

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/29/21

A Bill

SENATE BILL 588

5 By: Senator B. Ballinger
6 By: Representative Beck
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS ELECTRIC UTILITY STORM
10 RECOVERY SECURITIZATION ACT; TO ALLOW A GAS UTILITY
11 TO RECOVER THE COST OF RESTORATION OF DAMAGES CAUSED
12 BY STORMS AND RELATED PERILS THROUGH SECURITIZATION
13 OF THE STORM RESTORATION AND RELATED COSTS; TO ALLOW
14 THE RECOVERY THROUGH SECURITIZATION BY AN ELECTRIC
15 UTILITY AND A GAS UTILITY OF REASONABLE AND PRUDENT
16 COSTS TO PURCHASE AND RECEIVE NATURAL GAS, FUEL, OR
17 PURCHASED POWER AT EXTRAORDINARY COST IN IMMEDIATE
18 PREPARATION FOR OR IN RESPONSE TO A STORM; TO DECLARE
19 AN EMERGENCY; AND FOR OTHER PURPOSES.
20

Subtitle

21
22 TO AUTHORIZE UTILITIES TO RECOVER THE
23 COST OF RESTORATION OF DAMAGES AND
24 EXTRAORDINARY NATURAL GAS, FUEL, OR
25 PURCHASED POWER COSTS CAUSED BY STORMS
26 THROUGH SECURITIZATION; AND TO DECLARE AN
27 EMERGENCY.
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31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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33 SECTION 1. Arkansas Code Title 23, Chapter 18, Subchapter 9, is
34 amended to read as follows:

35 Subchapter 9 – Arkansas Electric Utility and Gas Utility Storm Recovery
36 Securitization Act



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23-18-901. Short title – Purpose.

(a) This subchapter shall be known and may be cited as the “Arkansas Electric Utility and Gas Utility Storm Recovery Securitization Act”.

(b)(1) The purpose of this subchapter is to enable Arkansas electric utilities and gas utilities, if authorized by a financing order issued by the Arkansas Public Service Commission, to use securitization financing for storm recovery costs, which may lower the financing costs or mitigate the impact on rates in comparison with traditional utility financing or other traditional utility recovery methods thereby benefitting customers.

(2) The storm recovery bonds will not be public debt of the State of Arkansas.

(3) The proceeds of the storm recovery bonds shall be used for the purposes of recovering storm recovery costs solely as ~~set forth~~ stated in a financing order issued by the commission to encourage and facilitate the rebuilding of utility infrastructure damaged by storms and the extraordinary natural gas, fuel, or purchased power costs occasioned by storms.

(4) Securitization financings for storm recovery costs are ~~hereby~~ recognized to be a valid public purpose.

(5) Federal tax laws and revenue procedures expressly require that certain state legislation be enacted in order for ~~such~~ the transactions to receive certain federal tax benefits.

(6)(A) The General Assembly finds a public need to promote ~~such~~ the securitization financings by providing clear and exclusive methods to create, transfer, and encumber interests in storm recovery property as defined in this subchapter.

(B) This need can be met by providing in this subchapter ~~such~~ the methods and by establishing that any conflict between the rules governing sales, assignments, or transfers of, or security interests or other encumbrances of any nature upon intangible personal property under other Arkansas laws and the methods provided in this subchapter, including without limitation with regard to creation, perfection, priority, or enforcement, shall be resolved in favor of the rules and methods established in this subchapter with regard to storm recovery property.

(c)(1) The intent of this subchapter is to provide benefits to Arkansas customers by allowing an Arkansas electric utility or gas utility,

1 if authorized by a financing order, to achieve certain tax and credit
2 benefits of financing storm recovery costs on a similar basis with utilities
3 in other states.

4 (2) This subchapter addresses certain property, security
5 interests, and other matters to ensure that the financial, state income tax,
6 state franchise tax, and federal income tax benefits of financing storm
7 recovery costs through securitization are available in Arkansas.

8 (3) Financing orders issued under this subchapter shall not be
9 considered as or deemed to be single issue ratemaking.

10 (4) The beneficial income tax and credit characteristics that
11 may be achieved include the following:

12 ~~(1)~~(A) Treating the storm recovery bonds as debt of the
13 ~~electric~~ utility for state and federal income tax purposes;

14 ~~(2)~~(B) Treating the storm recovery charges as gross income
15 to the ~~electric~~ utility recognized under the utility's usual method of
16 accounting for income taxes, rather than recognizing gross income upon the
17 receipt of the financing order or the receipt of cash in exchange for the
18 sale of the storm recovery property or the issuance of the storm recovery
19 bonds;

20 ~~(3)~~(C) Avoiding the recognition of debt on the ~~electric~~
21 utility's balance sheet for certain credit and regulatory purposes by reason
22 of the storm recovery bonds;

23 ~~(4)~~(D) Treating the sale, assignment, or transfer of the
24 storm recovery property by the ~~electric~~ utility as a true sale for state law
25 and bankruptcy purposes; and

26 ~~(5)~~(E) Avoiding any adverse impact of the financing on the
27 ~~electric~~ utility's credit rating.

28
29 23-18-902. Definitions.

30 As used in this subchapter:

31 (1) "Ancillary agreement" means any bond, insurance policy,
32 letter of credit, reserve account, surety bond, swap arrangement, hedging
33 arrangement, liquidity or credit support arrangement, or other financial
34 arrangement entered into in connection with the issuance of storm recovery
35 bonds;

36 (2)(A) "Assignee" means any legal or commercial entity,

1 including ~~but not limited to,~~ without limitation a corporation, statutory
2 trust, limited liability company, partnership, limited partnership, or other
3 legally recognized entity to which ~~an electric~~ a utility sells, assigns, or
4 transfers, other than as security, all or a portion of its interest in or
5 right to storm recovery property.

6 (B) The term also "Assignee" includes any legal or
7 commercial entity to which an assignee sells, assigns, or transfers, other
8 than as security, all or a portion of its interest in or right to storm
9 recovery property;

10 ~~(3) "Commission" means the Arkansas Public Service Commission;~~

11 ~~(4) "Electric utility" means any person or any combination of~~
12 ~~persons, or lessees, trustees, and receivers of such a person, now or~~
13 ~~hereafter~~ owning or operating for compensation in this state equipment or
14 facilities for producing, generating, transmitting, distributing, selling, or
15 furnishing electricity to or for the public at retail in this state, and is
16 regulated by the Arkansas Public Service Commission, including an electric
17 cooperative corporation generating or transmitting electricity;

18 (4) "Extraordinary natural gas, fuel, or purchased power costs"
19 means, at the option and request of a utility, and as approved by the
20 commission under § 23-18-903, some or all of the reasonable and prudent costs
21 of maintaining service in immediate preparation for or in response to a
22 storm;

23 (5) "Financing costs" means:

24 (A) Interest, discounts, and acquisition, defeasance, or
25 redemption premiums that are payable on storm recovery bonds;

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

30 (C) Any other cost related to issuing, supporting,
31 repaying, and servicing storm recovery bonds, including, ~~but not limited to,~~
32 without limitation servicing fees, billing or other information system
33 programming costs, accounting and auditing fees, trustee fees and expenses,
34 legal fees and expenses, consulting fees and expenses, administrative fees
35 and expenses, placement and underwriting fees and expenses, independent
36 director and manager fees and expenses, capitalized interest, rating agency

1 fees and expenses, stock exchange listing and compliance fees and expenses,
2 and filing fees, including costs related to obtaining the financing order;

3 (D) Any income taxes and license or other fees imposed on
4 the revenues generated from the collection of storm recovery charges or
5 otherwise resulting from the collection of storm recovery charges, in any
6 ~~such~~ case whether paid, payable, or accrued;

7 (E) Any gross receipts, franchise, use, and other taxes or
8 similar charges including, ~~but not limited to,~~ without limitation regulatory
9 assessment fees, in any ~~such~~ case whether paid, payable, or accrued, imposed
10 upon the ~~electric~~ utility, any assignee, or any financing party with respect
11 to the receipt of storm recovery charges or the issuance of storm recovery
12 bonds; and

13 (F) Any other costs, charges, and amounts approved by the
14 commission in a financing order;

15 (6) "Financing order" means an order of the commission adopted
16 upon petition of ~~an electric~~ a utility and ~~pursuant to~~ under § 23-18-903
17 which, among other things, allows for:

18 (A) The issuance of storm recovery bonds;

19 (B) The imposition, collection, and periodic adjustments
20 of storm recovery charges;

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

22 (D) The sale, assignment, or transfer of storm recovery
23 property to an assignee;

24 (7) "Financing party" means any holder of storm recovery bonds
25 and any trustee, collateral agent, or other person acting for the benefit of
26 holders of storm recovery bonds;

27 (8) "Financing statement" has the same meaning as that provided
28 in the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.;

29 (9) "Gas utility" means a person or any combination of persons,
30 lessees, trustees, or receivers of a person, lessee, or trustee, owning or
31 operating for compensation in this state equipment or facilities for storing,
32 transmitting, distributing, selling, or furnishing natural gas to or for the
33 public at retail in this state, and that is regulated by the commission;

34 (10) "Secured party" means a financing party;

35 (A) ~~in~~ In favor of which ~~an electric~~ a utility or its
36 direct or indirect successors or assignees creates a security interest in all

1 or any portion of its interest in or right to storm recovery property, ~~and~~ and

2 (B) A secured party That may be granted a security
3 interest in storm recovery property under this subchapter and a security
4 interest in other collateral subject to the Uniform Commercial Code – Secured
5 Transactions, § 4-9-101 et seq., in one (1) security agreement;

6 ~~(10)~~(11) “Security interest” means a pledge, hypothecation, or
7 other encumbrance of or other right over any portion of storm recovery
8 property created by contract to secure the payment or performance of an
9 obligation;

10 ~~(11)~~(12) “Storm” means, individually or collectively, a named
11 tropical storm, a named hurricane, a tornado, an ice or snow storm, a flood,
12 an earthquake or other significant weather event or a natural disaster that
13 occurred during the calendar year 2009 or thereafter;

14 ~~(12)~~(13) “Storm recovery activity” means any activity or
15 activities by or on behalf of ~~an electric~~ a utility in connection with the
16 restoration or maintenance of service associated with ~~electric power~~ utility
17 service outages affecting customers of ~~an electric~~ a utility as the result of
18 a storm or storms, including, ~~but not limited to,~~ without limitation:

19 (A) all All internal and external labor costs; ~~and~~

20 (B) all All costs related to mobilization, staging, and
21 construction, reconstruction, replacement, or repair of:

22 (i) electric Electric generation, transmission, or
23 distribution facilities; ~~and~~

24 (ii) Natural gas storage, transmission, or
25 distribution facilities; and

26 (C) The reasonable and prudent purchase and receipt of
27 extraordinary natural gas, fuel, or purchased power costs by a utility to
28 maintain service in immediate preparation for or response to a storm;

29 ~~(13)~~(14)(A) “Storm recovery bonds” means bonds, debentures,
30 notes, certificates of beneficial interest, certificates of participation,
31 certificates of ownership, or other evidences of indebtedness or ownership
32 that are issued pursuant to or in connection with an indenture, contract,
33 ancillary agreement, or other agreement of ~~an electric~~ a utility or an
34 assignee pursuant to a financing order, the proceeds of which are used
35 directly or indirectly to provide, recover, finance, or refinance commission-
36 approved storm recovery costs, financing costs, and costs to replenish or

1 fund a storm recovery reserve to ~~such~~ the level as the commission may
2 authorize in a financing order, and which are secured by or payable from
3 storm recovery property.

4 (B) If certificates of beneficial interest or certificates
5 of participation or ownership are issued, references in this subchapter to
6 principal, interest, or premium shall be construed to refer to comparable
7 amounts under those certificates;

8 ~~(14)~~(15) “Storm recovery charges” means the amounts:

9 (A) ~~authorized~~ Authorized by the commission to recover,
10 finance, or refinance storm recovery costs, financing costs, and the costs to
11 create, fund, or replenish a storm recovery reserve, including, ~~but not~~
12 ~~limited to,~~ without limitation through the issuance and repayment of storm
13 recovery bonds; and

14 (B) ~~Such charges~~ That shall be:

15 (i) ~~imposed~~ Imposed on all customer bills, subject
16 to the limitations described in subdivision (15)(B)(iii)(a) of this section,
17 and collected by ~~an electric~~ a utility or its successors or assignees, or a
18 collection agent; and

19 (ii) ~~Such charges shall be nonbypassable~~
20 Nonbypassable charges that are separate and apart from the ~~electric~~ utility’s
21 base rates; and

22 (iii)(a) ~~shall be paid~~ Paid by all existing and
23 future customers, subject to appropriate exclusions or adjustments to avoid
24 the collection of natural gas costs from gas utility customers that do not
25 purchase natural gas from the gas utility, receiving ~~transmission or~~
26 ~~distribution service, or both,~~ service from the ~~electric~~ utility or its
27 successors or assignees under commission-approved rate schedules as provided
28 in the financing order.

29 (b) An individual customer’s monthly storm
30 recovery charges shall be based upon the customer’s ~~then-current~~ then-current
31 monthly billing determinants;

32 ~~(15)~~(16)(A) “Storm recovery costs” means, at the option and
33 request of the ~~electric~~ utility and as approved by the commission pursuant to
34 § 23-18-903, costs that are:

35 (i) ~~reasonable and necessary~~ Reasonable and prudent
36 costs, including without limitation the costs;

1 ~~(a) expensed~~ Expensed, charged to self-
 2 insurance reserves, capitalized, or otherwise financed, that are incurred,
 3 ~~including costs incurred prior to April 1, 2009,~~ or are expected to be
 4 incurred by ~~an electric~~ a utility in undertaking a storm recovery activity;
 5 and

6 (b) To purchase and receive extraordinary
 7 natural gas, fuel, or purchased power costs by utilities to maintain service
 8 in immediate preparation for or in response to a storm; and

9 ~~(ii) Such costs shall be net~~ Net of applicable
 10 insurance proceeds and, ~~where~~ when determined appropriate by the commission,
 11 ~~shall include~~ including adjustments for normal capital replacement and
 12 operating costs, lost revenues, or other potential offsetting adjustments;
 13

14 (B) "Storm recovery costs" shall include includes without
 15 limitation:

16 (i) carrying Carrying costs, at simple interest
 17 which shall accrue at a rate equal to the ~~electric public~~ utility's last
 18 approved rate-base rate of return, from the date on which the storm recovery
 19 costs were incurred until the date that storm recovery bonds are issued or
 20 until storm recovery costs are otherwise recovered;

21 (ii) Storm recovery costs shall also include the The
 22 costs of retiring or purchasing any indebtedness or equity relating to or
 23 associated with storm recovery activities and extraordinary natural gas,
 24 fuel, or purchased power costs, including accrued interest, premium and other
 25 fees, costs, and charges related ~~thereto,~~ to the storm recovery activities;
 26 and

27 (iii) Storm recovery costs shall also include the The
 28 costs to create or fund any storm recovery reserves or to replenish any
 29 shortfall in any storm recovery reserves;

30 ~~(16)~~ (17) "Storm recovery property" means:

31 (A) All rights and interests of ~~an electric~~ a utility or
 32 the direct or indirect successors or assignees of the ~~electric~~ utility under
 33 a financing order, including the right to impose, bill, collect, and receive
 34 storm recovery charges authorized in the financing order and to obtain
 35 periodic adjustments to ~~such~~ the charges as provided in the financing order;
 36 and

(B) All revenues, collections, claims, rights to payments,

1 payments, money, or proceeds arising from the rights and interests specified
 2 in ~~subdivision (16)(A)~~ subdivision (17)(A) of this section, regardless of
 3 whether ~~such~~ the revenues, collections, claims, rights to payment, payments,
 4 money, or proceeds are imposed, billed, received, collected, or maintained
 5 together with or commingled with other revenues, collections, rights to
 6 payment, payments, money, or proceeds;

7 ~~(17)(18)~~ "Storm recovery reserve" means an electric utility's
 8 storm cost reserve account established pursuant to § 23-4-112; and

9 ~~(18) "Uniform Commercial Code Secured Transactions" means § 4-~~
 10 ~~9-101 et seq.~~ (19) "Utility" means an electric utility or a gas utility, or
 11 both.

12
 13 23-18-903. Financing orders.

14 (a)(1) ~~An electric~~ A utility may petition the Arkansas Public Service
 15 Commission for a financing order.

16 (2) For each petition as described in subdivision (a)(1) of this
 17 section, the ~~electric~~ utility shall:

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

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

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

32 ~~(4)(D)(i)~~ Indicate whether the ~~electric~~ utility proposes
 33 to finance all or a portion of the storm recovery costs and storm recovery
 34 reserve using storm recovery bonds.

35 (ii) If the ~~electric~~ utility proposes to finance a
 36 portion of ~~such~~ the costs, the ~~electric~~ utility shall identify that portion

1 in the petition;

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

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

8 ~~(7)(G)~~ Estimate any cost savings from or demonstrate how
9 rate 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)(H)~~ File with the petition direct testimony supporting
13 the petition; and

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

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

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

28 (C)(i) No later than one hundred thirty-five (135) days
29 after the date the petition is filed, the commission shall issue a financing
30 order or an order rejecting the petition.

31 (ii) The commission shall issue a financing order
32 authorizing financing of reasonable and prudent storm recovery costs, the
33 storm recovery reserve amount determined appropriate by the commission, and
34 financing costs if the commission finds that the issuance of the storm
35 recovery bonds and the imposition of storm recovery charges authorized by the
36 order are reasonably expected to result in lower overall costs or to mitigate

1 rate impacts to customers as compared with traditional utility financing or
2 other traditional utility recovery methods.

3 (iii) Any determination of whether storm recovery
4 costs are reasonable and prudent shall be made with reference to the general
5 public interest in and the scope of effort required to provide the
6 maintenance and safe and expeditious restoration of ~~electric~~ utility service.

7 (2) In a financing order issued to ~~an electric~~ a utility, the
8 commission shall:

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

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

20 (C) Provide that, for the period specified pursuant to
21 subdivision (b)(2)(A) of this section, the imposition and collection of storm
22 recovery charges authorized in the financing order shall be nonbypassable and
23 paid by all customers, subject to appropriate exclusions or adjustments to
24 avoid the collection of natural gas costs from gas utility customers that do
25 not purchase natural gas from the gas utility, receiving ~~transmission or~~
26 ~~distribution service, or both,~~ service from ~~an electric~~ a utility or its
27 successors or assignees under commission-approved rate schedules as provided
28 in the financing order. An individual customer's monthly storm recovery
29 charges shall be based upon the customer's then-current monthly billing
30 determinants;

31 (D) Determine what portion, if any, of the storm recovery
32 reserves ~~must~~ shall be held in a funded reserve and any limitations on how
33 the reserve may be held, accessed, or used;

34 (E) ~~Include~~ As necessary, include a formula-based
35 mechanism for making expeditious periodic adjustments in the storm recovery
36 charges that customers are required to pay under the financing order and for

1 making any adjustments that are necessary to correct for any projected
2 ~~overcollection or undercollection~~ over-collection or under-collection of the
3 charges or to otherwise ensure the timely payment as scheduled of storm
4 recovery bonds and financing costs and other required amounts and charges
5 payable in connection with the storm recovery bonds;

6 (F) Specify the storm recovery property that is or shall
7 be created in favor of ~~an electric~~ a utility or its successors or assignees
8 and that shall be used to pay or secure storm recovery bonds and financing
9 costs;

10 (G) Specify the degree of flexibility to be afforded to
11 the ~~electric~~ utility in establishing the terms and conditions of the storm
12 recovery bonds, including, ~~but not limited to,~~ without limitation repayment
13 schedules, interest rates, and other financing costs;

14 (H) Provide the method by which storm recovery charges
15 shall be allocated among the customer classes;

16 (I) Provide that after the final terms of an issuance of
17 storm recovery bonds have been established and ~~prior to~~ before the issuance
18 of storm recovery bonds, the ~~electric~~ utility shall determine the resulting
19 initial storm recovery charge ~~in accordance with~~ according to the financing
20 order and ~~such the~~ the initial storm recovery charge shall be final and effective
21 upon the issuance of ~~such the~~ the storm recovery bonds without further commission
22 action; and

23 (J) Include any other conditions that the commission
24 considers appropriate and that are not otherwise inconsistent with this
25 section.

26 (c)(1) After the issuance of a financing order, the ~~electric~~ utility
27 retains sole discretion regarding whether to cause the storm recovery bonds
28 to be issued, including the right to defer or postpone ~~such the~~ the sale,
29 assignment, transfer, or issuance, provided that the storm recovery bonds,
30 other than refunding bonds, ~~may~~ shall not be issued later than two (2) years
31 from the date the financing order becomes final and nonappealable, or ~~such a~~ a
32 later date as provided in the financing order, and provided further, that
33 nothing herein shall prevent the ~~electric~~ utility, ~~prior to~~ before the end of
34 ~~such the~~ the two-year period, from abandoning the issuance of storm recovery
35 bonds under the financing order, if this is in the best interest of
36 ratepayers, by filing with the commission a statement of abandonment and the

1 reasons therefore.

2 ~~(2) Nothing herein limits~~ This subchapter does not limit the
3 rights of the ~~electric~~ utility to recover its storm recovery costs under
4 normal ratemaking should the storm recovery bonds not be issued.

5 (d)(1) At the request of ~~an electric~~ a utility, the commission may
6 commence a proceeding and issue a subsequent financing order that provides
7 for the refinancing, retiring, or refunding of storm recovery bonds issued
8 pursuant to the original financing order if the commission finds that the
9 subsequent financing order satisfies all of the criteria specified in
10 subsection (b) of this section.

11 (2) Effective on retirement of the refunded storm recovery bonds
12 and the issuance of new storm recovery bonds, the commission may adjust the
13 related storm recovery charges accordingly or establish substitute storm
14 recovery charges.

15 (3) Any ~~such~~ financing order shall be issued within one hundred
16 twenty (120) days of the application of ~~an electric~~ a utility therefor.

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

19 (f)(1) An aggrieved party or intervenor may within fifteen (15) days
20 after the financing order or a supplemental order made by the commission
21 becomes effective, or within fifteen (15) days from the date an application
22 for rehearing is deemed to be denied as provided in § 23-2-422, file in the
23 Court of Appeals a petition ~~setting forth~~ stating the particular cause of
24 objection to the order complained of.

25 (2) Inasmuch as delay in the determination of the appeal of a
26 financing order may delay the issuance of storm recovery bonds thereby
27 diminishing savings or other benefits to customers which might be achieved if
28 ~~such the~~ bonds were issued as contemplated by a financing order, all ~~such the~~
29 cases shall be given precedence over all other civil cases in the court and
30 shall be heard and determined as speedily as possible.

31 (g) A financing order issued to ~~an electric~~ a utility may provide that
32 creation of the ~~electric~~ utility's storm recovery property pursuant to
33 subdivision (b)(2)(F) of this section is conditioned upon, and shall be
34 simultaneous with, the sale or other transfer of the storm recovery property
35 to an assignee and the pledge of the storm recovery property to secure storm
36 recovery bonds.

1 (h)(1) If the commission issues a financing order, the ~~electric~~
2 utility shall file with the commission at least annually a request for
3 administrative approval applying the formula-based true-up mechanism to make
4 the adjustments described in subdivision (b)(2)(E) of this section.

5 (2) The review of ~~such~~ a request described in subdivision (h)(1)
6 of this section shall be limited to determining whether there is any
7 mathematical error in the application of the formula-based mechanism relating
8 to the appropriate amount of any projected over-collection or ~~undercollection~~
9 under-collection of storm recovery charges and the amount of an adjustment.

10 (3) ~~Such~~ The adjustments shall ensure the recovery of revenues
11 sufficient to provide for the payment of principal, interest, acquisition,
12 defeasance, financing costs, or redemption premium and other fees, costs, and
13 charges in respect of storm recovery bonds approved under the financing
14 order.

15 (4) Within fifteen (15) days after receiving ~~an electric a~~
16 utility's request ~~pursuant to this subsection~~ under subdivision (h)(1) of
17 this section, the commission shall either administratively approve the
18 request or inform the ~~electric~~ utility of any mathematical errors in its
19 calculation.

20 (5) If the commission informs the utility of mathematical errors
21 in its calculation, the utility may correct its error and refile its request.

22 (6) The time frames previously described in this subsection
23 shall apply to a refiled request.

24 (i) Subsequent to the earlier of the transfer of storm recovery
25 property to an assignee or the issuance of storm recovery bonds authorized
26 thereby, a financing order is irrevocable, and except as provided in
27 subsections (d) and (h) of this section, the commission may not amend,
28 modify, or terminate the financing order by any subsequent action or reduce,
29 impair, postpone, terminate, or otherwise adjust storm recovery charges
30 approved in the financing order.

31
32 23-18-904. Exceptions to commission jurisdiction.

33 (a) If the Arkansas Public Service Commission issues a financing order
34 to ~~an electric a~~ utility pursuant to this section, the commission ~~may~~ shall
35 ~~not, in exercising its powers and carrying out its duties regarding any~~
36 ~~matter within its authority pursuant to this chapter,;~~

1 (1) ~~consider~~ Consider the storm recovery bonds issued pursuant
2 to the financing order to be the debt of the ~~electric~~ utility other than for
3 federal and state income tax purposes;

4 (2) ~~consider~~ Consider the storm recovery charges paid under the
5 financing order to be the revenue of the ~~electric~~ utility for any purpose,
6 ~~or~~;

7 (3) ~~consider~~ Consider the storm recovery costs or financing
8 costs specified in the financing order to be the costs of the ~~electric~~
9 utility; or

10 (4) ~~nor may the commission determine~~ Determine any action taken
11 by ~~an electric~~ a utility which is consistent with the financing order to be
12 unjust or unreasonable.

13 (b) The commission ~~may~~ shall not:

14 (1) ~~order~~ Order or otherwise directly or indirectly require ~~an~~
15 ~~electric~~ a utility to use storm recovery bonds to finance any project,
16 addition, plant, facility, extension, capital improvement, equipment, or any
17 other expenditure;

18 (2) ~~The commission may not refuse~~ Refuse to allow ~~an electric~~ a
19 utility to recover costs for storm recovery activities in an otherwise
20 permissible and reasonable fashion; or

21 (3) ~~refuse~~ Refuse or condition authorization or approval of the
22 issuance and sale by ~~an electric~~ a utility of securities or the assumption by
23 it of liabilities or obligations, solely because of the potential
24 availability of storm recovery financing.

25
26 23-18-905. Storm recovery property.

27 (a)(1) All storm recovery property that is specified in a financing
28 order shall constitute an existing, present intangible property right or
29 interest therein, notwithstanding that the imposition and collection of storm
30 recovery charges depend on the ~~electric~~ utility to which the financing order
31 is issued performing its servicing functions relating to the collection of
32 storm recovery charges and on future electricity or natural gas consumption.

33 (2) ~~Such~~ The property shall exist whether or not the revenues or
34 proceeds arising from the property have been billed, have accrued, or have
35 been collected and notwithstanding the fact that the value or amount of the
36 property is or may be dependent on the future provision of service to

1 customers by the ~~electric~~ utility or its successors or assignees and the
2 future consumption by customers of electricity or natural gas.

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

7 (c)(1) All or any portion of storm recovery property specified in a
8 financing order issued to ~~an electric~~ a utility, if storm recovery bonds are
9 to be issued, shall be sold, assigned, or transferred to a successor or an
10 assignee, including an affiliate or affiliates of the ~~electric~~ utility
11 created for the limited purpose of acquiring, owning, or administering storm
12 recovery property or issuing storm recovery bonds under the financing order.

13 (2) All or any portion of storm recovery property may be
14 encumbered by a security interest to secure storm recovery bonds issued
15 pursuant to the financing order, amounts payable to financing parties and to
16 counterparties under any ancillary agreements, and other financing costs.

17 (3) Each ~~such~~ sale, assignment, transfer, conveyance, or pledge
18 made by or security interest granted by ~~an electric~~ a utility or affiliate of
19 ~~an electric~~ a utility or assignee is considered to be a transaction in the
20 ordinary course of business.

21 (d)(1) The description of storm recovery property being sold,
22 assigned, or transferred to an assignee in any sale agreement, purchase
23 agreement, or other transfer agreement, being encumbered, granted, or pledged
24 to a secured party in any security agreement, pledge agreement, or other
25 security document, or indicated in any financing statement is only sufficient
26 if ~~such~~ the description or indication refers to the specific financing order
27 that created the storm recovery property and states that ~~such~~ the agreement
28 or financing statement covers all or part of ~~such~~ the storm recovery property
29 described in ~~such~~ the financing order.

30 (2) A description of storm recovery property in a financing
31 statement shall be sufficient if it refers to the financing order creating
32 the storm recovery property.

33 (3) This subsection applies to all purported sales, assignments,
34 or transfers of and all purported grants of liens or security interests in
35 storm recovery property, regardless of whether the related sale agreement,
36 purchase agreement, other transfer agreement, security agreement, pledge

1 agreement, or other security document was entered into, or any financing
2 statement was filed, before or after April 1, 2009.

3 (e)(1) If ~~an electric~~ a utility defaults on any required payment of
4 charges arising from storm recovery property specified in a financing order,
5 the court specified in § 23-18-903(f) upon application by an interested party
6 and without limiting any other remedies available to the applying party shall
7 order the sequestration and payment of the revenues arising from the storm
8 recovery property to the financing parties or their representatives.

9 (2) ~~Any such~~ An order described in subdivision (e)(1) of this
10 section shall remain in full force and effect notwithstanding any
11 reorganization, bankruptcy, or other insolvency proceedings with respect to
12 the ~~electric~~ utility or its successors or assigns.

13 (f) The interest of a transferee, purchaser, acquirer, assignee, or
14 secured party in storm recovery property specified in a financing order is
15 not subject to setoff, counterclaim, surcharge, or defense by the ~~electric~~
16 utility or any other person or in connection with the reorganization,
17 bankruptcy, or other insolvency of the ~~electric~~ utility, its successors or
18 assignees, or any other entity.

19 (g) Any successor to ~~an electric~~ a utility, whether pursuant to any
20 reorganization, bankruptcy, or other insolvency proceeding or whether
21 pursuant to any merger or acquisition, sale, or other business combination or
22 transfer by operation of law, as a result of ~~electric~~ utility restructuring
23 or otherwise, shall perform and satisfy all obligations of, and have the same
24 rights under a financing order as, the ~~electric~~ utility under the financing
25 order in the same manner and to the same extent as the ~~electric~~ utility,
26 including collecting and paying to the person entitled to receive them, the
27 revenues, collections, payments, or proceeds of the storm recovery property.

28 (h) Storm recovery bonds shall be nonrecourse to the credit or any
29 assets of the ~~electric~~ utility other than the storm recovery property as
30 specified in the financing order and any rights under any ancillary
31 agreement.

32
33 23-18-906. Sale.

34 (a) The sale, assignment, or transfer of storm recovery property is
35 governed by this section.

36 (b) All of the following apply to a sale, assignment, or transfer

1 under this section:

2 (1)(A) The sale, conveyance, assignment, or other transfer of
3 storm recovery property by ~~an electric~~ a utility to an assignee that the
4 parties have in the governing documentation expressly stated to be a sale or
5 other absolute transfer is an absolute transfer and true sale of, and not a
6 pledge of or security interest in, the transferor's right, title, and
7 interest in, to, and under the storm recovery property, other than for
8 federal and state income tax purposes.

9 (B) For all purposes other than federal and state income
10 tax purposes, the parties' characterization of a transaction as a sale of an
11 interest in storm recovery property shall be conclusive that the transaction
12 is a true sale and that ownership has passed to the party characterized as
13 the purchaser, regardless of whether the purchaser has possession of any
14 documents evidencing or pertaining to the interest.

15 (C) After ~~such~~ a transaction, the storm recovery property
16 is not subject to any claims of the transferor or the transferor's creditors,
17 other than creditors holding a prior security interest in the storm recovery
18 property perfected under ~~subdivision (4)~~ subdivision (b)(4) of this section;

19 (2) The characterization of the sale, conveyance, assignment, or
20 other transfer as a true sale or other absolute transfer under ~~subdivision~~
21 ~~(1)~~ subdivision (b)(1) of this section and the corresponding characterization
22 of the assignee's property interest is not affected by:

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

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

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

34 (D) Any indemnifications, obligations, or repurchase
35 rights made or provided by the transferor, except that ~~such~~ the indemnity or
36 repurchase rights shall not be based solely upon the inability or failure of

1 a transferor's customers to timely pay all or a portion of the storm recovery
2 charge;

3 (E) The transferor acting as the collector of the storm
4 recovery charges or the existence of any contract that authorizes or requires
5 the ~~electric~~ utility, to the extent that any interest in storm recovery
6 property is sold or assigned, to contract with the assignee or any financing
7 party that it will continue to operate its system to provide service to its
8 customers, will collect amounts in respect of the storm recovery charges for
9 the benefit and account of ~~such the~~ assignee or financing party, and will
10 account for and remit ~~such the~~ amounts to or for the account of ~~such the~~
11 assignee or financing party, including pursuant to a sequestration order
12 authorized by this subchapter;

13 (F) The contrary or other treatment of the sale,
14 conveyance, assignment, or other transfer for tax, financial reporting, or
15 other purposes;

16 (G) The granting or providing to holders of the storm
17 recovery bonds of a preferred right to the storm recovery property or credit
18 enhancement by the ~~electric~~ utility or its affiliates with respect to the
19 storm recovery bonds; or

20 (H)(i) The status of the assignee as a direct or indirect
21 wholly owned subsidiary or other affiliate of the ~~electric~~ utility.

22 (ii) The separate identity of any assignee of storm
23 recovery property which is a subsidiary or affiliate of the ~~electric~~ utility
24 shall not be disregarded due to the fact that the assignee and the ~~electric~~
25 utility share any one (1) or more incidents of control, including common
26 managers, officers, directors, members, accounting or administrative systems,
27 consolidated tax returns, or office space, that the assignee may be a
28 disregarded entity for tax purposes, that the utility caused the formation of
29 the assignee, that a contract by the utility and the assignee described in
30 ~~subdivision (2)(E)~~ subdivision (b)(2)(E) of this section exists, that the
31 assignee has no other business other than pertaining to the storm recovery
32 property, that the capitalization of the assignee is limited to amounts
33 required for compliance with certain applicable federal income tax laws and
34 revenue procedures, or that other factors used in applying a single business
35 enterprise test to juridical persons are present;

36 (3)(A) Any right that an ~~electric~~ utility has in the storm

1 recovery property prior to its pledge, sale, or transfer or any other right
2 of ~~an electric~~ a utility created under this subchapter or created in the
3 financing order and assignable under this section or assignable pursuant to a
4 financing order shall be property in the form of a contract right.

5 (B) Transfer of an interest in storm recovery property to
6 an assignee is enforceable only upon the later of the issuance of a financing
7 order, the execution and delivery of transfer documents to the assignee in
8 connection with the issuance of storm recovery bonds, and the receipt of
9 value.

10 (C) An enforceable transfer of an interest in storm
11 recovery property to an assignee other than a security interest shall be
12 perfected against all third parties, including subsequent judicial or other
13 lien creditors, when a notice of that transfer has been given by the filing
14 of a financing statement ~~in accordance with subdivision (4)~~ according to
15 subdivision (b)(4) of this section.

16 (D) The transfer shall be perfected against third parties
17 as of the date of filing;

18 (4)(A) Except as otherwise provided in this subchapter,
19 financing statements required to be filed under this section shall be filed,
20 indexed, and maintained in the same manner and in the same system of records
21 maintained for the filing of financing statements under the Uniform
22 Commercial Code – Secured Transactions, § 4-9-101 et seq.

23 (B) The filing of ~~such~~ a financing statement with the
24 Secretary of State shall be the only method of perfecting a sale, assignment,
25 or transfer of storm recovery property.

26 (C) The sale, assignment, or transfer of an interest in
27 storm recovery property perfected by filing a financing statement is
28 effective against the customers owing payment of the storm recovery charges,
29 creditors of the transferor, subsequent transferees, and all other third
30 persons notwithstanding the absence of actual knowledge of or notice to the
31 customers of the sale, assignment, or transfer.

32 (D) ~~No~~ A continuation statement need not be filed to
33 maintain ~~such~~ the perfection;

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

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

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

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

8 (6)(A) The priority of a sale, assignment, or transfer perfected
9 under this section is not impaired by any later modification of the financing
10 order or storm recovery property or by the commingling of funds arising from
11 storm recovery property with other funds.

12 (B) Any other security interest that may apply to those
13 funds, other than a security interest perfected under § 23-18-907 shall be
14 terminated when those funds are transferred to a segregated account for the
15 assignee or a financing party.

16 (C) If storm recovery property has been transferred to an
17 assignee or financing party, any proceeds of that property shall be held for
18 and delivered to the assignee or financing party by any collector as a
19 fiduciary.

20
21 23-18-907. Security interests.

22 (a)(1) The Uniform Commercial Code – Secured Transactions, § 4-9-101
23 et seq., does not apply to storm recovery property or any right, title, or
24 interest of a utility, assignee, or financing party therein except to the
25 extent specified in this subchapter.

26 (2) In addition, ~~such the~~ right, title, or interest pertaining
27 to a financing order including, ~~but not limited to,~~ without limitation the
28 associated storm recovery property including any revenues, collections,
29 claims, rights to payment, payments, money, or proceeds of or arising from
30 storm recovery charges pursuant to ~~such the~~ order, shall not be deemed
31 proceeds of any right or interest other than of the financing order and the
32 storm recovery property arising from the financing order.

33 (3) All revenues and collections resulting from storm recovery
34 property shall constitute proceeds only of the storm recovery property
35 arising from the financing order.

36 (b) Except to the extent provided in this subchapter with respect to

1 filings of financing statements or control of deposit accounts or investment
2 property as original collateral, the creation, attachment, granting,
3 perfection, and priority of security interests in storm recovery property to
4 secure storm recovery bonds is governed solely by this subchapter and not by
5 the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.

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

10 (A) The issuance of a financing order;

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

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

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

19 (d)(1) A security interest in storm recovery property is perfected
20 when it has attached and when the applicable financing statement describing
21 the storm recovery property as provided in § 23-18-905(d) has been filed with
22 the Secretary of State.

23 (2) The interest of a secured party is not perfected unless a
24 financing statement sufficient under this subchapter and otherwise ~~in~~
25 ~~accordance with~~ according to the Uniform Commercial Code – Secured
26 Transactions, § 4-9-101 et seq., is filed, and after perfection the secured
27 party's interest continues in the storm recovery property and all proceeds of
28 ~~such~~ the storm recovery property, whether or not billed, accrued, or
29 collected, and whether or not deposited into a deposit account and however
30 evidenced; provided however that a security interest granted by the issuer of
31 and securing storm recovery bonds held by a secured party having control of a
32 segregated deposit account or securities account as original collateral into
33 which revenues, collections, or proceeds of storm recovery property are
34 deposited or credited may be perfected by control as provided in subsection
35 (e) of this section.

36 (3) A security interest in proceeds of storm recovery property

1 is a perfected security interest if the security interest in the storm
2 recovery property was perfected under this subchapter.

3 (4) Except as otherwise provided in this subchapter, financing
4 statements required to be filed pursuant to this section shall be filed,
5 indexed, and maintained in the same manner and in the same system of records
6 maintained for the filing of financing statements under the Uniform
7 Commercial Code – Secured Transactions, § 4-9-101 et seq.

8 (5) The filing of ~~such~~ a financing statement shall be the only
9 method of perfecting a lien or security interest on storm recovery property
10 except as provided in this subsection.

11 (6) ~~No~~ A continuation statement need not be filed to maintain
12 ~~such~~ the perfection.

13 (e)(1) A perfected security interest in storm recovery property and
14 all proceeds of ~~such~~ the storm recovery property, whether or not billed,
15 accrued, or collected, and whether or not deposited into a deposit account
16 and however evidenced, shall have priority over a conflicting lien of any
17 nature in the same collateral property, except a security interest is
18 subordinate to the rights of a person that becomes a lien creditor before the
19 perfection of ~~such~~ the security interest.

20 (2) A security interest in storm recovery property which
21 qualifies for priority over a conflicting security interest or lien also has
22 priority over the conflicting security interest or lien in proceeds of the
23 storm recovery property.

24 (3) The relative priority of a perfected security interest of a
25 secured party is not adversely affected by any lien or security interest in a
26 deposit account of the ~~electric~~ utility that is a collector and into which
27 the revenues are deposited.

28 (4) The priority of a security interest perfected under this
29 section is not defeated or impaired by any later modification of the
30 financing order or storm recovery property or by the commingling of funds
31 arising from storm recovery property with other funds.

32 (5) Any other security interest, other than a prior security
33 interest perfected under this subchapter, that may apply to those funds shall
34 be terminated as to all funds transferred to a segregated account for the
35 benefit of an assignee or a financing party or to an assignee or financing
36 party directly.

1 (6) The perfection by control, the effect of perfection by
2 control, and the priority of a security interest granted by the issuer of and
3 securing storm recovery bonds held by a secured party having control of a
4 segregated deposit account or securities account as original collateral into
5 which revenues, collections, or proceeds of storm recovery property are
6 deposited or credited shall be governed by the Uniform Commercial Code –
7 Secured Transactions, § 4-9-101 et seq., including the choice of law rules in
8 §§ 4-9-301 – 4-9-307.

9 (f)(1) If a default or termination occurs under the terms of the storm
10 recovery bonds, the secured party may foreclose on or otherwise enforce the
11 security interest in any storm recovery property as if it were a secured
12 party under the Uniform Commercial Code – Secured Transactions, § 4-9-101 et
13 seq.

14 (2) A secured party holding a security interest in storm
15 recovery property shall be entitled to exercise all of the same rights and
16 remedies as are available to a secured party under the Uniform Commercial
17 Code – Secured Transactions, § 4-9-101 et seq., to the same extent as if
18 those rights and remedies were ~~set forth~~ stated in this subchapter.

19 (3) A court may order that amounts arising from storm recovery
20 property be transferred to a separate account of the secured party for the
21 financing parties' benefit, to which their security interest shall apply.

22 (4) On application by or on behalf of a secured party to the
23 court of this state specified in this subsection, ~~such~~ the court shall order
24 the sequestration and payment to the financing parties of revenues arising
25 from the storm recovery property.

26 (g)(1) A security interest created under this subchapter may provide
27 for a security interest in after-acquired collateral.

28 (2) A security interest granted under this subchapter is not
29 invalid or fraudulent against creditors solely because the grantor or the
30 ~~electric~~ utility as collector or servicer has the right or ability to
31 commingle the collateral or proceeds, or collect, compromise, enforce, and
32 otherwise deal with collateral.

33 (h) Any action arising under ~~the provisions of~~ this subchapter to
34 enforce a security interest in any security interest governed by this
35 subchapter or in any storm recovery property, or which otherwise asserts an
36 interest in, or a right in, to, or against any storm recovery property,

1 wherever located or deemed located, shall be brought in the Pulaski County
2 Circuit Court.

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

6 (1)(A) Conflicting perfected interests or rights of secured
7 parties rank according to priority in time of perfection.

8 (B) Priority dates from the time a filing covering the
9 interest or right is made ~~in accordance with~~ according to this section and
10 the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.;

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

13 (3) A perfected interest or right of a secured party has
14 priority over a person who becomes a lien creditor after the perfection of
15 ~~such~~ the secured party's interest or right.

16 (j)(1) The priority of a lien and security interest in storm recovery
17 property perfected under this section is not impaired by any later
18 modification of the financing order or storm recovery property or by the
19 commingling of funds arising from storm recovery property with other funds.

20 (2) Any other security interest that may apply to the storm
21 recovery property shall be terminated when those funds are transferred to a
22 segregated account for the assignee or a financing party.

23 (3) If storm recovery property has been transferred to an
24 assignee or financing party, any proceeds of that storm recovery property
25 shall be held in trust for the assignee or financing party.

26

27 23-18-908. Choice of law – Conflicts.

28 (a)(1) The law governing the validity, enforceability, attachment,
29 perfection, priority, exercise of remedies, and venue with respect to the
30 sale, assignment, or transfer of an interest or right or the creation of a
31 security interest in any storm recovery property shall be exclusively the
32 laws of this state, without applying this state's law on conflicts of laws
33 and notwithstanding any contrary contractual provision.

34 (2) The validity, enforceability, attachment, perfection,
35 priority, and exercise of remedies with respect to the sale, assignment, or
36 transfer of an interest or right or the creation of a security interest in

1 any storm recovery property shall be governed by this subchapter, and solely
2 to the extent not addressed by this subchapter, by the Uniform Commercial
3 Code – Secured Transactions, § 4-9-101 et seq., and other laws of this state.

4 (b) In the event of conflict between this subchapter and any other law
5 regarding the attachment, creation, perfection, the effect of perfection, or
6 priority of, and sale, assignment, or transfer of, or security interest in,
7 storm recovery property, or the exercise of remedies with respect thereto,
8 this subchapter shall govern to the extent of the conflict.

9
10 23-18-909. Storm recovery bonds not public debt – Legal investments.

11 (a)(1) Storm recovery bonds are not a debt or a general obligation of
12 the state or any of its political subdivisions, agencies, or
13 instrumentalities and are not a charge on their full faith and credit.

14 (2) An issue of storm recovery bonds does not, directly or
15 indirectly or contingently, obligate the state or any agency, political
16 subdivision, or instrumentality of the state to levy any tax or make any
17 appropriation for payment of the bonds, other than for paying storm recovery
18 charges in their capacity as consumers of electricity or natural gas.

19 (3) All storm recovery bonds authorized by a financing order by
20 the Arkansas Public Service Commission ~~must~~ shall contain on the face thereof
21 a statement to the following effect:

22 “Neither the full faith and credit nor the taxing power of the State of
23 Arkansas is pledged to the payment of the principal of, or interest on, this
24 bond.”

25 (b) Storm recovery bonds shall be legal investments for all
26 governmental units, financial institutions, insurance companies, fiduciaries,
27 and other persons that require statutory authority regarding legal
28 investment.

29
30 23-18-910. Tax treatment.

31 The Arkansas state income tax treatment of the following events will
32 conform to the federal income tax treatment of ~~such~~ the events:

33 (1) ~~The electric~~ A utility’s receipt of a financing order that
34 creates storm recovery property for the benefit of the ~~electric~~ utility;

35 (2) The ~~electric~~ utility’s receipt of cash or other valuable
36 consideration in exchange for its transfer of the storm recovery property to

1 an affiliate which is wholly owned, directly or indirectly, by the ~~electric~~
2 utility; and

3 (3) The ~~electric~~ utility's receipt of cash or other valuable
4 consideration in exchange for storm recovery bonds issued by the financing
5 party.

6

7 23-18-911. State pledge – Definition.

8 (a) For purposes of this section, the term “bondholder” means a person
9 who holds, owns, or is the beneficial holder or owner of a storm recovery
10 bond.

11 (b)(1) The state and its agencies, including the Arkansas Public
12 Service Commission, pledge to and agree with bondholders, the owners of the
13 storm recovery property, and other financing parties that the state ~~will~~
14 shall not:

15 (A) Alter the provisions of this section which make the
16 storm recovery charges imposed by a financing order irrevocable, binding, and
17 nonbypassable charges;

18 (B) Take or permit any action that impairs or would
19 impair the value of storm recovery property; or

20 (C) Except as allowed under this section, reduce, alter,
21 or impair storm recovery charges that are to be imposed, collected, and
22 remitted for the benefit of the bondholders and other financing parties until
23 any and all principal, interest, premium, financing costs and other fees,
24 expenses, or charges incurred, and any contracts to be performed in
25 connection with the related storm recovery bonds have been paid and performed
26 in full.

27 (2) ~~Nothing in this subsection shall~~ This subsection does not
28 preclude limitation or alteration if full compensation is made by law for the
29 full protection of the storm recovery charges collected pursuant to a
30 financing order and of the holders of storm recovery bonds and any assignee
31 or financing party entering into a contract with the ~~electric~~ utility.

32 (c) Any person or entity that issues storm recovery bonds may include
33 the pledge specified in subsection (b) of this section in the bonds and
34 related documentation.

35

36 23-18-912. Assignee or financing party not ~~an electric~~ a utility.

1 An assignee or financing party shall not be considered ~~an electric a~~
2 utility or person providing electric or natural gas service by virtue of
3 engaging in the transactions described in this subchapter.

4
5 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
6 General Assembly of the State of Arkansas that due to the recent historic
7 winter weather event, the high prices paid for energy by utilities could
8 necessitate a substantial increase in rates paid by consumers; that storm
9 recovery costs could be securitized and financed with prompt legislative
10 action, and that this act is immediately necessary because authorization is
11 required for securitization financing for storm recovery costs that may lower
12 the financing costs or mitigate the impact on rates in comparison to
13 traditional utility financing and benefit customers in this state. Therefore,
14 an emergency is declared to exist, and this act being immediately necessary
15 for the preservation of the public peace, health, and safety shall become
16 effective on:

17 (1) The date of its approval by the Governor;

18 (2) If the bill is neither approved nor vetoed by the Governor,
19 the expiration of the period of time during which the Governor may veto the
20 bill; or

21 (3) If the bill is vetoed by the Governor and the veto is
22 overridden, the date the last house overrides the veto.

23
24
25 /s/B. Ballinger

26
27
28 APPROVED: 4/12/21