

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

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:

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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
35 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.
- (5) 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.
- (6) Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
- (7) Financing statement. – Defined in Article 9 of the Code.
- (8) 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.
- (9) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
- (10) 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.
- (11) 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.
- (12) 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.

(13) 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.

(14) 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 rate-making 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.

(15) 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

- 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

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."

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

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

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

PART II. AUTHORIZE RATES USING ALTERNATIVE MECHANISMS

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

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

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

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

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

(b) Any banding of authorized returns approved pursuant to this section shall not exceed 125 basis points above or 125 basis points below the authorized return on equity that is set by the Commission. If an electric public utility that is operating under a banding of authorized returns exceeds the high-end range of the band that is approved by the Commission, the electric public utility shall refund or credit earnings above that high-end range to customers in a manner to be prescribed by rules adopted by the Commission pursuant to subsection (g) of this section. If an electric public utility that is operating under a banding of authorized returns falls below the low-end range of the band that is approved by the Commission, the electric public utility may file a general rate case proceeding initiated pursuant to G.S. 62-133. In setting a midpoint authorized rate of return on equity for banding, the Commission shall consider any decreased or increased risk to an electric public utility that may result from having an approved multiyear rate plan, banding of authorized returns, or a combination thereof.

(c) The Commission shall, after notice and an opportunity for interested parties to be heard, issue an order, in addition to its order ruling on the electric public utility's request to adjust base rates under G.S. 62-133, denying or approving, with or without modifications, an electric public utility's proposed rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of authorized returns, or a combination thereof, filed pursuant to this section no later than 365 days after the date on which the electric public utility files a proposed rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of authorized returns, or a combination thereof. If the Commission denies an electric public utility's proposed rate-making mechanism, plan, or settlement that includes multiyear rate plans, banding of

1 authorized returns, or a combination thereof, filed pursuant to this section, the Commission's
2 order ruling on the electric public utility's request to adjust base rates shall govern. The
3 Commission may approve such rate-making mechanisms, plans, or settlements proposed by an
4 electric public utility only upon a finding by the Commission that such mechanisms, plans, or
5 settlements are just and reasonable, and are in the public interest. In reviewing any such
6 application under this section, the Commission shall consider whether the electric public utility's
7 application, as proposed: (i) establishes rates as shall be fair both to the electric public utility and
8 to the consumer, (ii) reasonably assures the continuation of safe and reliable electric service, (iii)
9 will not unreasonably prejudice any class of electric customers, (iv) will not result in sudden
10 substantial rate increases, or "rate shock," to consumers, and (v) is otherwise consistent with the
11 public interest. The Commission is granted explicit authority to impose any or all conditions for
12 approval of an application submitted under this section that the Commission deems necessary to
13 ensure that rates are just and reasonable, and are in the public interest, including periodic reviews
14 to be held during the period that a multiyear rate plan may be in effect, with opportunities for
15 public hearings during such periodic reviews so that interested parties may be heard. If the
16 Commission approves the multiyear rate plan, banding of authorized returns, or a combination
17 thereof, with modifications, the utility subject to such approval may, at its option, accept the
18 modifications and implement the multiyear rate plan, banding of authorized returns, or a
19 combination thereof, as modified or may, at its option, withdraw its application and be governed
20 under the Commission's order ruling on the electric public utility's request to adjust base rates
21 under G.S. 62-133.

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

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

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

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

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

38 **PART III. EFFECTIVE DATE**

39 **SECTION 3.** Part I of this act is effective when it becomes law. Part II of this act is
40 effective when it becomes law and applies to any rate-making mechanisms, designs, plans, or
41 settlements filed by a public utility on or after the date that rules adopted pursuant to
42 G.S. 62-133A(g), as enacted by Section 2(a) of this act, become effective. The remainder of this
43 act is effective when it becomes law.
44