

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.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

*As Engrossed: H3/16/09*

# A Bill

HOUSE BILL 1712

5 By: Representative Williams  
6  
7

## 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

## Subtitle

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

### CHAPTER 20

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

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

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  
36 financing costs or mitigate the impact on rates in comparison with



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

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

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

34 (2) Treating the storm recovery charges as gross income to the  
35 electric utility recognized under the utility's usual method of accounting  
36 for income taxes, rather than recognizing gross income upon the receipt of

1 the financing order or the receipt of cash in exchange for the sale of the  
2 storm recovery property or the issuance of the storm recovery bonds;

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

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

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

11  
12 23-20-102. Definitions.

13 (a) As used in this Act:

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

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

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

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

34 (5) "Financing costs" means:

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

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

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

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

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

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

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

28                   (A) The issuance of storm recovery bonds;

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

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

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

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

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

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

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

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

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

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

1 certificates.

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

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

35 (16) "Storm recovery property" means:

36 (A) All rights and interests of an electric utility or the

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

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

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

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

15  
16 23-20-103. Financing orders.

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

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

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

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

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

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

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

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

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

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

16  
17           (b)(1) Proceedings on a petition submitted pursuant to subsection (a)  
18 above shall begin with a petition by an electric utility and shall be  
19 disposed of in accordance with the commission's rules and regulations  
20 promulgated pursuant to Arkansas Code §§25-15-201, et seq., except that the  
21 provisions of this section, to the extent applicable, shall control.

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

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



1 interest in, and the scope of effort required to provide, the safe and  
2 expeditious restoration of electric service.

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

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

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

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

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

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

34 (F) Specify the storm recovery property that is, or shall  
35 be, created in favor of an electric utility or its successors or assignees  
36 and that shall be used to pay or secure storm recovery bonds and financing

1 costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

13  
14 23-20-104. Exceptions to Commission Jurisdiction.

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

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

35  
36 23-20-105. Storm recovery property.

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

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

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

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

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

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

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

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

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

5  
6       23-20-106. Sale.

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

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

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

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

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

36               (C) Any recourse that the assignee may have against the

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

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

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

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

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

27 (H) The status of the assignee as a direct or indirect  
28 wholly owned subsidiary or other affiliate of the electric utility. The  
29 separate identity of any assignee of storm recovery property which is a  
30 subsidiary or affiliate of the electric utility shall not be disregarded due  
31 to the fact that the assignee and the electric utility share any one or more  
32 incidents of control, including common managers, officers, directors,  
33 members, accounting or administrative systems, consolidated tax returns, or  
34 office space, that the assignee may be a disregarded entity for tax purposes,  
35 that the utility caused the formation of the assignee, that a contract by the  
36 utility and the assignee described in §23-20-106(2)(E) exists, that the



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

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

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

8                   (6) 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. Any other security interest that  
12 may apply to those funds, other than a security interest perfected under §  
13 23-20-107 shall be terminated when those funds are transferred to a  
14 segregated account for the assignee or a financing party. If storm recovery  
15 property has been transferred to an assignee or financing party, any proceeds  
16 of that property shall be held for and delivered to the assignee or financing  
17 party by any collector as a fiduciary.

18  
19                   23-20-107. Security interests.

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

32                   (b) Except to the extent provided in this Act with respect to filings  
33 of financing statements or control of deposit accounts or investment property  
34 as original collateral, the creation, attachment, granting, perfection and  
35 priority of security interests in storm recovery property to secure storm  
36 recovery bonds is governed solely by this Act and not by the Uniform

1 Commercial Code - Secured Transactions.

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

6 (A) The issuance of a financing order;

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

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

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

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

1 statement shall be the only method of perfecting a lien or security interest  
2 on storm recovery property except as provided in this subsection. No  
3 continuation statement need be filed to maintain such perfection.

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

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

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

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

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

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

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

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

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

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

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

6  
7 23-20-108. Choice of law; conflicts.

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

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

25  
26 23-20-109. Storm recovery bonds not public debt; legal investments.

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

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

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

8  
9 23-20-110. Tax Treatment.

10 (a) The Arkansas state income tax treatment of the following events  
11 will conform to the federal income tax treatment of such events:

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

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

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

21 (b) A sale, assignment or other transfer of storm recovery property or  
22 any pledge or assignment for security of storm recovery property or the  
23 receipt of storm recovery charges shall be exempt from any state or local  
24 sales, use, gross receipts, income, franchise, transfer, gains, receipts, or  
25 similar taxes.

26  
27 23-20-111. State pledge.

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

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

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

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

3           (3) Except as allowed under this section, reduce, alter, or  
4 impair storm recovery charges that are to be imposed, collected, and remitted  
5 for the benefit of the bondholders and other financing parties until any and  
6 all principal, interest, premium, financing costs and other fees, expenses,  
7 or charges incurred, and any contracts to be performed, in connection with  
8 the related storm recovery bonds have been paid and performed in full.

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

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

16  
17           23-20-112. Not an electric utility.

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

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

26  
27           SECTION 3. All provisions of this Act of a general and permanent  
28 nature are amendatory of the Arkansas Code of 1987 Annotated and the Arkansas  
29 Code Revision Commission shall incorporate the same in the Code.

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

36



