

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 559
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/18/19
House Committee Substitute Favorable 6/19/19
PROPOSED HOUSE COMMITTEE SUBSTITUTE S559-PCS45330-RIF-24

Short Title: Storm Securitization/Alt. Rates.

(Public)

Sponsors:

Referred to:

April 3, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT FINANCING FOR CERTAIN STORM RECOVERY COSTS AND TO
3 AUTHORIZE THE UTILITIES COMMISSION TO FIX RATES FOR ELECTRIC PUBLIC
4 UTILITIES USING "MULTIYEAR RATE PLAN" AND "BANDING OF AUTHORIZED
5 RETURN" MECHANISMS.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. STORM SECURITIZATION**

9 **SECTION 1.(a)** Article 8 of Chapter 62 of the General Statutes is amended by adding
10 a new section to read:

11 **"§ 62-172. Financing for certain storm recovery costs.**

12 (a) Definitions. – The following definitions apply in this section:

13 (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve
14 account, surety bond, interest rate lock or swap arrangement, hedging
15 arrangement, liquidity or credit support arrangement, or other financial
16 arrangement entered into in connection with storm recovery bonds.

17 (2) Assignee. – A legally recognized entity to which a public utility assigns, sells,
18 or transfers, other than as security, all or a portion of its interest in or right to
19 storm recovery property. The term includes a corporation, limited liability
20 company, general partnership or limited partnership, public authority, trust,
21 financing entity, or any entity to which an assignee assigns, sells, or transfers,
22 other than as security, its interest in or right to storm recovery property.

23 (2a) Bondholder. – A person who holds a storm recovery bond.

24 (2b) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.

25 (3) Commission. – The North Carolina Utilities Commission.

26 (4) Financing costs. – The term includes all of the following:

27 a. Interest and acquisition, defeasance, or redemption premiums payable
28 on storm recovery bonds.

29 b. Any payment required under an ancillary agreement and any amount
30 required to fund or replenish a reserve account or other accounts
31 established under the terms of any indenture, ancillary agreement, or
32 other financing documents pertaining to storm recovery bonds.

33 c. Any other cost related to issuing, supporting, repaying, refunding, and
34 servicing storm recovery bonds, including, servicing fees, accounting



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- 1 and auditing fees, trustee fees, legal fees, consulting fees, structuring
2 adviser fees, administrative fees, placement and underwriting fees,
3 independent director and manager fees, capitalized interest, rating
4 agency fees, stock exchange listing and compliance fees, security
5 registration fees, filing fees, information technology programming
6 costs, and any other costs necessary to otherwise ensure the timely
7 payment of storm recovery bonds or other amounts or charges payable
8 in connection with the bonds, including costs related to obtaining the
9 financing order.
- 10 d. Any taxes and license fees or other fees imposed on the revenues
11 generated from the collection of the storm recovery charge or
12 otherwise resulting from the collection of storm recovery charges, in
13 any such case whether paid, payable, or accrued.
- 14 e. Any State and local taxes, franchise, gross receipts, and other taxes or
15 similar charges, including regulatory assessment fees, whether paid,
16 payable, or accrued.
- 17 f. Any costs incurred by the Commission or public staff for any outside
18 consultants or counsel retained in connection with the securitization of
19 storm recovery costs.
- 20 (5) Financing order. – An order that authorizes the issuance of storm recovery
21 bonds; the imposition, collection, and periodic adjustments of a storm
22 recovery charge; the creation of storm recovery property; and the sale,
23 assignment, or transfer of storm recovery property to an assignee.
- 24 (6) Financing party. – Bondholders and trustees, collateral agents, any party under
25 an ancillary agreement, or any other person acting for the benefit of
26 bondholders.
- 27 (7) Financing statement. – Defined in Article 9 of the Code.
- 28 (8) Pledgee. – A financing party to which a public utility or its successors or
29 assignees mortgages, negotiates, pledges, or creates a security interest or lien
30 on all or any portion of its interest in or right to storm recovery property.
- 31 (9) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric
32 power to retail electric customers in the State.
- 33 (10) Storm. – Individually or collectively, a named tropical storm or hurricane, a
34 tornado, ice storm or snow storm, flood, an earthquake, or other significant
35 weather or natural disaster.
- 36 (11) Storm recovery activity. – An activity or activities by a public utility, its
37 affiliates, or its contractors, directly and specifically in connection with the
38 restoration of service and infrastructure associated with electric power outages
39 affecting customers of a public utility as the result of a storm or storms,
40 including activities related to mobilization, staging, and construction,
41 reconstruction, replacement, or repair of electric generation, transmission,
42 distribution, or general plant facilities.
- 43 (12) Storm recovery bonds. – Bonds, debentures, notes, certificates of
44 participation, certificates of beneficial interest, certificates of ownership, or
45 other evidences of indebtedness or ownership that are issued by a public utility
46 or an assignee pursuant to a financing order, the proceeds of which are used
47 directly or indirectly to recover, finance, or refinance Commission-approved
48 storm recovery costs and financing costs, and that are secured by or payable
49 from storm recovery property. If certificates of participation or ownership are
50 issued, references in this section to principal, interest, or premium shall be
51 construed to refer to comparable amounts under those certificates.

1 (13) Storm recovery charge. – The amounts authorized by the Commission to
2 repay, finance, or refinance storm recovery costs and financing costs and that
3 are nonbypassable charges (i) imposed on and part of all retail customer bills,
4 (ii) collected by a public utility or its successors or assignees, or a collection
5 agent, in full, separate and apart from the public utility's base rates, and (iii)
6 paid by all existing or future retail customers receiving transmission or
7 distribution service, or both, from the public utility or its successors or
8 assignees under Commission-approved rate schedules or under special
9 contracts, even if a customer elects to purchase electricity from an alternative
10 electricity supplier following a fundamental change in regulation of public
11 utilities in this State.

12 (14) Storm recovery costs. – All of the following:

13 a. All incremental costs, including capital costs, appropriate for recovery
14 from existing and future retail customers receiving transmission or
15 distribution service from the public utility that a public utility has
16 incurred or expects to incur as a result of the applicable storm that are
17 caused by, associated with, or remain as a result of undertaking storm
18 recovery activity. Such costs include the public utility's cost of capital
19 from the date of the applicable storm to the date the storm recovery
20 bonds are issued calculated using the public utility's weighted average
21 cost of capital as defined in its most recent base rate case proceeding
22 before the Commission net of applicable income tax savings related to
23 the interest component.

24 b. Storm recovery costs shall be net of applicable insurance proceeds, tax
25 benefits and any other amounts intended to reimburse the public utility
26 for storm recovery activities such as government grants, or aid of any
27 kind and where determined appropriate by the Commission, and may
28 include adjustments for capital replacement and operating costs
29 previously considered in determining normal amounts in the public
30 utility's most recent general rate proceeding. Storm recovery costs
31 includes the cost to replenish and fund any storm reserves and costs of
32 repurchasing equity or retiring any existing indebtedness relating to
33 storm recovery activities.

34 c. With respect to storm recovery costs that the public utility expects to
35 incur, any difference between costs expected to be incurred and actual,
36 reasonable and prudent costs incurred, or any other rate-making
37 adjustments appropriate to fairly and reasonably assign or allocate
38 storm cost recovery to customers over time, shall be addressed in a
39 future general rate proceeding, as may be facilitated by other orders of
40 the Commission issued at the time or prior to such proceeding;
41 provided, however, that the Commission's adoption of a financing
42 order and approval of the issuance of storm recovery bonds may not
43 be revoked or otherwise modified.

44 (15) Storm recovery property. – All of the following:

45 a. All rights and interests of a public utility or successor or assignee of
46 the public utility under a financing order, including the right to impose,
47 bill, charge, collect, and receive storm recovery charges authorized
48 under the financing order and to obtain periodic adjustments to such
49 charges as provided in the financing order.

50 b. All revenues, collections, claims, rights to payments, payments,
51 money, or proceeds arising from the rights and interests specified in

1 the financing order, regardless of whether such revenues, collections,
2 claims, rights to payment, payments, money, or proceeds are imposed,
3 billed, received, collected, or maintained together with or commingled
4 with other revenues, collections, rights to payment, payments, money,
5 or proceeds.

6 (b) Financing Orders. –

7 (1) A public utility may petition the Commission for a financing order. The
8 petition shall include all of the following:

9 a. A description of the storm recovery activities that the public utility has
10 undertaken or proposes to undertake and the reasons for undertaking
11 the activities, or if the public utility is subject to a settlement agreement
12 as contemplated by subdivision (2) of this subsection, a description of
13 the settlement agreement.

14 b. The storm recovery costs and estimate of the costs of any storm
15 recovery activities that are being undertaken but are not completed.

16 c. The level of the storm recovery reserve that the public utility proposes
17 to establish or replenish and has determined would be appropriate to
18 recover through storm recovery bonds and is seeking to so recover and
19 such level that the public utility is funding or will seek to fund through
20 other means, together with a description of the factors and calculations
21 used in determining the amounts and methods of recovery.

22 d. An indicator of whether the public utility proposes to finance all or a
23 portion of the storm recovery costs using storm recovery bonds. If the
24 public utility proposes to finance a portion of the costs, the public
25 utility must identify the specific portion in the petition. By electing not
26 to finance a portion of such storm recovery costs using storm recovery
27 bonds, a public utility shall not be deemed to waive its right to recover
28 such costs pursuant to a separate proceeding with the Commission.

29 e. An estimate of the financing costs related to the storm recovery bonds.

30 f. An estimate of the storm recovery charges necessary to recover the
31 storm recovery costs, including the storm recovery reserve amount
32 determined appropriate by the Commission, and financing costs and
33 the period for recovery of such costs.

34 g. A comparison between the net present value of the costs to customers
35 that are estimated to result from the issuance of storm recovery bonds
36 and the costs that would result from the application of the traditional
37 method of financing and recovering storm recovery costs from
38 customers. The comparison should demonstrate that the issuance of
39 storm recovery bonds and the imposition of storm recovery charges
40 are expected to provide quantifiable benefits to customers.

41 h. Direct testimony and exhibits supporting the petition.

42 (2) If a public utility is subject to a settlement agreement that governs the type
43 and amount of principal costs that could be included in storm recovery costs
44 and the public utility proposes to finance all or a portion of the principal costs
45 using storm recovery bonds, then the public utility must file a petition with
46 the Commission for review and approval of those costs no later than 90 days
47 before filing a petition for a financing order pursuant to this section.

48 (3) Petition and order. –

49 a. Proceedings on a petition submitted pursuant to this subdivision begin
50 with the petition by a public utility, filed subject to the time frame
51 specified in subdivision (2) of this subsection, if applicable, and shall

1 be disposed of in accordance with the requirements of this Chapter and
2 the rules of the Commission, except as follows:

3 1. Within 14 days after the date the petition is filed, the
4 Commission shall establish a procedural schedule that permits
5 a Commission decision no later than 135 days after the date the
6 petition is filed.

7 2. No later than 135 days after the date the petition is filed, the
8 Commission shall issue a financing order or an order rejecting
9 the petition. A party to the Commission proceeding may
10 petition the Commission for reconsideration of the financing
11 order within five days after the date of its issuance.

12 b. A financing order issued by the Commission to a public utility shall
13 include all of the following elements:

14 1. Except for changes made pursuant to the formula-based
15 mechanism authorized under this section, the amount of storm
16 recovery costs, including the level of storm recovery reserves,
17 to be financed using storm recovery bonds. The Commission
18 shall describe and estimate the amount of financing costs that
19 may be recovered through storm recovery charges and specify
20 the period over which storm recovery costs and financing costs
21 may be recovered.

22 2. A finding that the proposed issuance of storm recovery bonds
23 and the imposition and collection of a storm recovery charge
24 are expected to provide quantifiable benefits to customers as
25 compared to the costs that would have been incurred absent the
26 issuance of storm recovery bonds.

27 3. A finding that the structuring and pricing of the storm recovery
28 bonds are reasonably expected to result in the lowest storm
29 recovery charges consistent with market conditions at the time
30 the storm recovery bonds are priced and the terms set forth in
31 such financing order.

32 4. A requirement that, for so long as the storm recovery bonds are
33 outstanding and until all financing costs have been paid in full,
34 the imposition and collection of storm recovery charges
35 authorized under a financing order shall be nonbypassable and
36 paid by all existing and future retail customers receiving
37 transmission or distribution service, or both, from the public
38 utility or its successors or assignees under
39 Commission-approved rate schedules or under special
40 contracts, even if a customer elects to purchase electricity from
41 an alternative electric supplier following a fundamental change
42 in regulation of public utilities in this State.

43 5. A determination of what portion, if any, of the storm recovery
44 reserves must be held in a funded reserve and any limitations
45 on how the reserve may be held, accessed, or used.

46 6. A formula-based true-up mechanism for making, at least
47 annually, expeditious periodic adjustments in the storm
48 recovery charges that customers are required to pay pursuant
49 to the financing order and for making any adjustments that are
50 necessary to correct for any overcollection or undercollection
51 of the charges or to otherwise ensure the timely payment of

- 1 storm recovery bonds and financing costs and other required
2 amounts and charges payable in connection with the storm
3 recovery bonds.
- 4 7. The storm recovery property that is, or shall be, created in favor
5 of a public utility or its successors or assignees and that shall
6 be used to pay or secure storm recovery bonds and all financing
7 costs.
- 8 8. The degree of flexibility to be afforded to the public utility in
9 establishing the terms and conditions of the storm recovery
10 bonds, including, but not limited to, repayment schedules,
11 expected interest rates, and other financing costs.
- 12 9. How storm recovery charges will be allocated among customer
13 classes.
- 14 10. A requirement that, after the final terms of an issuance of storm
15 recovery bonds have been established and before the issuance
16 of storm recovery bonds, the public utility determines the
17 resulting initial storm recovery charge in accordance with the
18 financing order and that such initial storm recovery charge be
19 final and effective upon the issuance of such storm recovery
20 bonds without further Commission action so long as the storm
21 recovery charge is consistent with the financing order.
- 22 11. A method of tracing funds collected as storm recovery charges,
23 or other proceeds of storm recovery property, and determine
24 that such method shall be deemed the method of tracing such
25 funds and determining the identifiable cash proceeds of any
26 storm recovery property subject to a financing order under
27 applicable law.
- 28 12. Any other conditions not otherwise inconsistent with this
29 section that the Commission determines are appropriate.
- 30 c. A financing order issued to a public utility may provide that creation
31 of the public utility's storm recovery property is conditioned upon, and
32 simultaneous with, the sale or other transfer of the storm recovery
33 property to an assignee and the pledge of the storm recovery property
34 to secure storm recovery bonds.
- 35 d. If the Commission issues a financing order, the public utility shall file
36 with the Commission at least annually a petition or a letter applying
37 the formula-based mechanism and, based on estimates of consumption
38 for each rate class and other mathematical factors, requesting
39 administrative approval to make the applicable adjustments. The
40 review of the filing shall be limited to determining whether there are
41 any mathematical or clerical errors in the application of the
42 formula-based mechanism relating to the appropriate amount of any
43 overcollection or undercollection of storm recovery charges and the
44 amount of an adjustment. The adjustments shall ensure the recovery
45 of revenues sufficient to provide for the payment of principal, interest,
46 acquisition, defeasance, financing costs, or redemption premium and
47 other fees, costs, and charges in respect of storm recovery bonds
48 approved under the financing order. Within 30 days after receiving a
49 public utility's request pursuant to this paragraph, the Commission
50 shall either approve the request or inform the public utility of any
51 mathematical or clerical errors in its calculation. If the Commission

- 1 informs the utility of mathematical or clerical errors in its calculation,
2 the utility may correct its error and refile its request. The time frames
3 previously described in this paragraph shall apply to a refiled request.
4 e. Subsequent to the transfer of storm recovery property to an assignee
5 or the issuance of storm recovery bonds authorized thereby, whichever
6 is earlier, a financing order is irrevocable and, except for changes made
7 pursuant to the formula-based mechanism authorized in this section,
8 the Commission may not amend, modify, or terminate the financing
9 order by any subsequent action or reduce, impair, postpone, terminate,
10 or otherwise adjust storm recovery charges approved in the financing
11 order. After the issuance of a financing order, the public utility retains
12 sole discretion regarding whether to assign, sell, or otherwise transfer
13 storm recovery property or to cause storm recovery bonds to be issued,
14 including the right to defer or postpone such assignment, sale, transfer,
15 or issuance.
- 16 (4) At the request of a public utility, the Commission may commence a
17 proceeding and issue a subsequent financing order that provides for
18 refinancing, retiring, or refunding storm recovery bonds issued pursuant to the
19 original financing order if the Commission finds that the subsequent financing
20 order satisfies all of the criteria specified in this section for a financing order.
21 Effective upon retirement of the refunded storm recovery bonds and the
22 issuance of new storm recovery bonds, the Commission shall adjust the related
23 storm recovery charges accordingly.
- 24 (5) Within 60 days after the Commission issues a financing order or a decision
25 denying a request for reconsideration or, if the request for reconsideration is
26 granted, within 30 days after the Commission issues its decision on
27 reconsideration, an adversely affected party may petition for judicial review
28 in the Supreme Court of North Carolina. Review on appeal shall be based
29 solely on the record before the Commission and briefs to the court and is
30 limited to determining whether the financing order, or the order on
31 reconsideration, conforms to the State Constitution and State and federal law
32 and is within the authority of the Commission under this section.
- 33 (6) Duration of financing order. –
34 a. A financing order remains in effect and storm recovery property under
35 the financing order continues to exist until storm recovery bonds
36 issued pursuant to the financing order have been paid in full or
37 defeased and, in each case, all Commission-approved financing costs
38 of such storm recovery bonds have been recovered in full.
39 b. A financing order issued to a public utility remains in effect and
40 unabated notwithstanding the reorganization, bankruptcy or other
41 insolvency proceedings, merger, or sale of the public utility or its
42 successors or assignees.
- 43 (c) Exceptions to Commission Jurisdiction. –
44 (1) The Commission may not, in exercising its powers and carrying out its duties
45 regarding any matter within its authority pursuant to this Chapter, consider the
46 storm recovery bonds issued pursuant to a financing order to be the debt of
47 the public utility other than for federal income tax purposes, consider the
48 storm recovery charges paid under the financing order to be the revenue of the
49 public utility for any purpose, or consider the storm recovery costs or
50 financing costs specified in the financing order to be the costs of the public

1 utility, nor may the Commission determine any action taken by a public utility
2 which is consistent with the financing order to be unjust or unreasonable.

3 (2) The Commission may not order or otherwise directly or indirectly require a
4 public utility to use storm recovery bonds to finance any project, addition,
5 plant, facility, extension, capital improvement, equipment, or any other
6 expenditure. After the issuance of a financing order, the public utility retains
7 sole discretion regarding whether to cause the storm recovery bonds to be
8 issued, including the right to defer or postpone such sale, assignment, transfer,
9 or issuance. Nothing shall prevent the public utility from abandoning the
10 issuance of storm recovery bonds under the financing order by filing with the
11 Commission a statement of abandonment and the reasons therefor. The
12 Commission may not refuse to allow a public utility to recover storm recovery
13 costs in an otherwise permissible fashion, or refuse or condition authorization
14 or approval of the issuance and sale by a public utility of securities or the
15 assumption by the public utility of liabilities or obligations, solely because of
16 the potential availability of storm recovery bond financing.

17 (d) Public Utility Duties. – The electric bills of a public utility that has obtained a
18 financing order and caused storm recovery bonds to be issued must comply with the provisions
19 of this subsection; however, the failure of a public utility to comply with this subsection does not
20 invalidate, impair, or affect any financing order, storm recovery property, storm recovery charge,
21 or storm recovery bonds. The public utility must do the following:

22 (1) Explicitly reflect that a portion of the charges on such bill represents storm
23 recovery charges approved in a financing order issued to the public utility and,
24 if the storm recovery property has been transferred to an assignee, must
25 include a statement to the effect that the assignee is the owner of the rights to
26 storm recovery charges and that the public utility or other entity, if applicable,
27 is acting as a collection agent or servicer for the assignee. The tariff applicable
28 to customers must indicate the storm recovery charge and the ownership of
29 the charge.

30 (2) Include the storm recovery charge on each customer's bill as a separate line
31 item and include both the rate and the amount of the charge on each bill.

32 (e) Storm Recovery Property. –

33 (1) Provisions applicable to storm recovery property. –

34 a. All storm recovery property that is specified in a financing order
35 constitutes an existing, present intangible property right or interest
36 therein, notwithstanding that the imposition and collection of storm
37 recovery charges depends on the public utility, to which the financing
38 order is issued, performing its servicing functions relating to the
39 collection of storm recovery charges and on future electricity
40 consumption. The property exists (i) regardless of whether or not the
41 revenues or proceeds arising from the property have been billed, have
42 accrued, or have been collected and (ii) notwithstanding the fact that
43 the value or amount of the property is dependent on the future
44 provision of service to customers by the public utility or its successors
45 or assignees and the future consumption of electricity by customers.

46 b. Storm recovery property specified in a financing order exists until
47 storm recovery bonds issued pursuant to the financing order are paid
48 in full and all financing costs and other costs of such storm recovery
49 bonds have been recovered in full.

50 c. All or any portion of storm recovery property specified in a financing
51 order issued to a public utility may be transferred, sold, conveyed, or

- 1 assigned to a successor or assignee that is wholly owned, directly or
2 indirectly, by the public utility and created for the limited purpose of
3 acquiring, owning, or administering storm recovery property or
4 issuing storm recovery bonds under the financing order. All or any
5 portion of storm recovery property may be pledged to secure storm
6 recovery bonds issued pursuant to the financing order, amounts
7 payable to financing parties and to counterparties under any ancillary
8 agreements, and other financing costs. Any transfer, sale, conveyance,
9 assignment, grant of a security interest in or pledge of storm recovery
10 property by a public utility, or an affiliate of the public utility, to an
11 assignee, to the extent previously authorized in a financing order, does
12 not require the prior consent and approval of the Commission.
- 13 d. If a public utility defaults on any required payment of charges arising
14 from storm recovery property specified in a financing order, a court,
15 upon application by an interested party, and without limiting any other
16 remedies available to the applying party, shall order the sequestration
17 and payment of the revenues arising from the storm recovery property
18 to the financing parties or their assignees. Any such financing order
19 remains in full force and effect notwithstanding any reorganization,
20 bankruptcy, or other insolvency proceedings with respect to the public
21 utility or its successors or assignees.
- 22 e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee
23 in storm recovery property specified in a financing order issued to a
24 public utility, and in the revenue and collections arising from that
25 property, is not subject to setoff, counterclaim, surcharge, or defense
26 by the public utility or any other person or in connection with the
27 reorganization, bankruptcy, or other insolvency of the public utility or
28 any other entity.
- 29 f. Any successor to a public utility, whether pursuant to any
30 reorganization, bankruptcy, or other insolvency proceeding or whether
31 pursuant to any merger or acquisition, sale, or other business
32 combination, or transfer by operation of law, as a result of public
33 utility restructuring or otherwise, must perform and satisfy all
34 obligations of, and have the same rights under a financing order as, the
35 public utility under the financing order in the same manner and to the
36 same extent as the public utility, including collecting and paying to the
37 person entitled to receive the revenues, collections, payments, or
38 proceeds of the storm recovery property. Nothing in this
39 sub-subdivision is intended to limit or impair any authority of the
40 Commission concerning the transfer or succession of interests of
41 public utilities.
- 42 g. Storm recovery bonds shall be nonrecourse to the credit or any assets
43 of the public utility other than the storm recovery property as specified
44 in the financing order and any rights under any ancillary agreement.
- 45 (2) Provisions applicable to security interests. –
- 46 a. The creation, perfection, and enforcement of any security interest in
47 storm recovery property to secure the repayment of the principal and
48 interest and other amounts payable in respect of storm recovery bonds;
49 amounts payable under any ancillary agreement and other financing
50 costs are governed by this subsection and not by the provisions of the
51 Code.

- 1 b. A security interest in storm recovery property is created, valid, and
2 binding and perfected at the later of the time: (i) the financing order is
3 issued, (ii) a security agreement is executed and delivered by the
4 debtor granting such security interest, (iii) the debtor has rights in such
5 storm recovery property or the power to transfer rights in such storm
6 recovery property, or (iv) value is received for the storm recovery
7 property. The description of storm recovery property in a security
8 agreement is sufficient if the description refers to this section and the
9 financing order creating the storm recovery property.
- 10 c. A security interest shall attach without any physical delivery of
11 collateral or other act, and, upon the filing of a financing statement
12 with the office of the Secretary of State, the lien of the security interest
13 shall be valid, binding, and perfected against all parties having claims
14 of any kind in tort, contract, or otherwise against the person granting
15 the security interest, regardless of whether the parties have notice of
16 the lien. Also upon this filing, a transfer of an interest in the storm
17 recovery property shall be perfected against all parties having claims
18 of any kind, including any judicial lien or other lien creditors or any
19 claims of the seller or creditors of the seller, and shall have priority
20 over all competing claims other than any prior security interest,
21 ownership interest, or assignment in the property previously perfected
22 in accordance with this section.
- 23 d. The Secretary of State shall maintain any financing statement filed to
24 perfect any security interest under this section in the same manner that
25 the Secretary maintains financing statements filed by transmitting
26 utilities under the Code. The filing of a financing statement under this
27 section shall be governed by the provisions regarding the filing of
28 financing statements in the Code.
- 29 e. The priority of a security interest in storm recovery property is not
30 affected by the commingling of storm recovery charges with other
31 amounts. Any pledgee or secured party shall have a perfected security
32 interest in the amount of all storm recovery charges that are deposited
33 in any cash or deposit account of the qualifying utility in which storm
34 recovery charges have been commingled with other funds and any
35 other security interest that may apply to those funds shall be terminated
36 when they are transferred to a segregated account for the assignee or a
37 financing party.
- 38 f. No application of the formula-based adjustment mechanism as
39 provided in this section will affect the validity, perfection, or priority
40 of a security interest in or transfer of storm recovery property.
- 41 g. If a default or termination occurs under the storm recovery bonds, the
42 financing parties or their representatives may foreclose on or otherwise
43 enforce their lien and security interest in any storm recovery property
44 as if they were secured parties with a perfected and prior lien under the
45 Code, and the Commission may order amounts arising from storm
46 recovery charges be transferred to a separate account for the financing
47 parties' benefit, to which their lien and security interest shall apply. On
48 application by or on behalf of the financing parties, the Superior Court
49 of Wake County shall order the sequestration and payment to them of
50 revenues arising from the storm recovery charges.

- 1 (3) Provisions applicable to the sale, assignment, or transfer of storm recovery
2 property. –
3 a. Any sale, assignment, or other transfer of storm recovery property
4 shall be an absolute transfer and true sale of, and not a pledge of or
5 secured transaction relating to, the seller's right, title, and interest in,
6 to, and under the storm recovery property if the documents governing
7 the transaction expressly state that the transaction is a sale or other
8 absolute transfer other than for federal and State income tax purposes.
9 For all purposes other than federal and State income tax purposes, the
10 parties' characterization of a transaction as a sale of an interest in storm
11 recovery property shall be conclusive that the transaction is a true sale
12 and that ownership has passed to the party characterized as the
13 purchaser, regardless of whether the purchaser has possession of any
14 documents evidencing or pertaining to the interest. A transfer of an
15 interest in storm recovery property may be created only when all of
16 the following have occurred: (i) the financing order creating the storm
17 recovery property has become effective, (ii) the documents evidencing
18 the transfer of storm recovery property have been executed by the
19 assignor and delivered to the assignee, and (iii) value is received for
20 the storm recovery property. After such a transaction, the storm
21 recovery property is not subject to any claims of the transferor or the
22 transferor's creditors, other than creditors holding a prior security
23 interest in the storm recovery property perfected in accordance with
24 subdivision (2) of subsection (e) of this section.
25 b. The characterization of the sale, assignment, or other transfer as an
26 absolute transfer and true sale and the corresponding characterization
27 of the property interest of the purchaser, shall not be affected or
28 impaired by the occurrence of any of the following factors:
29 1. Commingling of storm recovery charges with other amounts.
30 2. The retention by the seller of (i) a partial or residual interest,
31 including an equity interest, in the storm recovery property,
32 whether direct or indirect, or whether subordinate or otherwise,
33 or (ii) the right to recover costs associated with taxes, franchise
34 fees, or license fees imposed on the collection of storm
35 recovery charges.
36 3. Any recourse that the purchaser may have against the seller.
37 4. Any indemnification rights, obligations, or repurchase rights
38 made or provided by the seller.
39 5. The obligation of the seller to collect storm recovery charges
40 on behalf of an assignee.
41 6. The transferor acting as the servicer of the storm recovery
42 charges or the existence of any contract that authorizes or
43 requires the public utility, to the extent that any interest in
44 storm recovery property is sold or assigned, to contract with
45 the assignee or any financing party that it will continue to
46 operate its system to provide service to its customers, will
47 collect amounts in respect of the storm recovery charges for
48 the benefit and account of such assignee or financing party, and
49 will account for and remit such amounts to or for the account
50 of such assignee or financing party.

- 1 7. The treatment of the sale, conveyance, assignment, or other
2 transfer for tax, financial reporting, or other purposes.
- 3 8. The granting or providing to bondholders a preferred right to
4 the storm recovery property or credit enhancement by the
5 public utility or its affiliates with respect to such storm
6 recovery bonds.
- 7 9. Any application of the formula-based adjustment mechanism
8 as provided in this section.
- 9 c. Any right that a public utility has in the storm recovery property before
10 its pledge, sale, or transfer or any other right created under this section
11 or created in the financing order and assignable under this section or
12 assignable pursuant to a financing order is property in the form of a
13 contract right or a chose in action. Transfer of an interest in storm
14 recovery property to an assignee is enforceable only upon the later of
15 (i) the issuance of a financing order, (ii) the assignor having rights in
16 such storm recovery property or the power to transfer rights in such
17 storm recovery property to an assignee, (iii) the execution and delivery
18 by the assignor of transfer documents in connection with the issuance
19 of storm recovery bonds, and (iv) the receipt of value for the storm
20 recovery property. An enforceable transfer of an interest in storm
21 recovery property to an assignee is perfected against all third parties,
22 including subsequent judicial or other lien creditors, when a notice of
23 that transfer has been given by the filing of a financing statement in
24 accordance with sub-subdivision c. of subdivision (2) of this
25 subsection. The transfer is perfected against third parties as of the date
26 of filing.
- 27 d. The Secretary of State shall maintain any financing statement filed to
28 perfect any sale, assignment, or transfer of storm recovery property
29 under this section in the same manner that the Secretary maintains
30 financing statements filed by transmitting utilities under the Code. The
31 filing of any financing statement under this section shall be governed
32 by the provisions regarding the filing of financing statements in the
33 Code. The filing of such a financing statement is the only method of
34 perfecting a transfer of storm recovery property.
- 35 e. The priority of a transfer perfected under this section is not impaired
36 by any later modification of the financing order or storm recovery
37 property or by the commingling of funds arising from storm recovery
38 property with other funds. Any other security interest that may apply
39 to those funds, other than a security interest perfected under
40 subdivision (2) of this subsection, is terminated when they are
41 transferred to a segregated account for the assignee or a financing
42 party. If storm recovery property has been transferred to an assignee
43 or financing party, any proceeds of that property must be held in trust
44 for the assignee or financing party.
- 45 f. The priority of the conflicting interests of assignees in the same
46 interest or rights in any storm recovery property is determined as
47 follows:
- 48 1. Conflicting perfected interests or rights of assignees rank
49 according to priority in time of perfection. Priority dates from
50 the time a filing covering the transfer is made in accordance
51 with sub-subdivision c. of subdivision (2) of this subsection.

2. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.
3. A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

(f) Description or Indication of Property. – The description of storm recovery property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the storm recovery property and states that the agreement or financing statement covers all or part of the property described in the financing order. This section applies to all purported transfers of, and all purported grants or liens or security interests in, storm recovery property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.

(g) Financing Statements. – All financing statements referenced in this section are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.

(h) Choice of Law. – The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any storm recovery property shall be the laws of this State.

(i) Storm Recovery Bonds Not Public Debt. – Neither the State nor its political subdivisions are liable on any storm recovery bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of storm recovery bonds does not, directly, indirectly, or contingently, obligate the State or any agency, political subdivision, or instrumentality of the State to levy any tax or make any appropriation for payment of the storm recovery bonds, other than in their capacity as consumers of electricity. All storm recovery bonds must contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of North Carolina is pledged to the payment of the principal of, or interest on, this bond."

(j) Legal Investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in storm recovery bonds:

- (1) Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.
- (2) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.
- (3) Personal representatives, guardians, trustees, and other fiduciaries.
- (4) All other persons authorized to invest in bonds or other obligations of a similar nature.

(k) Obligation of Nonimpairment. –

- (1) The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the storm recovery property, and other financing parties that the State and its agencies will not take any action listed in this subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the storm recovery charges collected pursuant to a financing order and of the bondholders and

any assignee or financing party entering into a contract with the public utility.

The prohibited actions are as follows:

- a. Alter the provisions of this section, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create storm recovery property, and make the storm recovery charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
- b. Take or permit any action that impairs or would impair the value of storm recovery property or the security for the storm recovery bonds or revises the storm recovery costs for which recovery is authorized.
- c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
- d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this section, reduce, alter, or impair storm recovery charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related storm recovery bonds have been paid and performed in full.

(2) Any person or entity that issues storm recovery bonds may include the language specified in this subsection in the storm recovery bonds and related documentation.

(l) Not a Public Utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this section.

(m) Conflicts. – If there is a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in storm recovery property, this section shall govern.

(n) Consultation. – In making determinations under this section, the Commission or public staff or both may engage an outside consultant and counsel.

(o) Effect of Invalidity. – If any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all storm recovery bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason."

SECTION 1.(b) G.S. 25-9-109(d) reads as rewritten:

"(d) Inapplicability of Article. – This Article does not apply to:

...

(13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~

(14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this State or a governmental unit in this State, to secure, directly or indirectly, any bond, note, other evidence of indebtedness, or other payment obligations for borrowed money issued by, or in connection with, installment or lease

1 purchase financings by, this State or a governmental unit in this State.
2 However, notwithstanding this subdivision, this Article does apply to the
3 creation, perfection, priority, and enforcement of security interests created by
4 this State or a governmental unit in this State in equipment or ~~fixtures~~-fixtures;
5 or

- 6 (15) The creation, perfection, priority, or enforcement of any sale, assignment of,
7 pledge of, security interest in, or other transfer of, any interest or right or
8 portion of any interest or right in any storm recovery property as defined
9 G.S. 62-172."

11 PART II. AUTHORIZE RATES USING ALTERNATIVE MECHANISMS

12 SECTION 2.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding
13 a new section to read:

14 "§ 62-133A. Alternate rate methodology authorized.

15 (a) Notwithstanding the methods for fixing rates established under G.S. 62-133, the
16 Commission, upon application by an electric public utility, is authorized to approve multiyear
17 rate plans, banding of authorized returns, or a combination thereof, filed in and along with a
18 general rate case proceeding initiated pursuant to G.S. 62-133. For purposes of this section, the
19 following definitions apply:

20 (1) "Banding of authorized returns" means a rate mechanism under which the
21 Commission sets an authorized return on equity for an electric utility that acts
22 as a midpoint and then applies a low- and high-end range of returns to that
23 midpoint under which an electric public utility will not overearn if within the
24 high-end range and will not underearn if within the low-end range.

25 (2) "Multiyear rate plan" means a rate mechanism under which the Commission
26 sets base rates and revenue requirements for a multiyear plan period based on
27 a known and measurable set of capital investments and all the expenses
28 associated with those capital investments and authorizes periodic changes in
29 base rates during the approved plan period without the need for a base rate
30 proceeding during the plan period.

31 (b) In setting a midpoint authorized rate of return on equity for banding of authorized
32 returns pursuant to this section, the Commission shall consider any decreased or increased risk
33 to an electric public utility that may result from having an approved multiyear rate plan, banding
34 of authorized returns, or a combination thereof. Any banding of authorized returns approved
35 pursuant to this section shall not exceed 125 basis points above or 125 basis points below the
36 authorized return on equity that is set by the Commission, and shall otherwise be subject to all of
37 the following conditions:

38 (1) If an electric public utility that is operating under a banding of authorized
39 returns exceeds the midpoint return on equity up to the high-end range of the
40 band that is approved by the Commission based on its normalized, earned
41 return on equity for the prior 12-month, year-end period as set forth in
42 subsection (e) of this section, the electric public utility shall determine the
43 after-tax dollar value of the amount of the earnings that exceeded the midpoint
44 return on equity up to the high-end range of the band and shall, within 60 days
45 of determining that after-tax dollar value, submit that after-tax dollar value to
46 the Commission for verification along with a petition to the Commission to
47 make investments of an equivalent amount in one or more of the following
48 categories:

- 49 a. Electric infrastructure investments in economically distressed areas or
50 low-income communities that facilitate job creation.

- 1 b. Electric infrastructure investments that further creation of affordable
2 housing for low-income customers.
3 c. Electric infrastructure investments in communities that will result in
4 quantifiable and measurable benefits for low-income customers in
5 those communities.
6 d. Energy efficiency and demand-side management programs for
7 low-income customers.

8 In any petition submitted pursuant to this subdivision, the electric public
9 utility shall include a detailed explanation as to why the investments identified
10 in the petition were selected and shall describe other potential investments that
11 may have been considered, but not included in the petition, with an
12 explanation therefor. The Commission shall review any petition submitted
13 pursuant to this subdivision in accordance with the laws governing cost
14 recovery for the type of investment proposed in the petition and, if approved,
15 the Commission shall include the costs of the approved investments in the
16 electric public utility's cost of service or rate base, as appropriate. If the
17 Commission denies a petition submitted pursuant to this subdivision, the
18 electric utility shall, within 60 days of the Commission's order, submit a new
19 petition for investments in compliance with this subdivision.

20 (2) If an electric public utility that is operating under a banding of authorized
21 returns exceeds the high-end range of the band that is approved by the
22 Commission, the electric public utility shall refund or credit earnings above
23 that high-end range to customers in a manner to be prescribed by rules adopted
24 by the Commission pursuant to subsection (g) of this section.

25 (3) If an electric public utility that is operating under a banding of authorized
26 returns falls below the low-end range of the band that is approved by the
27 Commission, the electric public utility may file a general rate case proceeding
28 initiated pursuant to G.S. 62-133.

29 (c) The Commission shall, after notice and an opportunity for interested parties to be
30 heard, issue an order, in addition to its order ruling on the electric public utility's request to adjust
31 base rates under G.S. 62-133, denying or approving, with or without modifications, an electric
32 public utility's proposed rate-making mechanism, plan, or settlement that includes multiyear rate
33 plans, banding of authorized returns, or a combination thereof, filed pursuant to this section no
34 later than 365 days after the date on which the electric public utility files a proposed rate-making
35 mechanism, plan, or settlement that includes multiyear rate plans, banding of authorized returns,
36 or a combination thereof. If the Commission denies an electric public utility's proposed
37 rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of
38 authorized returns, or a combination thereof, filed pursuant to this section, the Commission's
39 order ruling on the electric public utility's request to adjust base rates shall govern. The
40 Commission may approve such rate-making mechanisms, plans, or settlements proposed by an
41 electric public utility only upon a finding by the Commission that such mechanisms, plans, or
42 settlements are just and reasonable, and are in the public interest. In reviewing any such
43 application under this section, the Commission shall consider whether the electric public utility's
44 application, as proposed: (i) establishes rates as shall be fair both to the electric public utility and
45 to the consumer, (ii) reasonably assures the continuation of safe and reliable electric service, (iii)
46 will not unreasonably prejudice any class of electric customers, (iv) will not result in sudden
47 substantial rate increases, or "rate shock," to consumers, and (v) is otherwise consistent with the
48 public interest. The Commission is granted explicit authority to impose any or all conditions for
49 approval of an application submitted under this section that the Commission deems necessary to
50 ensure that rates are just and reasonable, and are in the public interest, including periodic reviews
51 to be held during the period that a multiyear rate plan may be in effect, with opportunities for

1 public hearings during such periodic reviews so that interested parties may be heard. If the
2 Commission approves the multiyear rate plan, banding of authorized returns, or a combination
3 thereof, with modifications, the utility subject to such approval may, at its option, accept the
4 modifications and implement the multiyear rate plan, banding of authorized returns, or a
5 combination thereof, as modified or may, at its option, withdraw its application and be governed
6 under the Commission's order ruling on the electric public utility's request to adjust base rates
7 under G.S. 62-133.

8 (d) Any rate-making mechanisms, plans, or settlements approved pursuant to this section
9 shall remain in effect for a period of no more than three years.

10 (e) For purposes of measuring an electric public utility's earnings under any mechanisms,
11 plans, or settlements approved under this section, the electric public utility shall make an annual
12 filing that sets forth the electric public utility's earned return on equity for the prior 12-month
13 period.

14 (f) Nothing in this section shall be construed to (i) limit or abrogate the existing
15 rate-making authority of the Commission or (ii) invalidate or void any rates approved by the
16 Commission prior to the effective date of this section. In all respects, the rate-making
17 mechanisms, plans, or settlements approved under this section shall operate independently, and
18 be considered separately, from riders or other cost recovery mechanisms otherwise allowed by
19 law, unless otherwise incorporated into such mechanism, plan, or settlement.

20 (g) The Commission shall adopt rules necessary to implement the provisions of this
21 section."

22 SECTION 2.(b) The Commission shall adopt rules as required by G.S. 62-133A(g),
23 as enacted by Section 2(a) of this act, no later than 120 days after the date this act becomes law.
24

25 PART III. EFFECTIVE DATE

26 SECTION 3. Part I of this act is effective when it becomes law. Part II of this act is
27 effective when it becomes law and applies to any rate-making mechanisms, designs, plans, or
28 settlements filed by a public utility on or after the date that rules adopted pursuant to
29 G.S. 62-133A(g), as enacted by Section 2(a) of this act, become effective. The remainder of this
30 act is effective when it becomes law.