

Senate Engrossed House Bill

power; public utilities; UCC; securities

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

CHAPTER 207

HOUSE BILL 2679

AN ACT

AMENDING TITLE 30, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; AMENDING
TITLE 40, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 3; AMENDING SECTION
47-9109, ARIZONA REVISED STATUTES; RELATING TO PUBLIC UTILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 30, Arizona Revised Statutes, is amended by adding
3 chapter 7, to read:

4 CHAPTER 7

5 UTILITY SECURITIZATION

6 ARTICLE 1. GENERAL PROVISIONS

7 30-901. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ANCILLARY AGREEMENT" MEANS ANY OF THE FOLLOWING:

10 (a) A BOND.

11 (b) AN INSURANCE POLICY.

12 (c) A LETTER OF CREDIT.

13 (d) A RESERVE ACCOUNT.

14 (e) AN INTEREST RATE LOCK OR SWAP ARRANGEMENT.

15 (f) A HEDGING ARRANGEMENT.

16 (g) A LIQUIDITY OR CREDIT SUPPORT ARRANGEMENT.

17 (h) ANY OTHER SIMILAR AGREEMENT, INSTRUMENT OR ARRANGEMENT THAT IS
18 ENTERED INTO IN CONNECTION WITH THE ISSUANCE OF TRANSITION BONDS AND THAT
19 IS DESIGNED TO PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE
20 TRANSITION BONDS OR TO REDUCE OR MITIGATE THE RISK OF AN INCREASE IN ANY
21 FINANCING COST.

22 2. "CUSTOMER" MEANS A PERSON OR ENTITY WITHIN THIS STATE TO WHOM
23 ONE OF THE FOLLOWING APPLIES:

24 (a) REGARDLESS OF THE IDENTITY OF THE PERSON'S OR ENTITY'S ELECTRIC
25 GENERATION SUPPLIER AND WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY
26 ALSO RECEIVES SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR
27 ENTITY RECEIVES RETAIL ELECTRIC UTILITY SERVICE, WHETHER DIRECTLY OR
28 INDIRECTLY, WHETHER BUNDLED OR UNBUNDLED AND WHETHER SUPPLY OR DELIVERY,
29 OR BOTH, FROM ANY OF THE FOLLOWING:

30 (i) A PUBLIC POWER ENTITY.

31 (ii) A SUCCESSOR TO A PUBLIC POWER ENTITY.

32 (iii) ANY OTHER PERSON OR ENTITY, PUBLIC SERVICE CORPORATION,
33 COOPERATIVE OR MUNICIPAL ENTITY THAT ASSUMES THE RESPONSIBILITY TO PROVIDE
34 ELECTRIC UTILITY SERVICE IN A PUBLIC POWER ENTITY'S SERVICE TERRITORY AS
35 THE SERVICE TERRITORY EXISTS ON THE DATE THE GOVERNING BODY OF A PUBLIC
36 POWER ENTITY ADOPTS A FINANCING RESOLUTION.

37 (b) REGARDLESS OF THE IDENTITY OF THE PERSON'S OR ENTITY'S ELECTRIC
38 GENERATION SUPPLIER AND WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY
39 ALSO RECEIVES SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR
40 ENTITY MAINTAINS AN INTERCONNECTION WITH THE ELECTRIC DISTRIBUTION
41 FACILITIES OF A PUBLIC POWER ENTITY THAT ALLOWS THAT PERSON OR ENTITY TO
42 RECEIVE RETAIL ELECTRIC UTILITY SERVICE, WHETHER BUNDLED OR UNBUNDLED AND
43 WHETHER SUPPLY OR DELIVERY, OR BOTH, FROM ANY OF THE FOLLOWING:

44 (i) A PUBLIC POWER ENTITY.

1 (ii) A SUCCESSOR TO A PUBLIC POWER ENTITY.

2 (iii) ANY OTHER PERSON OR ENTITY, PUBLIC SERVICE CORPORATION,
3 COOPERATIVE OR MUNICIPAL ENTITY THAT ASSUMES THE RESPONSIBILITY TO PROVIDE
4 ELECTRIC UTILITY SERVICE IN A PUBLIC POWER ENTITY'S SERVICE TERRITORY AS
5 THE SERVICE TERRITORY EXISTS ON THE DATE THE GOVERNING BODY OF A PUBLIC
6 POWER ENTITY ADOPTS A FINANCING RESOLUTION.

7 (c) WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY ALSO RECEIVES
8 SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR ENTITY IS A
9 COOPERATIVE THAT PROVIDES RETAIL ELECTRIC SERVICE TO MEMBERS AND THAT
10 RECEIVES ELECTRICITY, WHETHER AT RETAIL OR A WHOLESALE PRICE, FROM A
11 PUBLIC POWER ENTITY THAT PROVIDES WHOLESALE ELECTRIC SUPPLY AND
12 TRANSMISSION SERVICES.

13 3. "FINANCING CHARGES" MEAN NONBYPASSABLE CHARGES THAT ARE PAID OR
14 PAYABLE BY ALL CUSTOMERS TO A QUALIFIED SPECIAL PURPOSE ENTITY TO RECOVER
15 ONGOING FINANCING COSTS IN ACCORDANCE WITH THIS CHAPTER. FINANCING
16 CHARGES CAN BE ADJUSTED FROM TIME TO TIME IN ACCORDANCE WITH THE TRUE-UP
17 MECHANISM.

18 4. "FINANCING COST":

19 (a) MEANS ALL COSTS THAT ARE INCURRED BY A QUALIFIED SPECIAL
20 PURPOSE ENTITY TO ISSUE, RATE, MARKET, PLACE, AUTHORIZE, SUPPORT, REPAY,
21 REFINANCE, SERVICE, ADMINISTER OR REFUND TRANSITION BONDS, WHETHER
22 INCURRED AT, BEFORE OR AFTER THE TRANSITION BONDS ARE ISSUED OR BEFORE OR
23 AFTER THE MATURITY DATE OF THE TRANSITION BONDS.

24 (b) INCLUDES ANY OF THE FOLLOWING:

25 (i) THE PRINCIPAL AND INTEREST AND ANY ACQUISITION, DEFEASANCE,
26 REDEMPTION OR OTHER PREMIUMS THAT ARE PAYABLE ON TRANSITION BONDS.

27 (ii) THE COSTS, FEES AND EXPENSES RELATED TO ISSUING, RATING,
28 MARKETING, PLACING, AUTHORIZING, SUPPORTING, REPAYING, REFINANCING,
29 SERVICING, ADMINISTERING OR REFUNDING TRANSITION BONDS, INCLUDING ANY
30 COSTS THAT ARE INCURRED FOR IMPLEMENTING THE TRUE-UP MECHANISM.

31 (iii) THE COSTS, FEES AND EXPENSES OF TRUSTEES OR SIMILAR
32 FIDUCIARIES, ATTORNEYS, ACCOUNTANTS, SERVICERS, RATING AGENCIES,
33 DEPOSITORY AND OTHER AGENTS OR OTHER PROFESSIONALS.

34 (iv) THE COSTS, FEES AND EXPENSES THAT ARE ASSOCIATED WITH HIRING
35 EXPERT CONSULTANTS THAT ARE NECESSARY TO AID THE GOVERNING BODY IN
36 REVIEWING AND APPROVING OF A SECURITIZATION PROPOSAL IN ACCORDANCE WITH
37 THIS CHAPTER.

38 (v) THE COSTS THAT ARE INCURRED UNDER AN ANCILLARY AGREEMENT AND
39 ANY AMOUNT THAT IS REQUIRED TO REFUND OR REPLENISH A RESERVE ACCOUNT OR
40 OTHER ACCOUNT ESTABLISHED UNDER AN ANCILLARY AGREEMENT OR OTHER DOCUMENT
41 RELATING TO TRANSITION BONDS.

42 (vi) THE COSTS OF FORMING, OPERATING, ADMINISTERING AND DISSOLVING
43 A QUALIFIED SPECIAL PURPOSE ENTITY.

1 (vii) THE COSTS, FEES AND EXPENSES THAT ARE INCURRED TO OBTAIN ANY
2 CONSENT, RELEASE, WAIVER OR APPROVAL FROM ANY HOLDER OF AN EXISTING
3 OBLIGATION OF A PUBLIC POWER ENTITY THAT IS NECESSARY TO PERMIT THE
4 ISSUANCE OF TRANSITION BONDS OR THE RETIREMENT, ABANDONMENT OR REDUCTION
5 IN THE UNDEPRECIATED BOOK VALUE OF A TRANSITION ASSET IN CONNECTION WITH A
6 TRANSACTION UNDER THIS CHAPTER.

7 (viii) THE COSTS THAT ARE INCURRED TO PROTECT THE STATUS OF
8 TRANSITION PROPERTY, THE RIGHT TO IMPOSE AND COLLECT FINANCING CHARGES OR
9 THE RIGHT TO RECEIVE FINANCING REVENUES, INCLUDING COSTS RELATED TO ANY
10 JUDICIAL OR OTHER PROCEEDINGS THAT ARE NECESSARY TO PROTECT THE TRANSITION
11 PROPERTY OR COLLECT FINANCING REVENUES.

12 (ix) FEDERAL, STATE AND OTHER TAXES THAT ARE IMPOSED ON THE PUBLIC
13 POWER ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY WITH RESPECT TO THE
14 FINANCING CHARGES OR FINANCING REVENUES WITHOUT DUPLICATION AND ANY OTHER
15 FEES, CHARGES OR ASSESSMENTS THAT ARE IMPOSED ON TRANSITION BONDS.

16 5. "FINANCING PARTY" MEANS A HOLDER OF TRANSITION BONDS AND ANY
17 TRUSTEE, COLLATERAL AGENT OR OTHER PERSON ACTING FOR THE BENEFIT OF THE
18 HOLDER.

19 6. "FINANCING RESOLUTION" MEANS A RESOLUTION THAT IS DESCRIBED IN
20 SECTION 30-903 AND THAT IS ADOPTED BY THE GOVERNING BODY OF A PUBLIC POWER
21 ENTITY THAT AUTHORIZES A SECURITIZATION TRANSACTION.

22 7. "FINANCING REVENUES" MEANS ANY MONEY AND OTHER PROPERTY RECEIVED
23 OR TO BE RECEIVED, DIRECTLY OR INDIRECTLY, IN PAYMENT OF OR ON ACCOUNT OF
24 FINANCING CHARGES, INCLUDING ALL OF THE PROCEEDS OF THE INVESTMENT
25 THEREOF.

26 8. "NONBYPASSABLE" MEANS THAT THE PAYMENT OF THE FINANCING CHARGES
27 MAY NOT BE AVOIDED AND SHALL BE PAID BY A CUSTOMER IF, AT THE TIME
28 INVOICES OR BILLS ARE RENDERED, TRANSITION BONDS ARE OUTSTANDING OR THE
29 FINANCING COSTS HAVE NOT BEEN RECOVERED IN FULL. FINANCING CHARGES SHALL
30 BE PAID REGARDLESS OF WHETHER:

31 (a) THE CUSTOMER IS LIABLE TO A PUBLIC POWER ENTITY FOR ANY CHARGES
32 FOR ELECTRIC SERVICE.

33 (b) THE SYSTEM ASSETS SERVING THE CUSTOMER CONTINUE TO BE OWNED BY
34 THE APPLICABLE PUBLIC POWER ENTITY.

35 9. "ONGOING FINANCING COSTS":

36 (a) MEANS ALL FINANCING COSTS, INCLUDING THE PRINCIPAL AND INTEREST
37 THAT ARE PAYABLE ON THE TRANSITION BONDS.

38 (b) DOES NOT INCLUDE UPFRONT FINANCING COSTS THAT ARE PAID BY THE
39 QUALIFIED SPECIAL PURPOSE ENTITY DIRECTLY OR INDIRECTLY FROM THE PROCEEDS
40 OF THE ISSUANCE OF TRANSITION BONDS.

41 10. "PUBLIC POWER ENTITY" MEANS ANY MUNICIPAL CORPORATION OR
42 POLITICAL SUBDIVISION THAT OWNS AND OPERATES FACILITIES FOR THE
43 GENERATION, TRANSMISSION OR DISTRIBUTION OF ELECTRIC ENERGY FOR SALE TO
44 RETAIL CUSTOMERS IN THIS STATE.

1 11. "QUALIFIED SPECIAL PURPOSE ENTITY":

2 (a) MEANS A LEGAL ENTITY THAT IS ESTABLISHED BY AND WHOLLY OWNED,
3 DIRECTLY OR INDIRECTLY, BY A PUBLIC POWER ENTITY IN WHICH AN INTEREST IN
4 TRANSITION PROPERTY IS CREATED PURSUANT TO THIS CHAPTER AND WHICH ISSUES
5 TRANSITION BONDS THAT ARE SECURED BY TRANSITION PROPERTY.

6 (b) INCLUDES ANY SUCCESSOR TO OR AN ASSIGNEE, OTHER THAN AS
7 SECURITY, OF THE LEGAL ENTITY.

8 12. "SECURITIZATION PROPOSAL" MEANS A REPORT THAT IS PREPARED BY
9 THE PUBLIC POWER ENTITY PURSUANT TO SECTION 30-903.

10 13. "SERVICER":

11 (a) MEANS A PERSON OR ENTITY THAT IS AUTHORIZED AND REQUIRED BY A
12 CONTRACT, TARIFF OR OTHERWISE TO DO ALL OF THE FOLLOWING:

13 (i) CALCULATE, BILL OR COLLECT FINANCING CHARGES ON BEHALF OF A
14 QUALIFIED SPECIAL PURPOSE ENTITY.

15 (ii) PREPARE PERIODIC REPORTS ON THE BILLING OF FINANCING CHARGES
16 AND THE COLLECTION OF FINANCING REVENUES.

17 (iii) RENDER OTHER SERVICES RELATED TO FINANCING CHARGES AND THE
18 TRANSITION PROPERTY, INCLUDING ADMINISTERING THE TRUE-UP MECHANISM.

19 (b) INCLUDES:

20 (i) A PUBLIC POWER ENTITY.

21 (ii) A PUBLIC SERVICE CORPORATION OR A COOPERATIVE.

22 (iii) A THIRD-PARTY SERVICER THAT COLLECTS FINANCING CHARGES UNDER
23 A TRANSITION BILLING SERVICES TARIFF.

24 14. "SIGNIFICANT EVENT RECOVERY COSTS" MEANS COSTS, FEES AND
25 EXPENSES THAT ARE SIGNIFICANT, AS DETERMINED BY THE GOVERNING BODY, THAT
26 ARE INCURRED OR TO BE INCURRED THROUGH THE DATE OF ADOPTION OF A FINANCING
27 RESOLUTION AND THAT ARE ASSOCIATED WITH OR THAT ARISE FROM INCIDENTS OF
28 SEVERE OR EXTREME WEATHER, NATURAL DISASTERS, CIVIL DISTURBANCE, WILDFIRE,
29 CRIMINAL ACTS OR ACTS OF WAR OR TERRORISM THAT RESULT IN ANY OF THE PUBLIC
30 POWER ENTITY'S ASSETS, FACILITIES OR INFRASTRUCTURE THAT ARE IN OPERATION
31 PROVIDING SERVICE FOR CUSTOMERS BECOMING DESTROYED, DAMAGED OR OTHERWISE
32 RENDERED INOPERABLE, IN WHOLE OR IN PART.

33 15. "THIRD-PARTY SERVICER" MEANS A PERSON, OTHER THAN A PUBLIC
34 POWER ENTITY, THAT IS ENGAGED TO ACT AS A SERVICER FOR TRANSITION BONDS IN
35 THE EVENT A PUBLIC POWER ENTITY IS UNABLE TO ACT AS A SERVICER.

36 16. "TRANSITION ASSET" MEANS ANY ELECTRIC POWER GENERATION,
37 TRANSMISSION OR DISTRIBUTION FACILITY, INCLUDING OTHER PROPERTY OR
38 EQUIPMENT USED IN CONNECTION WITH SUCH GENERATION, TRANSMISSION OR
39 DISTRIBUTION OF THE PUBLIC POWER ENTITY THAT IS IDENTIFIED IN A
40 SECURITIZATION PROPOSAL AND FINANCING RESOLUTION, AND THAT EITHER:

41 (a) HAS BEEN RETIRED AND NO LONGER PROVIDES SERVICE, IN WHOLE OR IN
42 PART.

1 (b) AS OF THE DATE OF THE FINANCING RESOLUTION, IS PLANNED TO BE
2 RETIRED, SOLD, DISPOSED OF, ABANDONED OR OTHERWISE REMOVED FROM SERVICE BY
3 THE PUBLIC POWER ENTITY, IN WHOLE OR IN PART, WITHIN TEN YEARS AFTER THE
4 DATE OF THE FINANCING RESOLUTION.

5 (c) HAS OTHERWISE BEEN DESTROYED, DAMAGED OR RENDERED INOPERABLE,
6 IN WHOLE OR IN PART, BY FORCES OR ACTION OUTSIDE OF THE PUBLIC POWER
7 ENTITY'S REASONABLE CONTROL.

8 17. "TRANSITION ASSET RETIREMENT COSTS":

9 (a) MEANS THE TOTAL OR ANY PORTION OF ANY UNDEPRECIATED VALUE OR
10 UNRECOVERED BALANCE OF ANY TRANSITION ASSET THAT WILL BE PERMANENTLY
11 REDUCED WHEN TRANSITION BONDS ARE ISSUED AND A PUBLIC POWER ENTITY
12 RECEIVES THE TRANSFER OF FUNDS PURSUANT TO SECTION 30-905, SUBSECTION A.

13 (b) INCLUDES ANY COSTS, FEES AND EXPENSES THAT ARE INCURRED TO
14 RETIRE, ABANDON OR REDUCE THE UNDEPRECIATED BOOK VALUE OF THE TRANSITION
15 ASSET IN CONNECTION WITH A TRANSACTION THAT INCLUDES THE DECOMMISSION,
16 REMEDIATION OR RESTORATION COSTS ASSOCIATED WITH THE TRANSITION ASSET.

17 18. "TRANSITION BENEFIT TEST" MEANS THE ASSESSMENT DESCRIBED IN
18 SECTION 30-903, SUBSECTION E, PARAGRAPH 2.

19 19. "TRANSITION BILLING SERVICES TARIFF":

20 (a) MEANS A TARIFF, RATE OR ORDER OF A PUBLIC POWER ENTITY THAT
21 AUTHORIZES THE PUBLIC POWER ENTITY OR OTHER PERSON TO ACT AS A SERVICER.

22 (b) DOES NOT SPECIFY OR ALTER THE AMOUNT OF ANY FINANCING CHARGES
23 NOR GRANT THE SERVICER ANY RIGHT, TITLE OR INTEREST IN FINANCING REVENUES.

24 20. "TRANSITION BONDS" MEANS BONDS, NOTES OR OTHER EVIDENCES OF
25 INDEBTEDNESS THAT ARE ISSUED BY A QUALIFIED SPECIAL PURPOSE ENTITY AND
26 THAT ARE DESCRIBED IN A SECURITIZATION PROPOSAL AND FINANCING RESOLUTION,
27 THE PROCEEDS OF WHICH ARE USED, DIRECTLY OR INDIRECTLY, TO RECOVER,
28 FINANCE, REFINANCE OR REFUND TRANSITION COSTS AND UPFRONT FINANCING COSTS,
29 AND THAT ARE DIRECTLY OR INDIRECTLY PAYABLE FROM, OR SECURED BY,
30 TRANSITION PROPERTY, FINANCING CHARGES OR FINANCING REVENUES.

31 21. "TRANSITION COSTS" INCLUDES ANY OF THE FOLLOWING:

32 (a) TRANSITION ASSET RETIREMENT COSTS.

33 (b) SIGNIFICANT EVENT RECOVERY COSTS.

34 22. "TRANSITION PROPERTY":

35 (a) MEANS THE PROPERTY RIGHTS AND PROPERTY INTERESTS OF A QUALIFIED
36 SPECIAL PURPOSE ENTITY, ANY HOLDERS OF TRANSITION BONDS WHEN ISSUED OR ANY
37 TRANSFEREE OR ASSIGNEE THEREOF THAT ARE CREATED OR RECOGNIZED AS A RESULT
38 OF A TRANSACTION AUTHORIZED BY THIS CHAPTER.

39 (b) INCLUDES ANY OF THE FOLLOWING:

40 (i) ALL RIGHTS AND INTERESTS OF A QUALIFIED SPECIAL PURPOSE ENTITY
41 UNDER A FINANCING RESOLUTION.

42 (ii) THE RIGHT TO IMPOSE, CHARGE, COLLECT AND RECEIVE FINANCING
43 CHARGES, INCLUDING THE RIGHT TO CALCULATE, IMPOSE, CHARGE, COLLECT AND
44 RECEIVE FINANCING CHARGES AUTHORIZED UNDER THE FINANCING RESOLUTION AND TO

1 OBTAIN PERIODIC ADJUSTMENTS TO THE FINANCING CHARGES PURSUANT TO THE
2 TRUE-UP MECHANISM.

3 (iii) ALL RIGHT AND TITLE TO, AND ALL INTEREST IN, FINANCING
4 REVENUES, REGARDLESS OF WHETHER THE REVENUES ARE BILLED, RECEIVED,
5 COLLECTED OR MAINTAINED SEPARATELY FROM OR COMMINGLED WITH OTHER REVENUES
6 OR MONIES OF ANY TYPE AND REGARDLESS OF WHETHER SUCH REVENUES ARE BILLED
7 OR COLLECTED BY A SERVICER.

8 (iv) ALL RESERVES THAT ARE ESTABLISHED IN CONNECTION WITH THE
9 TRANSITION BONDS OR THE TRANSITION PROPERTY.

10 (v) ALL RIGHTS OF A QUALIFIED SPECIAL PURPOSE ENTITY UNDER ANY
11 ANCILLARY AGREEMENT.

12 (c) DOES NOT INCLUDE AN ASSET OF A PUBLIC POWER ENTITY.

13 23. "TRUE-UP MECHANISM" MEANS A FORMULA THAT IS DESCRIBED IN A
14 SECURITIZATION PROPOSAL AND ESTABLISHED BEFORE OR CONCURRENT WITH THE
15 ISSUANCE OF TRANSITION BONDS AND THAT ADJUSTS FINANCING CHARGES OVER TIME
16 TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES
17 SO THAT BOTH A QUALIFIED SPECIAL PURPOSE ENTITY TIMELY AND COMPLETELY
18 RECOVERS NOT MORE THAN ALL ONGOING FINANCING COSTS AND ANY IMPACTS TO THE
19 PUBLIC POWER ENTITY'S CUSTOMERS FROM ANY OVERCOLLECTION ARE ADDRESSED IN A
20 TIMELY AND COMPLETE MANNER.

21 24. "UNIT FINANCING CHARGE" MEANS THE SHARE OR PORTION OF THE
22 FINANCING CHARGES THAT ARE IMPOSED ON, PAID BY AND COLLECTED FROM A
23 PARTICULAR CUSTOMER OR FROM EVERY CUSTOMER IN A PARTICULAR GROUP OF
24 CUSTOMERS.

25 25. "UPFRONT FINANCING COSTS":

26 (a) MEANS THOSE FINANCING COSTS THAT ARE PAID, DIRECTLY OR
27 INDIRECTLY FROM THE PROCEEDS OF TRANSITION BONDS, BY THE QUALIFIED SPECIAL
28 PURPOSE ENTITY.

29 (b) INCLUDES ALL OR A PORTION OF THE COSTS OF DEVELOPING A
30 SECURITIZATION PROPOSAL AND DESIGNING, MARKETING, OBTAINING RATINGS FOR
31 AND ISSUING TRANSITION BONDS.

32 30-902. Statement of public policy

33 A. IT IS THE PUBLIC POLICY OF THIS STATE TO GAIN THE BENEFITS OF
34 SECURITIZATION BY ESTABLISHING IRREVOCABLE FINANCING CHARGES THAT ARE
35 PAYABLE TO A QUALIFIED SPECIAL PURPOSE ENTITY AND BY CREATING AND VESTING
36 IN THE QUALIFIED SPECIAL PURPOSE ENTITY A PRESENT AND ALIENABLE PROPERTY
37 INTEREST IN THE RESULTING FINANCING REVENUES. THOSE BENEFITS INCLUDE
38 REDUCING ALL OF THE FOLLOWING:

39 1. THE UNRECOVERED COST OF TRANSITION ASSETS THAT ARE SUBJECT TO
40 POTENTIAL RETIREMENT, ABANDONMENT, SALE, DISPOSITION OR TRANSITION OR THAT
41 HAVE BEEN DAMAGED OR DESTROYED, INCLUDING ASSOCIATED LIABILITIES.

42 2. THE COSTS ARISING FROM OR RELATED TO WEATHER, WILDFIRE OR OTHER
43 SIGNIFICANT EVENTS OR INCIDENTS THAT CAUSE DAMAGE OR DESTRUCTION OR THAT
44 OTHERWISE RENDER INOPERABLE, IN WHOLE OR IN PART, ANY OF THE PUBLIC POWER

1 ENTITY'S ASSETS, FACILITIES OR INFRASTRUCTURE THAT ARE IN OPERATION
2 PROVIDING SERVICE FOR CUSTOMERS.

3 B. THE USE OF LOW-COST SECURITIZED BORROWING BY A SEPARATE
4 QUALIFIED SPECIAL PURPOSE ENTITY IS INTENDED TO ENABLE PUBLIC POWER
5 ENTITIES TO ACHIEVE THE BENEFITS OF SECURITIZATION FOR CUSTOMERS BY
6 REINVESTING CAPITAL NOW COMMITTED TO PAYING THOSE COSTS RELATED TO THE
7 PRODUCTION AND DELIVERY OF ENERGY FROM NEW FACILITIES, RESOURCES OR OTHER
8 ASSETS.

9 30-903. Securitization transactions: public meeting: notice:
10 securitization proposal: financing resolution
11 adoption

12 A. A PUBLIC POWER ENTITY MAY INITIATE A SECURITIZATION TRANSACTION
13 BY PROVIDING PUBLIC NOTICE OF THE PUBLIC POWER ENTITY'S INTENT TO ADOPT A
14 FINANCING RESOLUTION. THE PUBLIC NOTICE SHALL IDENTIFY THE DATE, TIME AND
15 LOCATION OF THE PUBLIC MEETING OF THE GOVERNING BODY, WHICH SHALL OCCUR
16 NOT LESS THAN THIRTY DAYS AND NOT MORE THAN SIXTY DAYS AFTER THE NOTICE IS
17 PUBLISHED. AFTER THE PUBLIC NOTICE IS PUBLISHED, THE PUBLIC POWER ENTITY
18 SHALL MAKE THE SECURITIZATION PROPOSAL AVAILABLE AT THE PUBLIC POWER
19 ENTITY'S MAIN OFFICE AND ON ITS PUBLICLY ACCESSIBLE WEBSITE.

20 B. THE PUBLIC POWER ENTITY SHALL PROVIDE THE PUBLIC NOTICE
21 PRESCRIBED IN SUBSECTION A OF THIS SECTION BY COMPLETING ALL OF THE
22 FOLLOWING:

23 1. ISSUING ONE PUBLICATION IN ONE OR MORE NEWSPAPERS OF GENERAL
24 CIRCULATION WITHIN THE PUBLIC POWER ENTITY'S ELECTRIC SERVICE AREA.

25 2. SENDING NOTICE BY UNITED STATES MAIL TO THE PUBLIC POWER
26 ENTITY'S STANDARD ELECTRIC RATE SCHEDULE CUSTOMERS OF RECORD.

27 3. SENDING NOTICE TO THE GOVERNING BODY OF EACH CITY, TOWN OR
28 COUNTY WHERE A PUBLIC POWER ENTITY IS LOCATED IN WHOLE OR IN PART.

29 C. THE SECURITIZATION PROPOSAL SHALL:

30 1. IDENTIFY, AS APPLICABLE, ANY TRANSITION ASSETS, TRANSITION ASSET
31 RETIREMENT COSTS AND SIGNIFICANT EVENT RECOVERY COSTS. FOR THE PURPOSES
32 OF THIS PARAGRAPH, TRANSITION ASSETS MUST CURRENTLY BE OR HAVE PREVIOUSLY
33 BEEN IN OPERATION PROVIDING SERVICE FOR THE PUBLIC POWER ENTITY'S
34 CUSTOMERS AS OF THE EFFECTIVE DATE OF THIS SECTION, EXCEPT FOR TRANSITION
35 ASSETS THAT ARE PLACED INTO SERVICE AFTER THE EFFECTIVE DATE OF THIS
36 SECTION THAT BECOME DESTROYED, DAMAGED OR RENDERED INOPERABLE, IN WHOLE OR
37 IN PART, BY FORCES OR ACTION OUTSIDE OF THE APPLICANT'S REASONABLE
38 CONTROL, AS PROVIDED IN SECTION 30-901, PARAGRAPH 16, SUBDIVISION (c).

39 2. ESTIMATE THE TRANSITION COSTS AND FINANCING COSTS INCLUDING AN
40 ESTIMATE OF RECOVERING SUCH COSTS ON A NET PRESENT VALUE BASIS.

41 3. DESCRIBE THE EXPECTED CHARACTERISTICS OF THE TRANSITION BONDS.

42 4. PROVIDE THE PROJECTED FINANCING CHARGES AND EXPLAIN HOW THE
43 FINANCING CHARGES WILL RESULT IN THE COLLECTION OF FINANCING REVENUES IN
44 AMOUNTS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ENABLE THE TIMELY AND

1 COMPLETE RECOVERY AND PAYMENT OF ALL ONGOING FINANCING COSTS. FOR THE
2 PURPOSES OF THIS PARAGRAPH, "FINANCING CHARGES" INCLUDES ANY COSTS AND
3 FEES THAT ARE ASSOCIATED WITH HIRING EXPERT CONSULTANTS WHO ARE NECESSARY
4 TO AID THE GOVERNING BODY IN REVIEWING AND APPROVING OF A SECURITIZATION
5 PROPOSAL.

6 5. ESTIMATE THE FINANCING CHARGES AND UNIT FINANCING CHARGES BEFORE
7 THE FIRST APPLICATION OF THE TRUE-UP MECHANISM. THE UNIT FINANCING
8 CHARGES MAY DIFFER BETWEEN CUSTOMERS AND GROUPS OF CUSTOMERS, BUT IF THAT
9 OCCURS, EACH CUSTOMER GROUP AND HOW THE GROUP IS DEFINED SHALL BE
10 DESCRIBED IN THE SECURITIZATION PROPOSAL. UNIT FINANCING CHARGES ARE
11 DETERMINED AND IMPOSED WITHOUT REGARD TO WHETHER, OR TO WHAT EXTENT, A
12 CUSTOMER USES THE SERVICES OF ANY PUBLIC POWER ENTITY DURING THE PERIOD IN
13 WHICH A PARTICULAR UNIT FINANCING CHARGE WILL APPLY.

14 6. DESCRIBE THE PROPOSED TRUE-UP MECHANISM AND HOW THE TRUE-UP
15 MECHANISM WILL ADJUST THE FINANCING CHARGES AND UNIT FINANCING CHARGES
16 OVER TIME TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF
17 FINANCING REVENUES.

18 7. IDENTIFY THE QUALIFIED SPECIAL PURPOSE ENTITY.

19 8. PROVIDE A REPORT THAT CONCLUDES THAT THE TRANSITION BONDS ARE
20 EXPECTED TO SATISFY THE CURRENT PUBLISHED CRITERIA FOR AN AAA RATING OR
21 THE EQUIVALENT THAT IS PREPARED BY A SECURITIES FIRM EXPERIENCED IN
22 UNDERWRITING AND BOND ISSUANCE.

23 9. IDENTIFY ANY ANTICIPATED ANCILLARY AGREEMENTS, INDIVIDUALLY OR
24 BY DESCRIPTION.

25 10. DESCRIBE HOW THE PUBLIC POWER ENTITY PROPOSES TO PERMANENTLY
26 REDUCE OR OFFSET THE VALUE OF EITHER:

27 (a) ANY UNDEPRECIATED TRANSITION ASSETS AND ANY ASSOCIATED
28 REGULATORY ASSETS OR RECORDED LIABILITIES WITH RESPECT TO AN OFFERING OF
29 TRANSITION BONDS TO RECOVER TRANSITION ASSET RETIREMENT COSTS.

30 (b) ANY REGULATORY ASSET OR RECORDED LIABILITY THAT IS ASSOCIATED
31 WITH TRANSITION BONDS TO RECOVER SIGNIFICANT EVENT RECOVERY COSTS IN
32 EXCHANGE FOR THE NET PROCEEDS OF THE TRANSITION BONDS.

33 11. INCLUDE A PROPOSED TRANSITION BILLING SERVICES TARIFF IF THE
34 PROPOSED INITIAL SERVICER IS A PUBLIC POWER ENTITY.

35 12. DESCRIBE THE PROCESS TO NOTIFY THE PUBLIC OF THE FINAL
36 STRUCTURE AND PRICING OF THE TRANSITION BONDS.

37 13. COMMIT TO PROVIDING A STATEMENT OF ACTUAL UPFRONT FINANCING
38 COSTS.

39 14. COMMIT TO PROVIDING AN UPDATED CALCULATION OF THE ESTIMATED
40 FINANCING CHARGES AND UNIT FINANCING CHARGES OVER THE LIFE OF THE
41 TRANSITION BONDS.

42 15. PROVIDE A PROPOSED FORM OF FINANCING RESOLUTION.

1 16. INCLUDE AN ANALYSIS THAT SHOWS THE SECURITIZATION TRANSACTION
2 WILL RESULT IN LOWER COSTS TO THE PUBLIC POWER ENTITY'S CUSTOMERS ON A NET
3 PRESENT VALUE BASIS AS COMPARED TO FINANCING OPTIONS THAT ARE OTHERWISE
4 AVAILABLE TO THE PUBLIC POWER ENTITY.

5 D. INTERESTED PERSONS MAY FILE WRITTEN COMMENTS WITH THE PUBLIC
6 POWER ENTITY'S GOVERNING BODY AT ANY TIME DURING OR BEFORE THE PUBLIC
7 MEETING OF THE GOVERNING BODY PRESCRIBED BY SUBSECTION A OF THIS SECTION.
8 AT THE PUBLIC MEETING, THE BOARD OF DIRECTORS SHALL PROVIDE:

9 1. THE REPRESENTATIVES OF THE PUBLIC POWER ENTITY'S MANAGEMENT WITH
10 AN OPPORTUNITY TO EXPLAIN THE SECURITIZATION PROPOSAL AND ANSWER
11 QUESTIONS.

12 2. ANY CONSULTANTS THAT WERE RETAINED BY THE PUBLIC POWER ENTITY
13 WITH AN OPPORTUNITY TO COMMENT ON THE SECURITIZATION PROPOSAL.

14 3. ANY INTERESTED PERSONS WITH A REASONABLE OPPORTUNITY TO SUBMIT
15 WRITTEN COMMENTS OR MAKE ORAL PRESENTATIONS OF VIEWS, QUESTIONS AND
16 COMMENTS ON THE SECURITIZATION PROPOSAL.

17 E. ON REVIEW OF THE INFORMATION AND COMMENTS GATHERED IN COMPLIANCE
18 WITH THIS SECTION, THE GOVERNING BODY OF A PUBLIC POWER ENTITY SHALL ADOPT
19 A FINANCING RESOLUTION THAT APPROVES, REJECTS OR APPROVES WITH CONDITIONS
20 THE INITIATION OF THE PROPOSED TRANSACTION. THE GOVERNING BODY MAY
21 APPROVE OR APPROVE WITH CONDITIONS THE INITIATION OF THE PROPOSED
22 TRANSACTION ONLY IF THE GOVERNING BODY FINDS THAT ALL OF THE FOLLOWING
23 APPLY:

24 1. THE SECURITIZATION PROPOSAL COMPLIES WITH SUBSECTION C OF THIS
25 SECTION.

26 2. THE SECURITIZATION TRANSACTION WILL RESULT IN LOWER COSTS TO THE
27 PUBLIC POWER ENTITY'S CUSTOMERS ON A NET PRESENT VALUE BASIS AS COMPARED
28 TO OTHER FINANCING OPTIONS THAT ARE OTHERWISE AVAILABLE TO THE PUBLIC
29 POWER ENTITY, WHICH SHALL BE DETERMINED BASED ON WHETHER THE TRANSITION
30 BENEFIT TEST HAS BEEN SATISFIED. THE TRANSITION BENEFIT TEST IS SATISFIED
31 ON A SHOWING THAT THE PROPOSED STRUCTURE AND PROJECTED PRICING OF THE
32 TRANSITION BONDS ARE REASONABLY EXPECTED TO RESULT, ON A NET PRESENT VALUE
33 BASIS OVER THE LIFE OF THE TRANSITION BONDS, IN THE LOWEST FINANCING
34 CHARGES THAT ARE COMMERCIALY AVAILABLE CONSISTENT WITH MARKET CONDITIONS
35 AT THE TIME THE TRANSITION BONDS ARE PRICED AND WITH THE TERMS OF THE
36 FINANCING RESOLUTION.

37 3. ANY PROPOSED TRANSITION BILLING SERVICES TARIFF, INCLUDING ANY
38 TRUE-UP MECHANISM THAT IS DESIGNED TO ADDRESS OVERCOLLECTION OR
39 UNDERCOLLECTION FROM THE PUBLIC POWER ENTITY'S CUSTOMERS, SUPPORTS
40 AFFORDABILITY AND RELIABILITY, IS IN THE PUBLIC INTEREST AND SHOULD BE
41 PLACED INTO EFFECT.

42 4. FOR A SECURITIZATION PROPOSAL THAT INVOLVES A TRANSITION ASSET
43 THAT IS AN ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS BEEN
44 RETIRED, SOLD, ABANDONED, DISPOSED OF OR OTHERWISE REMOVED FROM SERVICE OF

1 THE APPLICANT'S CUSTOMERS, IN WHOLE OR IN PART, AS PROVIDED IN SECTION
2 30-901, PARAGRAPH 16, SUBDIVISIONS (a) AND (b), THE REPLACEMENT MEANS OF
3 SATISFYING THE CUSTOMER LOAD SERVED BY THE ELECTRIC POWER GENERATION
4 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE IS MORE
5 COST-EFFECTIVE FOR THE APPLICANT'S CUSTOMERS THAN CONTINUED RELIANCE ON OR
6 OPERATION OF THE ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS
7 BEEN REMOVED FROM SERVICE. COST-EFFECTIVENESS SHALL BE DETERMINED BY
8 COMPARING THE SUM OF THE NET PRESENT VALUE OF ALL THE COSTS AND EXPENSES
9 OF RELIABLE REPLACEMENT GENERATION OF EQUAL OR GREATER CONTRIBUTION TOWARD
10 THE UTILITY'S RESOURCE ADEQUACY THAN THE ELECTRIC POWER GENERATION
11 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER THE
12 REPLACEMENT GENERATION'S EXPECTED USEFUL LIFE COMBINED WITH THE PROJECTED
13 NET PRESENT VALUE TO RATEPAYERS OF THE TOTAL EXPECTED COST OF THE
14 TRANSITION BONDS OVER THE TERM OF SUCH BONDS, AS COMPARED TO THE NET
15 PRESENT VALUE TO RATEPAYERS OF THE COST, INCLUDING ANY UNRECOVERED COSTS
16 ASSOCIATED WITH UNDEPRECIATED VALUE OR UNRECOVERED BALANCES OF THE
17 TRANSITION ASSET IF SUCH COSTS WERE TO BE FINANCED DIRECTLY BY THE PUBLIC
18 POWER ENTITY, OF CONTINUING TO OPERATE THE ELECTRIC POWER GENERATION
19 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER AN EQUIVALENT
20 TIME FRAME REGARDLESS OF THE FUEL SOURCE OF THE POWER GENERATION. THE
21 COST-EFFECTIVE EVALUATION SHALL INCLUDE A DESCRIPTION OF A PORTFOLIO THAT
22 CONTAINS NEW AND EXISTING RESOURCES THAT WILL PROVIDE RELIABLE REPLACEMENT
23 GENERATION OF EQUIVALENT RESOURCE ADEQUACY AS THE ELECTRIC POWER
24 GENERATION THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE.

25 5. THE SECURITIZATION PROPOSAL IS JUST AND REASONABLE, IS IN THE
26 PUBLIC INTEREST AND SHOULD BE PLACED INTO EFFECT.

27 F. FOR THE PURPOSES OF REVIEWING AND APPROVING A SECURITIZATION
28 PROPOSAL, THE GOVERNING BODY MAY RETAIN THE USE OF OUTSIDE EXPERT
29 CONSULTANTS AND CHARGE THE QUALIFIED SPECIAL PURPOSE ENTITY FOR
30 REIMBURSEMENT OF ANY COSTS AND FEES THAT ARE ASSOCIATED WITH HIRING THE
31 EXPERT CONSULTANTS.

32 30-904. Transition property; property rights; default on
33 transition bonds

34 A. TRANSITION PROPERTY IS IMMEDIATELY CREATED BY OPERATION OF LAW
35 ON THE LATTER OF THE APPROVAL OF A FINANCING RESOLUTION, THE CREATION AND
36 CAPITALIZATION OF A QUALIFIED SPECIAL PURPOSE ENTITY AND THE ISSUANCE AND
37 RECEIPT OF VALUE FOR THE APPLICABLE TRANSITION BONDS. TRANSITION PROPERTY
38 CONTINUES TO EXIST UNTIL THE CORRESPONDING TRANSITION BONDS AND ALL
39 ONGOING FINANCING COSTS RELATED TO THE TRANSITION BONDS HAVE BEEN FULLY
40 PAID. ON CREATION, TRANSITION PROPERTY BELONGS TO THE QUALIFIED SPECIAL
41 PURPOSE ENTITY. A QUALIFIED SPECIAL PURPOSE ENTITY MAY NOT PROVIDE
42 UTILITY SERVICE AND IS NOT A PUBLIC SERVICE CORPORATION, PUBLIC POWER
43 ENTITY OR COOPERATIVE. A QUALIFIED SPECIAL PURPOSE ENTITY SHALL NOT
44 CONDUCT ANY BUSINESS UNRELATED TO OWNING, PROTECTING AND ADMINISTERING THE

1 TRANSITION PROPERTY OR ISSUING, MARKETING, PLACING, AUTHORIZING,
2 SUPPORTING, REPAYING REFINANCING, SERVICING, ADMINISTERING OR REFUNDING
3 TRANSITION BONDS.

4 B. TRANSITION PROPERTY CONSTITUTES A VESTED, EXISTING, PRESENT,
5 CONTINUING AND IRREVOCABLE PROPERTY RIGHT FOR ALL PURPOSES,
6 NOTWITHSTANDING THE FACT THAT THE VALUE OF THE TRANSITION PROPERTY MAY
7 DEPEND ON, OR BE AFFECTED BY, EVENTS OR ACTIONS THAT HAVE NOT YET
8 OCCURRED. TRANSITION PROPERTY SHALL NOT BE AN ASSET OF THE PUBLIC POWER
9 ENTITY.

10 C. A PUBLIC POWER ENTITY MAY NOT HAVE AN OWNERSHIP OR BENEFICIAL
11 INTEREST OR ANY CLAIM OF RIGHT IN THE TRANSITION PROPERTY, OTHER THAN THE
12 REQUIREMENT TO CALCULATE, IMPOSE, CHARGE, COLLECT AND RECEIVE THE
13 FINANCING CHARGES AS A SERVICER AND TRANSFER THE RESULTING FINANCING
14 REVENUES TO THE QUALIFIED SPECIAL PURPOSE ENTITY THAT IS ENTITLED TO
15 RECEIVE THOSE FINANCING REVENUES.

16 D. THE QUALIFIED SPECIAL PURPOSE ENTITY MAY PLEDGE ALL OR ANY
17 PORTION OF THE TRANSITION PROPERTY TO SECURE THE TIMELY AND COMPLETE
18 PAYMENT OF TRANSITION BONDS AND FINANCING COSTS.

19 E. TRANSITION PROPERTY, FINANCING CHARGES, FINANCING REVENUES AND
20 THE INTERESTS OF A FINANCING PARTY OR ANY OTHER PERSON IN TRANSITION
21 PROPERTY OR IN FINANCING REVENUES ARE NOT SUBJECT TO OFFSET, COUNTERCLAIM,
22 SURCHARGE OR DEFENSE BY A SERVICER, A CUSTOMER, A PUBLIC POWER ENTITY, A
23 CREDITOR OF A PUBLIC POWER ENTITY, A CREDITOR OF THE QUALIFIED SPECIAL
24 PURPOSE ENTITY OR ANY OTHER PERSON, OR IN CONNECTION WITH ANY DEFAULT,
25 BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY PROCEEDING OF ANY SUCH
26 PERSON.

27 F. IF THERE IS A DEFAULT ON THE TRANSITION BONDS, BOTH OF THE
28 FOLLOWING APPLY:

29 1. ANY SECURED PARTY HAS THE RIGHT TO FORECLOSE ON TRANSITION
30 PROPERTY OR OTHERWISE ENFORCE ITS RIGHTS AS TO THE TRANSITION PROPERTY IN
31 THE SAME MANNER AS IF IT WERE A SECURED PARTY UNDER THE UNIFORM COMMERCIAL
32 CODE.

33 2. ON APPLICATION BY AN INTERESTED PARTY, AND WITHOUT LIMITING
34 PARAGRAPH 1 OF THIS SUBSECTION OR ANY OTHER REMEDIES AVAILABLE TO THE
35 APPLYING PARTY, A COURT SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE
36 MONIES ARISING FROM THE TRANSITION PROPERTY TO THE PERSON THAT IS ENTITLED
37 TO RECEIVE THE MONIES. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT
38 NOTWITHSTANDING ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR
39 RECEIVERSHIP PROCEEDINGS OF A PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL
40 PURPOSE ENTITY.

41 G. FOR THE PURPOSES OF THIS CHAPTER, TRANSITION PROPERTY SHALL BE IN
42 EXISTENCE REGARDLESS OF WHETHER THE REVENUES OR PROCEEDS WITH RESPECT TO
43 THE TRANSITION PROPERTY HAVE ACCRUED AND REGARDLESS OF WHETHER THE VALUE
44 OF THE PROPERTY RIGHT IS DEPENDENT ON CUSTOMERS RECEIVING SERVICE.

1 30-905. Transition bonds; issuance; authority of qualified
2 special purpose entity; reimbursement of costs

3 A. AFTER APPROVAL OF A FINANCING RESOLUTION PURSUANT TO SECTION
4 30-903, A QUALIFIED SPECIAL PURPOSE ENTITY IS AUTHORIZED TO ISSUE ONE OR
5 MORE SERIES, CLASSES OR TRANCHES OF TRANSITION BONDS AND TO PLEDGE
6 TRANSITION PROPERTY TO SECURE THE PAYMENT OF ONGOING FINANCING COSTS. ON
7 ISSUANCE OF THE TRANSITION BONDS, THE QUALIFIED SPECIAL PURPOSE ENTITY
8 SHALL TRANSFER TO THE PUBLIC POWER ENTITY THE NET PROCEEDS OF THE
9 TRANSITION BONDS MINUS THE UPFRONT FINANCING COSTS PAID BY THE QUALIFIED
10 SPECIAL PURPOSE ENTITY.

11 B. THE APPROVAL OF A FINANCING RESOLUTION DOES NOT OBLIGATE A PUBLIC
12 POWER ENTITY OR A QUALIFIED SPECIAL PURPOSE ENTITY TO ENGAGE IN THE
13 APPROVED TRANSACTION, AND NEITHER A PUBLIC POWER ENTITY NOR A QUALIFIED
14 SPECIAL PURPOSE ENTITY SHALL BE SUBJECT TO ANY REGULATORY CONDITIONS,
15 REGULATORY SANCTIONS OR OTHER PENALTIES FOR NOT ENGAGING IN AN APPROVED
16 TRANSACTION. IF THE QUALIFIED SPECIAL PURPOSE ENTITY DETERMINES NOT TO
17 ISSUE TRANSITION BONDS AUTHORIZED BY A FINANCING RESOLUTION, THE PUBLIC
18 POWER ENTITY SHALL REIMBURSE THE QUALIFIED SPECIAL PURPOSE ENTITY FOR ANY
19 COSTS PAID BY THE QUALIFIED SPECIAL PURPOSE ENTITY THAT WOULD HAVE
20 CONSTITUTED UPFRONT FINANCING COSTS HAD THE TRANSITION BONDS BEEN ISSUED,
21 EXCEPT THAT DELAYING THE ISSUANCE OF TRANSITION BONDS PENDING FINAL
22 RESOLUTION OF ANY APPEALS FROM THE FINANCING RESOLUTION OR ANY LEGAL
23 CHALLENGES TO THIS CHAPTER IS NOT DEEMED TO BE SUCH A DETERMINATION.

24 30-906. Transition property; security interest; lien;
25 priority

26 A. THIS SECTION APPLIES TO ALL PURPORTED TRANSFERS OF, GRANTS OF
27 LIENS ON, OR SECURITY INTERESTS IN TRANSITION PROPERTY. EXCEPT AS
28 OTHERWISE PROVIDED IN THIS SECTION, THE CREATION, PERFECTION AND
29 ENFORCEMENT OF A SECURITY INTEREST IN TRANSITION PROPERTY THAT IS PLEDGED
30 TO SECURE THE PAYMENT OF THE ONGOING FINANCING COSTS ARE GOVERNED BY THIS
31 SECTION.

32 B. THE DESCRIPTION OF OR REFERENCE TO TRANSITION PROPERTY IN A
33 TRANSFER OR SECURITY AGREEMENT IS SUFFICIENT IF AND ONLY IF THE
34 DESCRIPTION OR REFERENCE REFER TO THIS CHAPTER AND THE FINANCING
35 RESOLUTION DESCRIBING THE TRANSITION PROPERTY. A SECURITY INTEREST IN
36 TRANSITION PROPERTY IS CREATED, VALID, BINDING AND ENFORCEABLE AT THE
37 LATEST OF ANY OF THE FOLLOWING:

38 1. WHEN THE TRANSITION BONDS ARE ISSUED BY THE QUALIFIED SPECIAL
39 PURPOSE ENTITY.

40 2. WHEN A SECURITY AGREEMENT IS EXECUTED AND DELIVERED BY THE
41 QUALIFIED SPECIAL PURPOSE ENTITY.

1 3. WHEN VALUE IS RECEIVED BY THE QUALIFIED SPECIAL PURPOSE ENTITY
2 FOR THE TRANSITION BONDS.

3 C. THE SECURITY INTEREST IN TRANSITION PROPERTY IS A STATUTORY LIEN
4 THAT ATTACHES AUTOMATICALLY IN FAVOR OF THE APPLICABLE FINANCING PARTY
5 WHEN THE TRANSITION BOND IS ISSUED AND VALUE FOR THE TRANSITION BONDS IS
6 RECEIVED. THE SECURITY INTEREST ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF
7 ANY COLLATERAL OR OTHER ACT, AND THE SECURITY INTEREST IS VALID, BINDING
8 AND PERFECTED AGAINST ALL PARTIES THAT HAVE CLAIMS OF ANY KIND AGAINST THE
9 PERSON GRANTING THE SECURITY INTEREST, REGARDLESS OF WHETHER THE PARTIES
10 HAVE NOTICE OF A LIEN, ON THE FILING OF A FINANCING STATEMENT WITH THE
11 SECRETARY OF STATE. THE SECRETARY OF STATE SHALL MAINTAIN THE FINANCING
12 STATEMENT IN THE SAME MANNER AND IN THE SAME RECORDKEEPING SYSTEM
13 MAINTAINED FOR FINANCING STATEMENTS THAT ARE FILED PURSUANT TO TITLE 47,
14 CHAPTER 9, ARTICLE 5. FINANCING STATEMENTS THAT ARE FILED PURSUANT TO
15 THIS SECTION ARE EFFECTIVE WITHOUT THE NEED TO FILE A CONTINUATION
16 STATEMENT UNTIL A TERMINATION STATEMENT IS FILED.

17 D. A TRANSFER OF AN INTEREST, INCLUDING A GRANT OF A LIEN OR
18 SECURITY INTEREST, IN TRANSITION PROPERTY IS PERFECTED AGAINST ALL THIRD
19 PERSONS. A SECURITY INTEREST IN TRANSITION PROPERTY IS A CONTINUOUSLY
20 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN THAT MAY
21 SUBSEQUENTLY ATTACH TO THE TRANSITION PROPERTY UNLESS THE HOLDER OF THE
22 SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

23 E. THE PRIORITY OF A SECURITY INTEREST IN TRANSITION PROPERTY IS
24 NOT AFFECTED BY THE COMMINGLING OF FINANCING REVENUES WITH OTHER FUNDS.
25 ANY PLEDGEE OR SECURED PARTY HAS A PERFECTED SECURITY INTEREST IN THE
26 AMOUNT OF ALL FINANCING REVENUES THAT ARE DEPOSITED IN ANY ACCOUNT OF THE
27 SERVICER IN WHICH FINANCING REVENUES HAVE BEEN COMMINGLED WITH OTHER
28 MONIES, AND ANY OTHER SECURITY INTEREST THAT MAY APPLY TO SUCH FINANCING
29 REVENUES IS TERMINATED WHEN THOSE FUNDS ARE TRANSFERRED TO A SEGREGATED
30 ACCOUNT FOR A FINANCING PARTY OR ASSIGNEE OF A FINANCING PARTY.

31 F. THE TRUE-UP MECHANISM DOES NOT AFFECT THE VALIDITY, PERFECTION
32 OR PRIORITY OF A SECURITY INTEREST IN OR TRANSFER OF TRANSITION PROPERTY.

33 G. THE VALIDITY, PERFECTION OR PRIORITY OF A LIEN AND SECURITY
34 INTEREST UNDER THIS CHAPTER IS NOT IMPAIRED BY ANY LATER MODIFICATION OF A
35 FINANCING RESOLUTION OR CHANGES IN A CUSTOMER'S FINANCING CHARGES.

36 30-907. Financing charges; true-up mechanism; civil action

37 A. FINANCING CHARGES ARE NONBYPASSABLE, ARE MANDATORY AND APPLY TO
38 ALL CUSTOMERS. FINANCING REVENUES SHALL BE USED SOLELY FOR THE PAYMENT OF
39 ONGOING FINANCING COSTS.

40 B. THE TRUE-UP MECHANISM SHALL CORRECT FOR ANY OVERCOLLECTION OR
41 UNDERCOLLECTION OF FINANCING REVENUES AND PROVIDE FOR TIMELY AND COMPLETE
42 PAYMENT OF ONGOING FINANCING COSTS. ADJUSTMENTS TO FINANCING CHARGES THAT
43 ARE MADE IN ACCORDANCE WITH THE TRUE-UP MECHANISM SHALL BE APPLIED THROUGH
44 AN EQUAL PERCENTAGE CHANGE TO ALL UNIT FINANCING CHARGES OR THROUGH AN

1 ALTERNATIVE NONDISCRETIONARY MATHEMATICAL PROCESS OF ADJUSTING UNIT
2 FINANCING CHARGES THAT IS INCLUDED IN THE TRUE-UP MECHANISM AND THAT IS
3 DESCRIBED IN THE FINANCING RESOLUTION.

4 C. ADJUSTMENTS TO THE FINANCING CHARGES AND UNIT FINANCING CHARGES
5 RESULTING FROM THE APPLICATION OF THE TRUE-UP MECHANISM ARE EFFECTIVE
6 WITHOUT ANY ORDER OR ACTION OF THE GOVERNING BODY OF THE PUBLIC POWER
7 ENTITY OR ANY OTHER BODY, EXCEPT AS PROVIDED IN SUBSECTION D OF THIS
8 SECTION.

9 D. WHEN TRANSITION BONDS ARE ISSUED, THE DETERMINATION AND
10 IMPOSITION OF FINANCING CHARGES, THE RECOVERY OF FINANCING REVENUES AND
11 THE ADJUSTMENT OF THE FINANCING CHARGES THROUGH THE TRUE-UP MECHANISM ARE
12 NOT SUBJECT TO REVIEW OR APPROVAL BY ANY GOVERNMENT ENTITY, INCLUDING
13 STATE AGENCIES, PUBLIC CORPORATIONS, MUNICIPALITIES OR OTHER
14 INSTRUMENTALITIES OF THIS STATE, EXCEPT THAT THE SUPERIOR COURT HAS
15 EXCLUSIVE JURISDICTION TO AND, ON COMMENCEMENT OF A SUIT AGAINST THE
16 QUALIFIED SPECIAL PURPOSE ENTITY BY A CUSTOMER, MAY REVIEW AND DETERMINE
17 WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR IN THE
18 CALCULATION OR APPLICATION OF THE TRUE-UP MECHANISM OR THE CALCULATION OF
19 THE RESULTING FINANCING CHARGES AND UNIT FINANCING CHARGES.

20 E. THE JURISDICTION AND AUTHORITY OF THE SUPERIOR COURT IN AN
21 ACTION UNDER THIS SECTION IS LIMITED TO DETERMINING THE FINANCING CHARGES
22 AND UNIT FINANCING CHARGES THAT RESULT FROM THE CORRECT CALCULATION AND
23 APPLICATION OF THE TRUE-UP MECHANISM. THE SUPERIOR COURT SHALL NOT ORDER
24 OR REQUIRE ANY MODIFICATION TO THE TRUE-UP MECHANISM OR LIMIT, REDUCE,
25 ALTER, IMPAIR, DELAY OR TERMINATE THE APPLICATION OF THE TRUE-UP MECHANISM
26 OR THE COLLECTION AND REMITTANCE OF FINANCING REVENUES. A PARTY MAY NOT
27 BRING ANY ACTION TO ENJOIN, RESTRAIN, STAY OR DELAY THE VALIDITY,
28 CALCULATION AND IMPOSITION OF FINANCING CHARGES OR THE COLLECTION OF
29 FINANCING REVENUES, INCLUDING THE ESTABLISHMENT AND APPLICATION OF THE
30 TRUE-UP MECHANISM AND THE COLLECTION AND REMITTANCE OF FINANCING REVENUES.
31 AN ACTION UNDER THIS SECTION MUST BE FILED WITHIN TEN DAYS AFTER THE
32 QUALIFIED SPECIAL PURPOSE ENTITY OR SERVICER FILES NOTICE WITH THE PUBLIC
33 POWER ENTITY UNDER SUBSECTION J OF THIS SECTION. THE TIME FOR BRINGING
34 THE ACTION MAY NOT BE TOLLED OR EXTENDED FOR ANY REASON. WITHIN SIXTY
35 DAYS AFTER THE FILING OF AN ACTION UNDER THIS SECTION, THE SUPERIOR COURT
36 SHALL HEAR AND ISSUE A DECISION ON THE MATTER. THE DECISION IS APPEALABLE
37 ONLY TO THE SUPREME COURT, AND THE NOTICE OF APPEAL SHALL BE FILED WITHIN
38 FIVE DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE ACTION. THE
39 SUPREME COURT SHALL RENDER A DECISION ON THE APPEAL PROMPTLY BUT NOT LATER
40 THAN NINETY DAYS AFTER THE NOTICE OF APPEAL IS FILED WITH THE SUPREME
41 COURT.

42 F. A COURT MAY NOT ENJOIN, RESTRAIN, STAY OR DELAY THE APPLICATION
43 OF THE TRUE-UP MECHANISM OR THE COLLECTION AND REMITTANCE OF FINANCING
44 REVENUES. IF THE FINAL JUDGMENT OF THE SUPERIOR COURT, AFTER ALL APPEALS

1 ARE EXHAUSTED, REQUIRES A MODIFICATION OF ANY ADJUSTMENT MADE UNDER THE
2 TRUE-UP MECHANISM, THE SERVICER SHALL MAKE THAT MODIFICATION AT THE TIME
3 OF AND AS PART OF THE NEXT PERIODIC ADJUSTMENT OF THE FINANCING CHARGES ON
4 THE EXHAUSTION OF ALL APPEALS THROUGH THE TRUE-UP MECHANISM.

5 G. ANY ADJUSTMENTS THAT ARE MADE PURSUANT TO THE TRUE-UP MECHANISM,
6 ANY REVIEW OF THE CALCULATIONS OF THOSE ADJUSTMENTS OR ANY ACTION BROUGHT
7 TO DETERMINE WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR
8 IN THE APPLICATION OF THE TRUE-UP MECHANISM SHALL NOT AFFECT THE
9 IRREVOCABILITY OF THE TRANSITION PROPERTY, THE FINANCING RESOLUTION, THE
10 NONBYPASSABILITY OF THE FINANCING CHARGES AND UNIT FINANCING CHARGES OR
11 THE NONIMPAIRMENT PLEDGES PRESCRIBED IN SECTION 30-909.

12 H. REGARDLESS OF WHETHER FINANCING CHARGES ARE ADMINISTERED, BILLED
13 OR COLLECTED BY A SERVICER THAT IS A PUBLIC POWER ENTITY, THE FINANCING
14 CHARGES ARE NOT RATES OR CHARGES IMPOSED BY OR MADE BY A PUBLIC POWER
15 ENTITY FOR UTILITY SERVICE. THE RIGHT TO RECEIVE FINANCING CHARGES AND TO
16 COLLECT FINANCING REVENUES IS INDEPENDENT OF ANY RATE THAT IS ESTABLISHED,
17 MADE OR CHARGED BY A PUBLIC POWER ENTITY FOR PUBLIC UTILITY SERVICES,
18 INCLUDING COLLECTED REVENUES. FINANCING REVENUES ARE THE PROPERTY OF THE
19 QUALIFIED SPECIAL PURPOSE ENTITY AND ARE NOT THE PROPERTY OF THE SERVICER
20 OR ANY OTHER PUBLIC POWER ENTITY.

21 I. THE SERVICER, AS AGENT FOR THE QUALIFIED SPECIAL PURPOSE ENTITY,
22 AT A MINIMUM SEMIANNUALLY AND QUARTERLY DURING THE TWO-YEAR PERIOD
23 PRECEDING THE FINAL MATURITY DATE OF THE TRANSITION BONDS OR THE FINAL
24 MATURITY DATE OF THE SERIES, CLASS OR TRANCHE OF SUCH BONDS WITH THE
25 LATEST FINAL MATURITY DATE, IF MORE THAN ONE SERIES, CLASS OR TRANCHE HAS
26 BEEN ISSUED, SHALL PERFORM CALCULATIONS FOR BOTH OF THE FOLLOWING:

27 1. ESTIMATING WHETHER THE EXISTING FINANCING CHARGES AND RESULTING
28 FINANCING REVENUES ARE SUFFICIENT TO PROVIDE FOR A TIMELY AND COMPLETE
29 PAYMENT OF ANY ONGOING FINANCING COSTS OR WHETHER AN OVERCOLLECTION OR
30 UNDERCOLLECTION OF FINANCING REVENUES IS PROJECTED.

31 2. UNDERTAKING THE PROCESSES USED IN THE TRUE-UP MECHANISM TO
32 DETERMINE THE ADJUSTMENT TO THE FINANCING CHARGES THAT ARE PROJECTED TO
33 CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES.

34 J. THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE SERVICER AS AGENT
35 FOR THE QUALIFIED SPECIAL PURPOSE ENTITY SHALL FILE WITH THE GOVERNING
36 BODY OF THE PUBLIC POWER ENTITY AN INFORMATIONAL NOTICE THAT IDENTIFIES
37 THE ADJUSTED UNIT FINANCING CHARGES THAT ARE TO BE INCLUDED ON A
38 CUSTOMER'S BILLS UNDER THE TRANSITION SERVICES TARIFF. THIS NOTICE IS
39 REQUIRED TO INFORM THE CUSTOMER AND SHALL BE PROVIDED NOT LATER THAN
40 FIFTEEN DAYS BEFORE THE DATE THE UNIT FINANCING CHARGES BECOME EFFECTIVE.
41 THE NOTICE SHALL PROVIDE SUFFICIENT INFORMATION TO VERIFY THE MATHEMATICAL
42 CALCULATION OF THE ADJUSTED FINANCING CHARGES AND THE UNIT FINANCING
43 CHARGES THAT RESULT FROM APPLYING THE TRUE-UP MECHANISM.

1 K. IF A CUSTOMER DOES NOT PAY ANY UNIT FINANCING CHARGE, THE
2 QUALIFIED SPECIAL PURPOSE ENTITY OR THE SERVICER AS AGENT OF THE QUALIFIED
3 SPECIAL PURPOSE ENTITY MAY BRING SUIT IN ANY COURT OF COMPETENT
4 JURISDICTION AGAINST THE CUSTOMER TO COLLECT THE UNPAID UNIT FINANCING
5 CHARGES. REASONABLE ATTORNEY FEES AND COSTS SHALL BE AWARDED TO THE
6 PREVAILING PARTY. COMMENCEMENT OF THE SUIT DOES NOT AFFECT THE
7 CALCULATION OF ANY ADJUSTMENT THAT IS AUTHORIZED BY THE TRUE-UP MECHANISM
8 UNTIL THE NET PROCEEDS ARE RECOVERED AND PAID TO THE QUALIFIED SPECIAL
9 PURPOSE ENTITY AS FINANCING REVENUES.

10 30-908. Public power entity as servicer; transition billing
11 services tariffs; AAA rating

12 A. IF A SERVICER IS A PUBLIC POWER ENTITY, THE PUBLIC POWER ENTITY
13 SHALL USE ITS RESOURCES AND SYSTEMS TO PERFORM THE DUTIES OF A SERVICER
14 UNDER A TRANSITION BILLING SERVICES TARIFF.

15 B. IF A SERVICER COLLECTS PAYMENT MADE BY A CUSTOMER FOR FINANCING
16 CHARGES, WHETHER UNDER A TRANSITION BILLING SERVICES TARIFF OR OTHERWISE,
17 THE MONIES COLLECTED ARE FINANCING REVENUES WHEN THE MONIES ARE PAID BY
18 THE CUSTOMER, AND THE SERVICER HAS NO RIGHT, TITLE OR INTEREST IN THE
19 REVENUES OTHER THAN AS AN AGENT FOR THE QUALIFIED SPECIAL PURPOSE ENTITY.
20 IF A CUSTOMER PAYS ONLY A PORTION OF THE CHARGES STATED ON A BILL PROVIDED
21 BY A SERVICER THAT INCLUDES FINANCING CHARGES, THE PARTIAL PAYMENT SHALL
22 BE FIRST APPLIED TO PAYING THE FINANCING CHARGES.

23 C. IF A SERVICER FAILS TO MAKE ANY REQUIRED PAYMENT OF FINANCING
24 REVENUES TO A QUALIFIED SPECIAL PURPOSE ENTITY OR FAILS TO FULFILL ITS
25 SERVICING OBLIGATIONS UNDER AN APPLICABLE TRANSITION BILLING SERVICES
26 TARIFF, THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE HOLDERS OF THE
27 TRANSITION BONDS MAY REQUEST THAT THE SUPERIOR COURT ORDER THE
28 SEQUESTRATION AND PAYMENT OF THE FINANCING REVENUES FOR THE BENEFIT OF ANY
29 FINANCING PARTIES OR THEIR ASSIGNEES AND MAY REQUEST ANY OTHER APPLICABLE
30 RELIEF. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING
31 ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR RECEIVERSHIP
32 PROCEEDINGS OF THE SERVICER OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

33 D. IF THIS STATE, THROUGH THE GOVERNING BODY OF THE PUBLIC POWER
34 ENTITY OR OTHERWISE PURSUANT TO THIS CHAPTER, ALLOWS THE BILLING,
35 COLLECTION AND REMITTANCE BY A THIRD PARTY OF SUMS THAT WOULD OTHERWISE BE
36 BILLED, COLLECTED OR REMITTED BY A PUBLIC POWER ENTITY THAT ACTS AS A
37 SERVICER, THE AUTHORIZATION MUST BE CONSISTENT WITH THE RATING AGENCIES'
38 REQUIREMENTS THAT ARE NECESSARY FOR THE TRANSITION BONDS TO RECEIVE AND
39 MAINTAIN AN AAA OR EQUIVALENT RATING.

40 30-909. Transition bonds; irrevocability; public policy;
41 noncompliance

42 A. ON OR AFTER THE ISSUANCE OF TRANSITION BONDS, THE TRANSITION
43 PROPERTY, THE TRUE-UP MECHANISM AND THE FINANCING CHARGES ARE IRREVOCABLE,
44 FINAL, NONDISCRETIONARY AND EFFECTIVE WITHOUT THE NEED FOR FURTHER ACTION

1 BY THE GOVERNING BODY OR THIS STATE, AND SUCH FINANCING CHARGES SHALL NOT
2 BE SUBJECT TO RESCISSION, ALTERATION, AMENDMENT, REDUCTION, IMPAIRMENT OR
3 ADJUSTMENT BY FURTHER ACTION OF THIS STATE OR ANY OTHER BODY, EXCEPT
4 PURSUANT TO THE TRUE-UP MECHANISM.

5 B. THIS STATE, INCLUDING ALL AGENCIES, PUBLIC CORPORATIONS,
6 MUNICIPALITIES OR OTHER INSTRUMENTALITIES OF THIS STATE, PLEDGES TO AND
7 AGREES WITH THE FINANCING PARTIES, INCLUDING PRESENT AND FUTURE HOLDERS OF
8 TRANSITION BONDS, THE PUBLIC POWER ENTITY, THE QUALIFIED SPECIAL PURPOSE
9 ENTITY AND ANY OTHER PERSONS THAT ENTER INTO AN ANCILLARY AGREEMENT THAT
10 AFTER THE ISSUANCE OF TRANSITION BONDS AND UNTIL ALL FINANCING COSTS,
11 INCLUDING THE PRINCIPAL AND INTEREST ON THE TRANSITION BONDS AND ALL
12 AMOUNTS TO BE PAID UNDER AN ANCILLARY AGREEMENT, ARE FULLY MET AND
13 DISCHARGED, THIS STATE OR ANY AGENCY, PUBLIC CORPORATION, MUNICIPALITY OR
14 OTHER INSTRUMENTALITY OF THIS STATE MAY NOT TAKE OR ALLOW ANY ACTION TO BE
15 TAKEN TO LIMIT, REDUCE, ALTER, IMPAIR, DELAY OR TERMINATE ANY OF THE
16 FOLLOWING:

17 1. THE RIGHTS CONFERRED BY THIS CHAPTER, INCLUDING THE RIGHTS IN
18 TRANSITION PROPERTY OR TRANSITION BONDS.

19 2. THE IMPOSITION OF FINANCING CHARGES AND UNIT FINANCING CHARGES
20 BY THE QUALIFIED SPECIAL PURPOSE ENTITY.

21 3. THE OPERATION OF THE TRUE-UP MECHANISM TO ADJUST FINANCING
22 CHARGES AND UNIT FINANCING CHARGES.

23 4. THE COLLECTION OF FINANCING REVENUES IN PAYMENT OF FINANCING
24 CHARGES AND UNIT FINANCING CHARGES.

25 5. THE PAYMENT OF FINANCING COSTS.

26 C. IT IS THE INTENTION OF THIS STATE THAT THE PLEDGES MADE UNDER
27 SUBSECTION B OF THIS SECTION CAN AND WILL BE RELIED ON BY A PUBLIC POWER
28 ENTITY, THE QUALIFIED SPECIAL PURPOSE ENTITY, OTHER PERSONS THAT ENTER
29 INTO AN ANCILLARY AGREEMENT AND ANY FINANCING PARTY. THESE PLEDGES MAY BE
30 INCLUDED IN TRANSITION BONDS, ANCILLARY AGREEMENTS AND OTHER DOCUMENTATION
31 RELATED TO ISSUING, RATING AND MARKETING THE TRANSITION BONDS.

32 D. ON AND AFTER THE ISSUANCE OF THE TRANSITION BONDS, THE FAILURE
33 OF A PUBLIC POWER ENTITY OR A QUALIFIED SPECIAL PURPOSE ENTITY TO COMPLY
34 WITH THIS CHAPTER OR THE FINANCING RESOLUTION DOES NOT INVALIDATE, IMPAIR
35 OR AFFECT THE FINANCING RESOLUTION, THE TRANSITION PROPERTY, FINANCING
36 CHARGES, TRANSITION BONDS OR FINANCING COSTS.

37 E. A FINANCING RESOLUTION, TRANSITION PROPERTY AND FINANCING CHARGES
38 ARE NOT AFFECTED BY EITHER OF THE FOLLOWING:

39 1. THE BANKRUPTCY, REORGANIZATION, SALE, DISSOLUTION OR INSOLVENCY
40 OF THE PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE
41 SUCCESSORS OR ASSIGNS OF THE PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL
42 PURPOSE ENTITY.

1 2. THE COMMENCEMENT OF ANY PROCEEDING FOR BANKRUPTCY OR THE
2 APPOINTMENT OF A RECEIVER AS TO EITHER THE PUBLIC POWER ENTITY, THE
3 QUALIFIED SPECIAL PURPOSE ENTITY OR THE SUCCESSORS OF THE PUBLIC POWER
4 ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

5 30-910. Financing resolution; application for rehearing;
6 judicial review

7 A. A PARTY TO THE PROCEEDING WHO IS DISSATISFIED WITH A GOVERNING
8 BODY'S DECISION AS TO A FINANCING RESOLUTION ADOPTED PURSUANT TO THIS
9 CHAPTER OR THE ATTORNEY GENERAL ON BEHALF OF THIS STATE MAY APPLY TO THE
10 GOVERNING BODY FOR REHEARING. THE APPLICATION FOR REHEARING SHALL BE
11 FILED NOT LATER THAN TWENTY DAYS AFTER THE GOVERNING BODY'S DECISION ON
12 THE FINANCING RESOLUTION. IF THE GOVERNING BODY DOES NOT GRANT THE
13 APPLICATION FOR REHEARING WITHIN TWENTY DAYS AFTER THE APPLICATION IS
14 FILED, THE APPLICATION IS DEEMED DENIED.

15 B. WITHIN TEN DAYS AFTER A REHEARING IS DENIED OR GRANTED AND NOT
16 AFTERWARDS, A PARTY THAT FILES A REHEARING APPLICATION PURSUANT TO
17 SUBSECTION A OF THIS SECTION MAY FILE, IN THE SUPERIOR COURT IN THE COUNTY
18 IN WHICH THE GOVERNING BODY HAS ITS OFFICE, AN ACTION THAT SEEKS TO
19 VACATE, SET ASIDE, AFFIRM IN PART, REVERSE IN PART OR REMAND THE GOVERNING
20 BODY'S DECISION REGARDING THE FINANCING RESOLUTION. THE TIME FOR BRINGING
21 ANY ACTION AUTHORIZED BY THIS SUBSECTION MAY NOT BE TOLLED OR EXTENDED FOR
22 ANY REASON.

23 C. A PARTY THAT SEEKS TO VACATE, SET ASIDE OR OTHERWISE CHALLENGE A
24 FINANCING RESOLUTION OR OTHER GOVERNING BODY DECISION UNDER THIS CHAPTER,
25 IN WHOLE OR IN PART, BEARS THE BURDEN OF PROOF. IN AN ACTION THAT
26 CHALLENGES A FINANCING RESOLUTION OR RELATED DECISION THAT RESULTED FROM A
27 FINANCING RESOLUTION, RELIEF MAY BE AWARDED ONLY IF THE SUPERIOR COURT
28 DETERMINES, BASED ON CLEAR AND SATISFACTORY EVIDENCE, THAT EITHER OF THE
29 FOLLOWING APPLIES:

30 1. THE FINANCING RESOLUTION OR OTHER GOVERNING BODY DECISION UNDER
31 THIS CHAPTER IS UNLAWFUL.

32 2. THE FACTUAL FINDINGS MADE IN THE FINANCING RESOLUTION ARE
33 UNSUPPORTED BY THE FINANCING RESOLUTION OR EVIDENCE THAT WAS PRESENTED
34 BEFORE THE GOVERNING BODY.

35 D. WITHIN SIXTY DAYS AFTER THE FILING OF THE ACTION, THE SUPERIOR
36 COURT SHALL HEAR AND ISSUE A DECISION ON THE MATTER. THE SUPERIOR COURT
37 MAY EXTEND THIS TIME FOR NOT MORE THAN THIRTY DAYS FOR GOOD CAUSE.

38 E. A PARTY MAY APPEAL A DECISION IN AN ACTION FILED UNDER THIS
39 SECTION ONLY TO THE SUPREME COURT. THE PARTY SHALL FILE THE NOTICE OF
40 APPEAL WITHIN FIVE DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE
41 ACTION. THE TIME FOR FILING THE NOTICE OF APPEAL MAY NOT BE TOLLED OR
42 EXTENDED FOR ANY REASON. THE SUPREME COURT SHALL ISSUE A DECISION ON THE
43 APPEAL PROMPTLY.

1 F. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, A COURT IN THIS
2 STATE DOES NOT HAVE JURISDICTION TO REVIEW, ENJOIN, RESTRAIN, SUSPEND,
3 STAY OR DELAY ANY OF THE FOLLOWING:
4 1. A FINANCING RESOLUTION.
5 2. THE CREATION OF TRANSITION PROPERTY.
6 3. THE ISSUANCE OF TRANSITION BONDS.
7 4. A GOVERNING BODY'S PERFORMANCE OF ITS DUTIES UNDER THIS CHAPTER.
8 G. AN ORDER OR DECREE THAT IS ISSUED BY A GOVERNING BODY IN THE
9 PERFORMANCE OF ITS DUTIES UNDER THIS CHAPTER REMAINS IN FORCE PENDING THE
10 DECISION OF THE COURT.
11 30-911. Fees and taxes
12 FINANCING CHARGES ARE NOT SUBJECT TO EITHER:
13 1. A FRANCHISE FEE THAT IS IMPOSED BY A MUNICIPALITY, COUNTY OR
14 OTHER LOCAL GOVERNMENT UNIT AS A RESULT OF A FRANCHISE AGREEMENT OR LAWFUL
15 ORDINANCE.
16 2. TAXES THAT ARE APPLICABLE TO SERVICES PROVIDED BY OR RATES OF A
17 PUBLIC POWER ENTITY.
18 30-912. Transition bonds; public debt prohibition
19 A. TRANSITION BONDS ARE NOT A PUBLIC DEBT, A LIEN NOR A PLEDGE OF
20 THE REVENUES, FAITH AND CREDIT OR TAXING POWER OF A PUBLIC POWER ENTITY,
21 THIS STATE OR ANY COUNTY, MUNICIPALITY OR OTHER LOCAL GOVERNMENT UNIT OF
22 THIS STATE. THE APPROVAL OF A FINANCING RESOLUTION DOES NOT OBLIGATE THIS
23 STATE OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THIS STATE
24 TO LEVY ANY TAX OR MAKE ANY APPROPRIATION FOR PAYMENT OF ANY FINANCING
25 COST, INCLUDING THE PRINCIPAL AND INTEREST ON TRANSITION BONDS. THIS
26 STATE OR A COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THIS STATE MAY
27 NOT LEVY ANY TAX ON HOLDERS OF TRANSITION BONDS OR OWNERS OF TRANSITION
28 PROPERTY.
29 B. TRANSITION BONDS ARE NOT AN OBLIGATION, DEBT, LIEN OR PLEDGE OF
30 THE ASSETS OR REVENUES OF THE PUBLIC POWER ENTITY. APPROVAL IS NOT
31 REQUIRED UNDER SECTION 40-302 OR ANY OTHER PROVISION OF LAW FOR THE
32 APPROVAL OF A FINANCING RESOLUTION, FOR THE ISSUANCE OF TRANSITION BONDS,
33 FOR THE SALE OF TRANSITION BONDS OR FOR AN ASSIGNMENT OR TRANSFER OF
34 TRANSITION PROPERTY OR ANY INTEREST IN TRANSITION PROPERTY THAT IS
35 AUTHORIZED BY THIS CHAPTER.
36 30-913. Transition bonds; legal investments
37 TRANSITION BONDS ARE LEGAL INVESTMENTS FOR ALL GOVERNMENTAL UNITS,
38 PERMANENT FUNDS OF THIS STATE, FINANCE AUTHORITIES, FINANCIAL
39 INSTITUTIONS, INSURANCE COMPANIES, FIDUCIARIES AND OTHER PERSONS REQUIRING
40 STATUTORY AUTHORITY REGARDING LEGAL INVESTMENTS.
41 30-914. Obligations of successor to public power entity
42 ANY SUCCESSOR TO A PUBLIC POWER ENTITY, WHETHER PURSUANT TO A
43 BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY PROCEEDING OR PURSUANT TO A
44 MERGER, ACQUISITION, SALE OR TRANSFER OR OTHER BUSINESS COMBINATION BY

1 OPERATION OF LAW OR AGREEMENT OF THE PUBLIC POWER ENTITY OR OTHERWISE,
2 SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF AND HAVE THE SAME RIGHTS AND
3 OBLIGATIONS UNDER THIS CHAPTER OR ANY FINANCING RESOLUTION AS THE PUBLIC
4 POWER ENTITY IN THE SAME MANNER AND TO THE SAME EXTENT AS THE PUBLIC POWER
5 ENTITY, INCLUDING ACTING AS A SERVICER AND COLLECTING AND PAYING TO THE
6 PERSON ENTITLED TO RECEIVE THE FINANCING CHARGES AND FINANCING REVENUES.

7 30-915. Choice of law; conflicts with other laws

8 THE LAWS OF THIS STATE GOVERN THE VALIDITY, ENFORCEABILITY,
9 ATTACHMENT, PERFECTION, PRIORITY AND EXERCISE OF REMEDIES WITH RESPECT TO
10 THE CREATION OR TRANSFER OF, OR OF ANY INTEREST IN, TRANSITION PROPERTY,
11 FINANCING CHARGES OR FINANCING REVENUES. IF THERE IS ANY CONFLICT BETWEEN
12 THIS CHAPTER AND ANY OTHER LAW REGARDING THE CREATION, ATTACHMENT,
13 TRANSFER, ASSIGNMENT OR PERFECTION OF, OR THE EFFECT OF PERFECTION ON OR
14 THE PRIORITY OF ANY SECURITY INTEREST IN TRANSITION PROPERTY, FINANCING
15 CHARGES OR FINANCING REVENUES, THIS CHAPTER GOVERNS TO THE EXTENT OF THE
16 CONFLICT.

17 30-916. Effect of invalidity on actions

18 IF ALL OR ANY PART OF THIS CHAPTER IS INVALIDATED, SUPERSEDED,
19 REPLACED, REPEALED OR EXPIRES FOR ANY REASON, THAT OCCURRENCE DOES NOT
20 AFFECT THE VALIDITY OF ANY PRIOR ACTION ALLOWED UNDER THIS CHAPTER,
21 WHETHER TAKEN BY A PUBLIC POWER ENTITY, A QUALIFIED SPECIAL PURPOSE ENTITY
22 OR ANY OTHER PERSON, AND DOES NOT AFFECT TRANSITION BONDS THAT WERE
23 ALREADY ISSUED OR TRANSITION PROPERTY THAT WAS ALREADY CREATED.

24 Sec. 2. Title 40, Arizona Revised Statutes, is amended by adding
25 chapter 3, to read:

26 CHAPTER 3

27 UTILITY SECURITIZATION

28 ARTICLE 1. GENERAL PROVISIONS

29 40-601. Definitions

30 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

31 1. "ANCILLARY AGREEMENT" MEANS ANY OF THE FOLLOWING:

32 (a) A BOND.

33 (b) AN INSURANCE POLICY.

34 (c) A LETTER OF CREDIT.

35 (d) A RESERVE ACCOUNT.

36 (e) AN INTEREST RATE LOCK OR SWAP ARRANGEMENT.

37 (f) A HEDGING ARRANGEMENT.

38 (g) A LIQUIDITY OR CREDIT SUPPORT ARRANGEMENT.

39 (h) ANY OTHER SIMILAR AGREEMENT, INSTRUMENT OR ARRANGEMENT THAT IS
40 ENTERED INTO IN CONNECTION WITH THE ISSUANCE OF TRANSITION BONDS AND THAT
41 IS DESIGNED TO PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE
42 TRANSITION BONDS OR TO REDUCE OR MITIGATE THE RISK OF AN INCREASE IN ANY
43 FINANCING COST.

1 2. "APPLICANT" MEANS ANY OF THE FOLLOWING IN EACH CASE THAT FILES
2 AN APPLICATION FOR A FINANCING ORDER WITH THE COMMISSION:

3 (a) A PUBLIC SERVICE CORPORATION THAT PROVIDES ELECTRIC SERVICE,
4 INCLUDING A MEMBER-OWNED COOPERATIVE CORPORATION.

5 (b) A GROUP OF TWO OR MORE MEMBER-OWNED COOPERATIVES SEEKING
6 APPROVAL OF A COMBINED COOPERATIVE SECURITIZATION. FOR THE PURPOSES OF
7 THIS SUBDIVISION, EACH PARTICIPATING COOPERATIVE MAY BE REFERRED TO
8 INDIVIDUALLY AS THE APPLICANT OR THE GROUP OF COOPERATIVES MAY BE REFERRED
9 TO COLLECTIVELY AS THE APPLICANT AS THE CONTEXT INDICATES.

10 3. "COMBINED COOPERATIVE SECURITIZATION" MEANS A SECURITIZATION
11 TRANSACTION UNDER THIS CHAPTER THAT INVOLVES TWO OR MORE MEMBER-OWNED
12 COOPERATIVES ACTING TOGETHER INCLUDING A GENERATION AND TRANSMISSION
13 COOPERATIVE AND ONE OR MORE OF ITS MEMBER DISTRIBUTION COOPERATIVES EVEN
14 IF ALL APPLICABLE TRANSITION COSTS ARE INCURRED OR WILL BE PASSED DOWN TO
15 THE DISTRIBUTION COOPERATIVES.

16 4. "COMMISSION" MEANS THE CORPORATION COMMISSION.

17 5. "CUSTOMER" MEANS ANY PERSON OR ENTITY WITHIN THIS STATE TO WHOM
18 ONE OF THE FOLLOWING APPLIES:

19 (a) REGARDLESS OF THE IDENTITY OF THE PERSON'S OR ENTITY'S ELECTRIC
20 GENERATION SUPPLIER AND WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY
21 ALSO RECEIVES SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR
22 ENTITY RECEIVES RETAIL ELECTRIC SERVICE, WHETHER DIRECTLY OR INDIRECTLY,
23 WHETHER BUNDLED OR UNBUNDLED AND WHETHER SUPPLY OR DELIVERY, OR BOTH, FROM
24 ANY OF THE FOLLOWING:

25 (i) AN APPLICANT.

26 (ii) A SUCCESSOR TO AN APPLICANT.

27 (iii) ANY OTHER PERSON, PUBLIC SERVICE CORPORATION OR MUNICIPAL
28 ENTITY THAT ASSUMES THE RESPONSIBILITY TO PROVIDE ELECTRIC SERVICE IN AN
29 APPLICANT'S SERVICE TERRITORY AS THE SERVICE TERRITORY EXISTS ON THE DATE
30 THE COMMISSION ISSUES A FINANCING ORDER.

31 (b) REGARDLESS OF THE IDENTITY OF THE PERSON'S OR ENTITY'S ELECTRIC
32 GENERATION SUPPLIER AND WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY
33 ALSO RECEIVES SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR
34 ENTITY MAINTAINS AN INTERCONNECTION WITH THE ELECTRIC DISTRIBUTION
35 FACILITIES OF AN APPLICANT THAT ALLOWS THAT PERSON OR ENTITY TO RECEIVE
36 RETAIL ELECTRIC SERVICE, WHETHER BUNDLED OR UNBUNDLED AND WHETHER SUPPLY
37 OR DELIVERY, OR BOTH, FROM ANY OF THE FOLLOWING:

38 (i) AN APPLICANT.

39 (ii) A SUCCESSOR TO AN APPLICANT.

40 (iii) ANY OTHER PERSON, PUBLIC SERVICE CORPORATION OR MUNICIPAL
41 ENTITY THAT ASSUMES THE RESPONSIBILITY TO PROVIDE ELECTRIC SERVICE IN AN
42 APPLICANT'S SERVICE TERRITORY AS THE SERVICE TERRITORY EXISTS ON THE DATE
43 THE COMMISSION ISSUES A FINANCING ORDER.

1 (c) WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY ALSO RECEIVES
2 SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR ENTITY IS A
3 COOPERATIVE THAT PROVIDES RETAIL ELECTRIC SERVICE TO MEMBERS AND THAT
4 RECEIVES ELECTRICITY FROM AN APPLICANT THAT PROVIDES WHOLESALE ELECTRIC
5 GENERATION AND TRANSMISSION SERVICES.

6 6. "FINANCING CHARGES" MEAN NONBYPASSABLE CHARGES THAT ARE PAID OR
7 PAYABLE BY ALL CUSTOMERS TO A QUALIFIED SPECIAL PURPOSE ENTITY TO RECOVER
8 ONGOING FINANCING COSTS IN ACCORDANCE WITH THIS CHAPTER. FINANCING
9 CHARGES CAN BE ADJUSTED FROM TIME TO TIME IN ACCORDANCE WITH THE TRUE-UP
10 MECHANISM.

11 7. "FINANCING COST" MEANS ALL COSTS THAT ARE INCURRED BY A
12 QUALIFIED SPECIAL PURPOSE ENTITY, INCLUDING IN CONNECTION WITH A COMBINED
13 COOPERATIVE SECURITIZATION, TO ISSUE, RATE, MARKET, PLACE, AUTHORIZE,
14 SUPPORT, REPAY, REFINANCE, SERVICE, ADMINISTER OR REFUND TRANSITION BONDS,
15 WHETHER INCURRED AT, BEFORE OR AFTER ISSUANCE OR BEFORE OR AFTER THE DATE
16 OF MATURITY INCLUDING ANY OF THE FOLLOWING:

17 (a) THE PRINCIPAL AND INTEREST AND ANY ACQUISITION, DEFEASANCE OR
18 REDEMPTION PREMIUMS THAT ARE PAYABLE ON TRANSITION BONDS.

19 (b) THE COSTS, FEES AND EXPENSES THAT ARE RELATED TO ISSUING,
20 RATING, MARKETING, PLACING, AUTHORIZING, SUPPORTING, REPAYING,
21 REFINANCING, SERVICING, ADMINISTERING OR REFUNDING TRANSITION BONDS THAT
22 INCLUDE ANY COSTS INCURRED FOR IMPLEMENTING THE TRUE-UP MECHANISM.

23 (c) THE COSTS, FEES AND EXPENSES OF TRUSTEES OR SIMILAR
24 FIDUCIARIES, ATTORNEYS, ACCOUNTANTS, SERVICERS, RATING AGENCIES,
25 DEPOSITORY AND OTHER AGENTS OR OTHER PROFESSIONALS.

26 (d) THE COSTS, FEES AND EXPENSES THAT ARE ASSOCIATED WITH HIRING
27 EXPERT CONSULTANTS THAT ARE NECESSARY TO AID THE COMMISSION IN REVIEWING
28 AND APPROVING AN APPLICATION FOR A FINANCING ORDER IN ACCORDANCE WITH THIS
29 CHAPTER.

30 (e) THE COSTS THAT ARE INCURRED UNDER AN ANCILLARY AGREEMENT AND
31 ANY AMOUNT THAT IS REQUIRED TO REFUND OR REPLENISH A RESERVE ACCOUNT OR
32 OTHER ACCOUNT ESTABLISHED UNDER AN ANCILLARY AGREEMENT OR OTHER DOCUMENT
33 RELATING TO TRANSITION BONDS.

34 (f) THE COSTS OF FORMING, OPERATING, ADMINISTERING AND DISSOLVING A
35 QUALIFIED SPECIAL PURPOSE ENTITY.

36 (g) THE COSTS, FEES AND EXPENSES THAT ARE INCURRED TO OBTAIN ANY
37 CONSENT, RELEASE, WAIVER OR APPROVAL FROM ANY HOLDER OF AN EXISTING
38 OBLIGATION OF AN APPLICANT THAT IS NECESSARY TO PERMIT THE ISSUANCE OF
39 TRANSITION BONDS OR THE RETIREMENT, ABANDONMENT OR REDUCTION IN THE
40 UNDEPRECIATED BOOK VALUE OF A TRANSITION ASSET IN CONNECTION WITH A
41 TRANSACTION UNDER THIS CHAPTER.

42 (h) THE COSTS THAT ARE INCURRED TO PROTECT THE STATUS OF TRANSITION
43 PROPERTY, THE RIGHT TO IMPOSE AND COLLECT FINANCING CHARGES OR THE RIGHT
44 TO RECEIVE FINANCING REVENUES, INCLUDING COSTS RELATED TO ANY JUDICIAL OR

1 OTHER PROCEEDINGS THAT ARE NECESSARY TO PROTECT THE TRANSITION PROPERTY OR
2 COLLECT FINANCING REVENUES.

3 (i) FEDERAL, STATE AND OTHER TAXES THAT ARE IMPOSED ON THE
4 APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY, WITH RESPECT TO THE
5 FINANCING CHARGES OR FINANCING REVENUES WITHOUT DUPLICATION, AND ADJUSTED
6 TO REFLECT ANY UNRECOVERED DEFERRED INCOME TAX BALANCE ASSOCIATED WITH THE
7 TRANSITION COSTS, AND ANY OTHER FEES, CHARGES OR OTHER ASSESSMENTS THAT
8 ARE IMPOSED ON TRANSITION BONDS.

9 8. "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION THAT IS
10 ISSUED AS PRESCRIBED IN SECTION 40-603, SUBSECTION B.

11 9. "FINANCING PARTY" MEANS A HOLDER OF TRANSITION BONDS AND ANY
12 TRUSTEE, COLLATERAL AGENT OR OTHER PERSON ACTING FOR THE BENEFIT OF THE
13 HOLDER.

14 10. "FINANCING REVENUES" MEANS ANY MONEY AND OTHER PROPERTY
15 RECEIVED OR TO BE RECEIVED, DIRECTLY OR INDIRECTLY, IN PAYMENT OF OR ON
16 ACCOUNT OF THE FINANCING CHARGES, INCLUDING ALL OF THE PROCEEDS OF THE
17 INVESTMENT THEREOF.

18 11. "NONBYPASSABLE" MEANS THAT THE PAYMENT OF THE FINANCING CHARGES
19 MAY NOT BE AVOIDED AND SHALL BE PAID BY A CUSTOMER IF, AT THE TIME
20 INVOICES OR BILLS ARE RENDERED, TRANSITION BONDS ARE OUTSTANDING OR THE
21 FINANCING COSTS HAVE NOT BEEN RECOVERED IN FULL. FINANCING CHARGES SHALL
22 BE PAID REGARDLESS OF WHETHER:

23 (a) THE CUSTOMER IS LIABLE TO A PUBLIC SERVICE CORPORATION OR THE
24 APPLICANT FOR ANY RATE OR OTHER CHARGES FOR ELECTRIC SERVICE.

25 (b) THE SYSTEM ASSETS SERVING THE CUSTOMER CONTINUE TO BE OWNED BY
26 THE APPLICABLE APPLICANT OR OTHER PUBLIC SERVICE CORPORATION.

27 12. "ONGOING FINANCING COSTS":

28 (a) MEANS ALL FINANCING COSTS, INCLUDING THE PRINCIPAL AND INTEREST
29 THAT ARE PAYABLE ON THE TRANSITION BONDS.

30 (b) DOES NOT INCLUDE UPFRONT FINANCING COSTS THAT ARE PAID BY THE
31 QUALIFIED SPECIAL PURPOSE ENTITY DIRECTLY OR INDIRECTLY FROM THE PROCEEDS
32 OF THE ISSUANCE OF TRANSITION BONDS.

33 13. "QUALIFIED SPECIAL PURPOSE ENTITY":

34 (a) MEANS A LEGAL ENTITY THAT:

35 (i) IS ESTABLISHED BY AND WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY
36 AN APPLICANT IN WHICH AN INTEREST IN TRANSITION PROPERTY IS CREATED
37 PURSUANT TO THIS CHAPTER AND WHICH ISSUES TRANSITION BONDS THAT ARE
38 SECURED BY TRANSITION PROPERTY.

39 (ii) DOES NOT PROVIDE ELECTRIC SERVICE.

40 (iii) IS NOT A PUBLIC SERVICE CORPORATION.

41 (b) MAY NOT CONDUCT ANY BUSINESS THAT IS UNRELATED TO OWNING,
42 PROTECTING, AND ADMINISTERING THE TRANSITION PROPERTY OR ISSUING,
43 MARKETING, PLACING, AUTHORIZING, SUPPORTING, REPAYING, REFINANCING,
44 SERVICING, ADMINISTERING OR REFUNDING TRANSITION BONDS.

1 (c) INCLUDES ANY SUCCESSOR TO OR ASSIGNEE, OTHER THAN AS SECURITY,
2 OF THE LEGAL ENTITY.

3 (d) FOR A COMBINED COOPERATIVE SECURITIZATION, THE OWNERSHIP
4 INTERESTS IN A QUALIFIED SPECIAL PURPOSE ENTITY MAY BE ALLOCATED TO THE
5 RELEVANT COOPERATIVE APPLICANTS IN PROPORTION TO THE TRANSITION COSTS THAT
6 ARE ALLOCATED TO EACH OF THEM OR IN ANY OTHER MANNER APPROVED BY THE
7 FINANCING ORDER.

8 14. "SERVICER":

9 (a) MEANS A PERSON OR ENTITY THAT IS AUTHORIZED AND REQUIRED BY A
10 CONTRACT, TARIFF OR OTHERWISE, TO DO ALL OF THE FOLLOWING:

11 (i) CALCULATE, BILL OR COLLECT FINANCING CHARGES ON BEHALF OF A
12 QUALIFIED SPECIAL PURPOSE ENTITY.

13 (ii) PREPARE PERIODIC REPORTS ON THE BILLING OF FINANCING CHARGES
14 AND THE COLLECTION OF FINANCING REVENUES.

15 (iii) RENDER OTHER SERVICES RELATED TO FINANCING CHARGES AND THE
16 TRANSITION PROPERTY, INCLUDING ADMINISTERING THE TRUE-UP MECHANISM.

17 (b) INCLUDES:

18 (i) A PUBLIC SERVICE CORPORATION, INCLUDING AN APPLICANT.

19 (ii) A THIRD-PARTY SERVICER THAT COLLECTS FINANCE CHARGES UNDER A
20 TRANSITION BILLING SERVICES TARIFF.

21 15. "SIGNIFICANT EVENT RECOVERY COSTS":

22 (a) MEANS COSTS, FEES AND EXPENSES THAT ARE SIGNIFICANT, AS
23 DETERMINED BY THE COMMISSION, THAT ARE INCURRED OR TO BE INCURRED THROUGH
24 THE DATE OF ISSUANCE OF A FINANCING ORDER AND THAT ARE ASSOCIATED WITH OR
25 THAT ARISE FROM INCIDENTS OF SEVERE OR EXTREME WEATHER, NATURAL DISASTERS,
26 CIVIL DISTURBANCE, WILDFIRE, CRIMINAL ACTS OR ACTS OF WAR OR TERRORISM
27 THAT RESULT IN ANY OF THE APPLICANT'S ASSETS, FACILITIES OR INFRASTRUCTURE
28 THAT ARE IN OPERATION PROVIDING SERVICE FOR CUSTOMERS BECOMING DESTROYED,
29 DAMAGED OR OTHERWISE RENDERED INOPERABLE, IN WHOLE OR IN PART.

30 (b) FOR A COMBINED COOPERATIVE SECURITIZATION, MAY INCLUDE COSTS
31 THAT HAVE BEEN INCURRED BY A GENERATION AND TRANSMISSION COOPERATIVE
32 APPLICANT THAT WOULD OTHERWISE BE PASSED ON TO DISTRIBUTION COOPERATIVE
33 APPLICANTS IN WHOLESALE POWER OR SIMILAR CHARGES, REGARDLESS OF WHETHER
34 THE COSTS HAVE BEEN PASSED THROUGH TO DISTRIBUTION COOPERATIVE APPLICANTS
35 AT ANY GIVEN TIME.

36 16. "THIRD-PARTY SERVICER" MEANS A PERSON, OTHER THAN AN APPLICANT,
37 THAT IS ENGAGED TO ACT AS A SERVICER FOR TRANSITION BONDS IN THE EVENT AN
38 APPLICANT IS UNABLE TO ACT AS A SERVICER.

39 17. "TRANSITION ASSET" MEANS ANY ELECTRIC POWER GENERATION,
40 TRANSMISSION OR DISTRIBUTION FACILITIES, INCLUDING OTHER PROPERTY OR
41 EQUIPMENT THAT IS USED BY THE APPLICANT AND THAT IS IDENTIFIED IN AN
42 APPLICATION FOR A FINANCING ORDER, AND THAT EITHER:

43 (a) HAS BEEN RETIRED AND NO LONGER PROVIDES SERVICE, IN WHOLE OR IN
44 PART.

1 (b) AS OF THE DATE OF THE APPLICATION, IS PLANNED TO BE RETIRED,
2 SOLD, DISPOSED OF, ABANDONED OR OTHERWISE REMOVED FROM SERVICE BY THE
3 APPLICANT, IN WHOLE OR IN PART, WITHIN TEN YEARS AFTER THE DATE OF THE
4 APPLICATION.

5 (c) HAS OTHERWISE BEEN DESTROYED, DAMAGED OR RENDERED INOPERABLE,
6 IN WHOLE OR IN PART, BY FORCES OR ACTION OUTSIDE OF THE APPLICANT'S
7 REASONABLE CONTROL.

8 18. "TRANSITION ASSET RETIREMENT COSTS":

9 (a) MEANS THE UNDEPRECIATED VALUE, UNRECOVERED BALANCE OR PORTION
10 THEREOF AS TO ANY TRANSITION ASSET THAT IS INCLUDED IN THE APPLICANT'S
11 RATE BASE OR THAT IS RECOVERED THROUGH RATES THAT WILL BE PERMANENTLY
12 REDUCED WHEN THE TRANSITION BONDS ARE ISSUED AND THE APPLICANT RECEIVES
13 THE TRANSFER OF FUNDS AS DESCRIBED IN SECTION 40-606, SUBSECTION A IN
14 CONNECTION WITH A TRANSACTION AUTHORIZED BY THIS CHAPTER AND ANY COSTS,
15 FEES AND EXPENSES INCURRED TO RETIRE, ABANDON OR REDUCE THE UNDEPRECIATED
16 BOOK VALUE OF SUCH TRANSITION ASSET IN CONNECTION WITH A TRANSACTION UNDER
17 THIS CHAPTER, INCLUDING WITHOUT LIMITATION DECOMMISSIONING, REMEDIATION OR
18 RESTORATION COSTS ASSOCIATED WITH THE TRANSITION ASSET.

19 (b) FOR A COMBINED COOPERATIVE SECURITIZATION, MAY INCLUDE COSTS
20 THAT HAVE BEEN INCURRED BY A GENERATION AND TRANSMISSION COOPERATIVE
21 APPLICANT THAT WOULD OTHERWISE BE PASSED ON TO DISTRIBUTION COOPERATIVE
22 APPLICANTS IN WHOLESALE POWER OR SIMILAR CHARGES, REGARDLESS OF WHETHER
23 SUCH COSTS HAVE BEEN PASSED THROUGH TO DISTRIBUTION COOPERATIVE APPLICANTS
24 AT ANY GIVEN TIME.

25 19. "TRANSITION BENEFIT TEST" MEANS THE ASSESSMENT DESCRIBED IN
26 SECTION 40-603, SUBSECTION B, PARAGRAPH 2.

27 20. "TRANSITION BILLING SERVICES TARIFF":

28 (a) MEANS A TARIFF OF A PUBLIC SERVICE CORPORATION, INCLUDING AN
29 APPLICANT, THAT AUTHORIZES THE PUBLIC SERVICE CORPORATION, APPLICANT OR
30 OTHER PERSON TO ACT AS A SERVICER.

31 (b) MAY NOT SPECIFY OR ALTER THE AMOUNT OF ANY FINANCING CHARGES
32 NOR GRANT THE SERVICER ANY RIGHT, TITLE OR INTEREST IN FINANCING REVENUES.

33 21. "TRANSITION BONDS" MEANS BONDS, NOTES OR OTHER EVIDENCES OF
34 INDEBTEDNESS THAT ARE ISSUED BY A QUALIFIED SPECIAL PURPOSE ENTITY AND
35 THAT ARE DESCRIBED IN AN APPLICATION FOR A FINANCING ORDER, THE PROCEEDS
36 OF WHICH ARE USED, DIRECTLY OR INDIRECTLY, TO RECOVER, FINANCE, REFINANCE
37 OR REFUND TRANSITION COSTS AND UPFRONT FINANCING COSTS AND THAT ARE
38 DIRECTLY OR INDIRECTLY PAYABLE FROM, OR SECURED BY, TRANSITION PROPERTY,
39 FINANCING CHARGES OR FINANCING REVENUES.

40 22. "TRANSITION COSTS" INCLUDES ANY OF THE FOLLOWING:

41 (a) TRANSITION ASSET RETIREMENT COSTS.

42 (b) SIGNIFICANT EVENT RECOVERY COSTS.

43 23. "TRANSITION PROPERTY":

1 (a) MEANS THE PROPERTY RIGHTS AND PROPERTY INTERESTS OF A QUALIFIED
2 SPECIAL PURPOSE ENTITY, ANY HOLDERS OF TRANSITION BONDS WHEN ISSUED OR ANY
3 TRANSFEREE OR ASSIGNEE THEREOF THAT ARE CREATED OR RECOGNIZED AS A RESULT
4 OF A TRANSACTION AUTHORIZED BY THIS CHAPTER AND IS NOT AN ASSET OF THE
5 APPLICANT OR ANY OTHER PUBLIC SERVICE CORPORATION.

6 (b) INCLUDES ANY OF THE FOLLOWING:

7 (i) ALL RIGHTS AND INTERESTS OF A QUALIFIED SPECIAL PURPOSE ENTITY
8 UNDER A FINANCING ORDER.

9 (ii) THE RIGHT TO IMPOSE, CHARGE, COLLECT AND RECEIVE FINANCING
10 CHARGES, INCLUDING THE RIGHT TO CALCULATE, IMPOSE, CHARGE, COLLECT AND
11 RECEIVE ADJUSTMENTS TO THE FINANCING CHARGES PURSUANT TO THE TRUE-UP
12 MECHANISM.

13 (iii) ALL RIGHT AND TITLE TO, AND ALL INTEREST IN, FINANCING
14 REVENUES, REGARDLESS OF WHETHER THE REVENUES ARE BILLED, RECEIVED,
15 COLLECTED OR MAINTAINED SEPARATELY FROM OR COMMINGLED WITH OTHER REVENUES
16 OR MONIES OF ANY TYPE AND REGARDLESS OF WHETHER THE REVENUES ARE BILLED OR
17 COLLECTED BY A SERVICER.

18 (iv) ALL RESERVES THAT ARE ESTABLISHED IN CONNECTION WITH THE
19 TRANSITION BONDS OR THE TRANSITION PROPERTY.

20 (v) ALL RIGHTS OF A QUALIFIED SPECIAL PURPOSE ENTITY UNDER ANY
21 ANCILLARY AGREEMENT.

22 24. "TRUE-UP MECHANISM":

23 (a) MEANS A FORMULA, DESCRIBED IN THE APPLICATION FOR A FINANCING
24 ORDER AND ESTABLISHED BEFORE OR CONCURRENT WITH THE ISSUANCE OF TRANSITION
25 BONDS, THAT ADJUSTS FINANCING CHARGES OVER TIME TO CORRECT FOR ANY
26 OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES SO THAT BOTH A
27 QUALIFIED SPECIAL PURPOSE ENTITY TIMELY AND COMPLETELY RECOVERS NOT MORE
28 THAN ALL ONGOING FINANCING COSTS AND ANY IMPACTS TO THE APPLICANT'S
29 CUSTOMERS FROM ANY OVERCOLLECTION ARE ADDRESSED IN A TIMELY AND COMPLETE
30 MANNER.

31 (b) FOR A COMBINED COOPERATIVE SECURITIZATION AND IN ADDITION TO
32 THE MECHANISM DESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH, MEANS A
33 MECHANISM THAT MAY ALSO BE USED TO ALLOCATE OR REALLOCATE FINANCING COSTS
34 TO THE CUSTOMERS OF THE COOPERATIVE APPLICANTS.

35 25. "UNIT FINANCING CHARGE" MEANS THE SHARE OR PORTION OF THE
36 FINANCING CHARGES THAT ARE IMPOSED ON, PAID BY AND COLLECTED FROM A
37 PARTICULAR CUSTOMER OR FROM EVERY CUSTOMER IN A PARTICULAR GROUP OF
38 CUSTOMERS AND MAY DIFFER BETWEEN CUSTOMERS AND GROUPS OF CUSTOMERS, BUT IF
39 THEY DO, EACH CUSTOMER GROUP AND HOW IT IS DEFINED SHALL ALSO BE DESCRIBED
40 IN THE APPLICATION. UNIT FINANCING CHARGES ARE DETERMINED, AND IMPOSED,
41 WITHOUT REGARD TO WHETHER, OR TO WHAT EXTENT, A CUSTOMER USES THE SERVICES
42 OF ANY PUBLIC SERVICE CORPORATION DURING THE PERIOD IN WHICH A PARTICULAR
43 UNIT FINANCING CHARGE WILL APPLY.

1 26. "UPFRONT FINANCING COSTS":

2 (a) MEANS THOSE FINANCING COSTS THAT ARE PAID DIRECTLY OR
3 INDIRECTLY FROM THE PROCEEDS OF TRANSITION BONDS, BY THE QUALIFIED SPECIAL
4 PURPOSE ENTITY.

5 (b) INCLUDES ALL OR A PORTION OF THE COSTS OF OBTAINING A FINANCING
6 ORDER AND DESIGNING, MARKETING, OBTAINING RATINGS FOR AND ISSUING
7 TRANSITION BONDS.

8 40-602. Statement of public policy

9 A. IT IS THE PUBLIC POLICY OF THIS STATE TO GAIN THE BENEFITS OF
10 SECURITIZATION BY ESTABLISHING IRREVOCABLE FINANCING CHARGES THAT ARE
11 PAYABLE TO A QUALIFIED SPECIAL PURPOSE ENTITY AND BY CREATING AND VESTING
12 A PRESENT AND ALIENABLE PROPERTY INTEREST IN FINANCING REVENUES IN A
13 QUALIFIED SPECIAL PURPOSE ENTITY. THOSE BENEFITS INCLUDE REDUCING ALL OF
14 THE FOLLOWING:

15 1. THE CONTRIBUTION OF ASSETS, WHICH ARE SUBJECT TO POTENTIAL
16 RETIREMENT, ABANDONMENT, SALE, DISPOSITION OR TRANSITION, OR THAT HAVE
17 BEEN DAMAGED OR DESTROYED, TO THE RATE BASE, OR AS WOULD OTHERWISE BE
18 RECOVERED THROUGH RATES, OF PUBLIC SERVICE CORPORATIONS AND ANY ASSOCIATED
19 LIABILITIES.

20 2. THE COSTS ARISING FROM OR RELATED TO WEATHER, WILDFIRE OR OTHER
21 SIGNIFICANT EVENTS OR INCIDENTS THAT CAUSE DAMAGE, DESTRUCTION OR
22 OTHERWISE RENDER INOPERABLE, IN WHOLE OR IN PART, ANY OF THE APPLICANT'S
23 ASSETS, FACILITIES OR INFRASTRUCTURE THAT ARE IN OPERATION PROVIDING
24 SERVICE FOR CUSTOMERS.

25 B. THE USE OF LOW-COST SECURITIZED BORROWING BY A SEPARATE SPECIAL
26 PURPOSE ENTITY IS INTENDED TO ENABLE PUBLIC SERVICE CORPORATIONS TO
27 ACHIEVE THE BENEFITS OF SECURITIZATION FOR CUSTOMERS BY REINVESTING
28 CAPITAL NOW COMMITTED TO PAYING THE COSTS RELATED TO THE PRODUCTION AND
29 DELIVERY OF ENERGY FROM NEW FACILITIES, RESOURCES OR OTHER ASSETS.

30 40-603. Securitization transactions: initiation; financing
31 order; application requirements; transition benefit
32 test; timeframes

33 A. AN APPLICANT MAY REQUEST PERMISSION TO INITIATE A SECURITIZATION
34 TRANSACTION FROM THE COMMISSION BY SUBMITTING AN APPLICATION FOR A
35 FINANCING ORDER. THE APPLICATION SHALL:

36 1. IDENTIFY, AS APPLICABLE, ANY TRANSITION ASSETS, TRANSITION ASSET
37 RETIREMENT COSTS OR SIGNIFICANT EVENT RECOVERY COSTS. FOR THE PURPOSES OF
38 THIS PARAGRAPH, TRANSITION ASSETS MUST CURRENTLY BE OR HAVE PREVIOUSLY
39 BEEN IN OPERATION PROVIDING SERVICE FOR THE APPLICANT'S CUSTOMERS AS OF
40 THE EFFECTIVE DATE OF THIS SECTION, EXCEPT FOR TRANSITION ASSETS THAT ARE
41 PLACED INTO SERVICE AFTER THE EFFECTIVE DATE OF THIS SECTION THAT BECOME
42 DESTROYED, DAMAGED OR RENDERED INOPERABLE, IN WHOLE OR IN PART, BY FORCES
43 OR ACTION OUTSIDE OF THE APPLICANT'S REASONABLE CONTROL, AS PROVIDED IN
44 SECTION 40-601, PARAGRAPH 17, SUBDIVISION (c).

1 2. ESTIMATE THE TRANSITION COSTS AND FINANCING COSTS INCLUDING AN
2 ESTIMATE OF RECOVERING SUCH COSTS ON A NET PRESENT VALUE BASIS.
3 3. DESCRIBE THE EXPECTED CHARACTERISTICS OF THE TRANSITION BONDS.
4 4. PROJECT THE FINANCING CHARGES AND EXPLAIN HOW THE FINANCING
5 CHARGES WILL RESULT IN THE COLLECTION OF FINANCING REVENUES IN AMOUNTS
6 SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ENABLE THE TIMELY AND
7 COMPLETE RECOVERY AND PAYMENT OF ALL ONGOING FINANCING COSTS. FOR THE
8 PURPOSES OF THIS PARAGRAPH, "FINANCING CHARGES" INCLUDES ANY COSTS AND
9 FEES THAT ARE ASSOCIATED WITH HIRING EXPERT CONSULTANTS THAT ARE NECESSARY
10 TO AID THE COMMISSION IN REVIEWING AND APPROVING OF AN APPLICATION FOR A
11 FINANCING ORDER.
12 5. ESTIMATE THE FINANCING CHARGES AND UNIT FINANCING CHARGES BEFORE
13 THE FIRST APPLICATION OF THE TRUE-UP MECHANISM.
14 6. DESCRIBE THE PROPOSED TRUE-UP MECHANISM AND HOW THE TRUE-UP
15 MECHANISM WILL ADJUST THE FINANCING CHARGES AND UNIT FINANCING CHARGES
16 OVER TIME TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF
17 FINANCING REVENUES.
18 7. IDENTIFY THE QUALIFIED SPECIAL PURPOSE ENTITY.
19 8. INCLUDE A REPORT THAT IS PREPARED BY A SECURITIES FIRM
20 EXPERIENCED IN UNDERWRITING AND BOND ISSUANCE AND THAT CONCLUDES THE
21 TRANSITION BONDS ARE EXPECTED TO SATISFY THE CURRENT PUBLISHED CRITERIA
22 FOR AN AAA RATING OR THE EQUIVALENT.
23 9. IDENTIFY ANY ANTICIPATED ANCILLARY AGREEMENTS, INDIVIDUALLY OR
24 BY DESCRIPTION.
25 10. DESCRIBE HOW THE APPLICANT PROPOSES TO PERMANENTLY REDUCE OR
26 OFFSET THE VALUE OF EITHER:
27 (a) UNDEPRECIATED TRANSITION ASSETS IN RATE BASE OR RECOVERED
28 THROUGH RATES AND ANY ASSOCIATED REGULATORY ASSETS OR RECORDED LIABILITIES
29 WITH RESPECT TO AN OFFERING OF TRANSITION BONDS TO RECOVER TRANSITION
30 ASSET RETIREMENT COSTS.
31 (b) ANY REGULATORY ASSET OR RECORDED LIABILITY THAT IS ASSOCIATED
32 WITH TRANSITION BONDS TO RECOVER SIGNIFICANT EVENT RECOVERY COSTS IN
33 EXCHANGE FOR THE NET PROCEEDS OF THE TRANSITION BONDS.
34 11. INCLUDE A PROPOSED TRANSITION BILLING SERVICES TARIFF IF THE
35 PROPOSED INITIAL SERVICER IS A PUBLIC SERVICE CORPORATION.
36 12. COMMIT TO MAKING A FILING WITH THE COMMISSION THAT WILL
37 DESCRIBE THE FINAL STRUCTURE AND PRICING OF THE TRANSITION BONDS, A
38 STATEMENT OF ACTUAL UPFRONT FINANCING COSTS AND AN UPDATED CALCULATION OF
39 THE ESTIMATED FINANCING CHARGES AND UNIT FINANCING CHARGES OVER THE LIFE
40 OF THE TRANSITION BONDS.
41 13. PROVIDE A PROPOSED FINANCING ORDER.
42 14. FOR A COMBINED COOPERATIVE SECURITIZATION, DESCRIBE THE
43 ALLOCATION OF FINANCING COSTS OR FINANCING CHARGES AND UNIT FINANCING
44 CHARGES TO EACH COOPERATIVE APPLICANT'S CUSTOMERS, AS WELL AS HOW THE

1 TRUE-UP MECHANISM WILL ALLOCATE OR REALLOCATE FINANCING COSTS TO THE
2 COOPERATIVE APPLICANT'S CUSTOMERS OVER TIME.

3 15. INCLUDE AN ANALYSIS THAT SHOWS THE SECURITIZATION TRANSACTION
4 WILL RESULT IN LOWER COSTS TO THE APPLICANT'S CUSTOMERS ON A NET PRESENT
5 VALUE BASIS AS COMPARED TO FINANCING OPTIONS THAT ARE OTHERWISE AVAILABLE
6 TO THE APPLICANT.

7 B. THE COMMISSION SHALL ISSUE A FINANCING ORDER THAT APPROVES,
8 REJECTS OR APPROVES WITH CONDITIONS THE INITIATION OF THE PROPOSED
9 TRANSACTION. THE COMMISSION MAY APPROVE OR APPROVE WITH CONDITIONS THE
10 PROPOSED TRANSACTION ONLY IF THE COMMISSION FINDS THAT:

11 1. THE APPLICATION COMPLIES WITH ALL OF THE REQUIREMENTS PRESCRIBED
12 IN SUBSECTION A OF THIS SECTION.

13 2. THE SECURITIZATION TRANSACTION WILL RESULT IN LOWER COSTS TO THE
14 APPLICANT'S CUSTOMERS ON A NET PRESENT VALUE BASIS AS COMPARED TO OTHER
15 FINANCING OPTIONS THAT ARE AVAILABLE TO THE APPLICANT, WHICH SHALL BE
16 DETERMINED BASED ON WHETHER THE TRANSITION BENEFIT TEST IS SATISFIED. THE
17 TRANSITION BENEFIT TEST IS SATISFIED ON A SHOWING OF ALL OF THE FOLLOWING:

18 (a) THE PROJECTED NET PRESENT VALUE OVER THE TERM OF THE TRANSITION
19 BONDS OF THE FINANCING CHARGES MINUS, TO THE EXTENT APPLICABLE, THE
20 REVENUE REQUIREMENT CREDITS THAT ARISE FROM ANY DEFERRED INCOME TAX
21 BALANCES ASSOCIATED WITH THE TRANSITION COST WILL BE SMALLER IN ABSOLUTE
22 VALUE THAN THE PROJECTED NET PRESENT VALUE THAT IS CALCULATED AT THE SAME
23 DISCOUNT RATE OF THE PORTION OF THE ANNUAL REVENUE REQUIREMENTS OF THE
24 APPLICANT THAT IS ASSOCIATED WITH THE TRANSITION COST, IF THE COST WERE TO
25 BE FINANCED DIRECTLY BY THE APPLICANT.

26 (b) THE PROPOSED STRUCTURE AND PROJECTED PRICING OF THE TRANSITION
27 BONDS ARE REASONABLY EXPECTED TO RESULT, ON A NET PRESENT VALUE BASIS OVER
28 THE LIFE OF THE TRANSITION BONDS, IN THE LOWEST FINANCING CHARGES THAT ARE
29 COMMERCIALY AVAILABLE CONSISTENT WITH MARKET CONDITIONS AT THE TIME THE
30 TRANSITION BONDS ARE PRICED AND WITH THE TERMS OF THE FINANCING ORDER.

31 (c) FOR A FINANCING APPLICATION THAT INVOLVES A TRANSITION ASSET
32 THAT IS AN ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS BEEN
33 RETIRED, SOLD, ABANDONED, DISPOSED OF OR OTHERWISE REMOVED FROM SERVICE OF
34 THE APPLICANT'S CUSTOMERS, IN WHOLE OR IN PART, AS PROVIDED IN SECTION
35 40-601, PARAGRAPH 17, SUBDIVISIONS (a) AND (b), THE REPLACEMENT MEANS OF
36 SATISFYING THE CUSTOMER LOAD SERVED BY THE ELECTRIC POWER GENERATION
37 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE IS MORE
38 COST-EFFECTIVE FOR THE APPLICANT'S CUSTOMERS THAN CONTINUED RELIANCE ON OR
39 OPERATION OF THE ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS
40 BEEN REMOVED FROM SERVICE. COST-EFFECTIVENESS SHALL BE DETERMINED BY
41 COMPARING THE SUM OF THE NET PRESENT VALUE OF ALL THE COSTS AND EXPENSES
42 OF RELIABLE REPLACEMENT GENERATION OF EQUAL OR GREATER CONTRIBUTION TOWARD
43 THE UTILITY'S RESOURCE ADEQUACY THAN THE ELECTRIC POWER GENERATION
44 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER THE

1 REPLACEMENT GENERATION'S EXPECTED USEFUL LIFE COMBINED WITH THE PROJECTED
2 NET PRESENT VALUE TO RATEPAYERS OF THE TOTAL EXPECTED COST OF THE
3 TRANSITION BONDS OVER THE TERM OF SUCH BONDS, AS COMPARED TO THE NET
4 PRESENT VALUE TO RATEPAYERS OF THE COST, INCLUDING ANY UNRECOVERED COSTS
5 ASSOCIATED WITH UNDEPRECIATED VALUE OR UNRECOVERED BALANCES OF THE
6 TRANSITION ASSET IF SUCH COSTS WERE TO BE FINANCED DIRECTLY BY THE
7 APPLICANT, OF CONTINUING TO OPERATE THE ELECTRIC POWER GENERATION FACILITY
8 THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER AN EQUIVALENT TIME
9 FRAME REGARDLESS OF THE FUEL SOURCE OF THE POWER GENERATION. THE
10 COST-EFFECTIVE EVALUATION SHALL INCLUDE A DESCRIPTION OF A PORTFOLIO THAT
11 CONTAINS NEW AND EXISTING RESOURCES THAT WILL PROVIDE RELIABLE REPLACEMENT
12 GENERATION OF EQUIVALENT RESOURCE ADEQUACY AS THE ELECTRIC POWER
13 GENERATION THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE.

14 3. THE PROPOSED TRANSITION BILLING SERVICES TARIFF, INCLUDING ANY
15 TRUE-UP MECHANISM THAT IS DESIGNED TO ADDRESS OVERCOLLECTION OR
16 UNDERCOLLECTION FROM THE APPLICANT'S CUSTOMERS, IS JUST AND REASONABLE, IS
17 IN THE PUBLIC INTEREST AND SHOULD BE IN EFFECT.

18 4. THE PROPOSED TRANSACTION, AS DESCRIBED IN THE APPLICATION FOR A
19 FINANCING ORDER, IS JUST AND REASONABLE, IS IN THE PUBLIC INTEREST AND
20 SHOULD BE PUT INTO EFFECT.

21 C. THE COMMISSION SHALL ISSUE A FINAL DECISION REGARDING THE
22 APPLICATION FOR A FINANCING ORDER WITHIN ONE HUNDRED TWENTY DAYS AFTER THE
23 DATE THE APPLICATION FOR THE FINANCING ORDER WAS FILED. THE COMMISSION
24 MAY EXTEND THE TIME FOR AN ADDITIONAL NINETY DAYS FOR GOOD CAUSE SHOWN.

25 D. THE PARENT, HOLDING OR OTHER DIRECT BENEFICIAL OWNER OF AN
26 APPLICANT THAT IS ALSO A PUBLIC SERVICE COMPANY MAY NOT PURCHASE
27 TRANSITION BONDS.

28 E. FOR THE PURPOSES OF REVIEWING AND APPROVING AN APPLICATION FOR A
29 FINANCING ORDER, THE COMMISSION MAY USE EXPERT CONSULTANTS AND CHARGE THE
30 QUALIFIED SPECIAL PURPOSE ENTITY A FEE FOR HIRING THE EXPERT CONSULTANTS.

31 40-604. Commission authority; jurisdiction

32 A. ON AN APPLICANT'S RECEIPT OF THE NET PROCEEDS OF THE ISSUANCE OF
33 THE TRANSITION BONDS UNDER SECTION 40-606, SUBSECTION A, THE COMMISSION
34 HAS THE AUTHORITY TO ENSURE THAT:

35 1. ANY UNDEPRECIATED VALUE OF THE TRANSITION ASSETS ON THE
36 APPLICANT'S BOOKS ARE REDUCED BY THE CORRESPONDING AMOUNT, INCLUDING ANY
37 REDUCTIONS IN ASSOCIATED REGULATORY ASSETS OR RECORDED LIABILITIES, AS
38 APPLICABLE.

39 2. ANY REGULATORY ASSETS THAT ARE RELATED TO SIGNIFICANT EVENT
40 RECOVERY COSTS ARE REDUCED BY THAT CORRESPONDING AMOUNT.

41 3. ANY INCURRED COSTS OF A RECORDED LIABILITY THAT ARE INCURRED AND
42 ASSOCIATED WITH SIGNIFICANT EVENT RECOVERY COSTS ARE REDUCED BY THAT
43 CORRESPONDING AMOUNT.

1 B. THIS CHAPTER DOES NOT ABROGATE OR PREVENT THE COMMISSION'S
2 AUTHORITY TO DO ANY OF THE FOLLOWING:

3 1. ESTABLISH AND REGULATE RATES OF PUBLIC SERVICE CORPORATIONS.

4 2. INVESTIGATE THE PRACTICES OF PUBLIC SERVICE CORPORATIONS.

5 3. REVIEW AND AUDIT THE BOOKS AND RECORDS OF PUBLIC SERVICE
6 CORPORATIONS, INCLUDING THE ACTIONS TAKEN UNDER A TRANSITION BILLING
7 SERVICES TARIFF AND THE RECEIPT, HANDLING AND REMITTANCE TO THE QUALIFIED
8 SPECIAL PURPOSE ENTITY OF FINANCING REVENUES.

9 4. INVESTIGATE AN APPLICANT'S COMPLIANCE WITH THE TERMS AND
10 CONDITIONS OF A FINANCING ORDER AND TO REQUIRE THAT THE APPLICANT COMPLY
11 WITH THE FINANCING ORDER.

12 5. IMPOSE REGULATORY SANCTIONS ON AN APPLICANT FOR THE WILFUL
13 FAILURE TO COMPLY WITH A FINANCING ORDER OR THIS CHAPTER.

14 C. THE COMMISSION SHALL NOT ORDER OR REQUIRE, DIRECTLY OR AS A
15 CONDITION FOR ANY OTHER ACTION OR FINDING, A PUBLIC SERVICE CORPORATION TO
16 APPLY FOR PERMISSION TO INITIATE A SECURITIZATION TRANSACTION UNDER THIS
17 CHAPTER OR TO ENGAGE IN A TRANSACTION AUTHORIZED BY THIS CHAPTER.

18 D. EXCEPT AS PROVIDED IN SECTION 40-610, THIS CHAPTER DOES NOT
19 PRECLUDE THE COMMISSION FROM CONSIDERING THE BILL IMPACT OF UNIT FINANCING
20 CHARGES WHEN DETERMINING THE DESIGN OF THE RATES WITHIN ITS JURISDICTION
21 OR THE ALLOCATION OF THE COSTS TO AND AMONG PERSONS OR GROUPS OF PERSONS
22 PAYING THE RATES.

23 40-605. Transition property; property rights; default on
24 transition bonds

25 A. TRANSITION PROPERTY IS IMMEDIATELY CREATED BY OPERATION OF LAW
26 ON THE LATTER OF THE APPROVAL OF A FINANCING ORDER, THE CREATION AND
27 CAPITALIZATION OF THE QUALIFIED SPECIAL PURPOSE ENTITY AND ISSUANCE AND
28 RECEIPT OF VALUE FOR THE APPLICABLE TRANSITION BONDS. TRANSITION PROPERTY
29 CONTINUES TO EXIST UNTIL THE CORRESPONDING TRANSITION BONDS AND ALL
30 ONGOING FINANCING COSTS RELATED TO THE TRANSITION BONDS HAVE BEEN FULLY
31 PAID. ON CREATION, TRANSITION PROPERTY BELONGS TO THE QUALIFIED SPECIAL
32 PURPOSE ENTITY. A QUALIFIED SPECIAL PURPOSE ENTITY MAY NOT CONDUCT ANY
33 BUSINESS UNRELATED TO OWNING, PROTECTING AND ADMINISTERING THE TRANSITION
34 PROPERTY OR ISSUING, MARKETING, PLACING, AUTHORIZING, SUPPORTING,
35 REPLAYING, REFINANCING, SERVICING, ADMINISTERING OR REFUNDING TRANSITION
36 BONDS.

37 B. TRANSITION PROPERTY CONSTITUTES A VESTED, EXISTING, PRESENT,
38 CONTINUING AND IRREVOCABLE PROPERTY RIGHT FOR ALL PURPOSES,
39 NOTWITHSTANDING THE FACT THAT THE VALUE OF THE PROPERTY MAY DEPEND ON, OR
40 BE AFFECTED BY, EVENTS OR ACTIONS THAT HAVE NOT YET OCCURRED. TRANSITION
41 PROPERTY SHALL NOT BE AN ASSET OF THE APPLICANT OR ANY OTHER PUBLIC
42 SERVICE CORPORATION.

43 C. AN APPLICANT MAY NOT HAVE AN OWNERSHIP OR BENEFICIAL INTEREST OR
44 ANY CLAIM OF RIGHT IN THE TRANSITION PROPERTY, OTHER THAN THE REQUIREMENT

1 TO CALCULATE, IMPOSE, CHARGE, COLLECT AND RECEIVE THE FINANCING CHARGES AS
2 SERVICER AND TRANSFER THE RESULTING FINANCING REVENUES TO THE QUALIFIED
3 SPECIAL PURPOSE ENTITY THAT IS ENTITLED TO RECEIVE THOSE FINANCING
4 REVENUES.

5 D. THE QUALIFIED SPECIAL PURPOSE ENTITY MAY PLEDGE ALL OR ANY
6 PORTION OF THE TRANSITION PROPERTY TO SECURE THE TIMELY AND COMPLETE
7 PAYMENT OF TRANSITION BONDS AND FINANCING COSTS.

8 E. TRANSITION PROPERTY, FINANCING CHARGES, FINANCING REVENUES AND
9 THE INTERESTS OF A FINANCING PARTY OR ANY OTHER PERSON IN TRANSITION
10 PROPERTY OR IN FINANCING REVENUES ARE NOT SUBJECT TO OFFSET, COUNTERCLAIM,
11 SURCHARGE OR DEFENSE BY A SERVICER, A CUSTOMER, AN APPLICANT, A CREDITOR
12 OF AN APPLICANT, A CREDITOR OF THE QUALIFIED SPECIAL PURPOSE ENTITY OR ANY
13 OTHER PERSON, OR IN CONNECTION WITH ANY DEFAULT, BANKRUPTCY,
14 REORGANIZATION OR OTHER INSOLVENCY PROCEEDING OF ANY SUCH PERSON.

15 F. IF THERE IS A DEFAULT ON THE TRANSITION BONDS, BOTH OF THE
16 FOLLOWING APPLY:

17 1. ANY SECURED PARTY HAS THE RIGHT TO FORECLOSE ON TRANSITION
18 PROPERTY OR OTHERWISE ENFORCE ITS RIGHTS AS TO THE TRANSITION PROPERTY IN
19 THE SAME MANNER AS IF IT WERE A SECURED PARTY UNDER THE UNIFORM COMMERCIAL
20 CODE.

21 2. ON APPLICATION BY AN INTERESTED PARTY, AND WITHOUT LIMITING
22 PARAGRAPH 1 OF THIS SUBSECTION OR ANY OTHER REMEDIES AVAILABLE TO THE
23 APPLYING PARTY, A COURT SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE
24 MONIES ARISING FROM THE TRANSITION PROPERTY TO THE PERSON THAT IS ENTITLED
25 TO RECEIVE THE MONIES. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT
26 NOTWITHSTANDING ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR
27 RECEIVERSHIP PROCEEDINGS OF AN APPLICANT OR THE QUALIFIED SPECIAL PURPOSE
28 ENTITY.

29 G. FOR THE PURPOSES OF THIS CHAPTER, TRANSITION PROPERTY SHALL BE
30 IN EXISTENCE REGARDLESS OF WHETHER THE REVENUES OR PROCEEDS WITH RESPECT
31 TO SUCH PROPERTY HAVE ACCRUED AND REGARDLESS OF WHETHER THE VALUE OF THE
32 PROPERTY RIGHT IS DEPENDENT ON CUSTOMERS RECEIVING SERVICE.

33 40-606. Transition bonds; issuance; authority of qualified
34 special purpose entity; reimbursement of costs

35 A. AFTER APPROVAL OF A FINANCING ORDER ISSUED PURSUANT TO SECTION
36 40-603, THE QUALIFIED SPECIAL PURPOSE ENTITY IS AUTHORIZED TO ISSUE ONE OR
37 MORE SERIES, CLASSES OR TRANCHES OF TRANSITION BONDS AND TO PLEDGE
38 TRANSITION PROPERTY TO SECURE THE PAYMENT OF ONGOING FINANCING COSTS. ON
39 ISSUANCE OF THE TRANSITION BONDS, THE QUALIFIED SPECIAL PURPOSE ENTITY
40 SHALL TRANSFER TO THE APPLICANT THE NET PROCEEDS OF THE TRANSITION BONDS
41 MINUS THE UPFRONT FINANCING COSTS PAID BY THE QUALIFIED SPECIAL PURPOSE
42 ENTITY.

43 B. THE APPROVAL OF A FINANCING ORDER DOES NOT OBLIGATE AN APPLICANT
44 OR A QUALIFIED SPECIAL PURPOSE ENTITY TO ENGAGE IN THE APPROVED

1 TRANSACTION, AND NEITHER AN APPLICANT NOR A QUALIFIED SPECIAL PURPOSE
2 ENTITY SHALL BE SUBJECT TO ANY REGULATORY CONDITIONS, REGULATORY SANCTIONS
3 OR OTHER PENALTIES FOR NOT ENGAGING IN AN APPROVED TRANSACTION. IF THE
4 QUALIFIED SPECIAL PURPOSE ENTITY DETERMINES NOT TO ISSUE TRANSITION BONDS
5 AUTHORIZED BY A FINANCING ORDER, THE APPLICANT SHALL REIMBURSE THE
6 QUALIFIED SPECIAL PURPOSE ENTITY FOR ANY COSTS PAID BY THE QUALIFIED
7 SPECIAL PURPOSE ENTITY THAT WOULD HAVE CONSTITUTED UPFRONT FINANCING COSTS
8 HAD THE TRANSITION BONDS BEEN ISSUED, EXCEPT THAT DELAYING THE ISSUANCE OF
9 TRANSITION BONDS PENDING FINAL RESOLUTION OF ANY APPEALS FROM THE
10 FINANCING ORDER OR ANY LEGAL CHALLENGES TO THIS CHAPTER IS NOT DEEMED TO
11 BE A DETERMINATION.

12 40-607. Transition property; security interest; lien;
13 priority

14 A. THIS SECTION APPLIES TO ALL PURPORTED TRANSFERS OF, GRANTS OF
15 LIENS ON, OR SECURITY INTERESTS IN TRANSITION PROPERTY. EXCEPT AS
16 OTHERWISE PROVIDED IN THIS SECTION, THE CREATION, PERFECTION AND
17 ENFORCEMENT OF A SECURITY INTEREST IN TRANSITION PROPERTY THAT IS PLEDGED
18 TO SECURE THE PAYMENT OF THE ONGOING FINANCING COSTS ARE GOVERNED BY THIS
19 SECTION.

20 B. THE DESCRIPTION OF OR REFERENCE TO TRANSITION PROPERTY IN A
21 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS SUFFICIENT IF
22 AND ONLY IF THE DESCRIPTION OR REFERENCE REFERS TO THIS CHAPTER AND THE
23 FINANCING ORDER DESCRIBING THE TRANSITION PROPERTY. A SECURITY INTEREST
24 IN TRANSITION PROPERTY IS CREATED, VALID, BINDING AND ENFORCEABLE AT THE
25 LATEST OF ANY OF THE FOLLOWING:

26 1. WHEN THE TRANSITION BONDS ARE ISSUED BY THE QUALIFIED SPECIAL
27 PURPOSE ENTITY.

28 2. WHEN A SECURITY AGREEMENT IS EXECUTED AND DELIVERED BY THE
29 QUALIFIED SPECIAL PURPOSE ENTITY.

30 3. WHEN VALUE IS RECEIVED BY THE QUALIFIED SPECIAL PURPOSE ENTITY
31 FOR THE TRANSITION BONDS.

32 C. THE SECURITY INTEREST IN TRANSITION PROPERTY IS A STATUTORY LIEN
33 IN FAVOR OF THE APPLICABLE FINANCING PARTY THAT ATTACHES AUTOMATICALLY
34 WHEN THE TRANSITION BOND IS ISSUED AND VALUE FOR THE TRANSITION BONDS IS
35 RECEIVED. THE SECURITY INTEREST ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF
36 COLLATERAL OR OTHER ACT, AND THE SECURITY INTEREST IS VALID, BINDING AND
37 PERFECTED AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND AGAINST THE PERSON
38 GRANTING THE SECURITY INTEREST, REGARDLESS OF WHETHER THE PARTIES HAVE
39 NOTICE OF THE LIEN, ON THE FILING OF A FINANCING STATEMENT WITH THE
40 SECRETARY OF STATE. THE SECRETARY OF STATE SHALL MAINTAIN THE FINANCING
41 STATEMENT IN THE SAME MANNER AND IN THE SAME RECORDKEEPING SYSTEM
42 MAINTAINED FOR FINANCING STATEMENTS THAT ARE FILED PURSUANT TO TITLE 47,
43 CHAPTER 9, ARTICLE 5. FINANCING STATEMENTS THAT ARE FILED PURSUANT TO
44 THIS SECTION ARE EFFECTIVE WITHOUT THE NEED TO FILE A CONTINUATION

1 STATEMENT UNTIL A TERMINATION STATEMENT IS FILED.

2 D. A TRANSFER OF AN INTEREST, INCLUDING A GRANT OF A LIEN OR
3 SECURITY INTEREST, IN TRANSITION PROPERTY IS PERFECTED AGAINST ALL THIRD
4 PERSONS. A SECURITY INTEREST IN TRANSITION PROPERTY IS A CONTINUOUSLY
5 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN THAT MAY
6 SUBSEQUENTLY ATTACH TO THE TRANSITION PROPERTY UNLESS THE HOLDER OF THE
7 SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

8 E. THE PRIORITY OF A SECURITY INTEREST IN TRANSITION PROPERTY IS
9 NOT AFFECTED BY THE COMMINGLING OF FINANCING REVENUES WITH OTHER FUNDS.
10 ANY PLEDGEE OR SECURED PARTY HAS A PERFECTED SECURITY INTEREST IN THE
11 AMOUNT OF ALL FINANCING REVENUES THAT ARE DEPOSITED IN ANY ACCOUNT OF THE
12 SERVICER IN WHICH FINANCING REVENUES HAVE BEEN COMMINGLED WITH OTHER
13 FUNDS, AND ANY OTHER SECURITY INTEREST THAT MAY APPLY TO SUCH FINANCING
14 REVENUES IS TERMINATED WHEN THOSE FUNDS ARE TRANSFERRED TO A SEGREGATED
15 ACCOUNT FOR A FINANCING PARTY OR ASSIGNEE OF A FINANCING PARTY.

16 F. THE TRUE-UP MECHANISM DOES NOT AFFECT THE VALIDITY, PERFECTION
17 OR PRIORITY OF A SECURITY INTEREST IN OR TRANSFER OF TRANSITION PROPERTY.

18 G. THE VALIDITY, PERFECTION OR PRIORITY OF A LIEN AND SECURITY
19 INTEREST UNDER THIS CHAPTER IS NOT IMPAIRED BY ANY LATER MODIFICATION OF A
20 FINANCING ORDER OR CHANGES IN A CUSTOMER'S FINANCING CHARGES.

21 40-608. Financing charges; true-up mechanism; civil action

22 A. FINANCING CHARGES ARE NONBYPASSABLE, ARE MANDATORY AND APPLY TO
23 ALL CUSTOMERS. FINANCING REVENUES SHALL BE USED SOLELY FOR THE PAYMENT OF
24 ONGOING FINANCING COSTS.

25 B. THE TRUE-UP MECHANISM SHALL CORRECT FOR ANY OVERCOLLECTION OR
26 UNDERCOLLECTION OF FINANCING REVENUES AND PROVIDE FOR TIMELY AND COMPLETE
27 PAYMENT OF ONGOING FINANCING COSTS. ADJUSTMENTS TO FINANCING CHARGES THAT
28 ARE MADE IN ACCORDANCE WITH THE TRUE-UP MECHANISM SHALL BE APPLIED THROUGH
29 AN EQUAL PERCENTAGE CHANGE TO ALL UNIT FINANCING CHARGES OR THROUGH AN
30 ALTERNATIVE NONDISCRETIONARY MATHEMATICAL PROCESS OF ADJUSTING UNIT
31 FINANCING CHARGES THAT IS INCLUDED IN THE TRUE-UP MECHANISM AND THAT IS
32 DESCRIBED IN THE APPLICATION.

33 C. FOR COMBINED COOPERATIVE SECURITIZATION, THE TRUE-UP MECHANISM
34 MAY ALSO ALLOCATE OR REALLOCATE FINANCING COSTS OR FINANCING CHARGES AND
35 UNIT FINANCING CHARGES TO THE CUSTOMERS OF THE COOPERATIVE APPLICANTS.

36 D. ADJUSTMENTS TO THE FINANCING CHARGES AND UNIT FINANCING CHARGES
37 RESULTING FROM THE APPLICATION OF THE TRUE-UP MECHANISM ARE NOT SUBJECT TO
38 REGULATION BY THE COMMISSION AND ARE EFFECTIVE WITHOUT ANY ORDER OR ACTION
39 OF THE COMMISSION OR ANY OTHER BODY, EXCEPT AS PROVIDED IN SUBSECTION E OF
40 THIS SECTION.

41 E. AFTER TRANSITION BONDS HAVE BEEN ISSUED, THE DETERMINATION AND
42 IMPOSITION OF FINANCING CHARGES, THE RECOVERY OF FINANCING REVENUES AND
43 THE ADJUSTMENT OF THE FINANCING CHARGES THROUGH THE TRUE-UP MECHANISM ARE
44 NOT SUBJECT TO REVIEW OR APPROVAL BY ANY GOVERNMENT ENTITY INCLUDING STATE

1 AGENCIES, PUBLIC CORPORATIONS, MUNICIPALITIES OR OTHER INSTRUMENTALITIES
2 OF THIS STATE, EXCEPT THAT THE SUPERIOR COURT HAS EXCLUSIVE JURISDICTION
3 TO AND, ON COMMENCEMENT OF A SUIT AGAINST THE QUALIFIED SPECIAL PURPOSE
4 ENTITY BY A CUSTOMER, MAY REVIEW AND DETERMINE WHETHER THERE HAS BEEN A
5 MATHEMATICAL OR ADMINISTRATIVE ERROR IN ANY OF THE FOLLOWING:

6 1. THE CALCULATION OR APPLICATION OF THE TRUE-UP MECHANISM.

7 2. THE CALCULATION OF THE RESULTING FINANCING CHARGES AND UNIT
8 FINANCING CHARGES.

9 F. THE JURISDICTION AND AUTHORITY OF THE SUPERIOR COURT IN AN
10 ACTION UNDER THIS SECTION IS LIMITED TO DETERMINING THE FINANCING CHARGES
11 AND UNIT FINANCING CHARGES THAT RESULT FROM THE CORRECT CALCULATION AND
12 APPLICATION OF THE TRUE-UP MECHANISM. THE SUPERIOR COURT SHALL NOT ORDER
13 OR REQUIRE ANY MODIFICATION TO THE TRUE-UP MECHANISM OR LIMIT, REDUCE,
14 ALTER, IMPAIR, DELAY OR TERMINATE THE APPLICATION OF THE TRUE-UP MECHANISM
15 OR THE COLLECTION AND REMITTANCE OF FINANCING REVENUES. A PARTY MAY NOT
16 BRING ANY ACTION TO ENJOIN, RESTRAIN, STAY OR DELAY THE VALIDITY,
17 CALCULATION AND IMPOSITION OF FINANCING CHARGES OR THE COLLECTION OF
18 FINANCING REVENUES, INCLUDING THE ESTABLISHMENT AND APPLICATION OF THE
19 TRUE-UP MECHANISM AND THE COLLECTION AND REMITTANCE OF FINANCING REVENUES.
20 AN ACTION UNDER THIS SECTION MUST BE FILED WITHIN TEN DAYS AFTER THE
21 QUALIFIED SPECIAL PURPOSE ENTITY OR SERVICER FILES NOTICE WITH THE
22 COMMISSION UNDER SUBSECTION K OF THIS SECTION. THE TIME FOR BRINGING THE
23 ACTION MAY NOT BE TOLLED OR EXTENDED FOR ANY REASON. WITHIN SIXTY DAYS
24 AFTER THE FILING OF AN ACTION UNDER THIS SECTION, THE SUPERIOR COURT SHALL
25 HEAR AND RENDER A DECISION ON THE MATTER. THE DECISION IS APPEALABLE ONLY
26 TO THE SUPREME COURT, AND THE NOTICE OF APPEAL SHALL BE FILED WITHIN FIVE
27 DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE ACTION. THE SUPREME
28 COURT SHALL ISSUE A DECISION ON THE APPEAL PROMPTLY BUT NOT LATER THAN
29 NINETY DAYS AFTER THE NOTICE OF APPEAL IS FILED WITH THE SUPREME COURT.

30 G. A COURT MAY NOT ENJOIN, RESTRAIN, STAY OR DELAY THE APPLICATION
31 OF THE TRUE-UP MECHANISM OR THE COLLECTION AND REMITTANCE OF FINANCING
32 REVENUES. IF THE FINAL JUDGMENT OF THE SUPERIOR COURT, AFTER ALL APPEALS
33 ARE EXHAUSTED, REQUIRES A MODIFICATION OF ANY ADJUSTMENT MADE UNDER THE
34 TRUE-UP MECHANISM, THE SERVICER SHALL MAKE THAT MODIFICATION AT THE TIME
35 OF AND AS PART OF THE NEXT PERIODIC ADJUSTMENT OF THE FINANCING CHARGES
36 FOLLOWING THE FINAL JUDGMENT AND EXHAUSTION OF ALL APPEALS THROUGH THE
37 TRUE-UP MECHANISM.

38 H. ANY ADJUSTMENTS THAT ARE MADE PURSUANT TO THE TRUE-UP MECHANISM,
39 ANY REVIEW OF THE CALCULATIONS OF THOSE ADJUSTMENTS OR ANY ACTION BROUGHT
40 TO DETERMINE WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR
41 IN THE APPLICATION OF THE TRUE-UP MECHANISM SHALL NOT AFFECT THE
42 IRREVOCABILITY OF THE TRANSITION PROPERTY, THE FINANCING CHARGES, THE
43 FINANCING ORDER, THE NONBYPASSIBILITY OF THE FINANCING CHARGES AND UNIT

1 FINANCING CHARGES OR THE NONIMPAIRMENT PLEDGES PRESCRIBED IN SECTION
2 40-610.

3 I. REGARDLESS OF WHETHER FINANCING CHARGES ARE ADMINISTERED, BILLED
4 OR COLLECTED BY A SERVICER THAT IS A PUBLIC SERVICE CORPORATION, THE
5 FINANCING CHARGES ARE NOT RATES OR CHARGES IMPOSED OR MADE BY A PUBLIC
6 SERVICE CORPORATION FOR ELECTRIC SERVICE, AND THE RIGHT TO RECEIVE
7 FINANCING CHARGES AND TO COLLECT RESULTING FINANCING REVENUES IS
8 INDEPENDENT OF ANY RATE THAT IS ESTABLISHED, MADE OR CHARGED BY A PUBLIC
9 SERVICE CORPORATION FOR ELECTRIC SERVICES AND THE REVENUES COLLECTED
10 THEREUNDER. FINANCING REVENUES ARE THE PROPERTY OF THE QUALIFIED SPECIAL
11 PURPOSE ENTITY AND ARE NOT THE PROPERTY OF THE SERVICER OR ANY OTHER
12 PUBLIC SERVICE CORPORATION.

13 J. THE SERVICER, AS AGENT FOR THE QUALIFIED SPECIAL PURPOSE ENTITY,
14 AT A MINIMUM SEMIANNUALLY AND QUARTERLY DURING THE TWO-YEAR PERIOD
15 PRECEDING THE FINAL MATURITY DATE OF THE TRANSITION BONDS OR THE FINAL
16 MATURITY DATE OF THE SERIES, CLASS OR TRANCHE OF THE BONDS WITH THE LATEST
17 FINAL MATURITY DATE, IF MORE THAN ONE SERIES, CLASS OR TRANCHE HAS BEEN
18 ISSUED, SHALL PERFORM CALCULATIONS FOR BOTH OF THE FOLLOWING:

19 1. ESTIMATING WHETHER THE EXISTING FINANCING CHARGES AND RESULTING
20 FINANCING REVENUES ARE SUFFICIENT TO PROVIDE FOR TIMELY AND COMPLETE
21 PAYMENT OF ONGOING FINANCING COSTS OR WHETHER AN OVERCOLLECTION OR
22 UNDERCOLLECTION OF FINANCING REVENUES IS PROJECTED.

23 2. UNDERTAKING THE PROCESSES USED IN THE TRUE-UP MECHANISM TO
24 DETERMINE THE ADJUSTMENT TO THE FINANCING CHARGES PROJECTED TO CORRECT FOR
25 ANY OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES.

26 K. THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE SERVICER AS AGENT
27 FOR THE QUALIFIED SPECIAL PURPOSE ENTITY SHALL FILE WITH THE COMMISSION AN
28 INFORMATIONAL NOTICE THAT IDENTIFIES THE ADJUSTED UNIT FINANCING CHARGES
29 THAT ARE TO BE INCLUDED ON A CUSTOMER'S BILLS UNDER THE TRANSITION BILLING
30 SERVICES TARIFF. THIS NOTICE SHALL BE PROVIDED NOT LATER THAN FIFTEEN
31 DAYS BEFORE THE DATE THE UNIT FINANCING CHARGES BECOME EFFECTIVE. THE
32 NOTICE SHALL PROVIDE SUFFICIENT INFORMATION TO VERIFY THE MATHEMATICAL
33 CALCULATION OF THE ADJUSTED FINANCING CHARGES AND UNIT FINANCING CHARGES
34 THAT RESULT FROM APPLYING THE TRUE-UP MECHANISM.

35 L. IF A CUSTOMER DOES NOT PAY ANY UNIT FINANCING CHARGE, THE
36 QUALIFIED SPECIAL PURPOSE ENTITY OR THE SERVICER AS AGENT OF AND IN THE
37 NAME OF THE QUALIFIED SPECIAL PURPOSE ENTITY MAY BRING SUIT IN ANY COURT
38 OF COMPETENT JURISDICTION AGAINST THE CUSTOMER TO COLLECT THE UNPAID UNIT
39 FINANCING CHARGES. REASONABLE ATTORNEY FEES AND COSTS SHALL BE AWARDED TO
40 THE PREVAILING PARTY. COMMENCEMENT OF THE SUIT DOES NOT AFFECT THE
41 CALCULATION OF ANY ADJUSTMENT THAT IS AUTHORIZED BY THE TRUE-UP MECHANISM
42 UNTIL AND UNLESS NET PROCEEDS ARE RECOVERED AND PAID TO THE QUALIFIED
43 SPECIAL PURPOSE ENTITY AS FINANCING REVENUES.

1 40-609. Public service corporation as servicer; transition
2 billing services tariffs; AAA rating

3 A. IF A SERVICER IS A PUBLIC SERVICE CORPORATION, THE PUBLIC
4 SERVICE CORPORATION SHALL USE ITS RESOURCES AND SYSTEMS TO PERFORM THE
5 DUTIES OF A SERVICER UNDER A TRANSITION BILLING SERVICES TARIFF. THE
6 COMMISSION HAS CONTINUING JURISDICTION OVER THE TERMS OF A TRANSITION
7 BILLING SERVICES TARIFF THAT IS FILED AND MAINTAINED BY A PUBLIC SERVICE
8 CORPORATION.

9 B. FUNDS THAT ARE COLLECTED BY A SERVICER IN PAYMENT OF FINANCING
10 CHARGES, WHETHER UNDER A TRANSITION BILLING SERVICES TARIFF OR OTHERWISE,
11 ARE FINANCING REVENUES WHEN PAID BY A CUSTOMER, AND THE SERVICER HAS NO
12 RIGHT, TITLE OR INTEREST IN THOSE REVENUES OTHER THAN AS AGENT FOR THE
13 QUALIFIED SPECIAL PURPOSE ENTITY. IF A CUSTOMER PAYS ONLY A PORTION OF
14 THE CHARGES STATED ON A BILL PROVIDED BY A SERVICER THAT INCLUDES
15 FINANCING CHARGES, THE PARTIAL PAYMENT SHALL BE FIRST APPLIED TO THE
16 PAYMENT OF FINANCING CHARGES.

17 C. IF A SERVICER FAILS TO MAKE ANY REQUIRED PAYMENT OF FINANCING
18 REVENUES TO A QUALIFIED SPECIAL PURPOSE ENTITY OR FAILS TO FULFILL ITS
19 SERVICING OBLIGATIONS UNDER AN APPLICABLE TRANSITION BILLING SERVICES
20 TARIFF, THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE HOLDERS OF THE
21 TRANSITION BONDS MAY REQUEST THAT THE SUPERIOR COURT ORDER THE
22 SEQUESTRATION AND PAYMENT OF THE FINANCING REVENUES FOR THE BENEFIT OF ANY
23 FINANCING PARTIES OR THEIR ASSIGNEES AND MAY REQUEST ANY OTHER APPLICABLE
24 RELIEF. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING
25 ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR RECEIVERSHIP
26 PROCEEDINGS OF THE SERVICER OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

27 D. IF THIS STATE, WHETHER THROUGH ORDER OF THE COMMISSION OR
28 OTHERWISE, ALLOWS THE BILLING, COLLECTION AND REMITTANCE BY A THIRD PARTY
29 OF SUMS THAT WOULD OTHERWISE BE BILLED, COLLECTED OR REMITTED BY A PUBLIC
30 SERVICE CORPORATION THAT ACTS AS A SERVICER, THE AUTHORIZATION MUST BE
31 CONSISTENT WITH THE RATING AGENCIES' REQUIREMENTS THAT ARE NECESSARY FOR
32 THE TRANSITION BONDS TO RECEIVE AND MAINTAIN AN AAA OR EQUIVALENT RATING.

33 40-610. Transition bonds; irrevocability; public policy;
34 noncompliance

35 A. ON OR AFTER THE ISSUANCE OF TRANSITION BONDS, THE TRANSITION
36 PROPERTY, THE TRUE-UP MECHANISM AND THE FINANCING CHARGES ARE IRREVOCABLE,
37 FINAL, NONDISCRETIONARY AND EFFECTIVE WITHOUT THE NEED FOR FURTHER ACTION
38 BY THE COMMISSION OR ANY OTHER PERSON, AND SUCH FINANCING CHARGES SHALL
39 NOT BE SUBJECT TO RESCISSION, ALTERATION, AMENDMENT, REDUCTION, IMPAIRMENT
40 OR ADJUSTMENT BY FURTHER ACTION OF THE COMMISSION OR ANY OTHER PERSON
41 EXCEPT PURSUANT TO THE TRUE-UP MECHANISM, INCLUDING PURSUANT TO SECTION
42 40-252.

43 B. THIS STATE, INCLUDING ALL AGENCIES, PUBLIC CORPORATIONS,
44 MUNICIPALITIES OR OTHER INSTRUMENTALITIES OF THIS STATE, PLEDGES TO AND

1 AGREES WITH THE FINANCING PARTIES, INCLUDING PRESENT AND FUTURE HOLDERS OF
2 TRANSITION BONDS, THE APPLICANT, THE QUALIFIED SPECIAL PURPOSE ENTITY AND
3 ANY OTHER PERSONS THAT ENTER INTO AN ANCILLARY AGREEMENT, THAT AFTER THE
4 ISSUANCE OF TRANSITION BONDS AND UNTIL ALL FINANCING COSTS WHICH INCLUDE
5 THE PRINCIPAL AND INTEREST OF TRANSITION BONDS AND ALL AMOUNTS TO BE PAID
6 UNDER AN ANCILLARY AGREEMENT ARE FULLY MET AND DISCHARGED, THIS STATE OR
7 ANY AGENCY, PUBLIC CORPORATION, MUNICIPALITY OR OTHER INSTRUMENTALITY OF
8 THIS STATE MAY NOT TAKE OR ALLOW ANY ACTION TO BE TAKEN TO LIMIT, REDUCE,
9 ALTER, IMPAIR, DELAY OR TERMINATE ANY OF THE FOLLOWING:

10 1. THE RIGHTS CONFERRED BY THIS CHAPTER, INCLUDING THE RIGHTS IN
11 TRANSITION PROPERTY OR TRANSITION BONDS.

12 2. THE IMPOSITION OF FINANCING CHARGES AND UNIT FINANCING CHARGES
13 BY THE QUALIFIED SPECIAL PURPOSE ENTITY.

14 3. THE OPERATION OF THE TRUE-UP MECHANISM TO ADJUST FINANCING
15 CHARGES AND UNIT FINANCING CHARGES.

16 4. THE COLLECTION OF FINANCING REVENUES IN PAYMENT OF FINANCING
17 CHARGES AND UNIT FINANCING CHARGES.

18 5. THE PAYMENT OF FINANCING COSTS.

19 C. IT IS THE INTENTION OF THIS STATE THAT THE PLEDGES MADE UNDER
20 SUBSECTION B OF THIS SECTION CAN AND WILL BE RELIED ON BY THE APPLICANT,
21 THE QUALIFIED SPECIAL PURPOSE ENTITY, OTHER PERSONS THAT ENTER INTO AN
22 ANCILLARY AGREEMENT AND ANY FINANCING PARTY. THESE PLEDGES MAY BE
23 INCLUDED IN TRANSITION BONDS, ANCILLARY AGREEMENTS AND OTHER DOCUMENTATION
24 RELATED TO ISSUING, RATING AND MARKETING THE TRANSITION BONDS.

25 D. ON AND AFTER THE ISSUANCE OF THE TRANSITION BONDS, THE FAILURE
26 OF AN APPLICANT OR A QUALIFIED SPECIAL PURPOSE ENTITY TO COMPLY WITH THIS
27 CHAPTER OR A FINANCING ORDER DOES NOT INVALIDATE, IMPAIR OR AFFECT THE
28 FINANCING ORDER, THE TRANSITION PROPERTY, FINANCING CHARGES, TRANSITION
29 BONDS OR FINANCING COSTS.

30 E. A FINANCING ORDER, TRANSITION PROPERTY AND FINANCING CHARGES ARE
31 NOT AFFECTED BY EITHER OF THE FOLLOWING:

32 1. THE BANKRUPTCY, REORGANIZATION, SALE, DISSOLUTION OR INSOLVENCY
33 OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE SUCCESSORS
34 OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

35 2. AS TO EITHER THE APPLICANT, THE QUALIFIED SPECIAL PURPOSE ENTITY
36 OR THE SUCCESSORS OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE
37 ENTITY, THE COMMENCEMENT OF ANY PROCEEDING FOR BANKRUPTCY OR THE
38 APPOINTMENT OF A RECEIVER.

39 40-611. Financing order; application for rehearing; judicial
40 review

41 A. A PARTY TO THE PROCEEDING WHO IS DISSATISFIED WITH A COMMISSION
42 DECISION AS TO AN APPLICATION FOR A FINANCING ORDER UNDER THIS CHAPTER OR
43 THE ATTORNEY GENERAL ON BEHALF OF THIS STATE MAY APPLY TO THE COMMISSION
44 FOR REHEARING IN ACCORDANCE WITH SECTION 40-253. THE APPLICATION FOR

1 REHEARING SHALL BE FILED NOT LATER THAN TWENTY DAYS AFTER A COMMISSION
2 DECISION ON AN APPLICATION FOR A FINANCING ORDER. IF THE COMMISSION DOES
3 NOT GRANT THE APPLICATION FOR REHEARING WITHIN TWENTY DAYS AFTER THE
4 APPLICATION IS FILED, THE APPLICATION IS DEEMED DENIED.

5 B. SECTIONS 40-254 AND 40-254.01 DO NOT APPLY TO ANY CLAIMS ARISING
6 UNDER THIS CHAPTER.

7 C. WITHIN TEN DAYS AFTER A REHEARING IS DENIED OR GRANTED AND NOT
8 AFTERWARDS, A PARTY THAT FILES A REHEARING APPLICATION PURSUANT TO
9 SUBSECTION A OF THIS SECTION MAY FILE, IN THE SUPERIOR COURT IN THE COUNTY
10 IN WHICH THE COMMISSION HAS ITS OFFICE, AN ACTION THAT SEEKS TO VACATE,
11 SET ASIDE, AFFIRM IN PART, REVERSE IN PART OR REMAND THE COMMISSION'S
12 DECISION REGARDING THE FINANCING APPLICATION. THE TIME FOR BRINGING ANY
13 ACTION AUTHORIZED BY THIS SUBSECTION MAY NOT BE TOLLED OR EXTENDED FOR ANY
14 REASON.

15 D. A PARTY THAT SEEKS TO VACATE, SET ASIDE OR OTHERWISE CHALLENGE A
16 FINANCING ORDER OR OTHER COMMISSION DECISION UNDER THIS CHAPTER, IN WHOLE
17 OR IN PART, BEARS THE BURDEN OF PROOF. IN AN ACTION THAT CHALLENGES A
18 FINANCING ORDER OR OTHER DECISION THAT RESULTED FROM AN APPLICATION FOR AN
19 ORDER, RELIEF MAY BE AWARDED ONLY IF THE SUPERIOR COURT DETERMINES, BASED
20 ON CLEAR AND SATISFACTORY EVIDENCE, THAT EITHER OF THE FOLLOWING APPLIES:

21 1. THE FINANCING ORDER OR OTHER COMMISSION DECISION UNDER THIS
22 CHAPTER IS UNLAWFUL.

23 2. THE FACTUAL FINDINGS MADE IN THE FINANCING ORDER OR OTHER
24 COMMISSION DECISION UNDER THIS CHAPTER IS UNSUPPORTED BY THE APPLICATION
25 OR EVIDENCE IN THE PROCEEDING BEFORE THE COMMISSION.

26 E. WITHIN SIXTY DAYS AFTER THE FILING OF THE ACTION, THE SUPERIOR
27 COURT SHALL HEAR AND ISSUE A DECISION ON THE MATTER. THE SUPERIOR COURT
28 MAY EXTEND THIS TIME FOR NOT MORE THAN THIRTY DAYS FOR GOOD CAUSE.

29 F. A PARTY MAY APPEAL A DECISION IN AN ACTION FILED UNDER THIS
30 SECTION ONLY TO THE SUPREME COURT. THE PARTY SHALL FILE THE NOTICE OF
31 APPEAL WITHIN FIVE DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE
32 ACTION. THE TIME FOR FILING THE NOTICE OF APPEAL MAY NOT BE TOLLED OR
33 EXTENDED FOR ANY REASON. THE SUPREME COURT SHALL ISSUE A DECISION ON THE
34 APPEAL PROMPTLY.

35 G. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, A COURT IN THIS
36 STATE DOES NOT HAVE JURISDICTION TO REVIEW, ENJOIN, RESTRAIN, SUSPEND,
37 STAY OR DELAY ANY OF THE FOLLOWING:

38 1. A FINANCING ORDER.

39 2. THE CREATION OF TRANSITION PROPERTY.

40 3. THE ISSUANCE OF TRANSITION BONDS.

41 4. THE COMMISSION'S PERFORMANCE OF ITS DUTIES UNDER THIS CHAPTER.

42 H. THE ORDERS OR DECREES THAT ARE FIXED BY THE COMMISSION PURSUANT
43 TO THIS CHAPTER SHALL REMAIN IN FORCE PENDING THE DECISION OF THE COURT.

40-612. Fees and taxes

FINANCING CHARGES ARE NOT SUBJECT TO EITHER:

1. ANY ASSESSMENT OF A FRANCHISE FEE THAT IS IMPOSED BY A MUNICIPALITY, COUNTY OR OTHER LOCAL GOVERNMENT UNIT PURSUANT TO A FRANCHISE AGREEMENT OR LAWFUL ORDINANCE.

2. TAXES THAT ARE APPLICABLE TO SERVICES PROVIDED BY, OR RATES OF, A PUBLIC SERVICE CORPORATION.

40-613. Transition bonds; public debt prohibition; applicant; cooperative

A. TRANSITION BONDS ARE NOT A PUBLIC DEBT, NOR A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THIS STATE OR OF ANY COUNTY, MUNICIPALITY, OR OTHER LOCAL GOVERNMENT UNIT OF THIS STATE. THE APPROVAL OF A FINANCING ORDER DOES NOT OBLIGATE THIS STATE OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THIS STATE TO LEVY ANY TAX OR MAKE ANY APPROPRIATION FOR PAYMENT OF ANY FINANCING COST, INCLUDING THE PRINCIPAL AND INTEREST ON TRANSITION BONDS. HOLDERS OF TRANSITION BONDS OR OWNERS OF TRANSITION PROPERTY DO NOT HAVE A RIGHT TO HAVE TAXES LEVIED BY THIS STATE OR THE TAXING AUTHORITY OF ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THIS STATE FOR THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR PREMIUM ON TRANSITION BONDS.

B. TRANSITION BONDS ARE NOT AN OBLIGATION OF AN APPLICANT OR A PLEDGE OF THE ASSETS OF AN APPLICANT. APPROVAL IS NOT REQUIRED UNDER SECTION 40-302, OR ANY OTHER PROVISION OF LAW, FOR THE APPROVAL OF A FINANCING ORDER, FOR THE ISSUANCE OF TRANSITION BONDS, OR FOR A SALE, ASSIGNMENT OR TRANSFER OF TRANSITION PROPERTY OR AN INTEREST IN TRANSITION PROPERTY AUTHORIZED BY THIS CHAPTER. NOTWITHSTANDING ANY OTHER LAW, A CUSTOMER THAT IS A COOPERATIVE IS AUTHORIZED TO INCLUDE THE COSTS OF PAYING FINANCING CHARGES IN THE COSTS IT IS AUTHORIZED TO RECOVER FROM PERSONS WHO USE THE COOPERATIVE'S SERVICES.

40-614. Transition bonds; legal investments

TRANSITION BONDS ARE LEGAL INVESTMENTS FOR ALL GOVERNMENTAL UNITS, PERMANENT FUNDS OF THIS STATE, FINANCE AUTHORITIES, FINANCIAL INSTITUTIONS, INSURANCE COMPANIES, FIDUCIARIES AND OTHER PERSONS REQUIRING STATUTORY AUTHORITY REGARDING LEGAL INVESTMENTS.

40-615. Obligations of successor to applicant

ANY SUCCESSOR TO AN APPLICANT, WHETHER PURSUANT TO ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY PROCEEDING OR PURSUANT TO ANY MERGER OR ACQUISITION, SALE OR TRANSFER OR OTHER BUSINESS COMBINATION BY OPERATION OF LAW, AGREEMENT OF THE APPLICANT OR OTHERWISE, SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF AND HAVE THE SAME RIGHTS AND OBLIGATIONS UNDER THIS CHAPTER OR ANY FINANCING ORDER AS THE APPLICANT IN THE SAME MANNER AND TO THE SAME EXTENT AS THE APPLICANT, INCLUDING ACTING AS A SERVICER AND COLLECTING AND PAYING TO THE PERSON ENTITLED TO RECEIVE THE FINANCING CHARGES AND FINANCING REVENUES.

1 40-616. Choice of law; conflicts with other laws

2 THE LAWS OF THIS STATE GOVERN THE VALIDITY, ENFORCEABILITY,
3 ATTACHMENT, PERFECTION, PRIORITY AND EXERCISE OF REMEDIES WITH RESPECT TO
4 THE CREATION OR TRANSFER OF, OR OF ANY INTEREST IN, TRANSITION PROPERTY,
5 FINANCING CHARGES OR FINANCING REVENUES. IF THERE IS ANY CONFLICT BETWEEN
6 THIS CHAPTER AND ANY OTHER LAW REGARDING THE CREATION, ATTACHMENT,
7 TRANSFER, ASSIGNMENT OR PERFECTION OF, OR THE EFFECT OF PERFECTION ON OR
8 THE PRIORITY OF ANY SECURITY INTEREST IN TRANSITION PROPERTY, FINANCING
9 CHARGES OR FINANCING REVENUES, THIS CHAPTER GOVERNS TO THE EXTENT OF THE
10 CONFLICT.

11 40-617. Effect of invalidity on actions

12 IF ALL OR ANY PART OF THIS CHAPTER IS INVALIDATED, SUPERSEDED,
13 REPLACED, REPEALED OR EXPIRES FOR ANY REASON, THAT OCCURRENCE DOES NOT
14 AFFECT THE VALIDITY OF ANY PRIOR ACTION ALLOWED UNDER THIS CHAPTER,
15 WHETHER TAKEN BY THE COMMISSION, A PUBLIC SERVICE CORPORATION, A QUALIFIED
16 SPECIAL PURPOSE ENTITY OR ANY OTHER PERSON, AND DOES NOT AFFECT TRANSITION
17 BONDS THAT WERE ALREADY ISSUED OR TRANSITION PROPERTY THAT WAS ALREADY
18 CREATED.

19 Sec. 3. Section 47-9109, Arizona Revised Statutes, is amended to
20 read:

21 47-9109. Scope

22 A. Except as otherwise provided in subsections C and D of this
23 section, this chapter applies to:

24 1. A transaction, regardless of its form, that creates a security
25 interest in personal property or fixtures by contract;

26 2. An agricultural lien;

27 3. A sale of accounts, chattel paper, payment intangibles or
28 promissory notes;

29 4. A consignment;

30 5. A security interest arising under section 47-2401 or 47-2505, ~~or~~
31 section 47-2711, subsection C or section 47-2A508, subsection E, as
32 provided in section 47-9110; and

33 6. A security interest arising under section 47-4210 or 47-5118.

34 B. The application of this article to a security interest in a
35 secured obligation is not affected by the fact that the obligation is
36 itself secured by a transaction or interest to which this chapter does not
37 apply.

38 C. This chapter does not apply to the extent that:

39 1. A statute, regulation or treaty of the United States preempts
40 this article;

41 2. A statute of a foreign country or a governmental unit of a
42 foreign country, other than a statute generally applicable to security
43 interests, expressly governs creation, perfection, priority or enforcement
44 of a security interest created by that country or governmental unit; or

1 3. The rights of a transferee beneficiary or nominated person under
2 a letter of credit are independent and superior under section 47-5114.

3 D. This chapter does not apply to:

4 1. A landlord's lien, other than an agricultural lien;

5 2. A lien, other than an agricultural lien, given by statute or
6 other rule of law for services or materials, but section 47-9333 applies
7 with respect to priority of the lien;

8 3. An assignment of a claim for wages, salary or other compensation
9 of an employee;

10 4. A sale of accounts, chattel paper, payment intangibles or
11 promissory notes as part of a sale of the business out of which they
12 arose;

13 5. An assignment of accounts, chattel paper, payment intangibles or
14 promissory notes that is for the purpose of collection only;

15 6. An assignment of a right to payment under a contract to an
16 assignee that is also obligated to perform under the contract;

17 7. An assignment of a single account, payment intangible or
18 promissory note to an assignee in full or partial satisfaction of a
19 preexisting indebtedness;

20 8. A transfer of an interest in or an assignment of a claim under a
21 policy of insurance, other than an assignment by or to a health care
22 provider of a health-care-insurance receivable and any subsequent
23 assignment of the right to payment, but sections 47-9315 and 47-9322 apply
24 with respect to proceeds and priorities in proceeds;

25 9. An assignment of a right represented by a judgment, other than a
26 judgment taken on a right to payment that was collateral;

27 10. A right of recoupment or setoff, but:

28 (a) Section 47-9340 applies with respect to the effectiveness of
29 rights of recoupment or setoff against deposit accounts; and

30 (b) Section 47-9404 applies with respect to defenses or claims of
31 an account debtor;

32 11. The creation or transfer of an interest in or lien on real
33 property, including a lease or rents thereunder, except to the extent that
34 provision is made for:

35 (a) Liens on real property in sections 47-9203 and 47-9308;

36 (b) Fixtures in section 47-9334;

37 (c) Fixture filings in sections 47-9501, 47-9502, 47-9512, 47-9516
38 and 47-9519; and

39 (d) Security agreements covering personal and real property in
40 section 47-9604;

41 12. An assignment of a claim arising in tort, other than a
42 commercial tort claim, but sections 47-9315 and 47-9322 apply with respect
43 to proceeds and priorities in proceeds;

1 13. An assignment of a deposit account in a consumer transaction,
2 but sections 47-9315 and 47-9322 apply with respect to proceeds and
3 priorities in proceeds;

4 14. A transfer, pledge, assignment, grant or similar action by this
5 state, another state or a governmental unit of this state or another
6 state;

7 15. A claim or right to receive compensation for injuries or
8 sickness as described in 26 United States Code section 104a(1) or (2); or

9 16. A claim or right to receive benefits under a special needs
10 trust as described in 42 United States Code section 1396p(d)(4); OR ~~—~~

11 17. A SECURITY INTEREST THAT IS SUBJECT TO SECTION 30-906 OR
12 40-607.

APPROVED BY THE GOVERNOR MAY 13, 2025.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 13, 2025.