

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

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.
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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.

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

33 (b) The purpose of this Act is to enable Arkansas electric utilities,
34 if authorized by a financing order issued by the commission, to use
35 securitization financing for storm recovery costs, which may lower the
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 or a natural disaster or any act
 16 of terrorism that 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 or under special contracts, even if
 13 the customer elects to purchase electricity from an alternative electricity
 14 supplier following a fundamental change in regulation of public utilities in
 15 this state.

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

36 (16) "Storm recovery property" means:

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

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

12 (17) "Storm recovery reserve" means an electric utility's storm
 13 reserve or such other similar reserve established pursuant to order or rule
 14 of the commission, including any such reserved established prior to the
 15 effectiveness of this Act.

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

18
 19 23-20-103. Financing orders.

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

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

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

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

35 (4) Indicate whether the electric utility proposes to finance
 36 all or a portion of the storm recovery costs and storm recovery reserve using

1 storm recovery bonds. If the electric utility proposes to finance a portion
 2 of such costs, the electric utility shall identify that portion in the
 3 petition;

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

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

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

14 (8) File with the petition direct testimony supporting the
 15 petition.

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

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

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

1 expeditious restoration of electric service.

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

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

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

15 (C) Provide that, for the period specified pursuant to
 16 subsection (b)(2)(A), the imposition and collection of storm recovery charges
 17 authorized in the financing order shall be nonbypassable and paid by all
 18 customers receiving transmission or distribution service, or both, from the
 19 electric utility or its successors or assignees under commission-approved
 20 rate schedules or under special contracts, even if the customer elects to
 21 purchase electricity from an alternative electric supplier following a
 22 fundamental change in regulation of public utilities in the state.

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

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

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

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

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

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

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

16 (c) After the issuance of a financing order, the electric utility
 17 retains sole discretion regarding whether to cause the storm recovery bonds
 18 to be issued, including the right to defer or postpone such sale, assignment,
 19 transfer, or issuance and nothing herein limits the rights of the electric
 20 utility to recover its storm recovery costs under normal rate making should
 21 the storm recovery bonds not be issued.

22 (d) At the request of an electric utility, the commission may commence
 23 a proceeding and issue a subsequent financing order that provides for the
 24 refinancing, retiring, or refunding of storm recovery bonds issued pursuant
 25 to the original financing order if the commission finds that the subsequent
 26 financing order satisfies all of the criteria specified in Subsection (b) of
 27 this Section. Effective on retirement of the refunded storm recovery bonds
 28 and the issuance of new storm recovery bonds, the commission may adjust the
 29 related storm recovery charges accordingly or establish substitute storm
 30 recovery charges. Any such financing order shall be issued within 120 days
 31 of the application of an electric utility therefor.

32 (e) All financing orders by the commission shall be operative and in
 33 full force and effect from the date of issuance by the commission. A
 34 financing order shall not be subject to rehearing.

35 (f) An aggrieved party or intervenor may as its sole remedy, within 15
 36 days after the financing order or a supplemental order made by the commission

1 becomes effective, file in the Arkansas Court of Appeals, a petition setting
 2 forth the particular cause of objection to the order complained of. Inasmuch
 3 as delay in the determination of the appeal of a financing order may delay
 4 the issuance of storm recovery bonds, thereby diminishing savings to
 5 customers which might be achieved if such bonds were issued as contemplated
 6 by a financing order, all such cases shall be given precedence over all other
 7 civil cases in the court and shall be heard and determined as speedily as
 8 possible.

9 (g) A financing order issued to an electric utility may provide that
 10 creation of the electric utility's storm recovery property pursuant to
 11 subsection (b)(2)(F) of this section is conditioned upon, and shall be
 12 simultaneous with, the sale or other transfer of the storm recovery property
 13 to an assignee and the pledge of the storm recovery property to secure storm
 14 recovery bonds.

15 (h) If the commission issues a financing order, the electric utility
 16 shall file with the commission at least annually a request for administrative
 17 approval applying the formula-based true-up mechanism to make the adjustments
 18 described in subsection (b)(2)(E) of this section. The review of such a
 19 request shall be limited to determining whether there is any mathematical
 20 error in the application of the formula-based mechanism relating to the
 21 appropriate amount of any projected overcollection or undercollection of
 22 storm recovery charges and the amount of an adjustment. Such adjustments
 23 shall ensure the recovery of revenues sufficient to provide for the payment
 24 of principal, interest, acquisition, defeasance, financing costs, or
 25 redemption premium and other fees, costs, and charges in respect of storm
 26 recovery bonds approved under the financing order. Within 15 days after
 27 receiving an electric utility's request pursuant to this subsection, the
 28 commission shall either administratively approve the request or inform the
 29 electric utility of any mathematical errors in its calculation. If the
 30 commission informs the utility of mathematical errors in its calculation, the
 31 utility may correct its error and refile its request. The timeframes
 32 previously described in this subsection shall apply to a refiled request.

33 (i) Subsequent to the earlier of the transfer of storm recovery
 34 property to an assignee or the issuance of storm recovery bonds authorized
 35 thereby, a financing order is irrevocable and, except as provided in
 36 subsection (d) and subsection (h) of this section, the commission may not

1 amend, modify, or terminate the financing order by any subsequent action or
 2 reduce, impair, postpone, terminate, or otherwise adjust storm recovery
 3 charges approved in the financing order.

4
 5 23-20-104. Exceptions to Commission Jurisdiction.

6 (a) If the commission issues a financing order to an electric utility
 7 pursuant to this section, the commission may not, in exercising its powers
 8 and carrying out its duties regarding any matter within its authority
 9 pursuant to this chapter, consider the storm recovery bonds issued pursuant
 10 to the financing order to be the debt of the electric utility other than for
 11 federal and state income tax purposes, consider the storm recovery charges
 12 paid under the financing order to be the revenue of the electric utility for
 13 any purpose, or consider the storm recovery costs or financing costs
 14 specified in the financing order to be the costs of the electric utility, nor
 15 may the commission determine any action taken by an electric utility which is
 16 consistent with the financing order to be unjust or unreasonable.

17 (b) The commission may not order or otherwise directly or indirectly
 18 require an electric utility to use storm recovery bonds to finance any
 19 project, addition, plant, facility, extension, capital improvement,
 20 equipment, or any other expenditure. The commission may not refuse to allow
 21 an electric utility to recover costs for storm recovery activities in an
 22 otherwise permissible fashion, or refuse or condition authorization or
 23 approval of the issuance and sale by an electric utility of securities or the
 24 assumption by it of liabilities or obligations, solely because of the
 25 potential availability of storm recovery financing.

26
 27 23-20-105. Storm recovery property.

28 (a) All storm recovery property that is specified in a financing order
 29 shall constitute an existing, present intangible property right or interest
 30 therein, notwithstanding that the imposition and collection of storm recovery
 31 charges depends on the electric utility to which the financing order is
 32 issued performing its servicing functions relating to the collection of storm
 33 recovery charges and on future electricity consumption. Such property shall
 34 exist whether or not the revenues or proceeds arising from the property have
 35 been billed, have accrued, or have been collected and notwithstanding the
 36 fact that the value or amount of the property is or may be dependent on the

1 future provision of service to customers by the electric utility or its
2 successors or assignees and the future consumption by customers of
3 electricity.

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

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

21 (d) The description of storm recovery property being sold, assigned,
22 or transferred to an assignee in any sale agreement, purchase agreement, or
23 other transfer agreement, being encumbered, granted or pledged to a secured
24 party in any security agreement, pledge agreement, or other security
25 document, or indicated in any financing statement is only sufficient if such
26 description or indication refers to the specific financing order that created
27 the storm recovery property and states that such agreement or financing
28 statement covers all or part of such storm recovery property described in
29 such financing order. A description of storm recovery property in a
30 financing statement shall be sufficient if it refers to the financing order
31 creating the storm recovery property. This subsection (d) applies to all
32 purported sales, assignments, or transfers of, and all purported grants of
33 liens or security interests in, storm recovery property, regardless of
34 whether the related sale agreement, purchase agreement, other transfer
35 agreement, security agreement, pledge agreement, or other security document
36 was entered into, or any financing statement was filed, before or after the

1 effective date of this Act.

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

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

18 (g) Any successor to an electric utility, whether pursuant to any
 19 reorganization, bankruptcy, or other insolvency proceeding, or whether
 20 pursuant to any merger or acquisition, sale, or other business combination,
 21 or transfer by operation of law, as a result of electric utility
 22 restructuring or otherwise, shall perform and satisfy all obligations of, and
 23 have the same rights under a financing order as the electric utility under
 24 the financing order in the same manner and to the same extent as the electric
 25 utility, including collecting and paying to the person entitled to receive
 26 them, the revenues, collections, payments, or proceeds of the storm recovery
 27 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 23-20-106. Sale.

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

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

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

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

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

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

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

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

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

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

18 (H) The status of the assignee as a direct or indirect
19 wholly owned subsidiary or other affiliate of the electric utility. The
20 separate identity of any assignee of storm recovery property which is a
21 subsidiary or affiliate of the electric utility shall not be disregarded due
22 to the fact that the assignee and the electric utility share any one or more
23 incidents of control, including common managers, officers, directors,
24 members, accounting or administrative systems, consolidated tax returns, or
25 office space, that the assignee may be a disregarded entity for tax purposes,
26 that the utility caused the formation of the assignee, that a contract by the
27 utility and the assignee described in §23-20-106(2)(E) exists, that the
28 assignee has no other business other than pertaining to the storm recovery
29 property, that the capitalization of the assignee is limited to amounts
30 required for compliance with certain applicable federal income tax laws and
31 revenue procedures, or that other factors used in applying a single business
32 enterprise test to juridical persons are present.

33 (3) Any right that an electric utility has in the storm recovery
34 property prior to its pledge, sale, or transfer or any other right of an
35 electric utility created under this Act or created in the financing order and
36 assignable under this section or assignable pursuant to a financing order

1 shall be property in the form of a contract right. Transfer of an interest
 2 in storm recovery property to an assignee is enforceable only upon the later
 3 of the issuance of a financing order, the execution and delivery of transfer
 4 documents to the assignee in connection with the issuance of storm recovery
 5 bonds, and the receipt of value. An enforceable transfer of an interest in
 6 storm recovery property to an assignee other than a security interest shall
 7 be perfected against all third parties, including subsequent judicial or
 8 other lien creditors, when a notice of that transfer has been given by the
 9 filing of a financing statement in accordance with subparagraph (4). The
 10 transfer shall be perfected against third parties as of the date of filing;

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

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

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

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

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

35 (6) The priority of a sale, assignment, or transfer perfected
 36 under this section is not impaired by any later modification of the financing

1 order or storm recovery property or by the commingling of funds arising from
 2 storm recovery property with other funds. Any other security interest that
 3 may apply to those funds, other than a security interest perfected under §
 4 23-20-107 shall be terminated when those funds are transferred to a
 5 segregated account for the assignee or a financing party. If storm recovery
 6 property has been transferred to an assignee or financing party, any proceeds
 7 of that property shall be held for and delivered to the assignee or financing
 8 party by any collector as a fiduciary.

9
 10 23-20-107. Security interests.

11 (a) The Uniform Commercial Code - Secured Transactions does not apply
 12 to storm recovery property or any right, title, or interest of a utility,
 13 assignee, or financing party therein except to the extent specified in this
 14 Act. In addition, such right, title, or interest pertaining to a financing
 15 order including but not limited to the associated storm recovery property
 16 including any revenues, collections, claims, rights to payment, payments,
 17 money, or proceeds of or arising from storm recovery charges pursuant to such
 18 order, shall not be deemed proceeds of any right or interest other than of
 19 the financing order and the storm recovery property arising from the
 20 financing order. All revenues and collections resulting from storm recovery
 21 property shall constitute proceeds only of the storm recovery property
 22 arising from the financing order.

23 (b) Except to the extent provided in this Act with respect to filings
 24 of financing statements or control of deposit accounts or investment property
 25 as original collateral, the creation, attachment, granting, perfection and
 26 priority of security interests in storm recovery property to secure storm
 27 recovery bonds is governed solely by this Act and not by the Uniform
 28 Commercial Code - Secured Transactions.

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

33 (A) The issuance of a financing order;

34 (B) The execution and delivery of a security agreement,
 35 indenture, or other agreement with a financing party relating to the granting
 36 of a security interest in connection with the issuance of storm recovery

1 bonds; and

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

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

6 (d) A security interest in storm recovery property is perfected when
 7 it has attached and when the applicable financing statement describing the
 8 storm recovery property as provided in Arkansas Code § 23-20-105(d) has been
 9 filed with the Arkansas Secretary of State. The interest of a secured party
 10 is not perfected unless a financing statement sufficient under this Act and
 11 otherwise in accordance with the Uniform Commercial Code - Secured
 12 Transactions is filed, and after perfection the secured party's interest
 13 continues in the storm recovery property and all proceeds of such storm
 14 recovery property, whether or not billed, accrued, or collected, and whether
 15 or not deposited into a deposit account and however evidenced; provided
 16 however that a security interest granted by the issuer of and securing storm
 17 recovery bonds held by a secured party having control of a segregated deposit
 18 account or securities account as original collateral into which revenues,
 19 collections, or proceeds of storm recovery property are deposited or credited
 20 may be perfected by control as provided in subsection (e) below. A security
 21 interest in proceeds of storm recovery property is a perfected security
 22 interest if the security interest in the storm recovery property was
 23 perfected under this Act. Except as otherwise provided in this Act,
 24 financing statements required to be filed pursuant to this Section shall be
 25 filed, indexed, and maintained in the same manner and in the same system of
 26 records maintained for the filing of financing statements under the Uniform
 27 Commercial Code - Secured Transactions. The filing of such a financing
 28 statement shall be the only method of perfecting a lien or security interest
 29 on storm recovery property except as provided in this subsection. No
 30 continuation statement need be filed to maintain such perfection.

31 (e) A perfected security interest in storm recovery property and all
 32 proceeds of such storm recovery property, whether or not billed, accrued, or
 33 collected, and whether or not deposited into a deposit account and however
 34 evidenced, shall have priority over a conflicting lien of any nature in the
 35 same collateral property, except a security interest is subordinate to the
 36 rights of a person that becomes a lien creditor before the perfection of such

1 security interest. A security interest in storm recovery property which
 2 qualifies for priority over a conflicting security interest or lien also has
 3 priority over the conflicting security interest or lien in proceeds of the
 4 storm recovery property. The relative priority of a perfected security
 5 interest of a secured party is not adversely affected by any lien or security
 6 interest in a deposit account of the electric utility that is a collector and
 7 into which the revenues are deposited. The priority of a security interest
 8 perfected under this Section is not defeated or impaired by any later
 9 modification of the financing order or storm recovery property or by the
 10 commingling of funds arising from storm recovery property with other funds.
 11 Any other security interest, other than a prior security interest perfected
 12 under this Act, that may apply to those funds shall be terminated as to all
 13 funds transferred to a segregated account for the benefit of an assignee or a
 14 financing party or to an assignee or financing party directly. The
 15 perfection by control, the effect of perfection by control, and the priority
 16 of a security interest granted by the issuer of and securing storm recovery
 17 bonds held by a secured party having control of a segregated deposit account
 18 or securities account as original collateral into which revenues,
 19 collections, or proceeds of storm recovery property are deposited or credited
 20 shall be governed by the Uniform Commercial Code - Secured Transactions
 21 including the choice of law rules in Arkansas Code §§ 4-9-301 - 4-9-307.

22 (f) If a default or termination occurs under the terms of the storm
 23 recovery bonds, the secured party may foreclose on or otherwise enforce the
 24 security interest in any storm recovery property as if it was a secured party
 25 under the Uniform Commercial Code - Secured Transactions. A secured party
 26 holding a security interest in storm recovery property shall be entitled to
 27 exercise all of the same rights and remedies as are available to a secured
 28 party under the Uniform Commercial Code - Secured Transactions, to the same
 29 extent as if those rights and remedies were set forth in this Act. A court
 30 may order that amounts arising from storm recovery property be transferred to
 31 a separate account of the secured party for the financing parties' benefit,
 32 to which their security interest shall apply. On application by or on behalf
 33 of a secured party to the court of this state specified in Subsection (f) of
 34 this Section, such court shall order the sequestration and payment to the
 35 financing parties of revenues arising from the storm recovery property.

36 (g) A security interest created under this Act may provide for a

1 security interest in after-acquired collateral. A security interest granted
 2 under this Act is not invalid or fraudulent against creditors solely because
 3 the grantor or the electric utility as collector or servicer has the right or
 4 ability to commingle the collateral or proceeds, or collect, compromise,
 5 enforce, and otherwise deal with collateral.

6 (h) Any action arising under the provisions of this Act to enforce a
 7 security interest in any security interest governed by this Act or in any
 8 storm recovery property, or which otherwise asserts an interest in, or a
 9 right in, to or against any storm recovery property, wherever located or
 10 deemed located, shall be brought in the Circuit Court of Pulaski County,
 11 Arkansas.

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

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

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

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

24 (j) The priority of a lien and security interest in storm recovery
 25 property perfected under this Section is not impaired by any later
 26 modification of the financing order or storm recovery property or by the
 27 commingling of funds arising from storm recovery property with other funds.
 28 Any other security interest that may apply to the storm recovery property
 29 shall be terminated when those funds are transferred to a segregated account
 30 for the assignee or a financing party. If storm recovery property has been
 31 transferred to an assignee or financing party, any proceeds of that storm
 32 recovery property shall be held in trust for the assignee or financing party.

33
 34 23-20-108. Choice of law; conflicts.

35 (a) The law governing the validity, enforceability, attachment,
 36 perfection, priority, exercise of remedies, and venue with respect to the

1 sale, assignment, or transfer of an interest or right or the creation of a
 2 security interest in any storm recovery property shall be exclusively the
 3 laws of this state, without applying this state's law on conflicts of laws
 4 and notwithstanding any contrary contractual provision. The validity,
 5 enforceability, attachment, perfection, priority, and exercise of remedies
 6 with respect to the sale, assignment, or transfer of an interest or right or
 7 the creation of a security interest in any storm recovery property shall be
 8 governed by this Act, and solely to the extent not addressed by this Act, by
 9 the Uniform Commercial Code-Secured Transactions and other laws of this
 10 state.

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

16
 17 23-20-109. Storm recovery bonds not public debt; legal investments.

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

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

31 (b) Storm recovery bonds shall be legal investments for all
 32 governmental units, financial institutions, insurance companies, fiduciaries,
 33 and other persons that require statutory authority regarding legal
 34 investment.

35
 36 23-20-110. Tax Treatment.

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

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

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

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

12 (b) A sale, assignment or other transfer of storm recovery property or
 13 any pledge or assignment for security of storm recovery property or the
 14 receipt of storm recovery charges shall be exempt from any state or local
 15 sales, use, gross receipts, income, franchise, transfer, gains, receipts, or
 16 similar taxes.

17
 18 23-20-111. State pledge.

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

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

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

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

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

36 Nothing in this paragraph shall preclude limitation or alteration if

1 full compensation is made by law for the full protection of the storm
2 recovery charges collected pursuant to a financing order and of the holders
3 of storm recovery bonds and any assignee or financing party entering into a
4 contract with the electric utility.

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

7
8 23-20-112. Not an electric utility.

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

12
13 SECTION 2. EFFECT OF OTHER LAWS. The provisions of any other law,
14 except as expressly provided in this Act, or in such other law by way of
15 express reference to this Act, shall not limit or restrict the operation of
16 this Act in any manner.

17
18 SECTION 3. All provisions of this Act of a general and permanent
19 nature are amendatory of the Arkansas Code of 1987 Annotated and the Arkansas
20 Code Revision Commission shall incorporate the same in the Code.

21
22 SECTION 4. If any provisions of this Act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 the other provisions or applications of the Act which can be given effect
25 without the invalid provisions or application, and to this end the provisions
26 of this Act are declared severable.

27
28 SECTION 5. All laws and parts of laws in conflict with this Act are
29 hereby repealed.

30
31 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly that due to recent devastating ice storms in the state
33 resulting in large storm recovery costs which could be securitized and
34 financed under the provisions of this act, there is an immediate need to
35 authorize the securitization financing for storm recovery costs, which may
36 lower the financing costs or mitigate the impact on rates in comparison to

1 traditional utility financing or other traditional utility recovery methods
2 thereby benefitting customers. Therefore, an emergency is declared to exist
3 and this act being immediately necessary for the preservation of the public
4 peace, health and safety shall become effective on the date of its approval
5 by the Governor. If the bill is neither approved nor vetoed by the Governor,
6 it shall become effective on the expiration of the period of time during
7 which the Governor may veto the bill. If the bill is vetoed by the Governor
8 and the veto is overridden, it shall become effective on the date the last
9 house overrides the veto.

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