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(Public)

Sponsors:

Referred to:

March 12, 2025

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE INTERIM DATE FOR CARBON REDUCTION BY CERTAIN ELECTRIC PUBLIC UTILITIES, TO ALLOW AN ALTERNATIVE COST RECOVERY MECHANISM FOR THE FINANCING COSTS OF CONSTRUCTION WORK IN PROGRESS FOR BASELOAD ELECTRIC GENERATING FACILITIES, TO MODIFY THE STATUTES GOVERNING COST RECOVERY FOR FUEL-RELATED CHARGES AND PERFORMANCE-BASED RATEMAKING, AND TO CODIFY A PROVISION AUTHORIZING SECURITIZATION OF COSTS FOR RETIREMENT OF COAL-FIRED GENERATING UNITS.

The General Assembly of North Carolina enacts:

ELIMINATE THE INTERIM DATE FOR CARBON REDUCTION BY CERTAIN ELECTRIC PUBLIC UTILITIES

SECTION 1. G.S. 62-110.9 reads as rewritten:

"§ 62-110.9. Requirements concerning reductions in emissions of carbon dioxide from electric public utilities.

The Utilities Commission shall take all reasonable steps to achieve a ~~seventy percent (70%)~~ reduction in emissions of carbon dioxide (CO₂) emitted in the State from electric generating facilities owned or operated by electric public utilities ~~from 2005 levels by the year 2030 and that result in~~ carbon neutrality by the year 2050. For purposes of this section, (i) "electric public utility" means any electric public utility as defined in G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2021, and (ii) "carbon neutrality" means for every ton of CO₂ emitted in the State from electric generating facilities owned or operated by or on behalf of electric public utilities, an equivalent amount of CO₂ is reduced, removed, prevented, or offset, provided that the offsets are verifiable and do not exceed five percent (5%) of the authorized reduction goal. In achieving the authorized carbon reduction ~~goals, goal,~~ the Utilities Commission shall:

- (1) Develop a plan, no later than December 31, ~~2022, 2026,~~ with the electric public utilities, including stakeholder input, for the utilities to achieve the authorized reduction ~~goals, goal of carbon neutrality by the year 2050,~~ which may, at a minimum, consider power generation, transmission and distribution, grid modernization, storage, energy efficiency measures, demand-side management, and the latest technological breakthroughs to achieve the least cost path consistent with this section to achieve compliance with the



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- 1 authorized carbon reduction ~~goals-goal~~ (the "Carbon Plan"). The Carbon Plan
2 shall be reviewed every two years and may be adjusted as necessary in the
3 determination of the Commission and the electric public utilities.
- 4 (2) Comply with current law and practice with respect to the least cost planning
5 for generation, pursuant to G.S. 62-2(a)(3a), in achieving the authorized
6 carbon reduction ~~goals-goal~~ and determining generation and resource mix for
7 the future. Any new generation facilities or other resources selected by the
8 Commission in order to achieve the authorized reduction ~~goals-goal~~ for
9 electric public utilities shall be owned and recovered on a cost of service basis
10 by the applicable electric public utility except that:
- 11 a. Existing law shall apply with respect to energy efficiency measures
12 and demand-side management.
- 13 b. To the extent that new solar generation is selected by the Commission,
14 in adherence with least cost requirements, the solar generation selected
15 shall be subject to the following: (i) forty-five percent (45%) of the
16 total megawatts alternating current (MW AC) of any solar energy
17 facilities established pursuant to this section shall be supplied through
18 the execution of power purchase agreements with third parties
19 pursuant to which the electric public utility purchases solar energy,
20 capacity, and environmental and renewable attributes from solar
21 energy facilities owned and operated by third parties that are 80 MW
22 AC or less that commit to allow the procuring electric public utility
23 rights to dispatch, operate, and control the solicited solar energy
24 facilities in the same manner as the utility's own generating resources
25 and (ii) fifty-five percent (55%) of the total MW AC of any solar
26 energy facilities established pursuant to this section shall be supplied
27 from solar energy facilities that are utility-built or purchased by the
28 utility from third parties and owned and operated and recovered on a
29 cost of service basis by the soliciting electric public utility. These
30 ownership requirements shall be applicable to solar energy facilities
31 (i) paired with energy storage and (ii) procured in connection with any
32 voluntary customer program.
- 33 (3) Ensure any generation and resource changes maintain or improve upon the
34 adequacy and reliability of the existing grid.
- 35 (4) Retain discretion to determine optimal timing and generation and
36 resource-mix to achieve the least cost path to compliance with the authorized
37 carbon reduction ~~goals-goal~~, including discretion in achieving the authorized
38 carbon reduction ~~goals-goal~~ by the ~~dates-date~~ specified in order to allow for
39 implementation of solutions that would have a more significant and material
40 impact on carbon reduction; provided, however, the Commission shall not
41 exceed the ~~dates-date~~ specified to achieve the authorized carbon reduction
42 ~~goals-goal~~ by more than two years, except in the event the Commission
43 authorizes construction of a nuclear facility or wind energy facility that would
44 require additional time for completion due to technical, legal, logistical, or
45 other factors beyond the control of the electric public utility, or in the event
46 necessary to maintain the adequacy and reliability of the existing grid. In
47 making such determinations, the Utilities Commission shall receive and
48 consider stakeholder input."
49

50 **MODIFY CONSTRUCTION WORK IN PROGRESS FOR BASELOAD ELECTRIC**
51 **GENERATING FACILITIES**

1 **SECTION 2.(a)** G.S. 62-110.1 reads as rewritten:

2 "**§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs**
3 **for expansion of facilities; ongoing review of construction costs; inclusion of**
4 **approved construction costs in rates.**

5 ...

6 (e) As a condition for receiving a certificate, the applicant shall file an estimate of
7 construction costs in such detail as the Commission may require. The Commission shall hold a
8 public hearing on each application and no certificate shall be granted unless the Commission has
9 approved the estimated construction costs and made a finding that construction will be consistent
10 with the Commission's plan for expansion of electric generating capacity. A certificate for the
11 construction of generating facility by an electric public utility, as that term is defined by
12 G.S. 62-110.9, shall be granted only if the applicant demonstrates and the Commission finds that
13 the facility is part of the least cost path to achieve compliance with the authorized carbon
14 reduction ~~goals~~ goal in G.S. 62-110.9, will maintain or improve upon the adequacy and reliability
15 of the existing grid, and that the construction and operation of the facility is in the public ~~interest.~~
16 interest, and that the other resources listed in G.S. 62-110.9(1) would not establish or maintain a
17 more cost-effective and reliable generation system consistent with G.S. 62-110.9. In making its
18 determination, the Commission shall consider resource and fuel diversity and reasonably
19 anticipated future operating costs. Once the Commission grants a certificate, no public utility
20 shall cancel construction of a generating unit or facility without approval from the Commission
21 based upon a finding that the construction is no longer in the public interest.

22 (e1) Upon the request of the public utility or upon its own motion, the Commission may
23 review the certificate to determine whether changes in the probable future growth of the use of
24 electricity indicate that the public convenience and necessity require modification or revocation
25 of the certificate. If the Commission finds that completion of the generating facility is no longer
26 in the public interest, the Commission may modify or revoke the certificate.

27 (f) The public utility shall submit a progress report and any revision in the cost estimate
28 for the construction approved under subsection (e) of this section during each year of
29 construction. Upon the request of the public utility or upon its own motion, the Commission ~~may~~
30 shall conduct an ongoing review of construction of the facility as the construction proceeds. In
31 any such ongoing review process, the public utility shall submit an application, including detailed
32 documentation and supporting testimony, demonstrating that the public utility's construction and
33 related costs and expenditures incurred during the review period in connection with such certified
34 generating facility were reasonable and prudently incurred and, if necessary, requesting a
35 modification of the certificate. The purpose of each ongoing review hearing is to determine the
36 reasonableness and prudence of the costs incurred by the public utility during the period under
37 review and to determine whether the certificate should remain in effect or be modified or revoked.
38 The public utility shall have the burden of proof to demonstrate that all costs and expenditures
39 were reasonable and prudently incurred. The Commission shall conduct a hearing regarding each
40 such review period and shall allow intervention in such proceeding. Subject to any variation
41 needed at the start or completion of construction, the review period for each proceeding shall be
42 approximately 12 months of construction and related costs and expenditures. In addition, once
43 the ongoing review process has been initiated, the public utility shall be required to submit
44 quarterly status reports and the Public Staff shall be entitled to submit discovery with respect to
45 such quarterly status reports. The Commission shall commence the hearing with respect to each
46 review period within 120 days of the public utility's application and issue a decision within 60
47 days of the close of the hearing, or waiver thereof if no disputed issues have been identified. If
48 the Commission approves any revised construction cost ~~estimate~~ estimate, if applicable, and finds
49 that incurrence of the cost of that portion of the construction of the facility under review was
50 reasonable and prudent, the certificate shall remain in effect. If the Commission disapproves any
51 part of the revised cost estimate or finds that the incurrence of the cost of that portion of the

1 construction of the facility then under review was unreasonable or imprudent, the Commission
2 may modify or revoke the certificate.

3"

4 **SECTION 2.(b)** G.S. 62-133 reads as rewritten:

5 **"§ 62-133. How rates fixed.**

6 (a) In fixing the rates for any public utility subject to the provisions of this Chapter, other
7 than bus companies, motor carriers and certain water and sewer utilities, the Commission shall
8 fix such rates as shall be fair both to the public utilities and to the consumer.

9 (b) In fixing such rates, the Commission shall:

10 (1) Ascertain the reasonable original cost or the fair value under G.S. 62-133.1A
11 of the public utility's property used and useful, or to be used and useful within
12 a reasonable time after the test period, in providing the service rendered to the
13 public within the State, less that portion of the cost that has been consumed
14 by previous use recovered by depreciation expense. In addition, construction
15 work in progress may be included in the cost of the public utility's property
16 under any of the following circumstances:

17 a. To the extent the Commission considers inclusion in the public interest
18 and necessary to the financial stability of the utility in question,
19 reasonable and prudent expenditures for construction work in progress
20 may be included, subject to the provisions of subdivision (4a) of this
21 subsection.

22 b. For baseload electric generating facilities, reasonable and prudent
23 expenditures shall be included pursuant to subdivisions (2) or (3) of
24 G.S. 62-110.1(f1), whichever applies, subject to the provisions of
25 subdivision (4a) of this subsection.

26 c. For baseload electric generating facilities, if the Commission
27 determines there is an overall cost-savings for customers over the life
28 of the generating facility and a baseload electric generating facility has
29 been subject to an annual ongoing review process pursuant to
30 G.S. 62-110.1(f), the Commission shall, upon determining through the
31 ongoing review process that the expenditures were reasonably and
32 prudently incurred, allow an increase in base rates outside of the
33 rate-making processes established under this section or
34 G.S. 62-133.16 to reflect solely the financing costs on such reasonable
35 and prudent expenditures, with the increase being effective 30 days
36 after the Commission's order finding that the expenditures were
37 reasonable and prudent and allocated on a demand basis among
38 customer classes. Any recovery authorized pursuant to this
39 sub-subdivision shall be limited to those financing costs accrued on
40 actual, reasonable, and prudent construction costs, after taking into
41 account any direct customer contributions actually received that offset
42 such construction costs, up to the estimated construction cost estimate
43 approved by the Commission or later amended by the Commission
44 pursuant to G.S. 62-110.1(e). If applicable, any revenues actually
45 received from customers participating in a Commission-approved
46 customer program shall be used to reduce the construction costs of the
47 baseload electric generating facility and thereby proportionately
48 reduce the amount of financing costs recovered hereunder. In the event
49 the Commission approves cancellation of a generating facility for
50 which financing costs have been recovered pursuant to this
51 sub-subdivision, then: (i) as of the date the Commission approves

cancellation of the construction of the generating facility, the electric public utility shall cease recovery of such financing costs pursuant to this sub-subdivision; and (ii) all costs determined by the Commission pursuant to G.S. 62-110.1(f) to have been imprudently incurred shall be disallowed and shall not be recovered from customers. With respect to natural gas baseload electric generating facilities, the authorization to recover financing costs pursuant to this sub-subdivision shall sunset as of December 31, 2033, for all construction costs incurred after December 31, 2033, but continued recovery of financing costs on construction costs for natural gas baseload electric generating facilities incurred prior to December 31, 2033, shall be permitted subject to all conditions of this sub-subdivision.

...

(c) The original cost of the public utility's property, including its construction work in progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. If the public utility elects to establish rate base using fair value, the fair value determination of the public utility's property shall be made as provided in G.S. 62-133.1A, and the probable future revenues and expenses shall be based on the plant and equipment in operation at the end of the test period. The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is ~~closed~~closed, provided that the public utility has provided notice of the potential for such change at least 60 days prior to the start of the hearing. In setting the electric public utility's authorized rate of return on equity, the Commission shall consider any increased or decreased risk to either the electric public utility or its ratepayers that may result from recovery of financing costs pursuant to subdivision (1) of subsection (b) of this section.

...."

FUEL COST RECOVERY MODIFICATIONS

SECTION 3. G.S. 62-133.2 reads as rewritten:

"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.

(a) The Commission shall permit an electric public utility that generates electric power by fossil fuel or nuclear fuel to charge an increment or decrement as a rider to its rates for changes in the cost of fuel and fuel-related costs used in providing its North Carolina customers with electricity from the cost of fuel and fuel-related costs established in the electric public utility's previous general rate case on the basis of cost per kilowatt hour.

(a1) As used in this section, "cost of fuel and fuel-related costs" means all of the following:

- (1) The cost of fuel burned.
- (2) The cost of fuel transportation.
- (3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating ~~emissions~~emissions, including emissions allowances.
- (4) ~~The total delivered costs, including capacity and noncapacity related costs, including fuel costs, and all related transmission charges, of all purchases of electric power and capacity by the electric public utility that are subject to economic dispatch or economic curtailment.~~

- 1 (5) ~~The capacity costs associated with all purchases of electric power from~~
2 ~~qualifying cogeneration facilities and qualifying small power production~~
3 ~~facilities, as defined in 16 U.S.C. § 796, that are subject to economic dispatch~~
4 ~~by the electric public utility.~~
- 5 (6) ~~Except utility, except for those costs recovered pursuant to G.S. 62-133.8(h),~~
6 ~~the total delivered costs of all purchases of power from renewable energy~~
7 ~~facilities and new renewable energy facilities pursuant to G.S. 62-133.8 or~~
8 ~~G.S. 62-133.8(h).~~
- 9 (6a) ~~Any other costs required to comply with any federal mandate that is similar to~~
10 ~~the requirements of subsections (b), (c), (d), (e), and (f) of G.S. 62-133.8.~~
- 11 (7) ~~The fuel cost component of other purchased power.~~
- 12 (8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses
13 resulting from any sales by the electric public utility of fuel and other
14 fuel-related costs components.
- 15 (9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses
16 resulting from any sales by the electric public utility of by-products produced
17 in the generation process to the extent the costs of the inputs leading to that
18 by-product are costs of fuel or fuel-related costs.
- 19 (10) ~~The total delivered costs, including capacity and noncapacity costs, associated~~
20 ~~with all purchases of electric power from qualifying cogeneration facilities~~
21 ~~and qualifying small power production facilities, as defined in 16 U.S.C. §~~
22 ~~796, that are not subject to economic dispatch or economic curtailment by the~~
23 ~~electric public utility and not otherwise recovered under subdivision (6) of this~~
24 ~~subsection.~~
- 25 (11) All nonadministrative costs related to the renewable energy procurement
26 pursuant to G.S. 62-159.2 not recovered from the program participants.
- 27 (a2) For those costs ~~identified in subdivisions (4), (5), (6), (10), and (11) of subsection (a1)~~
28 ~~of this section, that involve power purchase agreements from renewable generating facilities~~
29 ~~(including qualifying cogeneration facilities and qualifying small power production facilities, as~~
30 ~~defined in 16 U.S.C. § 796, costs related to G.S. 62-133.8(h) or any other costs required to~~
31 ~~comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d),~~
32 ~~(e), and (f) of G.S. 62-133.8), and nonadministrative costs related to the renewable energy~~
33 ~~procurement pursuant to G.S. 62-159.2 not recovered from the program participants, the annual~~
34 ~~increase in the aggregate amount of these costs that are recoverable by an electric public utility~~
35 ~~pursuant to this section shall not exceed two and one-half percent (2.5%) of the electric public~~
36 ~~utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year.~~
37 ~~The costs described in subdivisions (4), (5), (6), (10), and (11) subdivision (4) of subsection (a1)~~
38 ~~of this section shall be recoverable from each class of customers as a separate component of the~~
39 ~~rider as follows:~~
- 40 (1) ~~For the noncapacity costs described in subdivisions (4), (10), and (11) of~~
41 ~~subsection (a1) of this section, the specific component for each class of~~
42 ~~customers shall be determined by allocating these costs allocated on a demand~~
43 ~~basis among customer classes based on the method used in the electric public~~
44 ~~utility's most recently filed fuel proceeding commenced on or before January~~
45 ~~1, 2017, as determined by the Commission, until the Commission determines~~
46 ~~how these costs shall be allocated in a general rate case for the electric public~~
47 ~~utility commenced on or after January 1, 2017.~~
- 48 (2) ~~For the capacity costs described in subdivisions (5), (6), (10), and (11) of~~
49 ~~subsection (a1) of this section, the specific component for each class of~~
50 ~~customers shall be determined by allocating these costs among customer~~
51 ~~classes based on the method used in the electric public utility's most recently~~

1 filed fuel proceeding commenced on or before January 1, 2017, as determined
2 by the Commission, until the Commission determines how these costs shall
3 be allocated in a general rate case for the electric public utility commenced on
4 or after January 1, 2017, classes.

5 (a3) Notwithstanding subsections (a1) and (a2) of this section, for an electric public utility
6 that has fewer than 150,000 North Carolina retail jurisdictional customers as of December 31,
7 2006, the costs identified in subdivisions (1), (2), (6), (7), and (10) of subsection (a1) of this
8 section and the fuel cost component, as may be modified by the Commission, of electric power
9 purchases identified in subdivision (4) of subsection (a1) of this section shall be recovered
10 through the increment or decrement rider approved by the Commission pursuant to this section.
11 For the costs identified in subdivisions (6) and (10) of subsection (a1) of this section that are
12 incurred on or after January 1, 2008, the annual increase in the amount of these costs shall not
13 exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional
14 gross revenues for the preceding calendar year. These costs described in subdivisions (6) and
15 (10) of subsection (a1) of this section shall be recoverable from each class of customers as a
16 separate component of the rider. For the costs described in subdivisions (6) and (10) of subsection
17 (a1) of this section, the specific component for each class of customers shall be determined by
18 allocating these costs among customer classes based on the electric public utility's North Carolina
19 peak demand for the prior year, as determined by the Commission, until the Commission
20 determines how these costs shall be allocated in a general rate case for the electric public utility
21 commenced on or after January 1, 2008.

22 (a4) The electric public utility shall make appropriate adjustments to its fuel and
23 fuel-related costs to reflect costs already being recovered in base rates so as to avoid double
24 recovery of any fuel and fuel-related costs and the Commission shall approve any accounting
25 adjustments necessary in a future fuel proceeding or general rate case to avoid such double
26 recovery.

27 (b) The Commission shall conduct a hearing within 12 months of each electric public
28 utility's last general rate case order to determine whether an increment or decrement rider is
29 required to reflect actual changes in the cost of fuel and fuel-related costs over or under the cost
30 of fuel and fuel-related costs on a kilowatt-hour basis in base rates established in the electric
31 public utility's last preceding general rate case. Additional hearings shall be held on an annual
32 basis but only one hearing for each electric public utility may be held within 12 months of the
33 last general rate case.

34 (c) ~~Each~~ For purposes of the annual hearing, each electric public utility shall submit to
35 the Commission ~~for the hearing~~ verified annualized information and data in such form and detail
36 as the Commission may require, for an historic 12-month test period, relating to:

- 37 (1) Cost of fuel and fuel-related costs used in each generating facility owned in
38 whole or in part by the utility.
- 39 (2) Fuel procurement practices and fuel inventories for each facility.
- 40 (3) Burned cost of fuel used in each generating facility.
- 41 (4) Plant capacity factor for each generating facility.
- 42 (5) Plant availability factor for each generating plant.
- 43 (6) Generation mix by types of fuel used.
- 44 (7) Sources and fuel cost component of purchased power used.
- 45 (8) Recipients of and revenues received for power sales and times of power sales.
- 46 (9) Test period kilowatt-hour sales for the utility's total system and on the total
47 system separated for North Carolina jurisdictional sales.
- 48 (10) Procurement practices and inventories for: fuel burned and for ammonia, lime,
49 limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or
50 treating emissions.

- 1 (11) The cost incurred at each generating facility of fuel burned and of ammonia,
2 lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in
3 reducing or treating emissions.
- 4 (12) Any net gains or losses resulting from any sales by the electric public utility
5 of fuel or other fuel-related costs components.
- 6 (13) Any net gains or losses resulting from any sales by the electric public utility
7 of by-products produced in the generation process to the extent the costs of
8 the inputs leading to that by-product are costs of fuel or fuel-related costs.

9 (d) The Commission shall provide for notice of a public hearing with reasonable and
10 adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the
11 Commission shall receive evidence from the utility, the Public Staff, and any intervenor desiring
12 to submit evidence, and from the public generally. In reaching its decision, the Commission shall
13 consider all evidence required under subsection (c) of this section as well as any and all other
14 competent evidence that may assist the Commission in reaching its decision including changes
15 in the cost of fuel consumed and fuel-related costs that occur within a reasonable time, as
16 determined by the Commission, after the test period is closed. The Commission shall incorporate
17 in its cost of fuel and fuel-related costs determination under this subsection the experienced
18 over-recovery or under-recovery of reasonable costs of fuel and fuel-related costs prudently
19 incurred ~~during by the test period, electric public utility,~~ based upon the prudent standards set
20 pursuant to subsection (d1) of this section, in fixing an increment or decrement rider. Upon
21 request of the electric public utility, the Commission shall also incorporate in this determination
22 the experienced over-recovery or under-recovery of costs of fuel and fuel-related costs through
23 the date that is 30 calendar days prior to the date of the hearing, provided that the reasonableness
24 and prudence of these costs shall be subject to review in the utility's next annual hearing pursuant
25 to this section. The Commission shall use deferral accounting, and consecutive test periods, in
26 complying with this subsection, and the over-recovery or under-recovery portion of the increment
27 or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base
28 fuel cost in a general rate case. Any experienced over-recovery or under-recovery of reasonable
29 fuel and fuel-related costs prudently incurred shall accrue interest at the commercial paper rate
30 as identified by the Federal Reserve for A2/P2 nonfinancial issuers, or reasonable successor
31 thereto, on a weighted average basis over the applicable time period. The burden of proof as to
32 the correctness and reasonableness of the charge and as to whether the cost of fuel and
33 fuel-related costs were reasonably and prudently incurred shall be on the utility. The Commission
34 shall allow only that portion, if any, of a requested cost of fuel and fuel-related costs adjustment
35 that is based on adjusted and reasonable cost of fuel and fuel-related costs prudently incurred
36 under efficient management and economic operations. In evaluating whether cost of fuel and
37 fuel-related costs were reasonable and prudently incurred, the Commission shall apply the rule
38 adopted pursuant to subsection (d1) of this section. To the extent that the Commission determines
39 that an increment or decrement to the rates of the utility due to changes in the cost of fuel and
40 fuel-related costs over or under base fuel costs established in the preceding general rate case is
41 just and reasonable, the Commission shall order that the increment or decrement become
42 effective for all sales of electricity and remain in effect until changed in a subsequent general rate
43 case or annual proceeding under this section.

44 (d1) Within one year after ratification of this act, for the purposes of setting cost of fuel
45 and fuel-related costs rates, the Commission shall adopt a rule that establishes prudent standards
46 and procedures with which it can appropriately measure management efficiency in minimizing
47 cost of fuel and fuel-related costs.

48 (d2) Within 45 days of the end of every quarter of the applicable 12 month recovery-period
49 approved by the Commission, each electric public utility shall file a report detailing its actual
50 over- and under-recovered amounts through such quarter and an updated projection of the
51 cumulative over- or under-recovered amounts at the end of such 12 month recovery-period based

1 on the most recently available fuel forecast. If the updated projection of the cumulative over- or
2 under-recovered amounts at the end of such 12 month recovery-period, inclusive of the actual
3 amounts, is greater than ten percent (10%) of the total revenue requirement approved by the
4 Commission in the most recent fuel proceeding, then the electric public utility shall identify the
5 adjustment needed to the increment or decrement rider to address such over- or under-recovery
6 and file an updated tariff to reflect such adjustment as part of such quarterly report.

7 (1) The identified adjustment to the increment or decrement rider shall go into
8 effect at the start of the month that is approximately 45 days after the quarterly
9 update filing made under this subsection and such adjustment shall remain in
10 effect for the remainder of the 12 month recovery-period in effect as of the
11 effective date of such adjustment.

12 (2) All of the costs of fuel and fuel-related costs, including those which are
13 recovered through the quarterly adjustment authorized under this subsection
14 will be reviewed for reasonableness and prudence of such costs in the next
15 annual proceeding held by the Commission to review an electric public
16 utility's annual fuel and fuel-related adjustment pursuant to subsections (b)
17 and (c) of this section.

18 (3) In the event that the electric public utility's projections result in either solely
19 downward rate adjustments for 12 consecutive quarterly periods or solely
20 upward rate adjustments for 12 consecutive quarterly periods, the electric
21 public utility shall report to the Commission in the next annual fuel filing
22 regarding the reasons for such outcome and its plans to improve the accuracy
23 of its projection methodology.

24 (e) If the Commission has not issued an order pursuant to this section within 180 days of
25 a utility's submission of annual data under subsection (c) of this section, the utility may place the
26 requested cost of fuel and fuel-related costs adjustment into effect. If the change in rate is finally
27 determined to be excessive, the utility shall make refund of any excess plus interest to its
28 customers in a manner ordered by the Commission.

29 (f) Nothing in this section shall relieve the Commission from its duty to consider the
30 reasonableness of the cost of fuel and fuel-related costs in a general rate case and to set rates
31 reflecting reasonable cost of fuel and fuel-related costs pursuant to G.S. 62-133. Nothing in this
32 section shall invalidate or preempt any condition adopted by the Commission and accepted by
33 the utility in any proceeding that would limit the recovery of costs by any electric public utility
34 under this section.

35 (g) Repealed by Session Laws 2014-120, s. 10(d), effective September 18, 2014."
36

37 **PERFORMANCE-BASED REGULATION CHANGES**

38 **SECTION 4.** G.S. 62-133.16 reads as rewritten:

39 **"§ 62-133.16. Performance-based regulation authorized.**

40 ...

41 (c) Application. – An electric public utility shall be permitted to submit a PBR
42 application in a general rate case proceeding initiated pursuant to G.S. 62-133. A PBR application
43 shall include a decoupling rate-making mechanism, one or more PIMs, and a MYRP, including
44 both an earnings sharing mechanism and proposed revenue requirements and base rates for each
45 of the years that a MYRP is in effect or a method for calculating the same. The PBR application
46 may also include proposed tracking metrics with or without targets or benchmarks to measure
47 electric public utility achievement. The following additional requirements apply to a PBR
48 application:

49 (1) The following shall apply to a MYRP:

50 a. The base rates for the first rate year of a MYRP shall be fixed in the
51 manner prescribed under G.S. 62-133, including actual changes in

1 costs, revenues, or the cost of the electric public utility's property used
2 and useful, or to be used and useful within a reasonable time after the
3 test period, plus costs associated with a known and measurable set of
4 capital investments, net of operating benefits, associated with a set of
5 discrete and identifiable capital spending projects to be placed in
6 service during the first rate year. Subsequent changes in base rates in
7 the second and third rate years of the MYRP shall be based on
8 projected incremental Commission-authorized capital investments
9 that will be used and useful during the rate year and associated
10 expenses, net of operating benefits, including operation and
11 maintenance savings, and depreciation of rate base associated with the
12 capital investments, that are incurred or realized during each rate year
13 of the MYRP period; provided that the amount of increase in the
14 second rate year under the MYRP shall not exceed four percent (4%)
15 of the electric public utility's North Carolina retail jurisdictional
16 revenue requirement that is used to fix rates during the first year of the
17 MYRP pursuant to G.S. 62-133 excluding any revenue requirement
18 for the capital spending projects to be placed in service during the first
19 rate year. The amount of increase for the third rate year under the
20 MYRP shall not exceed four percent (4%) of the electric public
21 utility's North Carolina retail jurisdictional revenue requirement that is
22 used to fix rates during the first year of the MYRP pursuant to
23 G.S. 62-133, excluding any revenue requirement for the capital
24 spending projects placed in service during the first rate year. The
25 revenue requirements associated with any single new generation plant
26 placed in service during the MYRP for which the total plant in service
27 balance exceeds five hundred million dollars (\$500,000,000) shall not
28 be included in a MYRP. Instead, MYRP, except that combustion
29 turbine generating units which are not part of a combined cycle
30 generating unit may be included in the MYRP subject to the four
31 percent (4%) limit identified in this subdivision. In the alternative, the
32 utility may request and the Commission may grant, if it deems
33 appropriate, permission to establish a regulatory asset and defer to
34 such regulatory all or a portion of the asset incremental costs related
35 to such electric generation investments to be considered for recovery
36 in a future rate proceeding. In setting the electric public utility's
37 authorized rate of return on equity for an MYRP period, the
38 Commission shall consider any increased or decreased risk to either
39 the electric public utility or its ratepayers that may result from having
40 an approved MYRP.

- 41 b. In a proceeding authorizing a MYRP, the Commission shall establish
42 a rider to refund amounts related to the earnings sharing mechanism,
43 and to refund or collect amounts related to PIM rewards or penalties,
44 and decoupling adjustments.
- 45 c. Within 60 days of the conclusion of each rate year, the Commission
46 shall establish a proceeding to:
- 47 1. Examine the earnings of the electric public utility during the
48 rate year to determine if the earnings exceeded the authorized
49 rate of return on equity determined by the Commission in the
50 proceeding establishing the PBR. If the weather-normalized
51 earnings exceed the authorized rate of return on equity plus 50

- 1 basis points, the excess earnings above the authorized rate of
- 2 return on equity plus 50 basis points shall be refunded to
- 3 customers in the rider established by the Commission. If the
- 4 weather-normalized earnings fall below the authorized rate of
- 5 return on equity, the electric public utility may file a rate case
- 6 pursuant to G.S. 62-133. Any penalties or rewards from PIM
- 7 incentives and any incentives related to demand-side
- 8 management and energy efficiency measures pursuant to
- 9 G.S. 62-133.9(f) will be excluded from the determination of
- 10 any refund pursuant to earnings sharing mechanism.
- 11 2. Evaluate the performance of the electric public utility with
- 12 respect to Commission approved PIMs applicable in the rate
- 13 year. Any financial rewards shall be collected from customers
- 14 and any penalties refunded to customers, in each case, through
- 15 the rider established by the Commission.
- 16 3. Evaluate the decoupling rate-making mechanism, and refund
- 17 or collect, as applicable, a corresponding amount from
- 18 residential customers through the rider established by the
- 19 Commission.
- 20 d. In addition to the annual review process set forth in sub-subdivision c.
- 21 of this subdivision, the following shall apply:
- 22 1. For each quarter of a MYRP, the electric public utility shall
- 23 report regarding the status of the approved MYRP projects in
- 24 the manner directed by the Commission, including reporting
- 25 on any project that is canceled, along with a detailed
- 26 explanation regarding the reasons for such cancellation and the
- 27 replacement capital spending project, if any. The Commission
- 28 may, upon its own motion or petition by the Public Staff, open
- 29 a proceeding to examine any potentially unreasonable or
- 30 imprudent cancellations of approved capital spending projects
- 31 and may initiate a proceeding to adjust base rates as necessary
- 32 or direct further action with respect to such canceled project.
- 33 2. In any base rate case immediately following an authorized
- 34 MYRP, the electric public utility shall be obligated to report
- 35 on its execution of the approved MYRP projects with respect
- 36 to any rate year completed as of the date of the filing of the
- 37 PBR application, including by explaining any material
- 38 differences between the approved MYRP projects and the
- 39 actual executed projects.
- 40 ...
- 41 (d) Commission Action on Application. –
- 42 (1) The Commission shall approve a PBR application by an electric public utility
- 43 only upon a finding that a proposed PBR would result in just and reasonable
- 44 rates, is in the public interest, and is consistent with the criteria established in
- 45 this section and rules adopted thereunder. In reviewing any such PBR
- 46 application under this section, the Commission shall consider whether the
- 47 PBR application:
- 48 a. Assures that no customer or class of customers is unreasonably harmed
- 49 and that the rates are fair both to the electric public utility and to the
- 50 customer.

- 1 b. Reasonably assures the continuation of safe and reliable electric
- 2 service.
- 3 c. Will not unreasonably prejudice any class of electric customers and
- 4 result in sudden substantial rate increases or "rate shock" to customers.
- 5 (2) In reviewing any such PBR application under this section, the Commission
- 6 may consider whether the PBR application:
- 7 a. Encourages peak load reduction or efficient use of the system.
- 8 b. Encourages utility-scale clean energy and storage.
- 9 c. Encourages DERs.
- 10 d. Reduces low-income energy burdens.
- 11 e. Encourages energy efficiency.
- 12 f. Encourages carbon reductions.
- 13 g. Encourages beneficial electrification, including electric vehicles.
- 14 h. Supports equity in contracting.
- 15 i. Promotes resilience and security of the electric grid.
- 16 j. Maintains adequate levels of ~~reliability~~reliability, power quality, and
- 17 customer service.
- 18 k. Promotes rate designs that yield peak load reduction or beneficial
- 19 load-shaping.
- 20 (3) When an electric public utility files with the Commission an application for a
- 21 general rate case pursuant to G.S. 62-133 and that application includes a PBR
- 22 application, the Commission shall institute proceedings on the application as
- 23 provided in this subdivision. The electric public utility shall not make any
- 24 changes in any rate or implement a PBR except upon 30 days' notice to the
- 25 Commission, and the Commission may require the electric public utility to
- 26 provide notice of the pending PBR application to the same extent as provided
- 27 in G.S. 62-134(a) and may suspend the effect of the proposed base rates and
- 28 PBR implementation pending investigation in the same manner as provided
- 29 in G.S. 62-134(b), provided that, the Commission may suspend the
- 30 implementation of the proposed base rates for no longer than ~~300~~330 days.
- 31 The electric public utility's application shall plainly state the changes in base
- 32 rates and the time when the change in rates will go into effect and shall include
- 33 schedules in the same manner required pursuant to G.S. 62-134(a). The
- 34 Commission shall, upon reasonable notice, conduct a hearing concerning the
- 35 lawfulness of the proposed base rates and the PBR application. After hearing,
- 36 the Commission shall issue an order approving, modifying, or rejecting the
- 37 electric public utility's PBR application. In the event that the Commission
- 38 rejects a PBR application, the Commission shall nevertheless establish the
- 39 electric public utility's base rates in accordance with G.S. 62-133 based on the
- 40 PBR application. If the Commission rejects the PBR application, it shall
- 41 provide an explanation of the deficiency and an opportunity for the electric
- 42 public utility to refile, or for the electric public utility and the stakeholders to
- 43 collaborate to cure the identified deficiency and refile.
- 44 ...
- 45 (j) Rulemaking. – The Commission shall adopt rules to implement the requirements of
- 46 this section. Rules adopted shall include all of the following matters:
- 47 (1) The specific procedures and requirements that an electric public utility shall
- 48 meet when requesting approval of a PBR application.
- 49 (2) The criteria for evaluating a PBR application.
- 50 (3) The parameters for a technical conference process to be conducted by the
- 51 Commission prior to submission of any PBR application consisting of one or

~~more public meetings~~ meeting at which the electric public utility presents information regarding projected transmission and distribution expenditures and interested parties are permitted to provide comment and feedback; provided, however, no cross-examination of parties shall be permitted. The technical conference process ~~to be established shall not exceed a duration of 60 days from the date on which the electric public utility requests initiation of such process.~~ shall occur after the electric public utility submits its application but no later than 90 days after the filing of such application, and at least 30 days before the deadline established by the Commission for any interested parties to intervene.

- (4) In the event the Commission rejects a PBR application, the process by which an electric public utility may address the Commission's reasons for rejection of a PBR application, which process may include collaboration between stakeholders and the electric public utility to cure any identified deficiency in an electric public utility's PBR application."

CODIFY SECURITIZATION FOR COSTS TO RETIRE COAL PLANTS

SECTION 5. G.S. 62-172 reads as rewritten:

"§ 62-172. **Financing for certain storm and coal plant retirement recovery costs.**

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

- (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with ~~storm recovery~~ securitization bonds.
- (2) Assignee. – A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to ~~storm recovery~~ securitization property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to ~~storm recovery~~ securitization property.
- (3) Bondholder. – A person who holds a ~~storm recovery~~ securitization bond.
- (3a) Coal plant retirement activity. – An activity or activities by a public utility, its affiliates, or its contractors, directly and specifically in connection with the retirement of subcritical coal-fired generating facilities, including decommissioning and restoring the site of such subcritical coal-fired generating facilities and related activities.
- (3b) Coal plant retirement charge. – The amounts authorized by the Commission to repay, finance, or refinance coal plant retirement 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.
- (3c) Coal plant retirement costs. – All of the following, as applicable, in the determination of the Commission in a separate proceeding:

- 1 a. One hundred percent (100%) of the remaining net book value of all of
- 2 a public utility's subcritical coal-fired electric generating facilities at
- 3 the time of retirement.
- 4 b. The public utility's cost of capital from the date of the applicable coal
- 5 plant retirement to the date the securitization bonds are issued,
- 6 calculated using the public utility's weighted average cost of capital as
- 7 defined in its most recent base rate case proceeding before the
- 8 Commission net of applicable income tax savings related to the
- 9 interest component; provided, however, if the coal plant is included in
- 10 base rates for all or any portion of the interval between date of the
- 11 applicable coal plant retirement and the securitization bonds are
- 12 issued, coal plant retirement costs shall not include the public utility's
- 13 cost of capital for such period of time.
- 14 c. Coal plant retirement costs shall include coal plant retirement
- 15 activities and shall be net of applicable insurance proceeds, tax
- 16 benefits, and government grants, or aid of any kind and where
- 17 determined appropriate by the Commission. Coal plant retirement
- 18 costs include costs of repurchasing equity or retiring any existing
- 19 indebtedness relating to the retirement of a subcritical coal-fired
- 20 electric generating facility.
- 21 d. With respect to coal plant retirement costs that the public utility
- 22 expects to incur, any difference between costs expected to be incurred
- 23 and actual, reasonable, and prudent costs incurred, or any other
- 24 ratemaking adjustments appropriate to fairly and reasonably assign or
- 25 allocate coal plant retirement bonds to customers over time, shall be
- 26 addressed in a future general rate proceeding, as may be facilitated by
- 27 other orders of the Commission issued at the time or prior to such
- 28 proceeding; provided, however, that the Commission's adoption of a
- 29 financing order and approval of the issuance of coal plant retirement
- 30 bonds may not be revoked or otherwise modified.
- 31 (4) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.
- 32 (5) Commission. – The North Carolina Utilities Commission.
- 33 (6) Financing costs. – The term includes all of the ~~following:~~following costs
- 34 applicable to the type of securitization bond, including:
- 35 a. Interest and acquisition, defeasance, or redemption premiums payable
- 36 on ~~storm recovery~~the securitization bonds.
- 37 b. Any payment required under an ancillary agreement and any amount
- 38 required to fund or replenish a reserve account or other accounts
- 39 established under the terms of any indenture, ancillary agreement, or
- 40 other financing documents pertaining to ~~storm recovery~~the
- 41 securitization bonds.
- 42 c. Any other cost related to issuing, supporting, repaying, refunding, and
- 43 servicing ~~storm recovery~~the securitization bonds, including, servicing
- 44 fees, accounting and auditing fees, trustee fees, legal fees, consulting
- 45 fees, structuring adviser fees, administrative fees, placement and
- 46 underwriting fees, independent director and manager fees, capitalized
- 47 interest, rating agency fees, stock exchange listing and compliance
- 48 fees, security registration fees, filing fees, information technology
- 49 programming costs, and any other costs necessary to otherwise ensure
- 50 the timely payment of ~~storm recovery~~the securitization bonds or other

- 1 amounts or charges payable in connection with the securitization
2 bonds, including costs related to obtaining the financing order.
- 3 d. Any taxes and license fees or other fees imposed on the revenues
4 generated from the collection of the ~~storm recovery charge~~
5 securitization charges, or otherwise resulting from the collection of
6 ~~storm recovery~~ the charges, in any such case whether paid, payable, or
7 accrued.
- 8 e. Any State and local taxes, franchise, gross receipts, and other taxes or
9 similar charges, including regulatory assessment fees, whether paid,
10 payable, or accrued.
- 11 f. Any costs incurred by the Commission or Public Staff for any outside
12 consultants or counsel retained in connection with the financing of the
13 securitization of storm recovery costs.
- 14 (7) Financing order. – An order that authorizes the issuance of ~~storm recovery~~
15 securitization bonds; the imposition, collection, and periodic adjustments of a
16 ~~storm recovery~~ securitization charge; the creation of ~~storm recovery~~
17 securitization property; and the sale, assignment, or transfer of ~~storm recovery~~
18 securitization property to an assignee.
- 19 (8) Financing party. – Bondholders and trustees, collateral agents, any party under
20 an ancillary agreement, or any other person acting for the benefit of
21 bondholders.
- 22 (9) Financing statement. – Defined in Article 9 of the Code.
- 23 (10) Pledgee. – A financing party to which a public utility or its successors or
24 assignees mortgages, negotiates, pledges, or creates a security interest or lien
25 on all or any portion of its interest in or right to ~~storm recovery~~ securitization
26 property.
- 27 (11) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric
28 power to retail electric customers in the State.
- 29 (11a) Securitization activities. – The aggregate of activities that qualify as either (i)
30 storm recovery activities, as defined in subdivision (13) of this subsection, or
31 (ii) coal plant retirement activities, as defined in subdivision (3a) of this
32 subsection, as the case may be.
- 33 (11b) Securitization bonds. – Bonds, debentures, notes, certificates of participation,
34 certificates of beneficial interest, certificates of ownership, or other evidence
35 of indebtedness or ownership that are issued by a public utility or an assignee
36 pursuant to a financing order, the proceeds of which are used directly or
37 indirectly to recover, finance, or refinance Commission-approved coal plant
38 retirement costs or storm recovery costs, or both, and financing costs, and that
39 are secured by or payable from securitization property. If certificates of
40 participation or ownership are issued, references in this section to principal,
41 interest, or premium shall be construed to refer to comparable amounts under
42 those certificates.
- 43 (11c) Securitization charges. – Storm recovery charges, as defined in subdivision
44 (15) of this subsection, or coal plant retirement charges, as defined in
45 subdivision (3b) of this subsection, or both, as the case may be.
- 46 (11d) Securitization costs. – Storm recovery costs, as defined in subdivision (16) of
47 this subsection, or (ii) coal plant retirement costs, as defined in subdivision
48 (3c) of this subsection, as the case may be.
- 49 (11e) Securitization property. – All of the following:
50 a. All rights and interests of a public utility or successor or assignee of
51 the public utility under a financing order, including the right to impose,

- 1 bill, charge, collect, and receive coal plant recovery charges, storm
2 recovery charges, or both, as authorized under the financing order and
3 to obtain periodic adjustments to such charges as provided in the
4 financing order.
- 5 b. All revenues, collections, claims, rights to payments, payments,
6 money, or proceeds arising from the rights and interests specified in
7 the financing order, regardless of whether such revenues, collections,
8 claims, rights to payment, payments, money, or proceeds are imposed,
9 billed, received, collected, or maintained together with or commingled
10 with other revenues, collections, rights to payment, payments, money,
11 or proceeds.
- 12 (12) Storm. – Individually or collectively, a named tropical storm or hurricane, a
13 tornado, ice storm or snow storm, flood, an earthquake, or other significant
14 weather or natural disaster.
- 15 (13) Storm recovery activity. – An activity or activities by a public utility, its
16 affiliates, or its contractors, directly and specifically in connection with the
17 restoration of service and infrastructure associated with electric power outages
18 affecting customers of a public utility as the result of a storm or storms,
19 including activities related to mobilization, staging, and construction,
20 reconstruction, replacement, or repair of electric generation, transmission,
21 distribution, or general plant facilities.
- 22 (14) ~~Storm recovery bonds. – Bonds, debentures, notes, certificates of~~
23 ~~participation, certificates of beneficial interest, certificates of ownership, or~~
24 ~~other evidences of indebtedness or ownership that are issued by a public utility~~
25 ~~or an assignee pursuant to a financing order, the proceeds of which are used~~
26 ~~directly or indirectly to recover, finance, or refinance Commission-approved~~
27 ~~storm recovery costs and financing costs, and that are secured by or payable~~
28 ~~from storm recovery property. If certificates of participation or ownership are~~
29 ~~issued, references in this section to principal, interest, or premium shall be~~
30 ~~construed to refer to comparable amounts under those certificates.~~
- 31 (15) Storm recovery charge. – The amounts authorized by the Commission to
32 repay, finance, or refinance storm recovery costs and financing costs and that
33 are nonbypassable charges (i) imposed on and part of all retail customer bills,
34 (ii) collected by a public utility or its successors or assignees, or a collection
35 agent, in full, separate and apart from the public utility's base rates, and (iii)
36 paid by all existing or future retail customers receiving transmission or
37 distribution service, or both, from the public utility or its successors or
38 assignees under Commission-approved rate schedules or under special
39 contracts, even if a customer elects to purchase electricity from an alternative
40 electricity supplier following a fundamental change in regulation of public
41 utilities in this State.
- 42 (16) Storm recovery costs. – All of the following:
43 a. All incremental costs, including capital costs, ~~appropriate for recovery~~
44 ~~from existing and future retail customers receiving transmission or~~
45 ~~distribution service from the public utility~~ that a public utility has
46 incurred or expects to incur as a result of the applicable storm that are
47 caused by, associated with, or remain as a result of undertaking storm
48 recovery activity. Such costs include the public utility's cost of capital
49 from the date of the applicable storm to the date the ~~storm recovery~~
50 securitization bonds are issued calculated using the public utility's
51 weighted average cost of capital as defined in its most recent base rate

- 1 case proceeding before the Commission net of applicable income tax
 2 savings related to the interest component.
- 3 b. Storm recovery costs shall be net of applicable insurance proceeds, tax
 4 benefits and any other amounts intended to reimburse the public utility
 5 for storm recovery activities such as government grants, or aid of any
 6 kind and where determined appropriate by the Commission, and may
 7 include adjustments for capital replacement and operating costs
 8 previously considered in determining normal amounts in the public
 9 utility's most recent general rate proceeding. Storm recovery costs
 10 includes the cost to replenish and fund any storm reserves and costs of
 11 repurchasing equity or retiring any existing indebtedness relating to
 12 storm recovery activities.
- 13 c. With respect to storm recovery costs that the public utility expects to
 14 incur, any difference between costs expected to be incurred and actual,
 15 reasonable and prudent costs incurred, ~~or any other ratemaking~~
 16 ~~adjustments appropriate to fairly and reasonably assign or allocate~~
 17 ~~storm cost recovery to customers over time~~, shall be addressed in a
 18 future general rate proceeding, as may be facilitated by other orders of
 19 the Commission issued at the time or prior to such proceeding;
 20 provided, however, that the Commission's adoption of a financing
 21 order and approval of the issuance of storm recovery securitization
 22 bonds may not be revoked or otherwise modified.
- 23 d. Notwithstanding any other provision herein, storm recovery costs
 24 deemed reasonable and prudent by the Commission, including any
 25 storm reserve amounts, shall be fully recoverable in a financing order
 26 for securitization bonds and shall not be removed, reduced, or
 27 disallowed on the basis of storm cost-related treatment in any prior
 28 regulatory orders or by application of the quantifiable benefits
 29 comparison required herein.
- 30 (17) ~~Storm recovery property. — All of the following:~~
- 31 a. ~~All rights and interests of a public utility or successor or assignee of~~
 32 ~~the public utility under a financing order, including the right to impose,~~
 33 ~~bill, charge, collect, and receive storm recovery charges authorized~~
 34 ~~under the financing order and to obtain periodic adjustments to such~~
 35 ~~charges as provided in the financing order.~~
- 36 b. ~~All revenues, collections, claims, rights to payments, payments,~~
 37 ~~money, or proceeds arising from the rights and interests specified in~~
 38 ~~the financing order, regardless of whether such revenues, collections,~~
 39 ~~claims, rights to payment, payments, money, or proceeds are imposed,~~
 40 ~~billed, received, collected, or maintained together with or commingled~~
 41 ~~with other revenues, collections, rights to payment, payments, money,~~
 42 ~~or proceeds.~~
- 43 (18) Subcritical coal-fired generating facility. – A plant that utilizes pulverized coal
 44 combustion technology in which the steam pressure within the boiler is below
 45 3,200 pounds per square inch and the temperature is below 1,025 degrees
 46 Fahrenheit (550 degrees Celsius) and has a conversion of the energy in the
 47 coal to electricity of no greater than thirty-seven percent (37%).
- 48 (19) Traditional method of recovery. – The standard method by which a public
 49 utility generally finances and recovers costs incurred for storm recovery
 50 activities or the remaining net book value of a retired generation facility
 51 through base rates, absent securitization. The method to calculate the

1 traditional method of recovery shall be limited to the following without
2 additional modification or reductions:

- 3 a. The recovery of costs, including both capital and O&M costs in
4 customer rates over a time period of not less than five years; and
5 b. The application of carrying costs at the public utility's most recently
6 approved weighted average cost of capital from the date the costs,
7 including both capital and O&M costs, are incurred until fully
8 recovered.

9 (a1) References to the terms "storm recovery bonds," "storm recovery charges," and
10 "storm recovery property" in any financing order issued by the Commission prior to the date this
11 act becomes effective shall mean "securitization bonds," "securitization charges," or
12 "securitization property," as defined in subsection (a) of this section.

13 (b) Financing Orders. –

14 (1) A public utility may petition the Commission for a financing order. ~~order to~~
15 finance securitization costs. The petition shall include all of the following: ~~the~~
16 following, as applicable:

- 17 a. A description of the ~~storm recovery~~ securitization activities that the
18 public utility has undertaken or proposes to undertake and the reasons
19 for undertaking the activities, with clear identification of those relating
20 to ~~storm recovery~~ activities, or coal plant retirement activities, or both,
21 or if the public utility is subject to a settlement agreement as
22 contemplated by subdivision (2) of this subsection, a description of the
23 settlement agreement.
24 b. The ~~storm recovery~~ securitization costs and estimate of the costs of
25 any ~~storm recovery~~ securitization activities that are being undertaken
26 but are not completed.
27 c. The level of the storm recovery ~~reserve~~ reserve, if any, that the public
28 utility proposes to establish or replenish and has determined would be
29 appropriate to recover through ~~storm recovery~~ securitization bonds
30 and is seeking to so recover and such level that the public utility is
31 funding or will seek to fund through other means, together with a
32 description of the factors and calculations used in determining the
33 amounts and methods of recovery.
34 d. An indicator of whether the public utility proposes to finance all or a
35 portion of the ~~storm recovery~~ securitization costs using ~~storm recovery~~ securitization
36 bonds. If the public utility proposes to finance a portion
37 of the costs, the public utility must identify the specific portion in the
38 petition. By electing not to finance a portion of such storm recovery
39 costs using ~~storm recovery~~ securitization bonds, a public utility shall
40 not be deemed to waive its right to recover such costs pursuant to a
41 separate proceeding with the Commission.
42 e. An estimate of the financing costs related to the ~~storm recovery~~ securitization
43 bonds.
44 f. An estimate of the ~~storm recovery~~ securitization charges necessary to
45 recover the ~~storm recovery~~ securitization costs, including the storm
46 recovery reserve ~~amount~~ amount, if any, determined appropriate by
47 the Commission, and financing costs and the period for recovery of
48 such costs.
49 g. A comparison between the net present value of the costs to customers
50 that are estimated to result from the issuance of ~~storm recovery~~ securitization
51 bonds and the costs that would result from the

1 application of the traditional method of financing and recovering
2 ~~storm recovery~~ applicable securitization costs from customers. The
3 comparison should demonstrate that the issuance of ~~storm recovery~~
4 securitization bonds and the imposition of ~~storm recovery~~
5 securitization charges are expected to provide quantifiable benefits to
6 ~~customers~~ customers compared to the traditional method of recovery.

7 h. Direct testimony and exhibits supporting the petition.

8 (2) If a public utility is subject to a settlement agreement that governs the type
9 and amount of principal costs that could be included in ~~storm recovery~~
10 securitization costs and the public utility proposes to finance all or a portion
11 of the principal costs using ~~storm recovery~~ securitization bonds, then the
12 public utility must file a petition with the Commission for review and approval
13 of those principal costs no later than 90 days before filing a petition for a
14 financing order pursuant to this section.

15 (3) Petition and order. –

16 a. Proceedings on a petition submitted pursuant to this subdivision begin
17 with the petition by a public utility, filed subject to the time frame
18 specified in subdivision (2) of this subsection, if applicable, and shall
19 be disposed of in accordance with the requirements of this Chapter and
20 the rules of the Commission, except as follows:

21 1. Within 14 days after the date the petition is filed, the
22 Commission shall establish a procedural schedule that permits
23 a Commission decision no later than 135 days after the date the
24 petition is filed.

25 2. No later than 135 days after the date the petition is filed, the
26 Commission shall issue a financing order or an order rejecting
27 the petition. A party to the Commission proceeding may
28 petition the Commission for reconsideration of the financing
29 order within five days after the date of its issuance.

30 b. A financing order issued by the Commission to a public utility shall
31 include all of the following ~~elements~~ elements, as applicable:

32 1. Except for changes made pursuant to the formula-based
33 mechanism authorized under this section, the amount of ~~storm~~
34 ~~recovery~~ securitization costs, including the level of storm
35 recovery reserves, if any, to be financed using ~~storm recovery~~
36 securitization bonds. The Commission shall describe and
37 estimate the amount of financing costs that may be recovered
38 through ~~storm recovery~~ securitization charges and specify the
39 period over which ~~storm recovery~~ securitization costs and
40 financing costs may be recovered.

41 2. A finding that the proposed issuance of ~~storm recovery~~
42 securitization bonds and the imposition and collection of a
43 ~~storm recovery~~ securitization charge are expected to provide
44 quantifiable benefits to customers as compared to the costs that
45 would have been incurred absent the issuance of ~~storm~~
46 ~~recovery~~ securitization bonds through the traditional
47 method of recovery.

48 3. A finding that the structuring and pricing of the ~~storm recovery~~
49 securitization bonds are reasonably expected to result in the
50 lowest ~~storm recovery~~ securitization charges consistent with

- 1 market conditions at the time the ~~storm recovery securitization~~
2 bonds are priced and the terms set forth in such financing order.
- 3 4. A requirement that, for so long as the ~~storm recovery~~
4 ~~securitization~~ bonds are outstanding and until all financing
5 costs have been paid in full, the imposition and collection of
6 ~~storm recovery securitization~~ charges authorized under a
7 financing order shall be nonbypassable and paid by all existing
8 and future retail customers receiving transmission or
9 distribution service, or both, from the public utility or its
10 successors or assignees under Commission-approved rate
11 schedules or under special contracts, even if a customer elects
12 to purchase electricity from an alternative electric supplier
13 following a fundamental change in regulation of public utilities
14 in this State.
- 15 5. A determination of what portion, if any, of the storm recovery
16 reserves must be held in a funded reserve and any limitations
17 on how the reserve may be held, accessed, or used.
- 18 6. A formula-based true-up mechanism for making, at least
19 annually, expeditious periodic adjustments in the ~~storm~~
20 ~~recovery securitization~~ charges that customers are required to
21 pay pursuant to the financing order and for making any
22 adjustments that are necessary to correct for any overcollection
23 or undercollection of the charges or to otherwise ensure the
24 timely payment of ~~storm recovery securitization~~ bonds and
25 financing costs and other required amounts and charges
26 payable in connection with the ~~storm recovery securitization~~
27 bonds.
- 28 7. The ~~storm recovery securitization~~ property that is, or shall be,
29 created in favor of a public utility or its successors or assignees
30 and that shall be used to pay or secure ~~storm recovery~~
31 ~~securitization~~ bonds and all financing costs.
- 32 8. The degree of flexibility to be afforded to the public utility in
33 establishing the terms and conditions of the ~~storm recovery~~
34 ~~securitization~~ bonds, including, but not limited to, repayment
35 schedules, expected interest rates, and other financing costs.
- 36 9. How ~~storm recovery securitization~~ charges will be allocated
37 among customer classes.
- 38 10. A requirement that, after the final terms of an issuance of ~~storm~~
39 ~~recovery securitization~~ bonds have been established and before
40 the issuance of ~~storm recovery securitization~~ bonds, the public
41 utility determines the resulting initial storm recovery charge in
42 accordance with the financing order and that such initial ~~storm~~
43 ~~recovery securitization~~ charge be final and effective upon the
44 issuance of such ~~storm recovery securitization~~ bonds without
45 further Commission action so long as the ~~storm recovery~~
46 ~~securitization~~ charge is consistent with the financing order.
- 47 11. A method of tracing funds collected as ~~storm recovery~~
48 ~~securitization~~ charges, or other proceeds of ~~storm recovery~~
49 ~~securitization~~ property, and determine that such method shall
50 be deemed the method of tracing such funds and determining
51 the identifiable cash proceeds of any ~~storm recovery~~

- 1 securitization property subject to a financing order under
2 applicable law.
- 3 12. Any other conditions not otherwise inconsistent with this
4 section that the Commission determines are appropriate.
- 5 c. A financing order issued to a public utility may provide that creation
6 of the public utility's ~~storm recovery~~ securitization property is
7 conditioned upon, and simultaneous with, the sale or other transfer of
8 the ~~storm recovery~~ securitization property to an assignee and the
9 pledge of the storm recovery property to secure ~~storm recovery~~
10 securitization bonds.
- 11 d. If the Commission issues a financing order, the public utility shall file
12 with the Commission at least annually a petition or a letter applying
13 the formula-based mechanism and, based on estimates of consumption
14 for each rate class and other mathematical factors, requesting
15 administrative approval to make the applicable adjustments. The
16 review of the filing shall be limited to determining whether there are
17 any mathematical or clerical errors in the application of the
18 formula-based mechanism relating to the appropriate amount of any
19 overcollection or undercollection of ~~storm recovery~~ securitization
20 charges and the amount of an adjustment. The adjustments shall ensure
21 the recovery of revenues sufficient to provide for the payment of
22 principal, interest, acquisition, defeasance, financing costs, or
23 redemption premium and other fees, costs, and charges in respect of
24 ~~storm recovery~~ securitization bonds approved under the financing
25 order. Within 30 days after receiving a public utility's request pursuant
26 to this paragraph, the Commission shall either approve the request or
27 inform the public utility of any mathematical or clerical errors in its
28 calculation. If the Commission informs the utility of mathematical or
29 clerical errors in its calculation, the utility may correct its error and
30 refile its request. The time frames previously described in this
31 paragraph shall apply to a refiled request.
- 32 e. Subsequent to the transfer of ~~storm recovery~~ securitization property to
33 an assignee or the issuance of ~~storm recovery~~ securitization bonds
34 authorized thereby, whichever is earlier, a financing order is
35 irrevocable and, except for changes made pursuant to the
36 formula-based mechanism authorized in this section, the Commission
37 may not amend, modify, or terminate the financing order by any
38 subsequent action or reduce, impair, postpone, terminate, or otherwise
39 adjust ~~storm recovery~~ securitization charges approved in the financing
40 order. After the issuance of a financing order, the public utility retains
41 sole discretion regarding whether to assign, sell, or otherwise transfer
42 ~~storm recovery~~ securitization property or to cause ~~storm recovery~~
43 securitization bonds to be issued, including the right to defer or
44 postpone such assignment, sale, transfer, or issuance.
- 45 (4) At the request of a public utility, the Commission may commence a
46 proceeding and issue a subsequent financing order that provides for
47 refinancing, retiring, or refunding ~~storm recovery~~ securitization bonds issued
48 pursuant to the original financing order if the Commission finds that the
49 subsequent financing order satisfies all of the criteria specified in this section
50 for a financing order. Effective upon retirement of the refunded ~~storm~~
51 ~~recovery~~ securitization bonds and the issuance of new ~~storm recovery~~

- 1 securitization bonds, the Commission shall adjust the related ~~storm recovery~~
2 securitization charges accordingly.
- 3 (5) Within 60 days after the Commission issues a financing order or a decision
4 denying a request for reconsideration or, if the request for reconsideration is
5 granted, within 30 days after the Commission issues its decision on
6 reconsideration, an adversely affected party may petition for judicial review
7 in the Supreme Court of North Carolina. Review on appeal shall be based
8 solely on the record before the Commission and briefs to the court and is
9 limited to determining whether the financing order, or the order on
10 reconsideration, conforms to the State Constitution and State and federal law
11 and is within the authority of the Commission under this section.
- 12 (6) Duration of financing order. –
- 13 a. A financing order remains in effect and ~~storm recovery~~ securitization
14 property under the financing order continues to exist until ~~storm~~
15 ~~recovery~~ securitization bonds issued pursuant to the financing order
16 have been paid in full or defeased and, in each case, all
17 Commission-approved financing costs of such ~~storm recovery~~
18 securitization bonds have been recovered in full.
- 19 b. A financing order issued to a public utility remains in effect and
20 unabated notwithstanding the reorganization, bankruptcy or other
21 insolvency proceedings, merger, or sale of the public utility or its
22 successors or assignees.
- 23 (c) Exceptions to Commission Jurisdiction. –
- 24 (1) The Commission may not, in exercising its powers and carrying out its duties
25 regarding any matter within its authority pursuant to this Chapter, consider the
26 ~~storm recovery~~ securitization bonds issued pursuant to a financing order to be
27 the debt of the public utility other than for federal income tax purposes,
28 consider the ~~storm recovery~~ securitization charges paid under the financing
29 order to be the revenue of the public utility for any purpose, or consider the
30 ~~storm recovery~~ securitization costs or financing costs specified in the
31 financing order to be the costs of the public utility, nor may the Commission
32 determine any action taken by a public utility which is consistent with the
33 financing order to be unjust or unreasonable.
- 34 (2) The Commission may not order or otherwise directly or indirectly require a
35 public utility to use ~~storm recovery~~ securitization bonds to finance any project,
36 addition, plant, facility, extension, capital improvement, early retirement,
37 equipment, or any other expenditure. After the issuance of a financing order,
38 the public utility retains sole discretion regarding whether to cause the ~~storm~~
39 ~~recovery~~ securitization bonds to be issued, including the right to defer or
40 postpone such sale, assignment, transfer, or issuance. Nothing shall prevent
41 the public utility from abandoning the issuance of ~~storm recovery~~
42 securitization bonds under the financing order by filing with the Commission
43 a statement of abandonment and the reasons therefor. The Commission may
44 not refuse to allow a public utility to recover ~~storm recovery~~ securitization
45 costs in an otherwise permissible fashion, or refuse or condition authorization
46 or approval of the issuance and sale by a public utility of securities or the
47 assumption by the public utility of liabilities or obligations, solely because of
48 the potential availability of ~~storm recovery~~ securitization bond financing.
- 49 (d) Public Utility Duties. – The electric bills of a public utility that has obtained a
50 financing order and caused ~~storm recovery~~ securitization bonds to be issued must comply with
51 the provisions of this subsection; however, the failure of a public utility to comply with this

1 subsection does not invalidate, impair, or affect any financing order, ~~storm recovery~~
2 ~~securitization~~ property, ~~storm recovery securitization~~ charge, or ~~storm recovery securitization~~
3 bonds. The public utility must do the following:

- 4 (1) Explicitly reflect ~~that a portion of the charges on such bill represents the~~
5 ~~portions representing the storm recovery charges~~ charge or the portions
6 ~~representing the coal plant retirement charge~~ approved in a financing order
7 issued to the public utility and, if the ~~storm recovery securitization~~ property
8 has been transferred to an assignee, must include a statement to the effect that
9 the assignee is the owner of the rights to ~~storm recovery the applicable~~
10 ~~securitization~~ charges and that the public utility or other entity, if applicable,
11 is acting as a collection agent or servicer for the assignee. The tariff applicable
12 to customers must indicate the storm recovery ~~charge~~ charge, or the coal plant
13 ~~retirement charge, or both,~~ and the ownership of the ~~charge~~ charges.
- 14 (2) Include the storm recovery charge and the coal plant retirement charge as
15 separate line items on each customer's bill as a separate line item and include
16 both the rate and the amount of the charge on each bill, consolidated by the
17 type of charge with supporting detail included on each bill, in a periodic bill
18 attachment or by way of a reference to a tariff or explanation of the bill
19 prepared by the public utility as approved by the Commission, provided each
20 charge is not commingled with charges of a different type.

21 (e) ~~Storm Recovery Securitization~~ Property. –

- 22 (1) Provisions applicable to ~~storm recovery securitization~~ property. –
- 23 a. All ~~storm recovery securitization~~ property that is specified in a
24 financing order constitutes an existing, present intangible property
25 right or interest therein, notwithstanding that the imposition and
26 collection of ~~storm recovery securitization~~ charges depends on the
27 public utility, to which the financing order is issued, performing its
28 servicing functions relating to the collection of ~~storm recovery~~
29 ~~securitization~~ charges and on future electricity consumption. The
30 property exists (i) regardless of whether or not the revenues or
31 proceeds arising from the property have been billed, have accrued, or
32 have been collected and (ii) notwithstanding the fact that the value or
33 amount of the property is dependent on the future provision of service
34 to customers by the public utility or its successors or assignees and the
35 future consumption of electricity by customers.
- 36 b. ~~Storm Recovery Securitization~~ property specified in a financing order
37 exists until ~~storm recovery securitization~~ bonds issued pursuant to the
38 financing order are paid in full and all financing costs and other costs
39 of such ~~storm recovery securitization~~ bonds have been recovered in
40 full.
- 41 c. All or any portion of ~~storm recovery securitization~~ property specified
42 in a financing order issued to a public utility may be transferred, sold,
43 conveyed, or assigned to a successor or assignee that is wholly owned,
44 directly or indirectly, by the public utility and created for the limited
45 purpose of acquiring, owning, or administering ~~storm recovery~~
46 ~~securitization~~ property or issuing ~~storm recovery securitization~~ bonds
47 under the financing order. All or any portion of ~~storm recovery~~
48 ~~securitization~~ property may be pledged to secure ~~storm recovery~~
49 ~~securitization~~ bonds issued pursuant to the financing order, amounts
50 payable to financing parties and to counterparties under any ancillary
51 agreements, and other financing costs. Any transfer, sale, conveyance,

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

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

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

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

(i) ~~Storm-Recovery~~ Securitization Bonds Not Public Debt. – Neither the State nor its political subdivisions are liable on any ~~storm-recovery securitization~~ 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 securitization~~ 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 securitization~~ bonds, other than in their capacity as consumers of electricity. All ~~storm-recovery securitization~~ 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 securitization~~ 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 (1) The State and its agencies, including the Commission, pledge and agree with
2 bondholders, the owners of the ~~storm-recovery~~-securitization property, and
3 other financing parties that the State and its agencies will not take any action
4 listed in this subdivision. This paragraph does not preclude limitation or
5 alteration if full compensation is made by law for the full protection of the
6 ~~storm-recovery~~-securitization charges collected pursuant to a financing order
7 and of the bondholders and any assignee or financing party entering into a
8 contract with the public utility. The prohibited actions are as follows:

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

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

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

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

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

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

46 **SECTION 6.** If any provision of this act or the application thereof to any person or
47 circumstances is held invalid, such invalidity shall not affect other provisions or applications of
48 this section that can be given effect without the invalid provision or application and, to this end,
49 the provisions of this section are declared to be severable.

50 **SECTION 7.** This act is effective when it becomes law.