

Article 8.

Securities Regulation.

**§ 62-160. Permission to pledge assets.**

No public utility shall pledge its faith, credit, moneys or property for the benefit of any holder of its preferred or common stocks or bonds, nor for any other business interest with which it may be affiliated through agents or holding companies or otherwise by the authority of the action of its stockholders, directors, or contract or other agents, the compliance or result of which would in any manner deplete, reduce, conceal, abstract or dissipate the earnings or assets thereof, decrease or increase its liabilities or assets, without first making application to the Commission and by order obtain its permission so to do. (1933, c. 307, s. 17; 1963, c. 1165, s. 1.)

**§ 62-161. Assumption of certain liabilities and obligations to be approved by Commission; refinancing of public utility securities.**

(a) No public utility shall issue any securities, or assume any liability or obligation as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect to the securities of any other person unless and until, and then only to the extent that, upon application by such utility, and after investigation by the Commission of the purposes and uses of the proposed issue, and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, the Commission by order authorizes such issue or assumption.

(b) The Commission shall make such order only if it finds that such issue or assumption is (i) for some lawful object within the corporate purposes of the public utility, (ii) is compatible with the public interest, (iii) is necessary or appropriate for or consistent with the proper performance by such utility of its service to the public and will not impair its ability to perform that service, and (iv) is reasonably necessary and appropriate for such purpose.

(c) Any such order of the Commission shall specify the purposes for which any such securities or the proceeds thereof may be used by the public utility making such application.

(d) If a public utility shall apply to the Commission for the refinancing of its outstanding shares of stock by exchanging or redeeming such outstanding shares, the exchange or redemption of such shares of any dividend rate or rates, class or classes, may be made in whole or in part, in the manner and to the extent approved by the Commission, notwithstanding any provisions of law applicable to corporations in general: Provided, that the proposed transactions are found by the Commission to be in the public interest and in the interest of consumers and investors, and provided that any redemption shall be at a price or prices, not less than par, and at a time or times, stated or provided for in the utility's charter or stock certificates. (1933, c. 307, s. 18; 1945, c. 656; 1963, c. 1165, s. 1.)

**§ 62-162. Commission may approve in whole or in part or refuse approval.**

The Commission, by its order, may grant or deny the application provided for in the preceding section [G.S. 62-161] as made, or may grant it in part or deny it in part or may grant it with such modification and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises and may, from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate and may, by any such supplemental order, modify the provisions of any previous order as to the particular purposes, uses, and extent to which or the conditions under which any securities so authorized or the proceeds thereof may be applied; subject always to the requirements of the foregoing section [G.S. 62-161]. (1933, c. 307, s. 19; 1963, c. 1165, s. 1.)

**§ 62-163. Contents of application for permission.**

Every application for authority for such issue or assumption shall be made in such form and contain such matters as the Commission may prescribe. Every such application and every certificate of notification hereinafter provided for shall be made under oath, signed and filed on behalf of the public utility by its president, a vice-president, auditor, comptroller, or other executive officer duly designated for that purpose by such utility. (1933, c. 307, s. 20; 1963, c. 1165, s. 1.)

**§ 62-164. Applications to receive immediate attention; continuances.**

All applications for the issuance of securities or assumption of liability or obligation shall be placed at the head of the Commission's docket and disposed of promptly, and all such applications shall be disposed of in 30 days after the same are filed with the Commission, unless it is necessary for good cause to continue the same for a longer period for consideration. Whenever such application is continued beyond 30 days after the time it is filed, the order making such continuance must state fully the facts necessitating such continuance. (1933, c. 307, s. 21; 1963, c. 1165, s. 1.)

**§ 62-165. Notifying Commission as to disposition of securities.**

Whenever any securities set forth and described in any such application for authority or certificate of notification as pledged or held unencumbered in the treasury of the utility shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of, by the utility, such utility shall, within 10 days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission. (1933, c. 307, s. 22; 1963, c. 1165, s. 1.)

**§ 62-166. No guarantee on part of State.**

Nothing herein shall be construed to imply any guarantee or obligation as to such securities on the part of the State of North Carolina. (1933, c. 307, s. 23; 1963, c. 1165, s. 1.)

**§ 62-167. Article not applicable to note issues and renewals; notice to Commission.**

The provisions of the foregoing sections shall not apply to notes issued by a utility for proper purposes and not in violation of law, payable at a period of not more than two years from the date thereof, and shall not apply to like notes issued by a utility payable at a period of not more than two years from date thereof, to pay, retire, discharge, or refund in whole or in part any such note or notes, and shall not apply to renewals thereof from time to time not exceeding in the aggregate six years from the date of the issue of the original note or notes so renewed or refunded. No such notes payable at a period of not more than two years from the date thereof, shall, in whole or in part, directly or indirectly, be paid, retired, discharged or refunded by any issue of securities or another kind of any term or character or from the proceeds thereof without the approval of the Commission. Within 10 days after the making of any such notes, so payable at periods of not more than two years from the date thereof, the utility issuing the same shall file with the Commission a certificate of notification, in such form as may be determined and prescribed by the Commission. (1933, c. 307, ss. 24, 25; 1963, c. 1165, s. 1.)

**§ 62-168. Not applicable to debentures of court receivers.**

Nothing contained in this Article shall limit the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtained in receivership proceedings in courts of equity. (1933, c. 307, s. 25; 1963, c. 1165, s. 1.)

**§ 62-169. Periodical or special reports.**

The Commission shall require periodical or special reports from each public utility issuing any security, including such notes payable at periods of not more than two years from the date thereof, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds. (1933, c. 307, s. 26; 1963, c. 1165, s. 1.)

**§ 62-170. Failure to obtain approval not to invalidate securities or obligations; noncompliance with Article, etc.**

(a) Securities issued and obligations and liabilities assumed by a public utility, for which the authorization of the Commission is required, shall not be invalidated because issued or assumed without such authorization therefor having first been obtained or because issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption.

(b) Securities issued or obligations or liabilities assumed in accordance with all the terms and conditions of the order of authorization therefor shall not be affected by a failure to comply with any provision of this Article or rule or regulation of the Commission relating to procedure and other matters preceding the entry of such order of authorization or order supplemental thereto.

(c) A copy of any order made and entered by the Commission and certified by a clerk of the Commission approving the issuance of any securities or the assumption of any obligation or liability by a public utility shall be sufficient evidence of full and complete compliance by the applicant for such approval with all procedural and other matters required precedent to the entry of such order.

(d) Any public utility which willfully issues any such securities, or assumes any such obligation or liability, or makes any sale or other disposition of securities, or applies any securities or the proceeds thereof to purposes other than the purposes specified in an order of the Commission with respect thereto, contrary to the provisions of this Article, shall be liable to a penalty of not more than ten thousand dollars (\$10,000), but such utility is only required to specify in general terms the purpose for which any securities are to be issued, or for which any obligation or liability is to be assumed, and the order of the Commission with respect thereto shall likewise be in general terms. (1933, c. 307, s. 27; 1963, c. 1165, s. 1.)

**§ 62-171. Commission may act jointly with agency of another state where public utility operates.**

If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, then the Utilities Commission of the State of North Carolina shall have the power to agree with such commission or other agency or agencies of such other state on the issue of stocks, bonds, notes or other evidences of indebtedness by a public utility owning or operating a public utility both in such state and in this State, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue joint certificate of such approval: Provided, however, that no such joint approval shall be required in order to express the consent to

an approval of such issue by the State of North Carolina if said issue is separately approved by the Utilities Commission of the State of North Carolina. (1933, c. 134, s. 8; c. 307, s. 28; 1941, c. 97; 1963, c. 1165, s. 1.)

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

- (a) Definitions. – The following definitions apply in this section:
- (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with storm recovery bonds.
  - (2) Assignee. – A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to storm recovery property.
  - (3) Bondholder. – A person who holds a storm recovery bond.
  - (4) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.
  - (5) Commission. – The North Carolina Utilities Commission.
  - (6) Financing costs. – The term includes all of the following:
    - a. Interest and acquisition, defeasance, or redemption premiums payable on storm recovery bonds.
    - b. Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to storm recovery bonds.
    - c. Any other cost related to issuing, supporting, repaying, refunding, and servicing storm recovery bonds, including, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of storm recovery bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order.
    - d. Any taxes and license fees or other fees imposed on the revenues generated from the collection of the storm recovery charge or otherwise resulting from the collection of storm recovery charges, in any such case whether paid, payable, or accrued.
    - e. Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued.

- f. Any costs incurred by the Commission or Public Staff for any outside consultants or counsel retained in connection with the securitization of storm recovery costs.
- (7) Financing order. – An order that authorizes the issuance of storm recovery bonds; the imposition, collection, and periodic adjustments of a storm recovery charge; the creation of storm recovery property; and the sale, assignment, or transfer of storm recovery property to an assignee.
- (8) Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
- (9) Financing statement. – Defined in Article 9 of the Code.
- (10) Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to storm recovery property.
- (11) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
- (12) Storm. – Individually or collectively, a named tropical storm or hurricane, a tornado, ice storm or snow storm, flood, an earthquake, or other significant weather or natural disaster.
- (13) Storm recovery activity. – An activity or activities by a public utility, its affiliates, or its contractors, directly and specifically in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of a public utility as the result of a storm or storms, including activities related to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities.
- (14) Storm recovery bonds. – Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved storm recovery costs and financing costs, and that are secured by or payable from storm recovery property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.
- (15) Storm recovery charge. – The amounts authorized by the Commission to repay, finance, or refinance storm recovery costs and financing costs and that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this State.
- (16) Storm recovery costs. – All of the following:

- a. All incremental costs, including capital costs, appropriate for recovery from existing and future retail customers receiving transmission or distribution service from the public utility that a public utility has incurred or expects to incur as a result of the applicable storm that are caused by, associated with, or remain as a result of undertaking storm recovery activity. Such costs include the public utility's cost of capital from the date of the applicable storm to the date the storm recovery bonds are issued calculated using the public utility's weighted average cost of capital as defined in its most recent base rate case proceeding before the Commission net of applicable income tax savings related to the interest component.
  - b. Storm recovery costs shall be net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the public utility for storm recovery activities such as government grants, or aid of any kind and where determined appropriate by the Commission, and may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the public utility's most recent general rate proceeding. Storm recovery costs includes the cost to replenish and fund any storm reserves and costs of repurchasing equity or retiring any existing indebtedness relating to storm recovery activities.
  - c. With respect to storm recovery costs that the public utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other ratemaking adjustments appropriate to fairly and reasonably assign or allocate storm cost recovery to customers over time, shall be addressed in a future general rate proceeding, as may be facilitated by other orders of the Commission issued at the time or prior to such proceeding; provided, however, that the Commission's adoption of a financing order and approval of the issuance of storm recovery bonds may not be revoked or otherwise modified.
- (17) Storm recovery property. – All of the following:
- a. All rights and interests of a public utility or successor or assignee of the public utility under a financing order, including the right to impose, bill, charge, collect, and receive storm recovery charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.
  - b. All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

(b) Financing Orders. –

- (1) A public utility may petition the Commission for a financing order. The petition shall include all of the following:
  - a. A description of the storm recovery activities that the public utility has undertaken or proposes to undertake and the reasons for undertaking the activities, or if the public utility is subject to a settlement agreement as contemplated by subdivision (2) of this subsection, a description of the settlement agreement.
  - b. The storm recovery costs and estimate of the costs of any storm recovery activities that are being undertaken but are not completed.
  - c. The level of the storm recovery reserve that the public utility proposes to establish or replenish and has determined would be appropriate to recover through storm recovery bonds and is seeking to so recover and such level that the public utility is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining the amounts and methods of recovery.
  - d. An indicator of whether the public utility proposes to finance all or a portion of the storm recovery costs using storm recovery bonds. If the public utility proposes to finance a portion of the costs, the public utility must identify the specific portion in the petition. By electing not to finance a portion of such storm recovery costs using storm recovery bonds, a public utility shall not be deemed to waive its right to recover such costs pursuant to a separate proceeding with the Commission.
  - e. An estimate of the financing costs related to the storm recovery bonds.
  - f. An estimate of the storm recovery charges necessary to recover the storm recovery costs, including the storm recovery reserve amount determined appropriate by the Commission, and financing costs and the period for recovery of such costs.
  - g. A comparison between the net present value of the costs to customers that are estimated to result from the issuance of storm recovery bonds and the costs that would result from the application of the traditional method of financing and recovering storm recovery costs from customers. The comparison should demonstrate that the issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers.
  - h. Direct testimony and exhibits supporting the petition.
- (2) If a public utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in storm recovery costs and the public utility proposes to finance all or a portion of the principal costs using storm recovery bonds, then the public utility must file a petition with the Commission for review and approval of those costs no later than 90 days before filing a petition for a financing order pursuant to this section.
- (3) Petition and order. –
  - a. Proceedings on a petition submitted pursuant to this subdivision begin with the petition by a public utility, filed subject to the time frame specified in subdivision (2) of this subsection, if applicable, and shall be

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

1. Within 14 days after the date the petition is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition is filed.
  2. No later than 135 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance.
- b. A financing order issued by the Commission to a public utility shall include all of the following elements:
1. Except for changes made pursuant to the formula-based mechanism authorized under this section, the amount of storm recovery costs, including the level of storm recovery reserves, to be financed using storm recovery bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through storm recovery charges and specify the period over which storm recovery costs and financing costs may be recovered.
  2. A finding that the proposed issuance of storm recovery bonds and the imposition and collection of a storm recovery charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds.
  3. A finding that the structuring and pricing of the storm recovery bonds are reasonably expected to result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in such financing order.
  4. A requirement that, for so long as the storm recovery bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of storm recovery charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.
  5. A determination of what portion, if any, of the storm recovery reserves must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used.



6. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the storm recovery charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of storm recovery bonds and financing costs and other required amounts and charges payable in connection with the storm recovery bonds.
  7. The storm recovery property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure storm recovery bonds and all financing costs.
  8. The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the storm recovery bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.
  9. How storm recovery charges will be allocated among customer classes.
  10. A requirement that, after the final terms of an issuance of storm recovery bonds have been established and before the issuance of storm recovery bonds, the public utility determines the resulting initial storm recovery charge in accordance with the financing order and that such initial storm recovery charge be final and effective upon the issuance of such storm recovery bonds without further Commission action so long as the storm recovery charge is consistent with the financing order.
  11. A method of tracing funds collected as storm recovery charges, or other proceeds of storm recovery property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any storm recovery property subject to a financing order under applicable law.
  12. Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.
- c. A financing order issued to a public utility may provide that creation of the public utility's storm recovery property is conditioned upon, and simultaneous with, the sale or other transfer of the storm recovery property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.
  - d. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any

mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of storm recovery charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of storm recovery bonds approved under the financing order. Within 30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical or clerical errors in its calculation. If the Commission informs the utility of mathematical or clerical errors in its calculation, the utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.

- e. Subsequent to the transfer of storm recovery property to an assignee or the issuance of storm recovery bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this section, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust storm recovery charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer storm recovery property or to cause storm recovery bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.
- (4) At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding storm recovery bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in this section for a financing order. Effective upon retirement of the refunded storm recovery bonds and the issuance of new storm recovery bonds, the Commission shall adjust the related storm recovery charges accordingly.
  - (5) Within 60 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina. Review on appeal shall be based solely on the record before the Commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and State and federal law and is within the authority of the Commission under this section.
  - (6) Duration of financing order. –
    - a. A financing order remains in effect and storm recovery property under the financing order continues to exist until storm recovery bonds issued

pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such storm recovery bonds have been recovered in full.

b. A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its successors or assignees.

(c) Exceptions to Commission Jurisdiction. –

(1) The Commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this Chapter, consider the storm recovery bonds issued pursuant to a financing order to be the debt of the public utility other than for federal income tax purposes, consider the storm recovery charges paid under the financing order to be the revenue of the public utility for any purpose, or consider the storm recovery costs or financing costs specified in the financing order to be the costs of the public utility, nor may the Commission determine any action taken by a public utility which is consistent with the financing order to be unjust or unreasonable.

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

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

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

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

- (e) Storm Recovery Property. –
- (1) Provisions applicable to storm recovery property. –
- a. All storm recovery property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of storm recovery charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of storm recovery charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.
  - b. Storm recovery property specified in a financing order exists until storm recovery bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such storm recovery bonds have been recovered in full.
  - c. All or any portion of storm recovery property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the public utility and created for the limited purpose of acquiring, owning, or administering storm recovery property or issuing storm recovery bonds under the financing order. All or any portion of storm recovery property may be pledged to secure storm recovery bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of storm recovery property by a public utility, or an affiliate of the public utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission.
  - d. If a public utility defaults on any required payment of charges arising from storm recovery property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the storm recovery property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.
  - e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in storm recovery property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public

- utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity.
- f. Any successor to a public utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the storm recovery property. Nothing in this sub-subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.
  - g. Storm recovery bonds shall be nonrecourse to the credit or any assets of the public utility other than the storm recovery property as specified in the financing order and any rights under any ancillary agreement.
- (2) Provisions applicable to security interests. –
- a. The creation, perfection, and enforcement of any security interest in storm recovery property to secure the repayment of the principal and interest and other amounts payable in respect of storm recovery bonds; amounts payable under any ancillary agreement and other financing costs are governed by this subsection and not by the provisions of the Code.
  - b. A security interest in storm recovery property is created, valid, and binding and perfected at the later of the time: (i) the financing order is issued, (ii) a security agreement is executed and delivered by the debtor granting such security interest, (iii) the debtor has rights in such storm recovery property or the power to transfer rights in such storm recovery property, or (iv) value is received for the storm recovery property. The description of storm recovery property in a security agreement is sufficient if the description refers to this section and the financing order creating the storm recovery property.
  - c. A security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of a financing statement with the office of the Secretary of State, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the storm recovery property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, and shall have priority over all competing claims other than any prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this section.

- d. The Secretary of State shall maintain any financing statement filed to perfect any security interest under this section in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of a financing statement under this section shall be governed by the provisions regarding the filing of financing statements in the Code.
  - e. The priority of a security interest in storm recovery property is not affected by the commingling of storm recovery charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all storm recovery charges that are deposited in any cash or deposit account of the qualifying utility in which storm recovery charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.
  - f. No application of the formula-based adjustment mechanism as provided in this section will affect the validity, perfection, or priority of a security interest in or transfer of storm recovery property.
  - g. If a default or termination occurs under the storm recovery bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any storm recovery property as if they were secured parties with a perfected and prior lien under the Code, and the Commission may order amounts arising from storm recovery charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the storm recovery charges.
- (3) Provisions applicable to the sale, assignment, or transfer of storm recovery property. –
- a. Any sale, assignment, or other transfer of storm recovery property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the storm recovery property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in storm recovery property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in storm recovery property may be created only when all of the following have occurred: (i) the financing order creating the storm recovery property has become effective, (ii) the documents evidencing the transfer of storm recovery property have been executed by the assignor and

delivered to the assignee, and (iii) value is received for the storm recovery property. After such a transaction, the storm recovery property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the storm recovery property perfected in accordance with subdivision (2) of subsection (e) of this section.

- b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:
  - 1. Commingling of storm recovery charges with other amounts.
  - 2. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the storm recovery property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of storm recovery charges.
  - 3. Any recourse that the purchaser may have against the seller.
  - 4. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
  - 5. The obligation of the seller to collect storm recovery charges on behalf of an assignee.
  - 6. The transferor acting as the servicer of the storm recovery charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in storm recovery property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the storm recovery charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.
  - 7. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
  - 8. The granting or providing to bondholders a preferred right to the storm recovery property or credit enhancement by the public utility or its affiliates with respect to such storm recovery bonds.
  - 9. Any application of the formula-based adjustment mechanism as provided in this section.
- c. Any right that a public utility has in the storm recovery property before its pledge, sale, or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in storm recovery property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such

storm recovery property or the power to transfer rights in such storm recovery property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of storm recovery bonds, and (iv) the receipt of value for the storm recovery property. An enforceable transfer of an interest in storm recovery property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with sub-subdivision c. of subdivision (2) of this subsection. The transfer is perfected against third parties as of the date of filing.

- d. The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of storm recovery property under this section in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this section shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of storm recovery property.
- e. The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under subdivision (2) of this subsection, is terminated when they are transferred to a segregated account for the assignee or a financing party. If storm recovery property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.
- f. The priority of the conflicting interests of assignees in the same interest or rights in any storm recovery property is determined as follows:
  - 1. Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance 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. (2019-244, s. 1; 2021-23, ss. 24, 25.)