may lower the



1 financing costs or mitigate the impact on rates in comparison with
2 traditional utility financing or other traditional utility recovery methods
3 thereby benefitting customers. The storm recovery bonds will not be public
4 debt. The proceeds of the storm recovery bonds shall be used for the
5 purposes of recovering storm recovery costs solely as set forth in a
6 financing order issued by the commission to encourage and facilitate the
7 rebuilding of utility infrastructure damaged by storms. Securitization
8 financings for storm recovery costs are hereby recognized to be a valid
9 public purpose. Federal tax laws and revenue procedures expressly require
10 that certain state legislation be enacted in order for such transactions to
11 receive certain federal tax benefits. The General Assembly finds a public
12 need to promote such securitization financings by providing, clear and
13 exclusive methods to create, transfer and encumber interests in storm
14 recovery property as defined in this Act. This need can be met by providing
15 in this Act for such methods and by establishing that any conflict between
16 the rules governing sales, assignments, or transfers of, or security
17 interests or other encumbrances of any nature upon intangible personal
18 property under other Arkansas laws and the methods provided in this Act,
19 including without limitation with regard to creation, perfection, priority or
20 enforcement, shall be resolved in favor of the rules and methods established
21 in this Act with regard to storm recovery property.

22 (c) The intent of this Act is to provide benefits to Arkansas
23 customers by allowing an Arkansas electric utility, if authorized by a
24 financing order, to achieve certain tax and credit benefits of financing
25 storm recovery costs, on a similar basis with utilities in other states.
26 This Act addresses certain property, security interests, and other matters to
27 ensure that the financial, state income tax, state franchise tax, and federal
28 income tax benefits of financing storm recovery costs through securitization
29 are available in Arkansas. Financing orders issued under this Act shall not
30 be considered as or deemed to be single issue rate making. The beneficial
31 income tax and credit characteristics that may be achieved include the
32 following:

33 (1) Treating the storm recovery bonds as debt of the electric
34 utility for state and federal income tax purposes;

35 (2) Treating the storm recovery charges as gross income to the
36 electric utility recognized under the utility's usual method of accounting

1 for income taxes, rather than recognizing gross income upon the receipt of
2 the financing order or the receipt of cash in exchange for the sale of the
3 storm recovery property or the issuance of the storm recovery bonds;

4 (3) Avoiding the recognition of debt on the electric utility's
5 balance sheet for certain credit and regulatory purposes by reason of the
6 storm recovery bonds;

7 (4) Treating the sale, assignment, or transfer of the storm
8 recovery property by the electric utility as a true sale for state law and
9 bankruptcy purposes; and

10 (5) Avoiding any adverse impact of the financing on the electric
11 utility's credit rating.

12
13 23-20-102. Definitions.

14 (a) As used in this Act:

15 (1) "Ancillary agreement" means any bond, insurance policy,
16 letter of credit, reserve account, surety bond, swap arrangement, hedging
17 arrangement, liquidity or credit support arrangement, or other financial
18 arrangement entered into in connection with the issuance of storm recovery
19 bonds.

20 (2) "Assignee" means any legal or commercial entity, including
21 but not limited to a corporation, statutory trust, limited liability company,
22 partnership, limited partnership, or other legally recognized entity to which
23 an electric utility sells, assigns, or transfers, other than as security, all
24 or a portion of its interest in or right to storm recovery property. The
25 term also includes any legal or commercial entity to which an assignee sells,
26 assigns, or transfers, other than as security, all or a portion of its
27 interest in or right to storm recovery property.

28 (3) "Commission" means the Arkansas Public Service Commission.

29 (4) "Electric utility" means any person, or any combination of
30 persons, or lessees, trustees, and receivers of such person, now or hereafter
31 owning or operating for compensation in this state equipment or facilities
32 for producing, generating, transmitting, distributing, selling, or furnishing
33 electricity to or for the public at retail in this state including an
34 electric cooperative corporation generating or transmitting electricity.

35 (5) "Financing costs" means:

36 (A) Interest, discounts, and acquisition, defeasance, or

1 redemption premiums that are payable on storm recovery bonds;

2 (B) Any payment required under an ancillary agreement and
3 any amount required to fund or replenish reserve or other accounts or
4 subaccounts established under the terms of any indenture, ancillary
5 agreement, or other financing documents pertaining to storm recovery bonds;

6 (C) Any other cost related to issuing, supporting,
7 repaying and servicing storm recovery bonds, including, but not limited to,
8 servicing fees, billing or other information system programming costs,
9 accounting and auditing fees, trustee fees and expenses, legal fees and
10 expenses, consulting fees and expenses, administrative fees and expenses,
11 placement and underwriting fees and expenses, independent director and
12 manager fees and expenses, capitalized interest, rating agency fees and
13 expenses, stock exchange listing and compliance fees and expenses, and filing
14 fees, including costs related to obtaining the financing order;

15 (D) Any income taxes and license or other fees imposed on
16 the revenues generated from the collection of storm recovery charges or
17 otherwise resulting from the collection of storm recovery charges, in any
18 such case whether paid, payable, or accrued;

19 (E) Any gross receipts, franchise, use, and other taxes or
20 similar charges including but not limited to regulatory assessment fees, in
21 any such case whether paid, payable or accrued imposed upon the electric
22 utility, any assignee or any financing party with respect to the receipt of
23 storm recovery charges or the issuance of storm recovery bonds;

24 (F) Any other costs, charges and amounts approved by the
25 commission in a financing order.

26 (6) "Financing order" means an order of the commission adopted
27 upon petition of an electric utility and pursuant to Arkansas Code §23-20-103
28 which, among other things, allows for:

29 (A) The issuance of storm recovery bonds;

30 (B) The imposition, collection, and periodic adjustments
31 of storm recovery charges;

32 (C) The creation of storm recovery property; or

33 (D) The sale, assignment, or transfer of storm recovery
34 property to an assignee.

35 (7) "Financing Party" means any holder of storm recovery bonds
36 and any trustee, collateral agent, or other person acting for the benefit of

1 holders of storm recovery bonds.

2 (8) "Financing statement" has the same meaning as that provided
3 in the Uniform Commercial Code - Secured Transactions.

4 (9) "Secured party" means a financing party in favor of which an
5 electric utility or its direct or indirect successors or assignees creates a
6 security interest in all or any portion of its interest in or right to storm
7 recovery property. A secured party may be granted a security interest in
8 storm recovery property under this Act and a security interest in other
9 collateral subject to the Uniform Commercial Code - Secured Transactions in
10 one security agreement.

11 (10) "Security interest" means a pledge, hypothecation, or other
12 encumbrance of or other right over any portion of storm recovery property
13 created by contract to secure the payment or performance of an obligation.

14 (11) "Storm" means, individually or collectively, a named
15 tropical storm, a named hurricane, a tornado, an ice or snow storm, a flood,
16 an earthquake or other significant weather event or a natural disaster that
17 occurred during the calendar year 2009 or thereafter.

18 (12) "Storm recovery activity" means any activity or activities
19 by or on behalf of an electric utility in connection with the restoration of
20 service associated with electric power outages affecting customers of an
21 electric utility as the result of a storm or storms, including but not
22 limited to all internal and external labor costs, and all costs related to
23 mobilization, staging, and construction, reconstruction, replacement or
24 repair of electric generation, transmission, or distribution facilities.

25 (13) "Storm recovery bonds" means bonds, debentures, notes,
26 certificates of beneficial interest, certificates of participation,
27 certificates of ownership, or other evidences of indebtedness or ownership
28 that are issued pursuant to or in connection with an indenture, contract,
29 ancillary agreement or other agreement of an electric utility or an assignee
30 pursuant to a financing order, the proceeds of which are used directly or
31 indirectly to provide, recover, finance, or refinance commission-approved
32 storm recovery costs, financing costs, and costs to replenish or fund a storm
33 recovery reserve to such level as the commission may authorize in a financing
34 order, and which are secured by or payable from storm recovery property. If
35 certificates of beneficial interest, certificates of participation or
36 ownership are issued, references in this Act to principal, interest, or

1 premium shall be construed to refer to comparable amounts under those
2 certificates.

3 (14) "Storm recovery charges" means the amounts authorized by
4 the commission to recover, finance or refinance storm recovery costs,
5 financing costs, and the costs to create, fund or replenish a storm recovery
6 reserve, including but not limited to through the issuance and repayment of
7 storm recovery bonds. Such charges shall be imposed on all customer bills
8 and collected by an electric utility or its successors or assignees, or a
9 collection agent. Such charges shall be nonbypassable charges that are
10 separate and apart from the electric utility's base rates and shall be paid
11 by all existing and future customers receiving transmission or distribution
12 service, or both, from the electric utility or its successors or assignees
13 under commission-approved rate schedules as provided in the financing order.
14 An individual customer's monthly storm recovery charges shall be based upon
15 the customer's then current monthly billing determinants.

16 (15) "Storm recovery costs" means, at the option and request of
17 the electric utility, and as approved by the commission pursuant to Arkansas
18 Code § 23-20-103 reasonable and necessary costs, including costs expensed,
19 charged to self-insurance reserves, capitalized, or otherwise financed, that
20 are incurred (including costs incurred prior to the effective date of this
21 Act) or are expected to be incurred by an electric utility in undertaking a
22 storm recovery activity. Such costs shall be net of applicable insurance
23 proceeds and, where determined appropriate by the commission, shall include
24 adjustments for normal capital replacement and operating costs, lost
25 revenues, or other potential offsetting adjustments. Storm recovery costs
26 shall include carrying costs, at simple interest which shall accrue at a rate
27 equal to the electric public utility's last approved rate-base rate of
28 return, from the date on which the storm recovery costs were incurred until
29 the date that storm recovery bonds are issued or until storm recovery costs
30 are otherwise recovered. Storm recovery costs shall also include the costs
31 of retiring or purchasing any indebtedness or equity relating to or
32 associated with storm recovery activities, including accrued interest,
33 premium and other fees, costs and charges related thereto. Storm recovery
34 costs shall also include the costs to create or fund any storm recovery
35 reserves or to replenish any shortfall in any storm recovery reserves.

36 (16) "Storm recovery property" means:

1 (A) All rights and interests of an electric utility or the
2 direct or indirect successors or assignees of the electric utility under a
3 financing order, including the right to impose, bill, collect, and receive
4 storm recovery charges authorized in the financing order and to obtain
5 periodic adjustments to such charges as provided in the financing order; and

6 (B) All revenues, collections, claims, rights to payments,
7 payments, money, or proceeds arising from the rights and interests specified
8 in subparagraph (A) above, regardless of whether such revenues, collections,
9 claims, rights to payment, payments, money, or proceeds are imposed, billed,
10 received, collected, or maintained together with or commingled with other
11 revenues, collections, rights to payment, payments, money or proceeds.

12 (17) "Storm recovery reserve" means an electric utility's storm
13 cost reserve account established pursuant to § 23-4-112.

14 (18) "Uniform Commercial Code - Secured Transactions" means Arkansas
15 Code §§ 4-9-101 et seq.

16
17 23-20-103. Financing orders.

18 (a) An electric utility may petition the commission for a financing
19 order. For each petition, the electric utility shall:

20 (1) Describe the storm recovery activities that the electric
21 utility has undertaken or proposes to undertake and describe the reasons for
22 undertaking the activities;

23 (2) Set forth the known storm recovery costs and estimate the
24 costs of any storm recovery activities that are not completed, or for which
25 the costs are not yet known as identified and requested by the electric
26 utility;

27 (3) Set forth the level of the storm recovery reserve that the
28 utility proposes to establish or replenish and has determined would be
29 appropriate to recover through storm recovery bonds and is seeking to so
30 recover and such level that the utility is funding or will seek to fund
31 through other means, together with a description of the factors and
32 calculations used in determining the amounts and methods of recovery;

33 (4) Indicate whether the electric utility proposes to finance
34 all or a portion of the storm recovery costs and storm recovery reserve using
35 storm recovery bonds. If the electric utility proposes to finance a portion
36 of such costs, the electric utility shall identify that portion in the

1 petition;

2 (5) Estimate the financing costs related to the storm recovery
3 bonds;

4 (6) Estimate the storm recovery charges necessary to pay in full
5 as scheduled the principal of, premium, if any, and interest on the proposed
6 storm recovery bonds and related financing costs until the legal final
7 maturity date of such proposed storm recovery bonds;

8 (7) Estimate any cost savings from or demonstrate how rate
9 impacts to customers would be mitigated as a result of financing storm
10 recovery costs with storm recovery bonds in comparison with traditional
11 utility financing or other traditional utility recovery methods;

12 (8) File with the petition direct testimony supporting the
13 petition; and

14 (9) Facilitate a timely audit of all capital costs included
15 within the storm recovery costs proposed to be financed by storm recovery
16 bonds.

17
18 (b)(1) Proceedings on a petition submitted pursuant to subsection (a)
19 above shall begin with a petition by an electric utility and shall be
20 disposed of in accordance with the commission's rules and regulations
21 promulgated pursuant to Arkansas Code §§25-15-201, et seq., except that the
22 provisions of this section, to the extent applicable, shall control.

23 (A) Within 7 days after the filing of a petition, the
24 commission shall publish a case schedule, which schedule shall place the
25 matter before the commission on an agenda that will permit a commission
26 decision no later than 120 days after the date the petition is filed.

27 (B) No later than 135 days after the date the petition is
28 filed, the commission shall issue a financing order or an order rejecting the
29 petition. The commission shall issue a financing order authorizing financing
30 of reasonable and prudent storm recovery costs, the storm recovery reserve
31 amount determined appropriate by the commission, and financing costs if the
32 commission finds that the issuance of the storm recovery bonds and the
33 imposition of storm recovery charges authorized by the order are reasonably
34 expected to result in lower overall costs or to mitigate rate impacts to
35 customers as compared with traditional utility financing or other traditional
36 utility recovery methods. Any determination of whether storm recovery costs

1 are reasonable and prudent shall be made with reference to the general public
2 interest in, and the scope of effort required to provide, the safe and
3 expeditious restoration of electric service.

4 (2) In a financing order issued to an electric utility, the
5 commission shall:

6 (A) Specify the amount of storm recovery costs and the
7 level of storm recovery reserves, taking into consideration, to the extent
8 the commission deems appropriate, any other methods used to recover these
9 costs, and describe and estimate the amount of financing costs which may be
10 recovered through storm recovery charges, and specify the period over which
11 such costs may be recovered.

12 (B) Determine that the proposed structuring, expected
13 pricing, and financing costs of the storm recovery bonds are reasonably
14 expected to result in lower overall costs or would mitigate rate impacts to
15 customers as compared with traditional utility financing or other traditional
16 utility recovery methods.

17 (C) Provide that, for the period specified pursuant to
18 subsection (b)(2)(A), the imposition and collection of storm recovery charges
19 authorized in the financing order shall be nonbypassable and paid by all
20 customers receiving transmission or distribution service, or both, from an
21 electric utility or its successors or assignees under commission-approved
22 rate schedules as provided in the financing order. An individual customer's
23 monthly storm recovery charges shall be based upon the customer's then
24 current monthly billing determinants.

25 (D) Determine what portion, if any, of the storm recovery
26 reserves must be held in a funded reserve and any limitations on how the
27 reserve may be held, accessed, or used.

28 (E) Include a formula-based mechanism for making
29 expeditious periodic adjustments in the storm recovery charges that customers
30 are required to pay under the financing order and for making any adjustments
31 that are necessary to correct for any projected overcollection or
32 undercollection of the charges or to otherwise ensure the timely payment as
33 scheduled of storm recovery bonds and financing costs and other required
34 amounts and charges payable in connection with the storm recovery bonds.

35 (F) Specify the storm recovery property that is, or shall
36 be, created in favor of an electric utility or its successors or assignees

1 and that shall be used to pay or secure storm recovery bonds and financing
2 costs.

3 (G) Specify the degree of flexibility to be afforded to
4 the electric utility in establishing the terms and conditions of the storm
5 recovery bonds, including, but not limited to, repayment schedules, interest
6 rates, and other financing costs.

7 (H) Provide the method by which storm recovery charges
8 shall be allocated among the customer classes.

9 (I) Provide that, after the final terms of an issuance of
10 storm recovery bonds have been established and prior to the issuance of storm
11 recovery bonds, the electric utility shall determine the resulting initial
12 storm recovery charge in accordance with the financing order and such initial
13 storm recovery charge shall be final and effective upon the issuance of such
14 storm recovery bonds without further commission action.

15 (J) Include any other conditions that the commission
16 considers appropriate and that are not otherwise inconsistent with this
17 section.

18 (c) After the issuance of a financing order, the electric utility
19 retains sole discretion regarding whether to cause the storm recovery bonds
20 to be issued, including the right to defer or postpone such sale, assignment,
21 transfer, or issuance, provided that the storm recovery bonds, other than
22 refunding bonds, may not be issued later than two years from the date the
23 financing order becomes final and non-appealable, or such later date as
24 provided in the financing order, and provided further, that nothing herein
25 shall prevent the electric utility, prior to the end of such two-year period,
26 from abandoning the issuance of storm recovery bonds under the financing
27 order, if this is in the best interest of ratepayers, by filing with the
28 commission a statement of abandonment and the reasons therefore. Nothing
29 herein limited the rights of the electric utility to recover its storm
30 recovery costs under normal rate making should the storm recovery bonds not
31 be issued.

32 (d) At the request of an electric utility, the commission may commence
33 a proceeding and issue a subsequent financing order that provides for the
34 refinancing, retiring, or refunding of storm recovery bonds issued pursuant
35 to the original financing order if the commission finds that the subsequent
36 financing order satisfies all of the criteria specified in Subsection (b) of

1 this Section. Effective on retirement of the refunded storm recovery bonds
2 and the issuance of new storm recovery bonds, the commission may adjust the
3 related storm recovery charges accordingly or establish substitute storm
4 recovery charges. Any such financing order shall be issued within 120 days
5 of the application of an electric utility therefor.

6 (e) All financing orders by the commission shall be operative and in
7 full force and effect from the date of issuance by the commission.

8 (f) An aggrieved party or intervenor may within 15 days after the
9 financing order or a supplemental order made by the commission becomes
10 effective, or within 15 days from the date an application for rehearing is
11 deemed to be denied as provided in § 23-2-422, file in the Arkansas Court of
12 Appeals, a petition setting forth the particular cause of objection to the
13 order complained of. Inasmuch as delay in the determination of the appeal of
14 a financing order may delay the issuance of storm recovery bonds, thereby
15 diminishing savings to customers which might be achieved if such bonds were
16 issued as contemplated by a financing order, all such cases shall be given
17 precedence over all other civil cases in the court and shall be heard and
18 determined as speedily as possible.

19 (g) A financing order issued to an electric utility may provide that
20 creation of the electric utility's storm recovery property pursuant to
21 subsection (b)(2)(F) of this section is conditioned upon, and shall be
22 simultaneous with, the sale or other transfer of the storm recovery property
23 to an assignee and the pledge of the storm recovery property to secure storm
24 recovery bonds.

25 (h) If the commission issues a financing order, the electric utility
26 shall file with the commission at least annually a request for administrative
27 approval applying the formula-based true-up mechanism to make the adjustments
28 described in subsection (b)(2)(E) of this section. The review of such a
29 request shall be limited to determining whether there is any mathematical
30 error in the application of the formula-based mechanism relating to the
31 appropriate amount of any projected overcollection or undercollection of
32 storm recovery charges and the amount of an adjustment. Such adjustments
33 shall ensure the recovery of revenues sufficient to provide for the payment
34 of principal, interest, acquisition, defeasance, financing costs, or
35 redemption premium and other fees, costs, and charges in respect of storm
36 recovery bonds approved under the financing order. Within 15 days after

1 receiving an electric utility's request pursuant to this subsection, the
2 commission shall either administratively approve the request or inform the
3 electric utility of any mathematical errors in its calculation. If the
4 commission informs the utility of mathematical errors in its calculation, the
5 utility may correct its error and refile its request. The timeframes
6 previously described in this subsection shall apply to a refiled request.

7 (i) Subsequent to the earlier of the transfer of storm recovery
8 property to an assignee or the issuance of storm recovery bonds authorized
9 thereby, a financing order is irrevocable and, except as provided in
10 subsection (d) and subsection (h) of this section, the commission may not
11 amend, modify, or terminate the financing order by any subsequent action or
12 reduce, impair, postpone, terminate, or otherwise adjust storm recovery
13 charges approved in the financing order.

14
15 23-20-104. Exceptions to Commission Jurisdiction.

16 (a) If the commission issues a financing order to an electric utility
17 pursuant to this section, the commission may not, in exercising its powers
18 and carrying out its duties regarding any matter within its authority
19 pursuant to this chapter, consider the storm recovery bonds issued pursuant
20 to the financing order to be the debt of the electric utility other than for
21 federal and state income tax purposes, consider the storm recovery charges
22 paid under the financing order to be the revenue of the electric utility for
23 any purpose, or consider the storm recovery costs or financing costs
24 specified in the financing order to be the costs of the electric utility, nor
25 may the commission determine any action taken by an electric utility which is
26 consistent with the financing order to be unjust or unreasonable.

27 (b) The commission may not order or otherwise directly or indirectly
28 require an electric utility to use storm recovery bonds to finance any
29 project, addition, plant, facility, extension, capital improvement,
30 equipment, or any other expenditure. The commission may not refuse to allow
31 an electric utility to recover costs for storm recovery activities in an
32 otherwise permissible and reasonable fashion, or refuse or condition
33 authorization or approval of the issuance and sale by an electric utility of
34 securities or the assumption by it of liabilities or obligations, solely
35 because of the potential availability of storm recovery financing.

36

1 23-20-105. Storm recovery property.

2 (a) All storm recovery property that is specified in a financing order
3 shall constitute an existing, present intangible property right or interest
4 therein, notwithstanding that the imposition and collection of storm recovery
5 charges depends on the electric utility to which the financing order is
6 issued performing its servicing functions relating to the collection of storm
7 recovery charges and on future electricity consumption. Such property shall
8 exist whether or not the revenues or proceeds arising from the property have
9 been billed, have accrued, or have been collected and notwithstanding the
10 fact that the value or amount of the property is or may be dependent on the
11 future provision of service to customers by the electric utility or its
12 successors or assignees and the future consumption by customers of
13 electricity.

14 (b) Storm recovery property specified in a financing order shall
15 continue to exist until the storm recovery bonds issued pursuant to the
16 financing order are indefeasibly paid in full and all financing costs of the
17 bonds have been paid in full.

18 (c) All or any portion of storm recovery property specified in a
19 financing order issued to an electric utility, if storm recovery bonds are to
20 be issued, shall be sold, assigned, or transferred to a successor or an
21 assignee, including an affiliate or affiliates of the electric utility
22 created for the limited purpose of acquiring, owning, or administering storm
23 recovery property or issuing storm recovery bonds under the financing order.
24 All or any portion of storm recovery property may be encumbered by a security
25 interest to secure storm recovery bonds issued pursuant to the financing
26 order, amounts payable to financing parties and to counterparties under any
27 ancillary agreements, and other financing costs. Each such sale, assignment,
28 transfer, conveyance, or pledge made by or security interest granted by an
29 electric utility or affiliate of an electric utility or assignee is
30 considered to be a transaction in the ordinary course of business.

31 (d) The description of storm recovery property being sold, assigned,
32 or transferred to an assignee in any sale agreement, purchase agreement, or
33 other transfer agreement, being encumbered, granted or pledged to a secured
34 party in any security agreement, pledge agreement, or other security
35 document, or indicated in any financing statement is only sufficient if such
36 description or indication refers to the specific financing order that created

1 the storm recovery property and states that such agreement or financing
2 statement covers all or part of such storm recovery property described in
3 such financing order. A description of storm recovery property in a
4 financing statement shall be sufficient if it refers to the financing order
5 creating the storm recovery property. This subsection (d) applies to all
6 purported sales, assignments, or transfers of, and all purported grants of
7 liens or security interests in, storm recovery property, regardless of
8 whether the related sale agreement, purchase agreement, other transfer
9 agreement, security agreement, pledge agreement, or other security document
10 was entered into, or any financing statement was filed, before or after the
11 effective date of this Act.

12 (e) If an electric utility defaults on any required payment of charges
13 arising from storm recovery property specified in a financing order, the
14 court specified in Arkansas Code § 23-20-103(f) upon application by an
15 interested party, and without limiting any other remedies available to the
16 applying party, shall order the sequestration and payment of the revenues
17 arising from the storm recovery property to the financing parties or their
18 representatives. Any such order shall remain in full force and effect
19 notwithstanding any reorganization, bankruptcy, or other insolvency
20 proceedings with respect to the electric utility or its successors or
21 assigns.

22 (f) The interest of a transferee, purchaser, acquirer, assignee, or
23 secured party in storm recovery property specified in a financing order is
24 not subject to setoff, counterclaim, surcharge, or defense by the electric
25 utility or any other person or in connection with the reorganization,
26 bankruptcy, or other insolvency of the electric utility, its successors or
27 assignees or any other entity.

28 (g) Any successor to an electric utility, whether pursuant to any
29 reorganization, bankruptcy, or other insolvency proceeding, or whether
30 pursuant to any merger or acquisition, sale, or other business combination,
31 or transfer by operation of law, as a result of electric utility
32 restructuring or otherwise, shall perform and satisfy all obligations of, and
33 have the same rights under a financing order as the electric utility under
34 the financing order in the same manner and to the same extent as the electric
35 utility, including collecting and paying to the person entitled to receive
36 them, the revenues, collections, payments, or proceeds of the storm recovery

1 property.

2 (h) Storm recovery bonds shall be nonrecourse to the credit or any
3 assets of the electric utility other than the storm recovery property as
4 specified in the financing order and any rights under any ancillary
5 agreement.

6
7 23-20-106. Sale.

8 The sale, assignment, or transfer of storm recovery property is
9 governed by this Section. All of the following apply to a sale, assignment,
10 or transfer under this Section:

11 (1) The sale, conveyance, assignment, or other transfer of storm
12 recovery property by an electric utility to an assignee that the parties have
13 in the governing documentation expressly stated to be a sale or other
14 absolute transfer is an absolute transfer and true sale of, and not a pledge
15 of or security interest in, the transferor's right, title, and interest in,
16 to and under the storm recovery property, other than for federal and state
17 income tax purposes. For all purposes other than federal and state income
18 tax purposes, the parties' characterization of a transaction as a sale of an
19 interest in storm recovery property shall be conclusive that the transaction
20 is a true sale and that ownership has passed to the party characterized as
21 the purchaser, regardless of whether the purchaser has possession of any
22 documents evidencing or pertaining to the interest. After such a
23 transaction, the storm recovery property is not subject to any claims of the
24 transferor or the transferor's creditors, other than creditors holding a
25 prior security interest in the storm recovery property perfected under
26 subsection (4) below;

27 (2) The characterization of the sale, conveyance, assignment, or
28 other transfer as a true sale or other absolute transfer under subsection (1)
29 above and the corresponding characterization of the assignee's property
30 interest is not affected by:

31 (A) Commingling of amounts arising with respect to the
32 storm recovery property with other amounts;

33 (B) The retention by the transferor of a partial or
34 residual interest, including an equity interest or entitlement to any
35 surplus, in the storm recovery property, whether direct or indirect, or
36 whether subordinate or otherwise;

1 (C) Any recourse that the assignee may have against the
2 transferor, except that any such recourse shall not be created, contingent
3 upon, or otherwise occurring or resulting from the inability or failure of
4 one or more of the transferor's customers to timely pay all or a portion of
5 the storm recovery charge;

6 (D) Any indemnifications, obligations, or repurchase
7 rights made or provided by the transferor, except that such indemnity or
8 repurchase rights shall not be based solely upon the inability or failure of
9 a transferor's customers to timely pay all or a portion of the storm recovery
10 charge;

11 (E) The transferor acting as the collector of the storm
12 recovery charges or the existence of any contract that authorizes or requires
13 the electric utility, to the extent that any interest in storm recovery
14 property is sold or assigned, to contract with the assignee or any financing
15 party that it will continue to operate its system to provide service to its
16 customers, will collect amounts in respect of the storm recovery charges for
17 the benefit and account of such assignee or financing party, and will account
18 for and remit such amounts to or for the account of such assignee or
19 financing party, including pursuant to a sequestration order authorized by
20 this Act;

21 (F) The contrary or other treatment of the sale,
22 conveyance, assignment, or other transfer for tax, financial reporting, or
23 other purposes;

24 (G) The granting or providing to holders of the storm
25 recovery bonds of a preferred right to the storm recovery property or credit
26 enhancement by the electric utility or its affiliates with respect to the
27 storm recovery bonds;

28 (H) The status of the assignee as a direct or indirect
29 wholly owned subsidiary or other affiliate of the electric utility. The
30 separate identity of any assignee of storm recovery property which is a
31 subsidiary or affiliate of the electric utility shall not be disregarded due
32 to the fact that the assignee and the electric utility share any one or more
33 incidents of control, including common managers, officers, directors,
34 members, accounting or administrative systems, consolidated tax returns, or
35 office space, that the assignee may be a disregarded entity for tax purposes,
36 that the utility caused the formation of the assignee, that a contract by the

1 utility and the assignee described in §23-20-106(2)(E) exists, that the
2 assignee has no other business other than pertaining to the storm recovery
3 property, that the capitalization of the assignee is limited to amounts
4 required for compliance with certain applicable federal income tax laws and
5 revenue procedures, or that other factors used in applying a single business
6 enterprise test to juridical persons are present.

7 (3) Any right that an electric utility has in the storm recovery
8 property prior to its pledge, sale, or transfer or any other right of an
9 electric utility created under this Act or created in the financing order and
10 assignable under this section or assignable pursuant to a financing order
11 shall be property in the form of a contract right. Transfer of an interest
12 in storm recovery property to an assignee is enforceable only upon the later
13 of the issuance of a financing order, the execution and delivery of transfer
14 documents to the assignee in connection with the issuance of storm recovery
15 bonds, and the receipt of value. An enforceable transfer of an interest in
16 storm recovery property to an assignee other than a security interest shall
17 be perfected against all third parties, including subsequent judicial or
18 other lien creditors, when a notice of that transfer has been given by the
19 filing of a financing statement in accordance with subparagraph (4). The
20 transfer shall be perfected against third parties as of the date of filing;

21 (4) Except as otherwise provided in this Act, financing
22 statements required to be filed under this Section shall be filed, indexed,
23 and maintained in the same manner and in the same system of records
24 maintained for the filing of financing statements under the Uniform
25 Commercial Code - Secured Transactions. The filing of such a financing
26 statement with the Arkansas Secretary of State shall be the only method of
27 perfecting a sale, assignment, or transfer of storm recovery property. The
28 sale, assignment, or transfer of an interest in storm recovery property
29 perfected by filing a financing statement is effective against the customers
30 owing payment of the storm recovery charges creditors of the transferor,
31 subsequent transferees, and all other third persons notwithstanding the
32 absence of actual knowledge of or notice to the customers of the sale,
33 assignment, or transfer. No continuation statement need be filed to maintain
34 such perfection;

35 (5) The priority of the conflicting ownership interests of
36 assignees in the same interest or rights in any storm recovery property is

1 determined as follows:

2 (A) Conflicting perfected interests or rights of assignees
3 rank according to priority in time of perfection;

4 (B) A perfected interest or right of an assignee has
5 priority over a conflicting unperfected interest or right of an assignee; and

6 (C) A perfected interest or right of an assignee has
7 priority over a person who becomes a lien creditor after the perfection of
8 such assignee's interest or right; and

9 (6) The priority of a sale, assignment, or transfer perfected
10 under this section is not impaired by any later modification of the financing
11 order or storm recovery property or by the commingling of funds arising from
12 storm recovery property with other funds. Any other security interest that
13 may apply to those funds, other than a security interest perfected under §
14 23-20-107 shall be terminated when those funds are transferred to a
15 segregated account for the assignee or a financing party. If storm recovery
16 property has been transferred to an assignee or financing party, any proceeds
17 of that property shall be held for and delivered to the assignee or financing
18 party by any collector as a fiduciary.

19
20 23-20-107. Security interests.

21 (a) The Uniform Commercial Code - Secured Transactions does not apply
22 to storm recovery property or any right, title, or interest of a utility,
23 assignee, or financing party therein except to the extent specified in this
24 Act. In addition, such right, title, or interest pertaining to a financing
25 order including but not limited to the associated storm recovery property
26 including any revenues, collections, claims, rights to payment, payments,
27 money, or proceeds of or arising from storm recovery charges pursuant to such
28 order, shall not be deemed proceeds of any right or interest other than of
29 the financing order and the storm recovery property arising from the
30 financing order. All revenues and collections resulting from storm recovery
31 property shall constitute proceeds only of the storm recovery property
32 arising from the financing order.

33 (b) Except to the extent provided in this Act with respect to filings
34 of financing statements or control of deposit accounts or investment property
35 as original collateral, the creation, attachment, granting, perfection and
36 priority of security interests in storm recovery property to secure storm

1 recovery bonds is governed solely by this Act and not by the Uniform
2 Commercial Code - Secured Transactions.

3 (c)(1) A security interest in storm recovery property is valid and
4 enforceable against the electric utility and its successor or an assignee and
5 third parties and attaches to storm recovery property only after all of the
6 following conditions are met:

7 (A) The issuance of a financing order;

8 (B) The execution and delivery of a security agreement,
9 indenture, or other agreement with a financing party relating to the granting
10 of a security interest in connection with the issuance of storm recovery
11 bonds; and

12 (C) The receipt of value for the storm recovery bonds.

13 (2) A security interest attaches to storm recovery property when
14 all of the foregoing conditions have been met, unless the security agreement
15 expressly postpones the time of attachment.

16 (d) A security interest in storm recovery property is perfected when
17 it has attached and when the applicable financing statement describing the
18 storm recovery property as provided in Arkansas Code § 23-20-105(d) has been
19 filed with the Arkansas Secretary of State. The interest of a secured party
20 is not perfected unless a financing statement sufficient under this Act and
21 otherwise in accordance with the Uniform Commercial Code - Secured
22 Transactions is filed, and after perfection the secured party's interest
23 continues in the storm recovery property and all proceeds of such storm
24 recovery property, whether or not billed, accrued, or collected, and whether
25 or not deposited into a deposit account and however evidenced; provided
26 however that a security interest granted by the issuer of and securing storm
27 recovery bonds held by a secured party having control of a segregated deposit
28 account or securities account as original collateral into which revenues,
29 collections, or proceeds of storm recovery property are deposited or credited
30 may be perfected by control as provided in subsection (e) below. A security
31 interest in proceeds of storm recovery property is a perfected security
32 interest if the security interest in the storm recovery property was
33 perfected under this Act. Except as otherwise provided in this Act,
34 financing statements required to be filed pursuant to this Section shall be
35 filed, indexed, and maintained in the same manner and in the same system of
36 records maintained for the filing of financing statements under the Uniform

1 Commercial Code - Secured Transactions. The filing of such a financing
2 statement shall be the only method of perfecting a lien or security interest
3 on storm recovery property except as provided in this subsection. No
4 continuation statement need be filed to maintain such perfection.

5 (e) A perfected security interest in storm recovery property and all
6 proceeds of such storm recovery property, whether or not billed, accrued, or
7 collected, and whether or not deposited into a deposit account and however
8 evidenced, shall have priority over a conflicting lien of any nature in the
9 same collateral property, except a security interest is subordinate to the
10 rights of a person that becomes a lien creditor before the perfection of such
11 security interest. A security interest in storm recovery property which
12 qualifies for priority over a conflicting security interest or lien also has
13 priority over the conflicting security interest or lien in proceeds of the
14 storm recovery property. The relative priority of a perfected security
15 interest of a secured party is not adversely affected by any lien or security
16 interest in a deposit account of the electric utility that is a collector and
17 into which the revenues are deposited. The priority of a security interest
18 perfected under this Section is not defeated or impaired by any later
19 modification of the financing order or storm recovery property or by the
20 commingling of funds arising from storm recovery property with other funds.
21 Any other security interest, other than a prior security interest perfected
22 under this Act, that may apply to those funds shall be terminated as to all
23 funds transferred to a segregated account for the benefit of an assignee or a
24 financing party or to an assignee or financing party directly. The
25 perfection by control, the effect of perfection by control, and the priority
26 of a security interest granted by the issuer of and securing storm recovery
27 bonds held by a secured party having control of a segregated deposit account
28 or securities account as original collateral into which revenues,
29 collections, or proceeds of storm recovery property are deposited or credited
30 shall be governed by the Uniform Commercial Code - Secured Transactions
31 including the choice of law rules in Arkansas Code §§ 4-9-301 - 4-9-307.

32 (f) If a default or termination occurs under the terms of the storm
33 recovery bonds, the secured party may foreclose on or otherwise enforce the
34 security interest in any storm recovery property as if it was a secured party
35 under the Uniform Commercial Code - Secured Transactions. A secured party
36 holding a security interest in storm recovery property shall be entitled to

1 exercise all of the same rights and remedies as are available to a secured
2 party under the Uniform Commercial Code - Secured Transactions, to the same
3 extent as if those rights and remedies were set forth in this Act. A court
4 may order that amounts arising from storm recovery property be transferred to
5 a separate account of the secured party for the financing parties' benefit,
6 to which their security interest shall apply. On application by or on behalf
7 of a secured party to the court of this state specified in Subsection (f) of
8 this Section, such court shall order the sequestration and payment to the
9 financing parties of revenues arising from the storm recovery property.

10 (g) A security interest created under this Act may provide for a
11 security interest in after-acquired collateral. A security interest granted
12 under this Act is not invalid or fraudulent against creditors solely because
13 the grantor or the electric utility as collector or servicer has the right or
14 ability to commingle the collateral or proceeds, or collect, compromise,
15 enforce, and otherwise deal with collateral.

16 (h) Any action arising under the provisions of this Act to enforce a
17 security interest in any security interest governed by this Act or in any
18 storm recovery property, or which otherwise asserts an interest in, or a
19 right in, to or against any storm recovery property, wherever located or
20 deemed located, shall be brought in the Circuit Court of Pulaski County,
21 Arkansas.

22 (i) The priority of the conflicting interests of secured parties in
23 the same interest or rights in any storm recovery property is determined as
24 follows:

25 (1) Conflicting perfected interests or rights of secured parties
26 rank according to priority in time of perfection. Priority dates from the
27 time a filing covering the interest or right is made in accordance with this
28 section and the Uniform Commercial Code - Secured Transactions;

29 (2) A perfected interest or right of a secured party has
30 priority over a conflicting unperfected interest or right of an assignee; and

31 (3) A perfected interest or right of a secured party has
32 priority over a person who becomes a lien creditor after the perfection of
33 such secured party's interest or right.

34 (j) The priority of a lien and security interest in storm recovery
35 property perfected under this Section is not impaired by any later
36 modification of the financing order or storm recovery property or by the

1 commingling of funds arising from storm recovery property with other funds.
2 Any other security interest that may apply to the storm recovery property
3 shall be terminated when those funds are transferred to a segregated account
4 for the assignee or a financing party. If storm recovery property has been
5 transferred to an assignee or financing party, any proceeds of that storm
6 recovery property shall be held in trust for the assignee or financing party.

7
8 23-20-108. Choice of law; conflicts.

9 (a) The law governing the validity, enforceability, attachment,
10 perfection, priority, exercise of remedies, and venue with respect to the
11 sale, assignment, or transfer of an interest or right or the creation of a
12 security interest in any storm recovery property shall be exclusively the
13 laws of this state, without applying this state's law on conflicts of laws
14 and notwithstanding any contrary contractual provision. The validity,
15 enforceability, attachment, perfection, priority, and exercise of remedies
16 with respect to the sale, assignment, or transfer of an interest or right or
17 the creation of a security interest in any storm recovery property shall be
18 governed by this Act, and solely to the extent not addressed by this Act, by
19 the Uniform Commercial Code-Secured Transactions and other laws of this
20 state.

21 (b) In the event of conflict between this Act and any other law
22 regarding the attachment, creation, perfection, the effect of perfection, or
23 priority of, and sale, assignment, or transfer of, or security interest in,
24 storm recovery property, or the exercise of remedies with respect thereto,
25 this Act shall govern to the extent of the conflict.

26
27 23-20-109. Storm recovery bonds not public debt; legal investments.

28 (a) Storm recovery bonds are not a debt or a general obligation of the
29 state or any of its political subdivisions, agencies, or instrumentalities
30 and are not a charge on their full faith and credit. An issue of storm
31 recovery bonds does not, directly or indirectly or contingently, obligate the
32 state or any agency, political subdivision, or instrumentality of the state
33 to levy any tax or make any appropriation for payment of the bonds, other
34 than for paying storm recovery charges in their capacity as consumers of
35 electricity. All storm recovery bonds authorized by a financing order by the
36 commission must contain on the face thereof a statement to the following

1 effect:

2 "Neither the full faith and credit nor the taxing power of the State of
3 Arkansas is pledged to the payment of the principal of, or interest on, this
4 bond."

5 (b) Storm recovery bonds shall be legal investments for all
6 governmental units, financial institutions, insurance companies, fiduciaries,
7 and other persons that require statutory authority regarding legal
8 investment.

9

10 23-20-110. Tax Treatment.

11 The Arkansas state income tax treatment of the following events will
12 conform to the federal income tax treatment of such events:

13 (1) the electric utility's receipt of a financing order that
14 creates storm recovery property for the benefit of the electric utility;

15 (2) the electric utility's receipt of cash or other valuable
16 consideration in exchange for it's transfer of the storm recovery property to
17 an affiliate which is wholly owned, directly or indirectly, by the electric
18 utility; and

19 (3) the electric utility's receipt of cash or other valuable
20 consideration in exchange for storm recovery bonds issued by the financing
21 party.

22

23 23-20-111. State pledge.

24 (a) For purposes of this subsection, the term "bondholder" means a
25 person who holds, owns or is the beneficial holder or owner of a storm
26 recovery bond.

27 (b) The state and its agencies, including the commission, pledge to
28 and agree with bondholders, the owners of the storm recovery property, and
29 other financing parties that the state will not:

30 (1) Alter the provisions of this section which make the storm
31 recovery charges imposed by a financing order irrevocable, binding, and
32 nonbypassable charges;

33 (2) Take or permit any action that impairs or would impair the
34 value of storm recovery property; or

35 (3) Except as allowed under this section, reduce, alter, or
36 impair storm recovery charges that are to be imposed, collected, and remitted

1 for the benefit of the bondholders and other financing parties until any and
2 all principal, interest, premium, financing costs and other fees, expenses,
3 or charges incurred, and any contracts to be performed, in connection with
4 the related storm recovery bonds have been paid and performed in full.

5 Nothing in this paragraph shall preclude limitation or alteration if
6 full compensation is made by law for the full protection of the storm
7 recovery charges collected pursuant to a financing order and of the holders
8 of storm recovery bonds and any assignee or financing party entering into a
9 contract with the electric utility.

10 (c) Any person or entity that issues storm recovery bonds may include
11 the pledge specified in paragraph (b) in the bonds and related documentation.

12
13 23-20-112. Not an electric utility.

14 An assignee or financing party shall not be considered an electric
15 utility or person providing electric service by virtue of engaging in the
16 transactions described in this Act.

17
18 SECTION 2. EFFECT OF OTHER LAWS. The provisions of any other law,
19 except as expressly provided in this Act, or in such other law by way of
20 express reference to this Act, shall not limit or restrict the operation of
21 this Act in any manner.

22
23 SECTION 3. All provisions of this Act of a general and permanent
24 nature are amendatory of the Arkansas Code of 1987 Annotated and the Arkansas
25 Code Revision Commission shall incorporate the same in the Code.

26
27 SECTION 4. If any provisions of this Act or the application thereof to
28 any person or circumstance is held invalid, such invalidity shall not affect
29 the other provisions or applications of the Act which can be given effect
30 without the invalid provisions or application, and to this end the provisions
31 of this Act are declared severable.

32
33 SECTION 5. All laws and parts of laws in conflict with this Act are
34 hereby repealed.

35
36 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly that due to recent devastating ice storms in the state
2 resulting in large storm recovery costs which could be securitized and
3 financed under the provisions of this act, there is an immediate need to
4 authorize the securitization financing for storm recovery costs, which may
5 lower the financing costs or mitigate the impact on rates in comparison to
6 traditional utility financing or other traditional utility recovery methods
7 thereby benefitting customers. Therefore, an emergency is declared to exist
8 and this act being immediately necessary for the preservation of the public
9 peace, health and safety shall become effective on the date of its approval
10 by the Governor. If the bill is neither approved nor vetoed by the Governor,
11 it shall become effective on the expiration of the period of time during
12 which the Governor may veto the bill. If the bill is vetoed by the Governor
13 and the veto is overridden, it shall become effective on the date the last
14 house overrides the veto.

15
16 */s/ Williams*

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18 **APPROVED: 4/1/2009**
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