

Stricken language would be deleted from and underlined language would be added to present law.
Act 641 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/29/21
A Bill

SENATE BILL 588

By: Senator B. Ballinger
By: Representative Beck

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS ELECTRIC UTILITY STORM RECOVERY SECURITIZATION ACT; TO ALLOW A GAS UTILITY TO RECOVER THE COST OF RESTORATION OF DAMAGES CAUSED BY STORMS AND RELATED PERILS THROUGH SECURITIZATION OF THE STORM RESTORATION AND RELATED COSTS; TO ALLOW THE RECOVERY THROUGH SECURITIZATION BY AN ELECTRIC UTILITY AND A GAS UTILITY OF REASONABLE AND PRUDENT COSTS TO PURCHASE AND RECEIVE NATURAL GAS, FUEL, OR PURCHASED POWER AT EXTRAORDINARY COST IN IMMEDIATE PREPARATION FOR OR IN RESPONSE TO A STORM; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AUTHORIZE UTILITIES TO RECOVER THE COST OF RESTORATION OF DAMAGES AND EXTRAORDINARY NATURAL GAS, FUEL, OR PURCHASED POWER COSTS CAUSED BY STORMS THROUGH SECURITIZATION; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 18, Subchapter 9, is amended to read as follows:

Subchapter 9 – Arkansas Electric Utility and Gas Utility Storm Recovery
Securitization Act



23-18-901. Short title – Purpose.

(a) This subchapter shall be known and may be cited as the “Arkansas Electric Utility and Gas Utility Storm Recovery Securitization Act”.

(b)(1) The purpose of this subchapter is to enable Arkansas electric utilities and gas utilities, if authorized by a financing order issued by the Arkansas Public Service Commission, to use securitization financing for storm recovery costs, which may lower the financing costs or mitigate the impact on rates in comparison with traditional utility financing or other traditional utility recovery methods thereby benefitting customers.

(2) The storm recovery bonds will not be public debt of the State of Arkansas.

(3) The proceeds of the storm recovery bonds shall be used for the purposes of recovering storm recovery costs solely as ~~set forth~~ stated in a financing order issued by the commission to encourage and facilitate the rebuilding of utility infrastructure damaged by storms and the extraordinary natural gas, fuel, or purchased power costs occasioned by storms.

(4) Securitization financings for storm recovery costs are ~~hereby~~ recognized to be a valid public purpose.

(5) Federal tax laws and revenue procedures expressly require that certain state legislation be enacted in order for ~~such~~ the transactions to receive certain federal tax benefits.

(6)(A) The General Assembly finds a public need to promote ~~such~~ the securitization financings by providing clear and exclusive methods to create, transfer, and encumber interests in storm recovery property as defined in this subchapter.

(B) This need can be met by providing in this subchapter ~~such~~ the methods and by establishing that any conflict between the rules governing sales, assignments, or transfers of, or security interests or other encumbrances of any nature upon intangible personal property under other Arkansas laws and the methods provided in this subchapter, including without limitation with regard to creation, perfection, priority, or enforcement, shall be resolved in favor of the rules and methods established in this subchapter with regard to storm recovery property.

(c)(1) The intent of this subchapter is to provide benefits to Arkansas customers by allowing an Arkansas electric utility or gas utility,

if authorized by a financing order, to achieve certain tax and credit benefits of financing storm recovery costs on a similar basis with utilities in other states.

(2) This subchapter addresses certain property, security interests, and other matters to ensure that the financial, state income tax, state franchise tax, and federal income tax benefits of financing storm recovery costs through securitization are available in Arkansas.

(3) Financing orders issued under this subchapter shall not be considered as or deemed to be single issue ratemaking.

(4) The beneficial income tax and credit characteristics that may be achieved include the following:

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

~~(2)~~(B) Treating the storm recovery charges as gross income to the ~~electric~~ utility recognized under the utility's usual method of accounting for income taxes, rather than recognizing gross income upon the receipt of the financing order or the receipt of cash in exchange for the sale of the storm recovery property or the issuance of the storm recovery bonds;

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

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

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

23-18-902. Definitions.

As used in this subchapter:

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

(2)(A) "Assignee" means any legal or commercial entity,

including ~~but not limited to,~~ without limitation a corporation, statutory trust, limited liability company, partnership, limited partnership, or other legally recognized entity to which ~~an electric~~ a utility sells, assigns, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property.

(B) The term also "Assignee" includes any legal or commercial entity to which an assignee sells, assigns, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property;

(3) ~~"Commission" means the Arkansas Public Service Commission;~~

~~(4) "Electric utility" means any person or any combination of persons, or lessees, trustees, and receivers of such a person, now or hereafter~~ owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity to or for the public at retail in this state, and is regulated by the Arkansas Public Service Commission, including an electric cooperative corporation generating or transmitting electricity;

(4) "Extraordinary natural gas, fuel, or purchased power costs" means, at the option and request of a utility, and as approved by the commission under § 23-18-903, some or all of the reasonable and prudent costs of maintaining service in immediate preparation for or in response to a storm;

(5) "Financing costs" means:

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

(B) Any payment required under an ancillary agreement and any amount required to fund or replenish reserve or other accounts or subaccounts 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, and servicing storm recovery bonds, including, ~~but not limited to,~~ without limitation servicing fees, billing or other information system programming costs, accounting and auditing fees, trustee fees and expenses, legal fees and expenses, consulting fees and expenses, administrative fees and expenses, placement and underwriting fees and expenses, independent director and manager fees and expenses, capitalized interest, rating agency

fees and expenses, stock exchange listing and compliance fees and expenses, and filing fees, including costs related to obtaining the financing order;

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

(E) Any gross receipts, franchise, use, and other taxes or similar charges including, ~~but not limited to,~~ without limitation regulatory assessment fees, in any ~~such~~ case whether paid, payable, or accrued, imposed upon the ~~electric~~ utility, any assignee, or any financing party with respect to the receipt of storm recovery charges or the issuance of storm recovery bonds; and

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

(6) "Financing order" means an order of the commission adopted upon petition of ~~an electric~~ a utility and ~~pursuant to~~ under § 23-18-903 which, among other things, allows for:

(A) The issuance of storm recovery bonds;

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

(C) The creation of storm recovery property; or

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

(7) "Financing party" means any holder of storm recovery bonds and any trustee, collateral agent, or other person acting for the benefit of holders of storm recovery bonds;

(8) "Financing statement" has the same meaning as that provided in the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.;

(9) "Gas utility" means a person or any combination of persons, lessees, trustees, or receivers of a person, lessee, or trustee, owning or operating for compensation in this state equipment or facilities for storing, transmitting, distributing, selling, or furnishing natural gas to or for the public at retail in this state, and that is regulated by the commission;

(10) "Secured party" means a financing party;

(A) ~~in~~ In favor of which ~~an electric~~ a utility or its direct or indirect successors or assignees creates a security interest in all

or any portion of its interest in or right to storm recovery property~~;~~ and

(B) A secured party That may be granted a security interest in storm recovery property under this subchapter and a security interest in other collateral subject to the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq., in one (1) security agreement;

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

~~(11)~~(12) “Storm” means, individually or collectively, a named tropical storm, a named hurricane, a tornado, an ice or snow storm, a flood, an earthquake or other significant weather event or a natural disaster that occurred during the calendar year 2009 or thereafter;

~~(12)~~(13) “Storm recovery activity” means any activity or activities by or on behalf of ~~an electric~~ a utility in connection with the restoration or maintenance of service associated with ~~electric power utility~~ service outages affecting customers of ~~an electric~~ a utility as the result of a storm or storms, including, ~~but not limited to,~~ without limitation:

(A) all All internal and external labor costs; ~~and~~

(B) all All costs related to mobilization, staging, and construction, reconstruction, replacement, or repair of:

(i) electric Electric generation, transmission, or distribution facilities; and

(ii) Natural gas storage, transmission, or distribution facilities; and

(C) The reasonable and prudent purchase and receipt of extraordinary natural gas, fuel, or purchased power costs by a utility to maintain service in immediate preparation for or response to a storm;

~~(13)~~(14)(A) “Storm recovery bonds” means bonds, debentures, notes, certificates of beneficial interest, certificates of participation, certificates of ownership, or other evidences of indebtedness or ownership that are issued pursuant to or in connection with an indenture, contract, ancillary agreement, or other agreement of ~~an electric~~ a utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to provide, recover, finance, or refinance commission-approved storm recovery costs, financing costs, and costs to replenish or

fund a storm recovery reserve to ~~such~~ the level as the commission may authorize in a financing order, and which are secured by or payable from storm recovery property.

(B) If certificates of beneficial interest or certificates of participation or ownership are issued, references in this subchapter to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates;

~~(14)~~(15) “Storm recovery charges” means the amounts:

(A) ~~authorized~~ Authorized by the commission to recover, finance, or refinance storm recovery costs, financing costs, and the costs to create, fund, or replenish a storm recovery reserve, including, ~~but not limited to,~~ without limitation through the issuance and repayment of storm recovery bonds; and

(B) ~~Such charges~~ That shall be:

(i) ~~imposed~~ Imposed on all customer bills, subject to the limitations described in subdivision (15)(B)(iii)(a) of this section, and collected by ~~an electric~~ a utility or its successors or assignees, or a collection agent; and

(ii) ~~Such charges shall be nonbypassable~~ Nonbypassable charges that are separate and apart from the ~~electric~~ utility’s base rates; and

(iii)(a) ~~shall be paid~~ Paid by all existing and future customers, subject to appropriate exclusions or adjustments to avoid the collection of natural gas costs from gas utility customers that do not purchase natural gas from the gas utility, receiving transmission or distribution service, or both, service from the electric utility or its successors or assignees under commission-approved rate schedules as provided in the financing order.

(b) An individual customer’s monthly storm recovery charges shall be based upon the customer’s ~~then-current~~ then-current monthly billing determinants;

~~(15)~~(16)(A) “Storm recovery costs” means, at the option and request of the ~~electric~~ utility and as approved by the commission pursuant to § 23-18-903, costs that are:

(i) ~~reasonable and necessary~~ Reasonable and prudent costs, including without limitation the costs;

~~(a) expensed~~ Expensed, charged to self-insurance reserves, capitalized, or otherwise financed, that are incurred, ~~including costs incurred prior to April 1, 2009,~~ or are expected to be incurred by ~~an electric~~ a utility in undertaking a storm recovery activity; and

(b) To purchase and receive extraordinary natural gas, fuel, or purchased power costs by utilities to maintain service in immediate preparation for or in response to a storm; and

~~(ii) Such costs shall be net~~ Net of applicable insurance proceeds and, ~~where~~ when determined appropriate by the commission, ~~shall include~~ including adjustments for normal capital replacement and operating costs, lost revenues, or other potential offsetting adjustments; and

(B) "Storm recovery costs" shall include includes without limitation:

(i) carrying Carrying costs, at simple interest which shall accrue at a rate equal to the ~~electric-public~~ utility's last approved rate-base rate of return, from the date on which the storm recovery costs were incurred until the date that storm recovery bonds are issued or until storm recovery costs are otherwise recovered; and

(ii) Storm recovery costs shall also include the The costs of retiring or purchasing any indebtedness or equity relating to or associated with storm recovery activities and extraordinary natural gas, fuel, or purchased power costs, including accrued interest, premium and other fees, costs, and charges related ~~thereto,~~ to the storm recovery activities; and

~~(iii) Storm recovery costs shall also include the~~ The costs to create or fund any storm recovery reserves or to replenish any shortfall in any storm recovery reserves;

~~(16)~~ (17) "Storm recovery property" means:

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

(B) All revenues, collections, claims, rights to payments,

payments, money, or proceeds arising from the rights and interests specified in ~~subdivision (16)(A)~~ subdivision (17)(A) of this section, regardless of whether ~~such~~ the 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;

~~(17)(18)~~ "Storm recovery reserve" means an electric utility's storm cost reserve account established pursuant to § 23-4-112; and

~~(18) "Uniform Commercial Code Secured Transactions" means § 4-9-101 et seq.~~ (19) "Utility" means an electric utility or a gas utility, or both.

23-18-903. Financing orders.

(a)(1) ~~An electric~~ A utility may petition the Arkansas Public Service Commission for a financing order.

(2) For each petition as described in subdivision (a)(1) of this section, the ~~electric~~ utility shall:

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

~~(2)(B)~~ ~~Set forth~~ State the known storm recovery costs and estimate the costs of any storm recovery activities that are not completed or for which the costs are not yet known as identified and requested by the ~~electric~~ utility;

~~(3)(C)~~ ~~Set forth~~ If applicable, state the level of the storm recovery reserve that the 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~~ the level that the 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;

~~(4)(D)(i)~~ Indicate whether the ~~electric~~ utility proposes to finance all or a portion of the storm recovery costs and storm recovery reserve using storm recovery bonds.

(ii) If the ~~electric~~ utility proposes to finance a portion of ~~such~~ the costs, the ~~electric~~ utility shall identify that portion

in the petition;

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

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

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

~~(8)~~(H) File with the petition direct testimony supporting the petition; and

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

(b)(1)(A) Proceedings on a petition submitted pursuant to ~~subsection~~ ~~(a)~~ subdivision (a)(1) of this section shall begin with a petition by ~~an~~ electric a utility and shall be disposed of ~~in accordance with~~ according to the commission's rules promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except that the provisions of this section, to the extent applicable, shall control.

(B) Within seven (7) days after the filing of a petition, the commission shall publish a case schedule, ~~which~~. The case schedule shall place the matter before the commission on an agenda that will permit a commission decision no later than one hundred twenty (120) days after the date the petition is filed.

(C)(i) No later than one hundred thirty-five (135) days after the date the petition is filed, the commission shall issue a financing order or an order rejecting the petition.

(ii) The commission shall issue a financing order authorizing financing of reasonable and prudent storm recovery costs, the storm recovery reserve amount determined appropriate by the commission, and financing costs if the commission finds that the issuance of the storm recovery bonds and the imposition of storm recovery charges authorized by the order are reasonably expected to result in lower overall costs or to mitigate

rate impacts to customers as compared with traditional utility financing or other traditional utility recovery methods.

(iii) Any determination of whether storm recovery costs are reasonable and prudent shall be made with reference to the general public interest in and the scope of effort required to provide the maintenance and safe and expeditious restoration of ~~electric~~ utility service.

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

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

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

(C) Provide that, for the period specified pursuant to subdivision (b)(2)(A) of this section, the imposition and collection of storm recovery charges authorized in the financing order shall be nonbypassable and paid by all customers, subject to appropriate exclusions or adjustments to avoid the collection of natural gas costs from gas utility customers that do not purchase natural gas from the gas utility, receiving ~~transmission or distribution service, or both,~~ service from ~~an electric~~ a utility or its successors or assignees under commission-approved rate schedules as provided in the financing order. An individual customer's monthly storm recovery charges shall be based upon the customer's then-current monthly billing determinants;

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

(E) ~~Include~~ As necessary, include a formula-based mechanism for making expeditious periodic adjustments in the storm recovery charges that customers are required to pay under the financing order and for

making any adjustments that are necessary to correct for any projected ~~overcollection or undercollection~~ over-collection or under-collection of the charges or to otherwise ensure the timely payment as scheduled of storm recovery bonds and financing costs and other required amounts and charges payable in connection with the storm recovery bonds;

(F) Specify the storm recovery property that is or shall be created in favor of ~~an electric~~ a utility or its successors or assignees and that shall be used to pay or secure storm recovery bonds and financing costs;

(G) Specify the degree of flexibility to be afforded to the ~~electric~~ utility in establishing the terms and conditions of the storm recovery bonds, including, ~~but not limited to,~~ without limitation repayment schedules, interest rates, and other financing costs;

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

(I) Provide that after the final terms of an issuance of storm recovery bonds have been established and ~~prior to~~ before the issuance of storm recovery bonds, the ~~electric~~ utility shall determine the resulting initial storm recovery charge ~~in accordance with~~ according to the financing order and ~~such the~~ the initial storm recovery charge shall be final and effective upon the issuance of ~~such the~~ the storm recovery bonds without further commission action; and

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

(c)(1) After the issuance of a financing order, the ~~electric~~ utility retains sole discretion regarding whether to cause the storm recovery bonds to be issued, including the right to defer or postpone ~~such the~~ the sale, assignment, transfer, or issuance, provided that the storm recovery bonds, other than refunding bonds, ~~may~~ shall not be issued later than two (2) years from the date the financing order becomes final and nonappealable, or ~~such a~~ a later date as provided in the financing order, and provided further, that nothing herein shall prevent the ~~electric~~ utility, ~~prior to~~ before the end of ~~such the~~ the two-year period, from abandoning the issuance of storm recovery bonds under the financing order, if this is in the best interest of ratepayers, by filing with the commission a statement of abandonment and the

reasons therefore.

~~(2) Nothing herein limits~~ This subchapter does not limit the rights of the ~~electric~~ utility to recover its storm recovery costs under normal ratemaking should the storm recovery bonds not be issued.

(d)(1) At the request of ~~an electric~~ a utility, the commission may commence a proceeding and issue a subsequent financing order that provides for the refinancing, retiring, or refunding of 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 subsection (b) of this section.

(2) Effective on retirement of the refunded storm recovery bonds and the issuance of new storm recovery bonds, the commission may adjust the related storm recovery charges accordingly or establish substitute storm recovery charges.

(3) Any ~~such~~ financing order shall be issued within one hundred twenty (120) days of the application of ~~an electric~~ a utility therefor.

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

(f)(1) An aggrieved party or intervenor may within fifteen (15) days after the financing order or a supplemental order made by the commission becomes effective, or within fifteen (15) days from the date an application for rehearing is deemed to be denied as provided in § 23-2-422, file in the Court of Appeals a petition ~~setting forth~~ stating the particular cause of objection to the order complained of.

(2) Inasmuch as delay in the determination of the appeal of a financing order may delay the issuance of storm recovery bonds thereby diminishing savings or other benefits to customers which might be achieved if ~~such the~~ bonds were issued as contemplated by a financing order, all ~~such the~~ cases shall be given precedence over all other civil cases in the court and shall be heard and determined as speedily as possible.

(g) A financing order issued to ~~an electric~~ a utility may provide that creation of the ~~electric~~ utility's storm recovery property pursuant to subdivision (b)(2)(F) of this section is conditioned upon, and shall be 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.

(h)(1) If the commission issues a financing order, the ~~electric~~ utility shall file with the commission at least annually a request for administrative approval applying the formula-based true-up mechanism to make the adjustments described in subdivision (b)(2)(E) of this section.

(2) The review of ~~such~~ a request described in subdivision (h)(1) of this section shall be limited to determining whether there is any mathematical error in the application of the formula-based mechanism relating to the appropriate amount of any projected over-collection or ~~undercollection~~ under-collection of storm recovery charges and the amount of an adjustment.

(3) ~~Such~~ 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.

(4) Within fifteen (15) days after receiving ~~an electric a~~ utility's request ~~pursuant to this subsection~~ under subdivision (h)(1) of this section, the commission shall either administratively approve the request or inform the ~~electric~~ utility of any mathematical errors in its calculation.

(5) If the commission informs the utility of mathematical errors in its calculation, the utility may correct its error and refile its request.

(6) The time frames previously described in this subsection shall apply to a refiled request.

(i) Subsequent to the earlier of the transfer of storm recovery property to an assignee or the issuance of storm recovery bonds authorized thereby, a financing order is irrevocable, and except as provided in subsections (d) and (h) of 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.

23-18-904. Exceptions to commission jurisdiction.

(a) If the Arkansas Public Service Commission issues a financing order to ~~an electric a~~ utility pursuant to this section, the commission ~~may shall~~ shall not, ~~in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this chapter,;~~

(1) ~~consider~~ Consider the storm recovery bonds issued pursuant to the financing order to be the debt of the ~~electric~~ utility other than for federal and state income tax purposes;

(2) ~~consider~~ Consider the storm recovery charges paid under the financing order to be the revenue of the ~~electric~~ utility for any purpose;

(3) ~~consider~~ Consider the storm recovery costs or financing costs specified in the financing order to be the costs of the ~~electric~~ utility; or

(4) ~~nor may the commission determine~~ Determine any action taken by ~~an electric~~ a utility which is consistent with the financing order to be unjust or unreasonable.

(b) The commission ~~may~~ shall not:

(1) ~~order~~ Order or otherwise directly or indirectly require ~~an electric~~ a utility to use storm recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure;

(2) ~~The commission may not refuse~~ Refuse to allow ~~an electric~~ a utility to recover costs for storm recovery activities in an otherwise permissible and reasonable fashion; or

(3) ~~refuse~~ Refuse or condition authorization or approval of the issuance and sale by ~~an electric~~ a utility of securities or the assumption by it of liabilities or obligations, solely because of the potential availability of storm recovery financing.

23-18-905. Storm recovery property.

(a)(1) All storm recovery property that is specified in a financing order shall constitute an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of storm recovery charges depend on the ~~electric~~ utility to which the financing order is issued performing its servicing functions relating to the collection of storm recovery charges and on future electricity or natural gas consumption.

(2) ~~Such~~ The property shall exist whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the property is or may be dependent on the future provision of service to

customers by the ~~electric~~ utility or its successors or assignees and the future consumption by customers of electricity or natural gas.

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

(c)(1) All or any portion of storm recovery property specified in a financing order issued to ~~an electric~~ a utility, if storm recovery bonds are to be issued, shall be sold, assigned, or transferred to a successor or an assignee, including an affiliate or affiliates of the ~~electric~~ utility created for the limited purpose of acquiring, owning, or administering storm recovery property or issuing storm recovery bonds under the financing order.

(2) All or any portion of storm recovery property may be encumbered by a security interest 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.

(3) Each ~~such~~ sale, assignment, transfer, conveyance, or pledge made by or security interest granted by ~~an electric~~ a utility or affiliate of ~~an electric~~ a utility or assignee is considered to be a transaction in the ordinary course of business.

(d)(1) The description of storm recovery property being sold, assigned, or transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, being encumbered, granted, or pledged to a secured party in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if ~~such~~ the description or indication refers to the specific financing order that created the storm recovery property and states that ~~such~~ the agreement or financing statement covers all or part of ~~such~~ the storm recovery property described in ~~such~~ the financing order.

(2) A description of storm recovery property in a financing statement shall be sufficient if it refers to the financing order creating the storm recovery property.

(3) This subsection applies to all purported sales, assignments, or transfers of and all purported grants of 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, before or after April 1, 2009.

(e)(1) If ~~an electric~~ a utility defaults on any required payment of charges arising from storm recovery property specified in a financing order, the court specified in § 23-18-903(f) 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 representatives.

(2) ~~Any such~~ An order described in subdivision (e)(1) of this section shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the ~~electric~~ utility or its successors or assigns.

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

(g) Any successor to ~~an electric~~ a 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 ~~electric~~ utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the ~~electric~~ utility under the financing order in the same manner and to the same extent as the ~~electric~~ utility, including collecting and paying to the person entitled to receive them, the revenues, collections, payments, or proceeds of the storm recovery property.

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

23-18-906. Sale.

(a) The sale, assignment, or transfer of storm recovery property is governed by this section.

(b) All of the following apply to a sale, assignment, or transfer

under this section:

(1)(A) The sale, conveyance, assignment, or other transfer of storm recovery property by ~~an electric~~ a utility to an assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer is an absolute transfer and true sale of, and not a pledge of or security interest in, the transferor's right, title, and interest in, to, and under the storm recovery property, other than for federal and state income tax purposes.

(B) 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.

(C) 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 under ~~subdivision (4)~~ subdivision (b)(4) of this section;

(2) The characterization of the sale, conveyance, assignment, or other transfer as a true sale or other absolute transfer under ~~subdivision (1)~~ subdivision (b)(1) of this section and the corresponding characterization of the assignee's property interest is not affected by:

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

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

(C) Any recourse that the assignee may have against the transferor, except that any ~~such~~ recourse shall not be created, contingent upon, or otherwise occurring or resulting from the inability or failure of one (1) or more of the transferor's customers to timely pay all or a portion of the storm recovery charge;

(D) Any indemnifications, obligations, or repurchase rights made or provided by the transferor, except that ~~such~~ the indemnity or repurchase rights shall not be based solely upon the inability or failure of

a transferor's customers to timely pay all or a portion of the storm recovery charge;

(E) The transferor acting as the collector of the storm recovery charges or the existence of any contract that authorizes or requires the ~~electric~~ 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~~ the assignee or financing party, and will account for and remit ~~such~~ the amounts to or for the account of ~~such~~ the assignee or financing party, including pursuant to a sequestration order authorized by this subchapter;

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

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

(H) (i) The status of the assignee as a direct or indirect wholly owned subsidiary or other affiliate of the ~~electric~~ utility.

(ii) The separate identity of any assignee of storm recovery property which is a subsidiary or affiliate of the ~~electric~~ utility shall not be disregarded due to the fact that the assignee and the ~~electric~~ utility share any one (1) or more incidents of control, including common managers, officers, directors, members, accounting or administrative systems, consolidated tax returns, or office space, that the assignee may be a disregarded entity for tax purposes, that the utility caused the formation of the assignee, that a contract by the utility and the assignee described in ~~subdivision (2)(E)~~ subdivision (b)(2)(E) of this section exists, that the assignee has no other business other than pertaining to the storm recovery property, that the capitalization of the assignee is limited to amounts required for compliance with certain applicable federal income tax laws and revenue procedures, or that other factors used in applying a single business enterprise test to juridical persons are present;

(3) (A) Any right that ~~an electric~~ a utility has in the storm

recovery property prior to its pledge, sale, or transfer or any other right of ~~an electric~~ a utility created under this subchapter or created in the financing order and assignable under this section or assignable pursuant to a financing order shall be property in the form of a contract right.

(B) Transfer of an interest in storm recovery property to an assignee is enforceable only upon the later of the issuance of a financing order, the execution and delivery of transfer documents to the assignee in connection with the issuance of storm recovery bonds, and the receipt of value.

(C) An enforceable transfer of an interest in storm recovery property to an assignee other than a security interest shall be 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 subdivision (4)~~ according to subdivision (b)(4) of this section.

(D) The transfer shall be perfected against third parties as of the date of filing;

(4)(A) Except as otherwise provided in this subchapter, financing statements required to be filed under this section shall be filed, indexed, and maintained in the same manner and in the same system of records maintained for the filing of financing statements under the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.

(B) The filing of ~~such~~ a financing statement with the Secretary of State shall be the only method of perfecting a sale, assignment, or transfer of storm recovery property.

(C) The sale, assignment, or transfer of an interest in storm recovery property perfected by filing a financing statement is effective against the customers owing payment of the storm recovery charges, creditors of the transferor, subsequent transferees, and all other third persons notwithstanding the absence of actual knowledge of or notice to the customers of the sale, assignment, or transfer.

(D) ~~No~~ A continuation statement need not be filed to maintain ~~such~~ the perfection;

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

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

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

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

(6)(A) The priority of a sale, assignment, or 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.

(B) Any other security interest that may apply to those funds, other than a security interest perfected under § 23-18-907 shall be terminated when those funds are transferred to a segregated account for the assignee or a financing party.

(C) If storm recovery property has been transferred to an assignee or financing party, any proceeds of that property shall be held for and delivered to the assignee or financing party by any collector as a fiduciary.

23-18-907. Security interests.

(a)(1) The Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq., does not apply to storm recovery property or any right, title, or interest of a utility, assignee, or financing party therein except to the extent specified in this subchapter.

(2) In addition, ~~such the~~ right, title, or interest pertaining to a financing order including, ~~but not limited to,~~ without limitation the associated storm recovery property including any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from storm recovery charges pursuant to ~~such the~~ order, shall not be deemed proceeds of any right or interest other than of the financing order and the storm recovery property arising from the financing order.

(3) All revenues and collections resulting from storm recovery property shall constitute proceeds only of the storm recovery property arising from the financing order.

(b) Except to the extent provided in this subchapter with respect to

filings of financing statements or control of deposit accounts or investment property as original collateral, the creation, attachment, granting, perfection, and priority of security interests in storm recovery property to secure storm recovery bonds is governed solely by this subchapter and not by the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.

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

(A) The issuance of a financing order;

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

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

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

(d)(1) A security interest in storm recovery property is perfected when it has attached and when the applicable financing statement describing the storm recovery property as provided in § 23-18-905(d) has been filed with the Secretary of State.

(2) The interest of a secured party is not perfected unless a financing statement sufficient under this subchapter and otherwise ~~in accordance with~~ according to the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq., is filed, and after perfection the secured party's interest continues in the storm recovery property and all proceeds of ~~such~~ the storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced; provided however that a security interest granted by the issuer of and securing storm recovery bonds held by a secured party having control of a segregated deposit account or securities account as original collateral into which revenues, collections, or proceeds of storm recovery property are deposited or credited may be perfected by control as provided in subsection (e) of this section.

(3) A security interest in proceeds of storm recovery property

is a perfected security interest if the security interest in the storm recovery property was perfected under this subchapter.

(4) Except as otherwise provided in this subchapter, financing statements required to be filed pursuant to this section shall be filed, indexed, and maintained in the same manner and in the same system of records maintained for the filing of financing statements under the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.

(5) The filing of ~~such~~ a financing statement shall be the only method of perfecting a lien or security interest on storm recovery property except as provided in this subsection.

(6) ~~No~~ A continuation statement need not be filed to maintain ~~such~~ the perfection.

(e)(1) A perfected security interest in storm recovery property and all proceeds of ~~such~~ the storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced, shall have priority over a conflicting lien of any nature in the same collateral property, except a security interest is subordinate to the rights of a person that becomes a lien creditor before the perfection of ~~such~~ the security interest.

(2) A security interest in storm recovery property which qualifies for priority over a conflicting security interest or lien also has priority over the conflicting security interest or lien in proceeds of the storm recovery property.

(3) The relative priority of a perfected security interest of a secured party is not adversely affected by any lien or security interest in a deposit account of the ~~electric~~ utility that is a collector and into which the revenues are deposited.

(4) The priority of a security interest perfected under this section is not defeated or 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.

(5) Any other security interest, other than a prior security interest perfected under this subchapter, that may apply to those funds shall be terminated as to all funds transferred to a segregated account for the benefit of an assignee or a financing party or to an assignee or financing party directly.

(6) The perfection by control, the effect of perfection by control, and the priority of a security interest granted by the issuer of and securing storm recovery bonds held by a secured party having control of a segregated deposit account or securities account as original collateral into which revenues, collections, or proceeds of storm recovery property are deposited or credited shall be governed by the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq., including the choice of law rules in §§ 4-9-301 – 4-9-307.

(f)(1) If a default or termination occurs under the terms of the storm recovery bonds, the secured party may foreclose on or otherwise enforce the security interest in any storm recovery property as if it were a secured party under the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.

(2) A secured party holding a security interest in storm recovery property shall be entitled to exercise all of the same rights and remedies as are available to a secured party under the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq., to the same extent as if those rights and remedies were ~~set forth~~ stated in this subchapter.

(3) A court may order that amounts arising from storm recovery property be transferred to a separate account of the secured party for the financing parties' benefit, to which their security interest shall apply.

(4) On application by or on behalf of a secured party to the court of this state specified in this subsection, ~~such~~ the court shall order the sequestration and payment to the financing parties of revenues arising from the storm recovery property.

(g)(1) A security interest created under this subchapter may provide for a security interest in after-acquired collateral.

(2) A security interest granted under this subchapter is not invalid or fraudulent against creditors solely because the grantor or the ~~electric~~ utility as collector or servicer has the right or ability to commingle the collateral or proceeds, or collect, compromise, enforce, and otherwise deal with collateral.

(h) Any action arising under ~~the provisions of~~ this subchapter to enforce a security interest in any security interest governed by this subchapter or in any storm recovery property, or which otherwise asserts an interest in, or a right in, to, or against any storm recovery property,

wherever located or deemed located, shall be brought in the Pulaski County Circuit Court.

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

(1)(A) Conflicting perfected interests or rights of secured parties rank according to priority in time of perfection.

(B) Priority dates from the time a filing covering the interest or right is made ~~in accordance with~~ according to this section and the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq.;

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

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

(j)(1) The priority of a lien and security interest in storm recovery property 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.

(2) Any other security interest that may apply to the storm recovery property shall be terminated when those funds are transferred to a segregated account for the assignee or a financing party.

(3) If storm recovery property has been transferred to an assignee or financing party, any proceeds of that storm recovery property shall be held in trust for the assignee or financing party.

23-18-908. Choice of law – Conflicts.

(a)(1) The law governing the validity, enforceability, attachment, perfection, priority, exercise of remedies, and venue with respect to the sale, assignment, or transfer of an interest or right or the creation of a security interest in any storm recovery property shall be exclusively the laws of this state, without applying this state's law on conflicts of laws and notwithstanding any contrary contractual provision.

(2) The validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the sale, assignment, or transfer of an interest or right or the creation of a security interest in

any storm recovery property shall be governed by this subchapter, and solely to the extent not addressed by this subchapter, by the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq., and other laws of this state.

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

23-18-909. Storm recovery bonds not public debt – Legal investments.

(a)(1) Storm recovery bonds are not a debt or a general obligation of the state or any of its political subdivisions, agencies, or instrumentalities and are not a charge on their full faith and credit.

(2) An issue of storm recovery bonds does not, directly or 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 bonds, other than for paying storm recovery charges in their capacity as consumers of electricity or natural gas.

(3) All storm recovery bonds authorized by a financing order by the Arkansas Public Service Commission ~~must~~ shall 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 Arkansas is pledged to the payment of the principal of, or interest on, this bond.”

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

23-18-910. Tax treatment.

The Arkansas state income tax treatment of the following events will conform to the federal income tax treatment of ~~such~~ the events:

(1) ~~The electric~~ A utility’s receipt of a financing order that creates storm recovery property for the benefit of the ~~electric~~ utility;

(2) The ~~electric~~ utility’s receipt of cash or other valuable consideration in exchange for its transfer of the storm recovery property to

an affiliate which is wholly owned, directly or indirectly, by the ~~electric~~ utility; and

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

23-18-911. State pledge – Definition.

(a) For purposes of this section, the term “bondholder” means a person who holds, owns, or is the beneficial holder or owner of a storm recovery bond.

(b)(1) The state and its agencies, including the Arkansas Public Service Commission, pledge to and agree with bondholders, the owners of the storm recovery property, and other financing parties that the state ~~will~~ shall not:

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

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

(C) Except as allowed under this section, reduce, alter, or impair storm recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and 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) ~~Nothing in this subsection shall~~ This subsection 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 holders of storm recovery bonds and any assignee or financing party entering into a contract with the ~~electric~~ utility.

(c) Any person or entity that issues storm recovery bonds may include the pledge specified in subsection (b) of this section in the bonds and related documentation.

23-18-912. Assignee or financing party not ~~an electric~~ a utility.

An assignee or financing party shall not be considered ~~an electric~~ a utility or person providing electric or natural gas service by virtue of engaging in the transactions described in this subchapter.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that due to the recent historic winter weather event, the high prices paid for energy by utilities could necessitate a substantial increase in rates paid by consumers; that storm recovery costs could be securitized and financed with prompt legislative action, and that this act is immediately necessary because authorization is required for securitization financing for storm recovery costs that may lower the financing costs or mitigate the impact on rates in comparison to traditional utility financing and benefit customers in this state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/B. Ballinger

APPROVED: 4/12/21