SENATE BILL 559: Storm Securitization.

2019-2020 General Assembly

Committee:		**Date:**	December 11, 2019
Introduced by:		**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	S.L. 2019-244		

OVERVIEW: S.L. 2019-244 permits electric public utility companies to use bond financing for certain storm recovery costs. This financing mechanism would not create any indebtedness for the State or any of its political subdivisions.

This act became effective November 6, 2019.

STORM SECURITIZATION

BACKGROUND:

In 2018, Duke Energy incurred approximately $571 million of storm expenditures from Hurricanes Florence and Michael and Winter Storm Diego within a four-month period. To finance these storm-recovery expenditures, the utility company would typically incur debt and recover the costs over time through the rate-making process.

BILL ANALYSIS:

S.L. 2019-244 creates a new financing tool that may be used to recover the storm restoration costs: *utility cost recovery charge securitization*. Under this financing tool, an electric public utility company could issue storm recovery bonds with lower financing costs that are secured through a dedicated storm recovery charge that is separate and distinct from the utility's base rate. Securitization typically benefits utilities and their current customers. Utilities benefit because they receive an immediate source of cash from the bond proceeds and customers benefit because the cost of securitized debt is lower than the utility's cost of debt, which reduces the impact on their monthly bills.

More than 20 states have used this model to finance storm recovery costs, stranded costs, environmental restoration, utility restructuring, deferred fuel costs, and renewable energy projects. This legislation only creates a financing tool for storm recovery costs of a public utility that sells electric power to retail electric customers in this State. Duke Energy filed requests for deferrals for the 2018 storm costs for the Utilities Commission (Commission) consideration during the next rate case. If this legislation is enacted, storm recovery bonds could be used to finance the storm recovery costs.

There are three major components of utility cost recovery charge securitization:

- State legislation.
- A financing order.
- A true-up mechanism.

State Legislation

The legislation creates the storm recovery charge and provides that the revenues generated by this charge, known as storm recovery property, is a property right that can be transferred and pledged as security for the storm recovery bonds. Since this property right may not be governed by the Uniform Commercial Code (UCC), the legislation establishes the procedures for creating, perfecting, and enforcing the security interest in storm recovery property.

This property right is created through the political and regulatory process; to ensure the credibility of the storm recovery bonds, the legislation includes a State non-impairment obligation. If the storm recovery bonds are issued, the State and its agencies, including the Commission, agrees not to take any action that would limit or alter the storm recovery charges (which is the property right securing the bonds) until the storm recovery bonds have been paid and performed in full.

The legislation protects bondholders in several additional ways:

- It provides that the sale of an interest in storm recovery property is a true sale and that ownership passes to the party characterized as the purchaser. The purchaser may be a limited purpose subsidiary of the public utility created for the sole purpose of issuing the storm recovery bonds. This provision protects bondholders from the interruption or impairment of cash flows in the event of a utility bankruptcy.
- It provides that the interest in the storm recovery property is not affected or impaired by the commingling of storm recovery charges with other amounts.
- It provides that the storm recovery charge must be imposed on all customer bills collected by the public utility or its successors or assignees. The charge must be stated as a separate, itemized charge on customer bills that is separate and apart from the public utility's base rate.
- It provides that the storm recovery charge must be paid by all existing or future retail customers receiving transmission or distribution service form the public utility, even if a customer elects to purchase electricity from an alternative electricity supplier. (nonbypassablility)

Financing Order

The legislation establishes the process by which a public utility that sells electric power to retail electric customers in the State may petition the Commission for a financing order. The financing order sets forth specific transaction terms and related provisions. Before granting a financing order, the Commission must find that the issuance of the storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of storm recovery bonds.

The petition must include a description of the storm recovery activities, an estimate of the storm recovery costs, the proposed level of storm recovery reserve, an indicator of the amount of storm recovery costs to be financed using storm recovery bonds, an estimate of the financing costs related to the bonds, an estimate of the storm recovery charges necessary to recover storm recovery costs, and a comparison between the net present value of the cost to customers estimated to result from the issuance of storm recovery bonds and the cost that would result from the application of the traditional method of financing and recovering storm recovery costs; this comparison must demonstrate that issuance of storm recovery bonds and the imposition of storm recovery charges are expected to provide quantifiable benefits to customers.

The financing order must include the amount of storm recovery costs to be financed using storm recovery bonds, the imposition and collection of storm recovery charges that are nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service from the public utility or its successors or assignees, the maturity period of the bonds, a formula-based true-up mechanism, the creation of storm recovery property that will be used to secure the bonds, and a method of tracing funds collected as storm recovery charges. The financing order is irrevocable.

True-Up Mechanism

The legislation specifies that the financing order must include a requirement that the public utility file with the Commission at least annually a petition or letter applying the formula-based mechanism, and request adjustments in the storm recovery charge, if necessary, to a sufficient level to ensure the bond payment obligations. The Commission does not have the discretion to disapprove or alter the true-up calculation, except to correct mathematical and clerical errors. The adjustment of the storm recovery charge through this mechanism is the most significant credit component of these transactions.

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