

House Engrossed

power; public utilities; UCC; securities

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

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 THAT ARE INCURRED UNDER AN ANCILLARY AGREEMENT AND
35 ANY AMOUNT THAT IS REQUIRED TO REFUND OR REPLENISH A RESERVE ACCOUNT OR
36 OTHER ACCOUNT ESTABLISHED UNDER AN ANCILLARY AGREEMENT OR OTHER DOCUMENT
37 RELATING TO TRANSITION BONDS.

38 (v) THE COSTS OF FORMING, OPERATING, ADMINISTERING AND DISSOLVING A
39 QUALIFIED SPECIAL PURPOSE ENTITY.

40 (vi) THE COSTS, FEES AND EXPENSES THAT ARE INCURRED TO OBTAIN ANY
41 CONSENT, RELEASE, WAIVER OR APPROVAL FROM ANY HOLDER OF AN EXISTING
42 OBLIGATION OF A PUBLIC POWER ENTITY THAT IS NECESSARY TO PERMIT THE
43 ISSUANCE OF TRANSITION BONDS OR THE RETIREMENT, ABANDONMENT OR REDUCTION
44 IN THE UNDEPRECIATED BOOK VALUE OF A TRANSITION ASSET IN CONNECTION WITH A
45 TRANSACTION UNDER THIS CHAPTER.

1 (vii) THE COSTS THAT ARE INCURRED TO PROTECT THE STATUS OF
2 TRANSITION PROPERTY, THE RIGHT TO IMPOSE AND COLLECT FINANCING CHARGES OR
3 THE RIGHT TO RECEIVE FINANCING REVENUES, INCLUDING COSTS RELATED TO ANY
4 JUDICIAL OR OTHER PROCEEDINGS THAT ARE NECESSARY TO PROTECT THE TRANSITION
5 PROPERTY OR COLLECT FINANCING REVENUES.

6 (viii) FEDERAL, STATE AND OTHER TAXES THAT ARE IMPOSED ON THE
7 PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY WITH RESPECT
8 TO THE FINANCING CHARGES OR FINANCING REVENUES WITHOUT DUPLICATION AND ANY
9 OTHER FEES, CHARGES OR ASSESSMENTS THAT ARE IMPOSED ON TRANSITION BONDS.

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

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

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

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

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

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

29 9. "ONGOING FINANCING COSTS":

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

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

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

39 11. "QUALIFIED SPECIAL PURPOSE ENTITY":

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

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

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

3 13. "SERVICER":

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

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

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

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

12 (b) INCLUDES:

13 (i) A PUBLIC POWER ENTITY.

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

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

17 14. "SIGNIFICANT EVENT RECOVERY COSTS" MEANS COSTS, FEES AND
18 EXPENSES THAT ARE INCURRED OR TO BE INCURRED THROUGH THE DATE OF ADOPTION
19 OF A FINANCING RESOLUTION BY A PUBLIC POWER ENTITY AND THAT ARE ASSOCIATED
20 WITH OR THAT ARISE FROM WEATHER, WILDFIRE OR PUBLIC HEALTH EMERGENCY
21 EVENTS OR INCIDENTS OR OTHER EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO
22 CAUSE SIGNIFICANT LOSS OF LIFE, INJURY TO PERSON OR PROPERTY, HUMAN
23 SUFFERING OR FINANCIAL LOSS.

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

27 16. "TRANSITION ASSET" MEANS ANY ELECTRIC POWER GENERATION,
28 TRANSMISSION OR DISTRIBUTION FACILITY, INCLUDING OTHER PROPERTY OR
29 EQUIPMENT USED IN CONNECTION WITH SUCH GENERATION, TRANSMISSION OR
30 DISTRIBUTION OF THE PUBLIC POWER ENTITY THAT IS IDENTIFIED IN A
31 SECURITIZATION PROPOSAL AND FINANCING RESOLUTION, AND THAT EITHER:

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

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

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

41 17. "TRANSITION ASSET RETIREMENT COSTS":

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

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

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

7 19. "TRANSITION BILLING SERVICES TARIFF":

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

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

12 20. "TRANSITION BONDS" MEANS BONDS, NOTES OR OTHER EVIDENCES OF
13 INDEBTEDNESS THAT ARE ISSUED BY A QUALIFIED SPECIAL PURPOSE ENTITY AND
14 THAT ARE DESCRIBED IN A SECURITIZATION PROPOSAL AND FINANCING RESOLUTION,
15 THE PROCEEDS OF WHICH ARE USED, DIRECTLY OR INDIRECTLY, TO RECOVER,
16 FINANCE, REFINANCE OR REFUND TRANSITION COSTS AND UPFRONT FINANCING COSTS,
17 AND THAT ARE DIRECTLY OR INDIRECTLY PAYABLE FROM, OR SECURED BY,
18 TRANSITION PROPERTY, FINANCING CHARGES OR FINANCING REVENUES.

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

20 (a) TRANSITION ASSET RETIREMENT COSTS.

21 (b) UNRECOVERED FUEL COSTS.

22 (c) SIGNIFICANT EVENT RECOVERY COSTS.

23 22. "TRANSITION PROPERTY":

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

28 (b) INCLUDES ANY OF THE FOLLOWING:

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

31 (ii) THE RIGHT TO IMPOSE, CHARGE, COLLECT AND RECEIVE FINANCING
32 CHARGES, INCLUDING THE RIGHT TO CALCULATE, IMPOSE, CHARGE, COLLECT AND
33 RECEIVE FINANCING CHARGES AUTHORIZED UNDER THE FINANCING RESOLUTION AND TO
34 OBTAIN PERIODIC ADJUSTMENTS TO THE FINANCING CHARGES PURSUANT TO THE
35 TRUE-UP MECHANISM.

36 (iii) ALL RIGHT AND TITLE TO, AND ALL INTEREST IN, FINANCING
37 REVENUES, REGARDLESS OF WHETHER THE REVENUES ARE BILLED, RECEIVED,
38 COLLECTED OR MAINTAINED SEPARATELY FROM OR COMMINGLED WITH OTHER REVENUES
39 OR MONIES OF ANY TYPE AND REGARDLESS OF WHETHER SUCH REVENUES ARE BILLED
40 OR COLLECTED BY A SERVICER.

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

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

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

1 23. "TRUE-UP MECHANISM" MEANS A FORMULA THAT IS DESCRIBED IN A
2 SECURITIZATION PROPOSAL AND ESTABLISHED BEFORE OR CONCURRENT WITH THE
3 ISSUANCE OF TRANSITION BONDS AND THAT ADJUSTS FINANCING CHARGES OVER TIME
4 TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES
5 SO THAT A QUALIFIED SPECIAL PURPOSE ENTITY TIMELY AND COMPLETELY RECOVERS
6 ALL ONGOING FINANCING COSTS.

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

11 25. "UNRECOVERED FUEL COSTS":

12 (a) MEANS:

13 (i) A PUBLIC POWER ENTITY'S UNRECOVERED AMOUNTS OF PREVIOUSLY
14 INCURRED COSTS, FEES AND EXPENSES TO PURCHASE FUEL USED TO GENERATE
15 ELECTRICITY.

16 (ii) A PUBLIC POWER ENTITY'S UNRECOVERED AMOUNTS OF PREVIOUSLY
17 INCURRED COSTS, FEES AND EXPENSES TO PURCHASE ELECTRICITY OR CAPACITY OR
18 ANY OTHER COMPONENT OF WHOLESALE ELECTRICITY TRANSACTIONS FROM A THIRD
19 PARTY, INCLUDING THE COSTS OF PURCHASED POWER, THAT HAVE NOT YET BEEN
20 COLLECTED FROM CUSTOMERS.

21 (b) INCLUDES FINANCING COSTS ON THE PUBLIC POWER ENTITY'S
22 UNRECOVERED FUEL OR PURCHASED POWER BALANCES.

23 26. "UPFRONT FINANCING COSTS":

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

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

30 30-902. Statement of public policy

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

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

40 2. THE UNRECOVERED COSTS OF FUEL OR PURCHASED POWER.

41 3. THE COSTS ARISING FROM OR RELATED TO WEATHER, WILDFIRE OR OTHER
42 SIGNIFICANT EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO CAUSE
43 SIGNIFICANT LOSS OF LIFE, INJURY TO PERSON OR PROPERTY, HUMAN SUFFERING OR
44 FINANCIAL LOSS.

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

7 30-903. Securitization transactions; public meeting; notice;
8 securitization proposal; financing resolution
9 adoption

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

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

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

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

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

27 C. THE SECURITIZATION PROPOSAL SHALL:

28 1. IDENTIFY, AS APPLICABLE, ANY TRANSITION ASSETS, TRANSITION ASSET
29 RETIREMENT COSTS, UNRECOVERED FUEL COSTS AND SIGNIFICANT EVENT RECOVERY
30 COSTS. FOR THE PURPOSES OF THIS PARAGRAPH, "UNRECOVERED FUEL COSTS":

31 (a) INCLUDES AMOUNTS OF UNRECOVERED FUEL OR PURCHASED POWER
32 EXPENSES WITH ASSOCIATED FINANCING COSTS.

33 (b) AS DETERMINED BY THE GOVERNING BODY, SHALL BE SIGNIFICANT AND
34 ARISE FROM ANY OF THE FOLLOWING:

35 (i) SUPPLY SHORTAGES.

36 (ii) DISRUPTIONS IN TRANSPORTATION INFRASTRUCTURE OR SUPPLY CHAINS.

37 (iii) MARKET VOLATILITY.

38 (iv) SUBSTANTIAL CUSTOMER LOAD GROWTH.

39 (v) ANY OTHER REASONABLY UNFORESEEN CIRCUMSTANCE.

40 2. ESTIMATE THE TRANSITION COSTS AND FINANCING COSTS.

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
45 COMPLETE RECOVERY AND PAYMENT OF ALL ONGOING FINANCING COSTS.

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

9 6. DESCRIBE THE PROPOSED TRUE-UP MECHANISM AND HOW THE TRUE-UP
10 MECHANISM WILL ADJUST THE FINANCING CHARGES AND UNIT FINANCING CHARGES
11 OVER TIME TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF
12 FINANCING REVENUES.

13 7. IDENTIFY THE QUALIFIED SPECIAL PURPOSE ENTITY.

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

18 9. IDENTIFY ANY ANTICIPATED ANCILLARY AGREEMENTS, INDIVIDUALLY OR
19 BY DESCRIPTION.

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

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

25 (b) ANY REGULATORY ASSET OR RECORDED LIABILITY THAT IS ASSOCIATED
26 WITH TRANSITION BONDS TO RECOVER UNRECOVERED FUEL COSTS OR SIGNIFICANT
27 EVENT RECOVERY COSTS IN EXCHANGE FOR THE NET PROCEEDS OF THE TRANSITION
28 BONDS.

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

31 12. DESCRIBE THE PROCESS TO NOTIFY THE PUBLIC OF THE FINAL
32 STRUCTURE AND PRICING OF THE TRANSITION BONDS.

33 13. COMMIT TO PROVIDING A STATEMENT OF ACTUAL UPFRONT FINANCING
34 COSTS.

35 14. COMMIT TO PROVIDING AN UPDATED CALCULATION OF THE ESTIMATED
36 FINANCING CHARGES AND UNIT FINANCING CHARGES OVER THE LIFE OF THE
37 TRANSITION BONDS.

38 15. PROVIDE A PROPOSED FORM OF FINANCING RESOLUTION.

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

43 1. THE REPRESENTATIVES OF THE PUBLIC POWER ENTITY'S MANAGEMENT WITH
44 AN OPPORTUNITY TO EXPLAIN THE SECURITIZATION PROPOSAL AND ANSWER
45 QUESTIONS.

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

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

6 E. ON REVIEW OF THE INFORMATION AND COMMENTS GATHERED IN COMPLIANCE
7 WITH THIS SECTION, THE GOVERNING BODY OF A PUBLIC POWER ENTITY SHALL ADOPT
8 A FINANCING RESOLUTION THAT APPROVES, REJECTS OR APPROVES WITH CONDITIONS
9 THE INITIATION OF THE PROPOSED TRANSACTION. THE GOVERNING BODY MAY
10 APPROVE OR APPROVE WITH CONDITIONS THE INITIATION OF THE PROPOSED
11 TRANSACTION ONLY IF THE GOVERNING BODY FINDS THAT ALL OF THE FOLLOWING
12 APPLY:

13 1. THE SECURITIZATION PROPOSAL COMPLIES WITH SUBSECTION C OF THIS
14 SECTION.

15 2. THE TRANSITION BENEFIT TEST HAS BEEN SATISFIED. THE TRANSITION
16 BENEFIT TEST IS SATISFIED ON A SHOWING THAT THE PROPOSED STRUCTURE AND
17 PROJECTED PRICING OF THE TRANSITION BONDS ARE REASONABLY EXPECTED TO
18 RESULT, ON A NET PRESENT VALUE BASIS OVER THE LIFE OF THE TRANSITION
19 BONDS, IN THE LOWEST FINANCING CHARGES THAT ARE COMMERCIALY AVAILABLE
20 CONSISTENT WITH MARKET CONDITIONS AT THE TIME THE TRANSITION BONDS ARE
21 PRICED AND WITH THE TERMS OF THE FINANCING RESOLUTION.

22 3. ANY PROPOSED TRANSITION BILLING SERVICES TARIFF SUPPORTS
23 AFFORDABILITY AND RELIABILITY, IS IN THE PUBLIC INTEREST AND SHOULD BE
24 PLACED INTO EFFECT.

25 4. FOR A SECURITIZATION PROPOSAL THAT INVOLVES A TRANSITION ASSET
26 THAT IS AN ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS BEEN
27 RETIRED, SOLD, ABANDONED, DISPOSED OF OR OTHERWISE REMOVED FROM SERVICE OF
28 THE APPLICANT'S CUSTOMERS, IN WHOLE OR IN PART, AS PROVIDED IN SECTION
29 30-901, PARAGRAPH 16, SUBDIVISIONS (a) AND (b), THE REPLACEMENT MEANS OF
30 SATISFYING THE CUSTOMER LOAD SERVED BY THE ELECTRIC POWER GENERATION
31 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE IS MORE
32 COST-EFFECTIVE FOR THE APPLICANT'S CUSTOMERS THAN CONTINUED RELIANCE ON OR
33 OPERATION OF THE ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS
34 BEEN REMOVED FROM SERVICE. COST-EFFECTIVENESS SHALL BE DETERMINED BY
35 COMPARING THE SUM OF THE NET PRESENT VALUE OF ALL THE COSTS AND EXPENSES
36 OF RELIABLE REPLACEMENT GENERATION OF EQUAL OR GREATER CONTRIBUTION TOWARD
37 THE UTILITY'S RESOURCE ADEQUACY THAN THE ELECTRIC POWER GENERATION
38 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER THE
39 REPLACEMENT GENERATION'S EXPECTED USEFUL LIFE COMBINED WITH THE PROJECTED
40 NET PRESENT VALUE TO RATEPAYERS OF THE TOTAL EXPECTED COST OF THE
41 TRANSITION BONDS OVER THE TERM OF SUCH BONDS, AS COMPARED TO THE NET
42 PRESENT VALUE TO RATEPAYERS OF THE COST, INCLUDING ANY UNRECOVERED COSTS
43 ASSOCIATED WITH UNDEPRECIATED VALUE OR UNRECOVERED BALANCES OF THE
44 TRANSITION ASSET IF SUCH COSTS WERE TO BE FINANCED DIRECTLY BY THE PUBLIC
45 POWER ENTITY, OF CONTINUING TO OPERATE THE ELECTRIC POWER GENERATION

1 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER AN EQUIVALENT
2 TIME FRAME REGARDLESS OF THE FUEL SOURCE OF THE POWER GENERATION. THE
3 COST-EFFECTIVE EVALUATION SHALL INCLUDE A DESCRIPTION OF A PORTFOLIO THAT
4 CONTAINS NEW AND EXISTING RESOURCES THAT WILL PROVIDE RELIABLE REPLACEMENT
5 GENERATION OF EQUIVALENT RESOURCE ADEQUACY AS THE ELECTRIC POWER
6 GENERATION THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE.

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

9 30-904. Transition property; property rights; default on
10 transition bonds

11 A. TRANSITION PROPERTY IS IMMEDIATELY CREATED BY OPERATION OF LAW
12 ON THE LATTER OF THE APPROVAL OF A FINANCING RESOLUTION, THE CREATION AND
13 CAPITALIZATION OF A QUALIFIED SPECIAL PURPOSE ENTITY AND THE ISSUANCE AND
14 RECEIPT OF VALUE FOR THE APPLICABLE TRANSITION BONDS. TRANSITION PROPERTY
15 CONTINUES TO EXIST UNTIL THE CORRESPONDING TRANSITION BONDS AND ALL
16 ONGOING FINANCING COSTS RELATED TO THE TRANSITION BONDS HAVE BEEN FULLY
17 PAID. ON CREATION, TRANSITION PROPERTY BELONGS TO THE QUALIFIED SPECIAL
18 PURPOSE ENTITY. A QUALIFIED SPECIAL PURPOSE ENTITY MAY NOT PROVIDE
19 UTILITY SERVICE AND IS NOT A PUBLIC SERVICE CORPORATION, PUBLIC POWER
20 ENTITY OR COOPERATIVE. A QUALIFIED SPECIAL PURPOSE ENTITY SHALL NOT
21 CONDUCT ANY BUSINESS UNRELATED TO OWNING, PROTECTING AND ADMINISTERING THE
22 TRANSITION PROPERTY OR ISSUING, MARKETING, PLACING, AUTHORIZING,
23 SUPPORTING, REPAYING REFINANCING, SERVICING, ADMINISTERING OR REFUNDING
24 TRANSITION BONDS.

25 B. TRANSITION PROPERTY CONSTITUTES A VESTED, EXISTING, PRESENT,
26 CONTINUING AND IRREVOCABLE PROPERTY RIGHT FOR ALL PURPOSES,
27 NOTWITHSTANDING THE FACT THAT THE VALUE OF THE TRANSITION PROPERTY MAY
28 DEPEND ON, OR BE AFFECTED BY, EVENTS OR ACTIONS THAT HAVE NOT YET
29 OCCURRED. TRANSITION PROPERTY SHALL NOT BE AN ASSET OF THE PUBLIC POWER
30 ENTITY.

31 C. A PUBLIC POWER ENTITY MAY NOT HAVE AN OWNERSHIP OR BENEFICIAL
32 INTEREST OR ANY CLAIM OF RIGHT IN THE TRANSITION PROPERTY, OTHER THAN THE
33 REQUIREMENT TO CALCULATE, IMPOSE, CHARGE, COLLECT AND RECEIVE THE
34 FINANCING CHARGES AS A SERVICER AND TRANSFER THE RESULTING FINANCING
35 REVENUES TO THE QUALIFIED SPECIAL PURPOSE ENTITY THAT IS ENTITLED TO
36 RECEIVE THOSE FINANCING REVENUES.

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

40 E. TRANSITION PROPERTY, FINANCING CHARGES, FINANCING REVENUES AND
41 THE INTERESTS OF A FINANCING PARTY OR ANY OTHER PERSON IN TRANSITION
42 PROPERTY OR IN FINANCING REVENUES ARE NOT SUBJECT TO OFFSET, COUNTERCLAIM,
43 SURCHARGE OR DEFENSE BY A SERVICER, A CUSTOMER, A PUBLIC POWER ENTITY, A
44 CREDITOR OF A PUBLIC POWER ENTITY, A CREDITOR OF THE QUALIFIED SPECIAL
45 PURPOSE ENTITY OR ANY OTHER PERSON, OR IN CONNECTION WITH ANY DEFAULT,

1 BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY PROCEEDING OF ANY SUCH
2 PERSON.

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

5 1. ANY SECURED PARTY HAS THE RIGHT TO FORECLOSE ON TRANSITION
6 PROPERTY OR OTHERWISE ENFORCE ITS RIGHTS AS TO THE TRANSITION PROPERTY IN
7 THE SAME MANNER AS IF IT WERE A SECURED PARTY UNDER THE UNIFORM COMMERCIAL
8 CODE.

9 2. ON APPLICATION BY AN INTERESTED PARTY, AND WITHOUT LIMITING
10 PARAGRAPH 1 OF THIS SUBSECTION OR ANY OTHER REMEDIES AVAILABLE TO THE
11 APPLYING PARTY, A COURT SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE
12 MONIES ARISING FROM THE TRANSITION PROPERTY TO THE PERSON THAT IS ENTITLED
13 TO RECEIVE THE MONIES. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT
14 NOTWITHSTANDING ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR
15 RECEIVERSHIP PROCEEDINGS OF A PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL
16 PURPOSE ENTITY.

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

21 30-905. Transition bonds; issuance; authority of qualified
22 special purpose entity; reimbursement of costs

23 A. AFTER APPROVAL OF A FINANCING RESOLUTION PURSUANT TO SECTION
24 30-903, A QUALIFIED SPECIAL PURPOSE ENTITY IS AUTHORIZED TO ISSUE ONE OR
25 MORE SERIES, CLASSES OR TRANCHES OF TRANSITION BONDS AND TO PLEDGE
26 TRANSITION PROPERTY TO SECURE THE PAYMENT OF ONGOING FINANCING COSTS. ON
27 ISSUANCE OF THE TRANSITION BONDS, THE QUALIFIED SPECIAL PURPOSE ENTITY
28 SHALL TRANSFER TO THE PUBLIC POWER ENTITY THE NET PROCEEDS OF THE
29 TRANSITION BONDS MINUS THE UPFRONT FINANCING COSTS PAID BY THE QUALIFIED
30 SPECIAL PURPOSE ENTITY.

31 B. THE APPROVAL OF A FINANCING RESOLUTION DOES NOT OBLIGATE A PUBLIC
32 POWER ENTITY OR A QUALIFIED SPECIAL PURPOSE ENTITY TO ENGAGE IN THE
33 APPROVED TRANSACTION, AND NEITHER A PUBLIC POWER ENTITY NOR A QUALIFIED
34 SPECIAL PURPOSE ENTITY SHALL BE SUBJECT TO ANY REGULATORY CONDITIONS,
35 REGULATORY SANCTIONS OR OTHER PENALTIES FOR NOT ENGAGING IN AN APPROVED
36 TRANSACTION. IF THE QUALIFIED SPECIAL PURPOSE ENTITY DETERMINES NOT TO
37 ISSUE TRANSITION BONDS AUTHORIZED BY A FINANCING RESOLUTION, THE PUBLIC
38 POWER ENTITY SHALL REIMBURSE THE QUALIFIED SPECIAL PURPOSE ENTITY FOR ANY
39 COSTS PAID BY THE QUALIFIED SPECIAL PURPOSE ENTITY THAT WOULD HAVE
40 CONSTITUTED UPFRONT FINANCING COSTS HAD THE TRANSITION BONDS BEEN ISSUED,
41 EXCEPT THAT DELAYING THE ISSUANCE OF TRANSITION BONDS PENDING FINAL
42 RESOLUTION OF ANY APPEALS FROM THE FINANCING RESOLUTION OR ANY LEGAL
43 CHALLENGES TO THIS CHAPTER IS NOT DEEMED TO BE SUCH A DETERMINATION.

1 30-906. Transition property: security interest: lien:
2 priority

3 A. THIS SECTION APPLIES TO ALL PURPORTED TRANSFERS OF, GRANTS OF
4 LIENS ON, OR SECURITY INTERESTS IN TRANSITION PROPERTY. EXCEPT AS
5 OTHERWISE PROVIDED IN THIS SECTION, THE CREATION, PERFECTION AND
6 ENFORCEMENT OF A SECURITY INTEREST IN TRANSITION PROPERTY THAT IS PLEDGED
7 TO SECURE THE PAYMENT OF THE ONGOING FINANCING COSTS ARE GOVERNED BY THIS
8 SECTION.

9 B. THE DESCRIPTION OF OR REFERENCE TO TRANSITION PROPERTY IN A
10 TRANSFER OR SECURITY AGREEMENT IS SUFFICIENT IF AND ONLY IF THE
11 DESCRIPTION OR REFERENCE REFER TO THIS CHAPTER AND THE FINANCING
12 RESOLUTION DESCRIBING THE TRANSITION PROPERTY. A SECURITY INTEREST IN
13 TRANSITION PROPERTY IS CREATED, VALID, BINDING AND ENFORCEABLE AT THE
14 LATEST OF ANY OF THE FOLLOWING:

15 1. WHEN THE TRANSITION BONDS ARE ISSUED BY THE QUALIFIED SPECIAL
16 PURPOSE ENTITY.

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

19 3. WHEN VALUE IS RECEIVED BY THE QUALIFIED SPECIAL PURPOSE ENTITY
20 FOR THE TRANSITION BONDS.

21 C. THE SECURITY INTEREST IN TRANSITION PROPERTY IS A STATUTORY LIEN
22 THAT ATTACHES AUTOMATICALLY IN FAVOR OF THE APPLICABLE FINANCING PARTY
23 WHEN THE TRANSITION BOND IS ISSUED AND VALUE FOR THE TRANSITION BONDS IS
24 RECEIVED. THE SECURITY INTEREST ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF
25 ANY COLLATERAL OR OTHER ACT, AND THE SECURITY INTEREST IS VALID, BINDING
26 AND PERFECTED AGAINST ALL PARTIES THAT HAVE CLAIMS OF ANY KIND AGAINST THE
27 PERSON GRANTING THE SECURITY INTEREST, REGARDLESS OF WHETHER THE PARTIES
28 HAVE NOTICE OF A LIEN, ON THE FILING OF A FINANCING STATEMENT WITH THE
29 SECRETARY OF STATE. THE SECRETARY OF STATE SHALL MAINTAIN THE FINANCING
30 STATEMENT IN THE SAME MANNER AND IN THE SAME RECORDKEEPING SYSTEM
31 MAINTAINED FOR FINANCING STATEMENTS THAT ARE FILED PURSUANT TO TITLE 47,
32 CHAPTER 9, ARTICLE 5. FINANCING STATEMENTS THAT ARE FILED PURSUANT TO
33 THIS SECTION ARE EFFECTIVE WITHOUT THE NEED TO FILE A CONTINUATION
34 STATEMENT UNTIL A TERMINATION STATEMENT IS FILED.

35 D. A TRANSFER OF AN INTEREST, INCLUDING A GRANT OF A LIEN OR
36 SECURITY INTEREST, IN TRANSITION PROPERTY IS PERFECTED AGAINST ALL THIRD
37 PERSONS. A SECURITY INTEREST IN TRANSITION PROPERTY IS A CONTINUOUSLY
38 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN THAT MAY
39 SUBSEQUENTLY ATTACH TO THE TRANSITION PROPERTY UNLESS THE HOLDER OF THE
40 SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

41 E. THE PRIORITY OF A SECURITY INTEREST IN TRANSITION PROPERTY IS
42 NOT AFFECTED BY THE COMMINGLING OF FINANCING REVENUES WITH OTHER FUNDS.
43 ANY PLEDGEE OR SECURED PARTY HAS A PERFECTED SECURITY INTEREST IN THE
44 AMOUNT OF ALL FINANCING REVENUES THAT ARE DEPOSITED IN ANY ACCOUNT OF THE
45 SERVICER IN WHICH FINANCING REVENUES HAVE BEEN COMMINGLED WITH OTHER

1 MONIES, AND ANY OTHER SECURITY INTEREST THAT MAY APPLY TO SUCH FINANCING
2 REVENUES IS TERMINATED WHEN THOSE FUNDS ARE TRANSFERRED TO A SEGREGATED
3 ACCOUNT FOR A FINANCING PARTY OR ASSIGNEE OF A FINANCING PARTY.

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

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

9 30-907. Financing charges; true-up mechanism; civil action

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

13 B. THE TRUE-UP MECHANISM SHALL CORRECT FOR ANY OVERCOLLECTION OR
14 UNDERCOLLECTION OF FINANCING REVENUES AND PROVIDE FOR TIMELY AND COMPLETE
15 PAYMENT OF ONGOING FINANCING COSTS. ADJUSTMENTS TO FINANCING CHARGES THAT
16 ARE MADE IN ACCORDANCE WITH THE TRUE-UP MECHANISM SHALL BE APPLIED THROUGH
17 AN EQUAL PERCENTAGE CHANGE TO ALL UNIT FINANCING CHARGES OR THROUGH AN
18 ALTERNATIVE NONDISCRETIONARY MATHEMATICAL PROCESS OF ADJUSTING UNIT
19 FINANCING CHARGES THAT IS INCLUDED IN THE TRUE-UP MECHANISM AND THAT IS
20 DESCRIBED IN THE FINANCING RESOLUTION.

21 C. ADJUSTMENTS TO THE FINANCING CHARGES AND UNIT FINANCING CHARGES
22 RESULTING FROM THE APPLICATION OF THE TRUE-UP MECHANISM ARE EFFECTIVE
23 WITHOUT ANY ORDER OR ACTION OF THE GOVERNING BODY OF THE PUBLIC POWER
24 ENTITY OR ANY OTHER BODY, EXCEPT AS PROVIDED IN SUBSECTION D OF THIS
25 SECTION.

26 D. WHEN TRANSITION BONDS ARE ISSUED, THE DETERMINATION AND
27 IMPOSITION OF FINANCING CHARGES, THE RECOVERY OF FINANCING REVENUES AND
28 THE ADJUSTMENT OF THE FINANCING CHARGES THROUGH THE TRUE-UP MECHANISM ARE
29 NOT SUBJECT TO REVIEW OR APPROVAL BY ANY GOVERNMENT ENTITY, INCLUDING
30 STATE AGENCIES, PUBLIC CORPORATIONS, MUNICIPALITIES OR OTHER
31 INSTRUMENTALITIES OF THIS STATE, EXCEPT THAT THE SUPERIOR COURT HAS
32 EXCLUSIVE JURISDICTION TO AND, ON COMMENCEMENT OF A SUIT AGAINST THE
33 QUALIFIED SPECIAL PURPOSE ENTITY BY A CUSTOMER, MAY REVIEW AND DETERMINE
34 WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR IN THE
35 CALCULATION OR APPLICATION OF THE TRUE-UP MECHANISM OR THE CALCULATION OF
36 THE RESULTING FINANCING CHARGES AND UNIT FINANCING CHARGES.

37 E. THE JURISDICTION AND AUTHORITY OF THE SUPERIOR COURT IN AN
38 ACTION UNDER THIS SECTION IS LIMITED TO DETERMINING THE FINANCING CHARGES
39 AND UNIT FINANCING CHARGES THAT RESULT FROM THE CORRECT CALCULATION AND
40 APPLICATION OF THE TRUE-UP MECHANISM. THE SUPERIOR COURT SHALL NOT ORDER
41 OR REQUIRE ANY MODIFICATION TO THE TRUE-UP MECHANISM OR LIMIT, REDUCE,
42 ALTER, IMPAIR, DELAY OR TERMINATE THE APPLICATION OF THE TRUE-UP MECHANISM
43 OR THE COLLECTION AND REMITTANCE OF FINANCING REVENUES. A PARTY MAY NOT
44 BRING ANY ACTION TO ENJOIN, RESTRAIN, STAY OR DELAY THE VALIDITY,
45 CALCULATION AND IMPOSITION OF FINANCING CHARGES OR THE COLLECTION OF

1 FINANCING REVENUES, INCLUDING THE ESTABLISHMENT AND APPLICATION OF THE
2 TRUE-UP MECHANISM AND THE COLLECTION AND REMITTANCE OF FINANCING REVENUES.
3 AN ACTION UNDER THIS SECTION MUST BE FILED WITHIN TEN DAYS AFTER THE
4 QUALIFIED SPECIAL PURPOSE ENTITY OR SERVICER FILES NOTICE WITH THE PUBLIC
5 POWER ENTITY UNDER SUBSECTION J OF THIS SECTION. THE TIME FOR BRINGING
6 THE ACTION MAY NOT BE TOLLED OR EXTENDED FOR ANY REASON. WITHIN SIXTY
7 DAYS AFTER THE FILING OF AN ACTION UNDER THIS SECTION, THE SUPERIOR COURT
8 SHALL HEAR AND ISSUE A DECISION ON THE MATTER. THE DECISION IS APPEALABLE
9 ONLY TO THE SUPREME COURT, AND THE NOTICE OF APPEAL SHALL BE FILED WITHIN
10 FIVE DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE ACTION. THE
11 SUPREME COURT SHALL RENDER A DECISION ON THE APPEAL PROMPTLY BUT NOT LATER
12 THAN NINETY DAYS AFTER THE NOTICE OF APPEAL IS FILED WITH THE SUPREME
13 COURT.

14 F. A COURT MAY NOT ENJOIN, RESTRAIN, STAY OR DELAY THE APPLICATION
15 OF THE TRUE-UP MECHANISM OR THE COLLECTION AND REMITTANCE OF FINANCING
16 REVENUES. IF THE FINAL JUDGMENT OF THE SUPERIOR COURT, AFTER ALL APPEALS
17 ARE EXHAUSTED, REQUIRES A MODIFICATION OF ANY ADJUSTMENT MADE UNDER THE
18 TRUE-UP MECHANISM, THE SERVICER SHALL MAKE THAT MODIFICATION AT THE TIME
19 OF AND AS PART OF THE NEXT PERIODIC ADJUSTMENT OF THE FINANCING CHARGES ON
20 THE EXHAUSTION OF ALL APPEALS THROUGH THE TRUE-UP MECHANISM.

21 G. ANY ADJUSTMENTS THAT ARE MADE PURSUANT TO THE TRUE-UP MECHANISM,
22 ANY REVIEW OF THE CALCULATIONS OF THOSE ADJUSTMENTS OR ANY ACTION BROUGHT
23 TO DETERMINE WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR
24 IN THE APPLICATION OF THE TRUE-UP MECHANISM SHALL NOT AFFECT THE
25 IRREVOCABILITY OF THE TRANSITION PROPERTY, THE FINANCING RESOLUTION, THE
26 NONBYPASSABILITY OF THE FINANCING CHARGES AND UNIT FINANCING CHARGES OR
27 THE NONIMPAIRMENT PLEDGES PRESCRIBED IN SECTION 30-909.

28 H. REGARDLESS OF WHETHER FINANCING CHARGES ARE ADMINISTERED, BILLED
29 OR COLLECTED BY A SERVICER THAT IS A PUBLIC POWER ENTITY, THE FINANCING
30 CHARGES ARE NOT RATES OR CHARGES IMPOSED BY OR MADE BY A PUBLIC POWER
31 ENTITY FOR UTILITY SERVICE. THE RIGHT TO RECEIVE FINANCING CHARGES AND TO
32 COLLECT FINANCING REVENUES IS INDEPENDENT OF ANY RATE THAT IS ESTABLISHED,
33 MADE OR CHARGED BY A PUBLIC POWER ENTITY FOR PUBLIC UTILITY SERVICES,
34 INCLUDING COLLECTED REVENUES. FINANCING REVENUES ARE THE PROPERTY OF THE
35 QUALIFIED SPECIAL PURPOSE ENTITY AND ARE NOT THE PROPERTY OF THE SERVICER
36 OR ANY OTHER PUBLIC POWER ENTITY.

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

43 1. ESTIMATING WHETHER THE EXISTING FINANCING CHARGES AND RESULTING
44 FINANCING REVENUES ARE SUFFICIENT TO PROVIDE FOR A TIMELY AND COMPLETE

1 PAYMENT OF ANY ONGOING FINANCING COSTS OR WHETHER AN OVERCOLLECTION OR
2 UNDERCOLLECTION OF FINANCING REVENUES IS PROJECTED.

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

6 J. THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE SERVICER AS AGENT
7 FOR THE QUALIFIED SPECIAL PURPOSE ENTITY SHALL FILE WITH THE GOVERNING
8 BODY OF THE PUBLIC POWER ENTITY AN INFORMATIONAL NOTICE THAT IDENTIFIES
9 THE ADJUSTED UNIT FINANCING CHARGES THAT ARE TO BE INCLUDED ON A
10 CUSTOMER'S BILLS UNDER THE TRANSITION SERVICES TARIFF. THIS NOTICE IS
11 REQUIRED TO INFORM THE CUSTOMER AND SHALL BE PROVIDED NOT LATER THAN
12 FIFTEEN DAYS BEFORE THE DATE THE UNIT FINANCING CHARGES BECOME EFFECTIVE.
13 THE NOTICE SHALL PROVIDE SUFFICIENT INFORMATION TO VERIFY THE MATHEMATICAL
14 CALCULATION OF THE ADJUSTED FINANCING CHARGES AND THE UNIT FINANCING
15 CHARGES THAT RESULT FROM APPLYING THE TRUE-UP MECHANISM.

16 K. IF A CUSTOMER DOES NOT PAY ANY UNIT FINANCING CHARGE, THE
17 QUALIFIED SPECIAL PURPOSE ENTITY OR THE SERVICER AS AGENT OF THE QUALIFIED
18 SPECIAL PURPOSE ENTITY MAY BRING SUIT IN ANY COURT OF COMPETENT
19 JURISDICTION AGAINST THE CUSTOMER TO COLLECT THE UNPAID UNIT FINANCING
20 CHARGES. REASONABLE ATTORNEY FEES AND COSTS SHALL BE AWARDED TO THE
21 PREVAILING PARTY. COMMENCEMENT OF THE SUIT DOES NOT AFFECT THE
22 CALCULATION OF ANY ADJUSTMENT THAT IS AUTHORIZED BY THE TRUE-UP MECHANISM
23 UNTIL THE NET PROCEEDS ARE RECOVERED AND PAID TO THE QUALIFIED SPECIAL
24 PURPOSE ENTITY AS FINANCING REVENUES.

25 30-908. Public power entity as servicer; transition billing
26 services tariffs; AAA rating

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

30 B. IF A SERVICER COLLECTS PAYMENT MADE BY A CUSTOMER FOR FINANCING
31 CHARGES, WHETHER UNDER A TRANSITION BILLING SERVICES TARIFF OR OTHERWISE,
32 THE MONIES COLLECTED ARE FINANCING REVENUES WHEN THE MONIES ARE PAID BY
33 THE CUSTOMER, AND THE SERVICER HAS NO RIGHT, TITLE OR INTEREST IN THE
34 REVENUES OTHER THAN AS AN AGENT FOR THE QUALIFIED SPECIAL PURPOSE ENTITY.
35 IF A CUSTOMER PAYS ONLY A PORTION OF THE CHARGES STATED ON A BILL PROVIDED
36 BY A SERVICER THAT INCLUDES FINANCING CHARGES, THE PARTIAL PAYMENT SHALL
37 BE FIRST APPLIED TO PAYING THE FINANCING CHARGES.

38 C. IF A SERVICER FAILS TO MAKE ANY REQUIRED PAYMENT OF FINANCING
39 REVENUES TO A QUALIFIED SPECIAL PURPOSE ENTITY OR FAILS TO FULFILL ITS
40 SERVICING OBLIGATIONS UNDER AN APPLICABLE TRANSITION BILLING SERVICES
41 TARIFF, THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE HOLDERS OF THE
42 TRANSITION BONDS MAY REQUEST THAT THE SUPERIOR COURT ORDER THE
43 SEQUESTRATION AND PAYMENT OF THE FINANCING REVENUES FOR THE BENEFIT OF ANY
44 FINANCING PARTIES OR THEIR ASSIGNEES AND MAY REQUEST ANY OTHER APPLICABLE
45 RELIEF. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING

1 ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR RECEIVERSHIP
2 PROCEEDINGS OF THE SERVICER OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

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

10 30-909. Transition bonds: irrevocability: public policy:
11 noncompliance

12 A. ON OR AFTER THE ISSUANCE OF TRANSITION BONDS, THE TRANSITION
13 PROPERTY, THE TRUE-UP MECHANISM AND THE FINANCING CHARGES ARE IRREVOCABLE,
14 FINAL, NONDISCRETIONARY AND EFFECTIVE WITHOUT THE NEED FOR FURTHER ACTION
15 BY THE GOVERNING BODY OR THIS STATE, AND SUCH FINANCING CHARGES SHALL NOT
16 BE SUBJECT TO RESCISSION, ALTERATION, AMENDMENT, REDUCTION, IMPAIRMENT OR
17 ADJUSTMENT BY FURTHER ACTION OF THIS STATE OR ANY OTHER BODY, EXCEPT
18 PURSUANT TO THE TRUE-UP MECHANISM.

19 B. THIS STATE, INCLUDING ALL AGENCIES, PUBLIC CORPORATIONS,
20 MUNICIPALITIES OR OTHER INSTRUMENTALITIES OF THIS STATE, PLEDGES TO AND
21 AGREES WITH THE FINANCING PARTIES, INCLUDING PRESENT AND FUTURE HOLDERS OF
22 TRANSITION BONDS, THE PUBLIC POWER ENTITY, THE QUALIFIED SPECIAL PURPOSE
23 ENTITY AND ANY OTHER PERSONS THAT ENTER INTO AN ANCILLARY AGREEMENT THAT
24 AFTER THE ISSUANCE OF TRANSITION BONDS AND UNTIL ALL FINANCING COSTS,
25 INCLUDING THE PRINCIPAL AND INTEREST ON THE TRANSITION BONDS AND ALL
26 AMOUNTS TO BE PAID UNDER AN ANCILLARY AGREEMENT, ARE FULLY MET AND
27 DISCHARGED, THIS STATE OR ANY AGENCY, PUBLIC CORPORATION, MUNICIPALITY OR
28 OTHER INSTRUMENTALITY OF THIS STATE MAY NOT TAKE OR ALLOW ANY ACTION TO BE
29 TAKEN TO LIMIT, REDUCE, ALTER, IMPAIR, DELAY OR TERMINATE ANY OF THE
30 FOLLOWING:

31 1. THE RIGHTS CONFERRED BY THIS CHAPTER, INCLUDING THE RIGHTS IN
32 TRANSITION PROPERTY OR TRANSITION BONDS.

33 2. THE IMPOSITION OF FINANCING CHARGES AND UNIT FINANCING CHARGES
34 BY THE QUALIFIED SPECIAL PURPOSE ENTITY.

35 3. THE OPERATION OF THE TRUE-UP MECHANISM TO ADJUST FINANCING
36 CHARGES AND UNIT FINANCING CHARGES.

37 4. THE COLLECTION OF FINANCING REVENUES IN PAYMENT OF FINANCING
38 CHARGES AND UNIT FINANCING CHARGES.

39 5. THE PAYMENT OF FINANCING COSTS.

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

1 D. ON AND AFTER THE ISSUANCE OF THE TRANSITION BONDS, THE FAILURE
2 OF A PUBLIC POWER ENTITY OR A QUALIFIED SPECIAL PURPOSE ENTITY TO COMPLY
3 WITH THIS CHAPTER OR THE FINANCING RESOLUTION DOES NOT INVALIDATE, IMPAIR
4 OR AFFECT THE FINANCING RESOLUTION, THE TRANSITION PROPERTY, FINANCING
5 CHARGES, TRANSITION BONDS OR FINANCING COSTS.

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

8 1. THE BANKRUPTCY, REORGANIZATION, SALE, DISSOLUTION OR INSOLVENCY
9 OF THE PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE
10 SUCCESSORS OR ASSIGNS OF THE PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL
11 PURPOSE ENTITY.

12 2. THE COMMENCEMENT OF ANY PROCEEDING FOR BANKRUPTCY OR THE
13 APPOINTMENT OF A RECEIVER AS TO EITHER THE PUBLIC POWER ENTITY, THE
14 QUALIFIED SPECIAL PURPOSE ENTITY OR THE SUCCESSORS OF THE PUBLIC POWER
15 ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

16 30-910. Financing resolution; application for rehearing;
17 judicial review

18 A. A PARTY TO THE PROCEEDING WHO IS DISSATISFIED WITH A GOVERNING
19 BODY'S DECISION AS TO A FINANCING RESOLUTION ADOPTED PURSUANT TO THIS
20 CHAPTER OR THE ATTORNEY GENERAL ON BEHALF OF THIS STATE MAY APPLY TO THE
21 GOVERNING BODY FOR REHEARING. THE APPLICATION FOR REHEARING SHALL BE
22 FILED NOT LATER THAN TWENTY DAYS AFTER THE GOVERNING BODY'S DECISION ON
23 THE FINANCING RESOLUTION. IF THE GOVERNING BODY DOES NOT GRANT THE
24 APPLICATION FOR REHEARING WITHIN TWENTY DAYS AFTER THE APPLICATION IS
25 FILED, THE APPLICATION IS DEEMED DENIED.

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

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

41 1. THE FINANCING RESOLUTION OR OTHER GOVERNING BODY DECISION UNDER
42 THIS CHAPTER IS UNLAWFUL.

43 2. THE FACTUAL FINDINGS MADE IN THE FINANCING RESOLUTION ARE
44 UNSUPPORTED BY THE FINANCING RESOLUTION OR EVIDENCE THAT WAS PRESENTED
45 BEFORE THE GOVERNING BODY.

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

4 E. A PARTY MAY APPEAL A DECISION IN AN ACTION FILED UNDER THIS
5 SECTION ONLY TO THE SUPREME COURT. THE PARTY SHALL FILE THE NOTICE OF
6 APPEAL WITHIN FIVE DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE
7 ACTION. THE TIME FOR FILING THE NOTICE OF APPEAL MAY NOT BE TOLLED OR
8 EXTENDED FOR ANY REASON. THE SUPREME COURT SHALL ISSUE A DECISION ON THE
9 APPEAL PROMPTLY.

10 F. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, A COURT IN THIS
11 STATE DOES NOT HAVE JURISDICTION TO REVIEW, ENJOIN, RESTRAIN, SUSPEND,
12 STAY OR DELAY ANY OF THE FOLLOWING:

13 1. A FINANCING RESOLUTION.

14 2. THE CREATION OF TRANSITION PROPERTY.

15 3. THE ISSUANCE OF TRANSITION BONDS.

16 4. A GOVERNING BODY'S PERFORMANCE OF ITS DUTIES UNDER THIS CHAPTER.

17 G. AN ORDER OR DECREE THAT IS ISSUED BY A GOVERNING BODY IN THE
18 PERFORMANCE OF ITS DUTIES UNDER THIS CHAPTER REMAINS IN FORCE PENDING THE
19 DECISION OF THE COURT.

20 30-911. Fees and taxes

21 FINANCING CHARGES ARE NOT SUBJECT TO EITHER:

22 1. A FRANCHISE FEE THAT IS IMPOSED BY A MUNICIPALITY, COUNTY OR
23 OTHER LOCAL GOVERNMENT UNIT AS A RESULT OF A FRANCHISE AGREEMENT OR LAWFUL
24 ORDINANCE.

25 2. TAXES THAT ARE APPLICABLE TO SERVICES PROVIDED BY OR RATES OF A
26 PUBLIC POWER ENTITY.

27 30-912. Transition bonds; public debt prohibition

28 A. TRANSITION BONDS ARE NOT A PUBLIC DEBT, A LIEN NOR A PLEDGE OF
29 THE REVENUES, FAITH AND CREDIT OR TAXING POWER OF A PUBLIC POWER ENTITY,
30 THIS STATE OR ANY COUNTY, MUNICIPALITY OR OTHER LOCAL GOVERNMENT UNIT OF
31 THIS STATE. THE APPROVAL OF A FINANCING RESOLUTION DOES NOT OBLIGATE THIS
32 STATE OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THIS STATE
33 TO LEVY ANY TAX OR MAKE ANY APPROPRIATION FOR PAYMENT OF ANY FINANCING
34 COST, INCLUDING THE PRINCIPAL AND INTEREST ON TRANSITION BONDS. THIS
35 STATE OR A COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THIS STATE MAY
36 NOT LEVY ANY TAX ON HOLDERS OF TRANSITION BONDS OR OWNERS OF TRANSITION
37 PROPERTY.

38 B. TRANSITION BONDS ARE NOT AN OBLIGATION, DEBT, LIEN OR PLEDGE OF
39 THE ASSETS OR REVENUES OF THE PUBLIC POWER ENTITY. APPROVAL IS NOT
40 REQUIRED UNDER SECTION 40-302 OR ANY OTHER PROVISION OF LAW FOR THE
41 APPROVAL OF A FINANCING RESOLUTION, FOR THE ISSUANCE OF TRANSITION BONDS,
42 FOR THE SALE OF TRANSITION BONDS OR FOR AN ASSIGNMENT OR TRANSFER OF
43 TRANSITION PROPERTY OR ANY INTEREST IN TRANSITION PROPERTY THAT IS
44 AUTHORIZED BY THIS CHAPTER.

30-913. 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.

30-914. Obligations of successor to public power entity

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

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

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

30-916. Effect of invalidity on actions

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

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

CHAPTER 3

UTILITY SECURITIZATION

ARTICLE 1. GENERAL PROVISIONS

40-601. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

- (a) A BOND.
- (b) AN INSURANCE POLICY.
- (c) A LETTER OF CREDIT.
- (d) A RESERVE ACCOUNT.
- (e) AN INTEREST RATE LOCK OR SWAP ARRANGEMENT.

1 (f) A HEDGING ARRANGEMENT.

2 (g) A LIQUIDITY OR CREDIT SUPPORT ARRANGEMENT.

3 (h) ANY OTHER SIMILAR AGREEMENT, INSTRUMENT OR ARRANGEMENT THAT IS
4 ENTERED INTO IN CONNECTION WITH THE ISSUANCE OF TRANSITION BONDS AND THAT
5 IS DESIGNED TO PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE
6 TRANSITION BONDS OR TO REDUCE OR MITIGATE THE RISK OF AN INCREASE IN ANY
7 FINANCING COST.

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

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

12 (b) A GROUP OF TWO OR MORE MEMBER-OWNED COOPERATIVES SEEKING
13 APPROVAL OF A COMBINED COOPERATIVE SECURITIZATION. FOR THE PURPOSES OF
14 THIS SUBDIVISION, EACH PARTICIPATING COOPERATIVE MAY BE REFERRED TO
15 INDIVIDUALLY AS THE APPLICANT OR THE GROUP OF COOPERATIVES MAY BE REFERRED
16 TO COLLECTIVELY AS THE APPLICANT AS THE CONTEXT INDICATES.

17 3. "COMBINED COOPERATIVE SECURITIZATION" MEANS A SECURITIZATION
18 TRANSACTION UNDER THIS CHAPTER THAT INVOLVES TWO OR MORE MEMBER-OWNED
19 COOPERATIVES ACTING TOGETHER INCLUDING A GENERATION AND TRANSMISSION
20 COOPERATIVE AND ONE OR MORE OF ITS MEMBER DISTRIBUTION COOPERATIVES EVEN
21 IF ALL APPLICABLE TRANSITION COSTS ARE INCURRED OR WILL BE PASSED DOWN TO
22 THE DISTRIBUTION COOPERATIVES.

23 4. "COMMISSION" MEANS THE CORPORATION COMMISSION.

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

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

32 (i) AN APPLICANT.

33 (ii) A SUCCESSOR TO AN APPLICANT.

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

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

45 (i) AN APPLICANT.

1 (ii) A SUCCESSOR TO AN APPLICANT.

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

6 (c) WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY ALSO RECEIVES
7 SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR ENTITY IS A
8 COOPERATIVE THAT PROVIDES RETAIL ELECTRIC SERVICE TO MEMBERS AND THAT
9 RECEIVES ELECTRICITY FROM AN APPLICANT THAT PROVIDES WHOLESALE ELECTRIC
10 GENERATION AND TRANSMISSION SERVICES.

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

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

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

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

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

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

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

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

43 (g) THE COSTS THAT ARE INCURRED TO PROTECT THE STATUS OF TRANSITION
44 PROPERTY, THE RIGHT TO IMPOSE AND COLLECT FINANCING CHARGES OR THE RIGHT
45 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 (h) 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 INCURRED OR TO BE
23 INCURRED THROUGH THE DATE OF ISSUANCE OF A FINANCING ORDER BY A PUBLIC
24 SERVICE CORPORATION AND THAT ARE ASSOCIATED WITH OR THAT ARISE FROM
25 WEATHER, WILDFIRE OR PUBLIC HEALTH EMERGENCY EVENTS OR INCIDENTS OR OTHER
26 EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO CAUSE SIGNIFICANT LOSS OF
27 LIFE, INJURY TO PERSON OR PROPERTY, HUMAN SUFFERING OR FINANCIAL LOSS.

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

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

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

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

43 (b) AS OF THE DATE OF THE APPLICATION, IS PLANNED TO BE RETIRED,
44 SOLD, DISPOSED OF, ABANDONED OR OTHERWISE REMOVED FROM SERVICE BY THE

1 APPLICANT, IN WHOLE OR IN PART, WITHIN TEN YEARS AFTER THE DATE OF THE
2 APPLICATION.

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

6 18. "TRANSITION ASSET RETIREMENT COSTS":

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

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

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

25 20. "TRANSITION BILLING SERVICES TARIFF":

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

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

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

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

39 (a) TRANSITION ASSET RETIREMENT COSTS.

40 (b) UNRECOVERED FUEL COSTS.

41 (c) SIGNIFICANT EVENT RECOVERY COSTS.

42 23. "TRANSITION PROPERTY":

43 (a) MEANS THE PROPERTY RIGHTS AND PROPERTY INTERESTS OF A QUALIFIED
44 SPECIAL PURPOSE ENTITY, ANY HOLDERS OF TRANSITION BONDS WHEN ISSUED OR ANY
45 TRANSFEREE OR ASSIGNEE THEREOF THAT ARE CREATED OR RECOGNIZED AS A RESULT

1 OF A TRANSACTION AUTHORIZED BY THIS CHAPTER AND IS NOT AN ASSET OF THE
2 APPLICANT OR ANY OTHER PUBLIC SERVICE CORPORATION.

3 (b) INCLUDES ANY OF THE FOLLOWING:

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

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

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

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

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

19 24. "TRUE-UP MECHANISM":

20 (a) MEANS A FORMULA, DESCRIBED IN THE APPLICATION FOR A FINANCING
21 ORDER AND ESTABLISHED BEFORE OR CONCURRENT WITH THE ISSUANCE OF TRANSITION
22 BONDS, THAT ADJUSTS FINANCING CHARGES OVER TIME TO CORRECT FOR ANY
23 OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES SO THAT A
24 QUALIFIED SPECIAL PURPOSE ENTITY TIMELY AND COMPLETELY RECOVERS ALL
25 ONGOING FINANCING COSTS.

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

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

39 26. "UNRECOVERED FUEL COSTS":

40 (a) MEANS FOR ANY APPLICANT:

41 (i) THE UNRECOVERED AMOUNTS OF PREVIOUSLY INCURRED COSTS, FEES AND
42 EXPENSES TO PURCHASE FUEL USED TO GENERATE ELECTRICITY.

43 (ii) THE UNRECOVERED AMOUNTS OF PREVIOUSLY INCURRED COSTS, FEES AND
44 EXPENSES TO PURCHASE ELECTRICITY, CAPACITY OR ANY OTHER COMPONENT OF

1 WHOLESALE ELECTRICITY TRANSACTIONS FROM A THIRD PARTY, INCLUDING IN
2 TRANSACTIONS BETWEEN COOPERATIVES.

3 (iii) ANY DEBT OR OTHER CARRYING COSTS ASSOCIATED WITH THE
4 APPLICANT'S UNRECOVERED FUEL OR PURCHASED POWER BALANCES.

5 (b) FOR A COMBINED COOPERATIVE SECURITIZATION, MAY INCLUDE
6 UNRECOVERED FUEL COSTS THAT HAVE BEEN INCURRED BY A GENERATION AND
7 TRANSMISSION COOPERATIVE APPLICANT THAT OTHERWISE WOULD BE PASSED ON TO
8 DISTRIBUTION COOPERATIVE APPLICANTS IN WHOLESALE POWER OR SIMILAR CHARGES
9 REGARDLESS OF WHETHER THE UNRECOVERED FUEL COSTS HAVE BEEN PASSED THROUGH
10 TO DISTRIBUTION COOPERATIVE APPLICANTS AT ANY GIVEN TIME.

11 27. "UPFRONT FINANCING COSTS":

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

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

18 40-602. Statement of public policy

19 A. IT IS THE PUBLIC POLICY OF THIS STATE TO GAIN THE BENEFITS OF
20 SECURITIZATION BY ESTABLISHING IRREVOCABLE FINANCING CHARGES THAT ARE
21 PAYABLE TO A QUALIFIED SPECIAL PURPOSE ENTITY AND BY CREATING AND VESTING
22 A PRESENT AND ALIENABLE PROPERTY INTEREST IN FINANCING REVENUES IN A
23 QUALIFIED SPECIAL PURPOSE ENTITY. THOSE BENEFITS INCLUDE REDUCING ALL OF
24 THE FOLLOWING:

25 1. THE CONTRIBUTION OF ASSETS, WHICH ARE SUBJECT TO POTENTIAL
26 RETIREMENT, ABANDONMENT, SALE, DISPOSITION OR TRANSITION, OR THAT HAVE
27 BEEN DAMAGED OR DESTROYED, TO THE RATE BASE, OR AS WOULD OTHERWISE BE
28 RECOVERED THROUGH RATES, OF PUBLIC SERVICE CORPORATIONS AND ANY ASSOCIATED
29 LIABILITIES.

30 2. THE UNRECOVERED COSTS OF FUEL OR PURCHASED POWER.

31 3. THE COSTS ARISING FROM OR RELATED TO WEATHER, WILDFIRE OR OTHER
32 SIGNIFICANT EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO CAUSE
33 SIGNIFICANT LOSS OF LIFE, INJURY TO PERSON OR PROPERTY, HUMAN SUFFERING OR
34 FINANCIAL LOSS.

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

40 40-603. Securitization transactions; initiation; financing
41 order; application requirements; transition benefit
42 test; timeframes

43 A. AN APPLICANT MAY REQUEST PERMISSION TO INITIATE A SECURITIZATION
44 TRANSACTION FROM THE COMMISSION BY SUBMITTING AN APPLICATION FOR A
45 FINANCING ORDER. THE APPLICATION SHALL:

1 1. IDENTIFY, AS APPLICABLE, ANY TRANSITION ASSETS, TRANSITION ASSET
2 RETIREMENT COSTS, UNRECOVERED FUEL COSTS OR SIGNIFICANT EVENT RECOVERY
3 COSTS. FOR THE PURPOSES OF THIS PARAGRAPH, "UNRECOVERED FUEL COSTS":
4 (a) INCLUDES AMOUNTS OF UNRECOVERED FUEL OR PURCHASED POWER
5 EXPENSES WITH ASSOCIATED DEBT OR OTHER CARRYING COSTS.
6 (b) AS DETERMINED BY THE COMMISSION, SHALL BE SIGNIFICANT AND ARISE
7 FROM ANY OF THE FOLLOWING:
8 (i) SUPPLY SHORTAGES.
9 (ii) DISRUPTIONS IN THE TRANSPORTATION INFRASTRUCTURE OR SUPPLY
10 CHAINS.
11 (iii) MARKET VOLATILITY.
12 (iv) SUBSTANTIAL CUSTOMER LOAD GROWTH.
13 (v) ANY OTHER REASONABLY UNFORESEEN CIRCUMSTANCE.
14 2. ESTIMATE THE TRANSITION COSTS AND FINANCING COSTS.
15 3. DESCRIBE THE EXPECTED CHARACTERISTICS OF THE TRANSITION BONDS.
16 4. PROJECT THE FINANCING CHARGES AND EXPLAIN HOW THE FINANCING
17 CHARGES WILL RESULT IN THE COLLECTION OF FINANCING REVENUES IN AMOUNTS
18 SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ENABLE THE TIMELY AND
19 COMPLETE RECOVERY AND PAYMENT OF ALL ONGOING FINANCING COSTS.
20 5. ESTIMATE THE FINANCING CHARGES AND UNIT FINANCING CHARGES BEFORE
21 THE FIRST APPLICATION OF THE TRUE-UP MECHANISM.
22 6. DESCRIBE THE PROPOSED TRUE-UP MECHANISM AND HOW THE TRUE-UP
23 MECHANISM WILL ADJUST THE FINANCING CHARGES AND UNIT FINANCING CHARGES
24 OVER TIME TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF
25 FINANCING REVENUES.
26 7. IDENTIFY THE QUALIFIED SPECIAL PURPOSE ENTITY.
27 8. INCLUDE A REPORT THAT IS PREPARED BY A SECURITIES FIRM
28 EXPERIENCED IN UNDERWRITING AND BOND ISSUANCE AND THAT CONCLUDES THE
29 TRANSITION BONDS ARE EXPECTED TO SATISFY THE CURRENT PUBLISHED CRITERIA
30 FOR AN AAA RATING OR THE EQUIVALENT.
31 9. IDENTIFY ANY ANTICIPATED ANCILLARY AGREEMENTS, INDIVIDUALLY OR
32 BY DESCRIPTION.
33 10. DESCRIBE HOW THE APPLICANT PROPOSES TO PERMANENTLY REDUCE OR
34 OFFSET THE VALUE OF EITHER:
35 (a) UNDEPRECIATED TRANSITION ASSETS IN RATE BASE OR RECOVERED
36 THROUGH RATES AND ANY ASSOCIATED REGULATORY ASSETS OR RECORDED LIABILITIES
37 WITH RESPECT TO AN OFFERING OF TRANSITION BONDS TO RECOVER TRANSITION
38 ASSET RETIREMENT COSTS.
39 (b) ANY REGULATORY ASSET OR RECORDED LIABILITY THAT IS ASSOCIATED
40 WITH TRANSITION BONDS TO RECOVER UNRECOVERED FUEL COSTS OR SIGNIFICANT
41 EVENT RECOVERY COSTS IN EXCHANGE FOR THE NET PROCEEDS OF THE TRANSITION
42 BONDS.
43 11. INCLUDE A PROPOSED TRANSITION BILLING SERVICES TARIFF IF THE
44 PROPOSED INITIAL SERVICER IS A PUBLIC SERVICE CORPORATION.

1 12. COMMIT TO MAKING AN INFORMATIONAL FILING WITH THE COMMISSION
2 THAT WILL DESCRIBE THE FINAL STRUCTURE AND PRICING OF THE TRANSITION
3 BONDS, A STATEMENT OF ACTUAL UPFRONT FINANCING COSTS AND AN UPDATED
4 CALCULATION OF THE ESTIMATED FINANCING CHARGES AND UNIT FINANCING CHARGES
5 OVER THE LIFE OF THE TRANSITION BONDS.

6 13. PROVIDE A PROPOSED FINANCING ORDER.

7 14. FOR A COMBINED COOPERATIVE SECURITIZATION, DESCRIBE THE
8 ALLOCATION OF FINANCING COSTS OR FINANCING CHARGES AND UNIT FINANCING
9 CHARGES TO EACH COOPERATIVE APPLICANT'S CUSTOMERS, AS WELL AS HOW THE
10 TRUE-UP MECHANISM WILL ALLOCATE OR REALLOCATE FINANCING COSTS TO THE
11 COOPERATIVE APPLICANT'S CUSTOMERS OVER TIME.

12 B. THE COMMISSION SHALL ISSUE A FINANCING ORDER THAT APPROVES,
13 REJECTS OR APPROVES WITH CONDITIONS THE INITIATION OF THE PROPOSED
14 TRANSACTION. THE COMMISSION MAY APPROVE OR APPROVE WITH CONDITIONS THE
15 PROPOSED TRANSACTION ONLY IF THE COMMISSION FINDS THAT:

16 1. THE APPLICATION COMPLIES WITH ALL OF THE REQUIREMENTS PRESCRIBED
17 IN SUBSECTION A OF THIS SECTION.

18 2. THE TRANSITION BENEFIT TEST IS SATISFIED. THE TRANSITION
19 BENEFIT TEST IS SATISFIED ON A SHOWING OF ALL OF THE FOLLOWING:

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

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

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

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

15 3. THE PROPOSED TRANSITION BILLING SERVICES TARIFF IS JUST AND
16 REASONABLE, IS IN THE PUBLIC INTEREST AND SHOULD BE IN EFFECT.

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

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

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

27 40-604. Commission authority; jurisdiction

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

31 1. ANY UNDEPRECIATED VALUE OF THE TRANSITION ASSETS ON THE
32 APPLICANT'S BOOKS ARE REDUCED BY THE CORRESPONDING AMOUNT, INCLUDING ANY
33 REDUCTIONS IN ASSOCIATED REGULATORY ASSETS OR RECORDED LIABILITIES, AS
34 APPLICABLE.

35 2. ANY REGULATORY ASSETS THAT ARE RELATED TO UNRECOVERED FUEL COSTS
36 OR SIGNIFICANT EVENT RECOVERY COSTS ARE REDUCED BY THAT CORRESPONDING
37 AMOUNT.

38 3. ANY INCURRED COSTS OF A RECORDED LIABILITY THAT ARE INCURRED AND
39 ASSOCIATED WITH UNRECOVERED FUEL COSTS OR SIGNIFICANT EVENT RECOVERY COSTS
40 ARE REDUCED BY THAT CORRESPONDING AMOUNT.

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

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

44 2. INVESTIGATE THE PRACTICES OF PUBLIC SERVICE CORPORATIONS.

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

5 4. INVESTIGATE AN APPLICANT'S COMPLIANCE WITH THE TERMS AND
6 CONDITIONS OF A FINANCING ORDER AND TO REQUIRE THAT THE APPLICANT COMPLY
7 WITH THE FINANCING ORDER.

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

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

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

19 40-605. Transition property: property rights: default on
20 transition bonds

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

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

39 C. AN APPLICANT MAY NOT HAVE AN OWNERSHIP OR BENEFICIAL INTEREST OR
40 ANY CLAIM OF RIGHT IN THE TRANSITION PROPERTY, OTHER THAN THE REQUIREMENT
41 TO CALCULATE, IMPOSE, CHARGE, COLLECT AND RECEIVE THE FINANCING CHARGES AS
42 SERVICER AND TRANSFER THE RESULTING FINANCING REVENUES TO THE QUALIFIED
43 SPECIAL PURPOSE ENTITY THAT IS ENTITLED TO RECEIVE THOSE FINANCING
44 REVENUES.

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

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

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

13 1. ANY SECURED PARTY HAS THE RIGHT TO FORECLOSE ON TRANSITION
14 PROPERTY OR OTHERWISE ENFORCE ITS RIGHTS AS TO THE TRANSITION PROPERTY IN
15 THE SAME MANNER AS IF IT WERE A SECURED PARTY UNDER THE UNIFORM COMMERCIAL
16 CODE.

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

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

29 40-606. Transition bonds; issuance; authority of qualified
30 special purpose entity; reimbursement of costs

31 A. AFTER APPROVAL OF A FINANCING ORDER ISSUED PURSUANT TO SECTION
32 40-603, THE QUALIFIED SPECIAL PURPOSE ENTITY IS AUTHORIZED TO ISSUE ONE OR
33 MORE SERIES, CLASSES OR TRANCHES OF TRANSITION BONDS AND TO PLEDGE
34 TRANSITION PROPERTY TO SECURE THE PAYMENT OF ONGOING FINANCING COSTS. ON
35 ISSUANCE OF THE TRANSITION BONDS, THE QUALIFIED SPECIAL PURPOSE ENTITY
36 SHALL TRANSFER TO THE APPLICANT THE NET PROCEEDS OF THE TRANSITION BONDS
37 MINUS THE UPFRONT FINANCING COSTS PAID BY THE QUALIFIED SPECIAL PURPOSE
38 ENTITY.

39 B. THE APPROVAL OF A FINANCING ORDER DOES NOT OBLIGATE AN APPLICANT
40 OR A QUALIFIED SPECIAL PURPOSE ENTITY TO ENGAGE IN THE APPROVED
41 TRANSACTION, AND NEITHER AN APPLICANT NOR A QUALIFIED SPECIAL PURPOSE
42 ENTITY SHALL BE SUBJECT TO ANY REGULATORY CONDITIONS, REGULATORY SANCTIONS
43 OR OTHER PENALTIES FOR NOT ENGAGING IN AN APPROVED TRANSACTION. IF THE
44 QUALIFIED SPECIAL PURPOSE ENTITY DETERMINES NOT TO ISSUE TRANSITION BONDS
45 AUTHORIZED BY A FINANCING ORDER, THE APPLICANT SHALL REIMBURSE THE

1 QUALIFIED SPECIAL PURPOSE ENTITY FOR ANY COSTS PAID BY THE QUALIFIED
2 SPECIAL PURPOSE ENTITY THAT WOULD HAVE CONSTITUTED UPFRONT FINANCING COSTS
3 HAD THE TRANSITION BONDS BEEN ISSUED, EXCEPT THAT DELAYING THE ISSUANCE OF
4 TRANSITION BONDS PENDING FINAL RESOLUTION OF ANY APPEALS FROM THE
5 FINANCING ORDER OR ANY LEGAL CHALLENGES TO THIS CHAPTER IS NOT DEEMED TO
6 BE A DETERMINATION.

7 40-607. Transition property; security interest; lien;
8 priority

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

15 B. THE DESCRIPTION OF OR REFERENCE TO TRANSITION PROPERTY IN A
16 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS SUFFICIENT IF
17 AND ONLY IF THE DESCRIPTION OR REFERENCE REFERS TO THIS CHAPTER AND THE
18 FINANCING ORDER DESCRIBING THE TRANSITION PROPERTY. A SECURITY INTEREST
19 IN TRANSITION PROPERTY IS CREATED, VALID, BINDING AND ENFORCEABLE AT THE
20 LATEST OF ANY OF THE FOLLOWING:

21 1. WHEN THE TRANSITION BONDS ARE ISSUED BY THE QUALIFIED SPECIAL
22 PURPOSE ENTITY.

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

25 3. WHEN VALUE IS RECEIVED BY THE QUALIFIED SPECIAL PURPOSE ENTITY
26 FOR THE TRANSITION BONDS.

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

41 D. A TRANSFER OF AN INTEREST, INCLUDING A GRANT OF A LIEN OR
42 SECURITY INTEREST, IN TRANSITION PROPERTY IS PERFECTED AGAINST ALL THIRD
43 PERSONS. A SECURITY INTEREST IN TRANSITION PROPERTY IS A CONTINUOUSLY
44 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN THAT MAY

1 SUBSEQUENTLY ATTACH TO THE TRANSITION PROPERTY UNLESS THE HOLDER OF THE
2 SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

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

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

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

16 40-608. Financing charges; true-up mechanism; civil action

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

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

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

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

36 E. AFTER TRANSITION BONDS HAVE BEEN ISSUED, THE DETERMINATION AND
37 IMPOSITION OF FINANCING CHARGES, THE RECOVERY OF FINANCING REVENUES AND
38 THE ADJUSTMENT OF THE FINANCING CHARGES THROUGH THE TRUE-UP MECHANISM ARE
39 NOT SUBJECT TO REVIEW OR APPROVAL BY ANY GOVERNMENT ENTITY INCLUDING STATE
40 AGENCIES, PUBLIC CORPORATIONS, MUNICIPALITIES OR OTHER INSTRUMENTALITIES
41 OF THIS STATE, EXCEPT THAT THE SUPERIOR COURT HAS EXCLUSIVE JURISDICTION
42 TO AND, ON COMMENCEMENT OF A SUIT AGAINST THE QUALIFIED SPECIAL PURPOSE
43 ENTITY BY A CUSTOMER, MAY REVIEW AND DETERMINE WHETHER THERE HAS BEEN A
44 MATHEMATICAL OR ADMINISTRATIVE ERROR IN ANY OF THE FOLLOWING:

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

2 2. THE CALCULATION OF THE RESULTING FINANCING CHARGES AND UNIT
3 FINANCING CHARGES.

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

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

33 H. ANY ADJUSTMENTS THAT ARE MADE PURSUANT TO THE TRUE-UP MECHANISM,
34 ANY REVIEW OF THE CALCULATIONS OF THOSE ADJUSTMENTS OR ANY ACTION BROUGHT
35 TO DETERMINE WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR
36 IN THE APPLICATION OF THE TRUE-UP MECHANISM SHALL NOT AFFECT THE
37 IRREVOCABILITY OF THE TRANSITION PROPERTY, THE FINANCING CHARGES, THE
38 FINANCING ORDER, THE NONBYPASSIBILITY OF THE FINANCING CHARGES AND UNIT
39 FINANCING CHARGES OR THE NONIMPAIRMENT PLEDGES PRESCRIBED IN SECTION
40 40-610.

41 I. REGARDLESS OF WHETHER FINANCING CHARGES ARE ADMINISTERED, BILLED
42 OR COLLECTED BY A SERVICER THAT IS A PUBLIC SERVICE CORPORATION, THE
43 FINANCING CHARGES ARE NOT RATES OR CHARGES IMPOSED OR MADE BY A PUBLIC
44 SERVICE CORPORATION FOR ELECTRIC SERVICE, AND THE RIGHT TO RECEIVE
45 FINANCING CHARGES AND TO COLLECT RESULTING FINANCING REVENUES IS

1 INDEPENDENT OF ANY RATE THAT IS ESTABLISHED, MADE OR CHARGED BY A PUBLIC
2 SERVICE CORPORATION FOR ELECTRIC SERVICES AND THE REVENUES COLLECTED
3 THEREUNDER. FINANCING REVENUES ARE THE PROPERTY OF THE QUALIFIED SPECIAL
4 PURPOSE ENTITY AND ARE NOT THE PROPERTY OF THE SERVICER OR ANY OTHER
5 PUBLIC SERVICE CORPORATION.

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

12 1. ESTIMATING WHETHER THE EXISTING FINANCING CHARGES AND RESULTING
13 FINANCING REVENUES ARE SUFFICIENT TO PROVIDE FOR TIMELY AND COMPLETE
14 PAYMENT OF ONGOING FINANCING COSTS OR WHETHER AN OVERCOLLECTION OR
15 UNDERCOLLECTION OF FINANCING REVENUES IS PROJECTED.

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

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

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

37 40-609. Public service corporation as servicer; transition
38 billing services tariffs; AAA rating

39 A. IF A SERVICER IS A PUBLIC SERVICE CORPORATION, THE PUBLIC
40 SERVICE CORPORATION SHALL USE ITS RESOURCES AND SYSTEMS TO PERFORM THE
41 DUTIES OF A SERVICER UNDER A TRANSITION BILLING SERVICES TARIFF. THE
42 COMMISSION HAS CONTINUING JURISDICTION OVER THE TERMS OF A TRANSITION
43 BILLING SERVICES TARIFF THAT IS FILED AND MAINTAINED BY A PUBLIC SERVICE
44 CORPORATION.

1 B. FUNDS THAT ARE COLLECTED BY A SERVICER IN PAYMENT OF FINANCING
2 CHARGES, WHETHER UNDER A TRANSITION BILLING SERVICES TARIFF OR OTHERWISE,
3 ARE FINANCING REVENUES WHEN PAID BY A CUSTOMER, AND THE SERVICER HAS NO
4 RIGHT, TITLE OR INTEREST IN THOSE REVENUES OTHER THAN AS AGENT FOR THE
5 QUALIFIED SPECIAL PURPOSE ENTITY. IF A CUSTOMER PAYS ONLY A PORTION OF
6 THE CHARGES STATED ON A BILL PROVIDED BY A SERVICER THAT INCLUDES
7 FINANCING CHARGES, THE PARTIAL PAYMENT SHALL BE FIRST APPLIED TO THE
8 PAYMENT OF FINANCING CHARGES.

9 C. IF A SERVICER FAILS TO MAKE ANY REQUIRED PAYMENT OF FINANCING
10 REVENUES TO A QUALIFIED SPECIAL PURPOSE ENTITY OR FAILS TO FULFILL ITS
11 SERVICING OBLIGATIONS UNDER AN APPLICABLE TRANSITION BILLING SERVICES
12 TARIFF, THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE HOLDERS OF THE
13 TRANSITION BONDS MAY REQUEST THAT THE SUPERIOR COURT ORDER THE
14 SEQUESTRATION AND PAYMENT OF THE FINANCING REVENUES FOR THE BENEFIT OF ANY
15 FINANCING PARTIES OR THEIR ASSIGNEES AND MAY REQUEST ANY OTHER APPLICABLE
16 RELIEF. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING
17 ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR RECEIVERSHIP
18 PROCEEDINGS OF THE SERVICER OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

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

25 40-610. Transition bonds; irrevocability; public policy;
26 noncompliance

27 A. ON OR AFTER THE ISSUANCE OF TRANSITION BONDS, THE TRANSITION
28 PROPERTY, THE TRUE-UP MECHANISM AND THE FINANCING CHARGES ARE IRREVOCABLE,
29 FINAL, NONDISCRETIONARY AND EFFECTIVE WITHOUT THE NEED FOR FURTHER ACTION
30 BY THE COMMISSION OR ANY OTHER PERSON, AND SUCH FINANCING CHARGES SHALL
31 NOT BE SUBJECT TO RESCISSION, ALTERATION, AMENDMENT, REDUCTION, IMPAIRMENT
32 OR ADJUSTMENT BY FURTHER ACTION OF THE COMMISSION OR ANY OTHER PERSON
33 EXCEPT PURSUANT TO THE TRUE-UP MECHANISM, INCLUDING PURSUANT TO SECTION
34 40-252.

35 B. THIS STATE, INCLUDING ALL AGENCIES, PUBLIC CORPORATIONS,
36 MUNICIPALITIES OR OTHER INSTRUMENTALITIES OF THIS STATE, PLEDGES TO AND
37 AGREES WITH THE FINANCING PARTIES, INCLUDING PRESENT AND FUTURE HOLDERS OF
38 TRANSITION BONDS, THE APPLICANT, THE QUALIFIED SPECIAL PURPOSE ENTITY AND
39 ANY OTHER PERSONS THAT ENTER INTO AN ANCILLARY AGREEMENT, THAT AFTER THE
40 ISSUANCE OF TRANSITION BONDS AND UNTIL ALL FINANCING COSTS WHICH INCLUDE
41 THE PRINCIPAL AND INTEREST OF TRANSITION BONDS AND ALL AMOUNTS TO BE PAID
42 UNDER AN ANCILLARY AGREEMENT ARE FULLY MET AND DISCHARGED, THIS STATE OR
43 ANY AGENCY, PUBLIC CORPORATION, MUNICIPALITY OR OTHER INSTRUMENTALITY OF
44 THIS STATE MAY NOT TAKE OR ALLOW ANY ACTION TO BE TAKEN TO LIMIT, REDUCE,
45 ALTER, IMPAIR, DELAY OR TERMINATE ANY OF THE FOLLOWING:

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

3 2. THE IMPOSITION OF FINANCING CHARGES AND UNIT FINANCING CHARGES
4 BY THE QUALIFIED SPECIAL PURPOSE ENTITY.

5 3. THE OPERATION OF THE TRUE-UP MECHANISM TO ADJUST FINANCING
6 CHARGES AND UNIT FINANCING CHARGES.

7 4. THE COLLECTION OF FINANCING REVENUES IN PAYMENT OF FINANCING
8 CHARGES AND UNIT FINANCING CHARGES.

9 5. THE PAYMENT OF FINANCING COSTS.

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

16 D. ON AND AFTER THE ISSUANCE OF THE TRANSITION BONDS, THE FAILURE
17 OF AN APPLICANT OR A QUALIFIED SPECIAL PURPOSE ENTITY TO COMPLY WITH THIS
18 CHAPTER OR A FINANCING ORDER DOES NOT INVALIDATE, IMPAIR OR AFFECT THE
19 FINANCING ORDER, THE TRANSITION PROPERTY, FINANCING CHARGES, TRANSITION
20 BONDS OR FINANCING COSTS.

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

23 1. THE BANKRUPTCY, REORGANIZATION, SALE, DISSOLUTION OR INSOLVENCY
24 OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE SUCCESSORS
25 OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

26 2. AS TO EITHER THE APPLICANT, THE QUALIFIED SPECIAL PURPOSE ENTITY
27 OR THE SUCCESSORS OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE
28 ENTITY, THE COMMENCEMENT OF ANY PROCEEDING FOR BANKRUPTCY OR THE
29 APPOINTMENT OF A RECEIVER.

30 40-611. Financing order; application for rehearing; judicial
31 review

32 A. A PARTY TO THE PROCEEDING WHO IS DISSATISFIED WITH A COMMISSION
33 DECISION AS TO AN APPLICATION FOR A FINANCING ORDER UNDER THIS CHAPTER OR
34 THE ATTORNEY GENERAL ON BEHALF OF THIS STATE MAY APPLY TO THE COMMISSION
35 FOR REHEARING IN ACCORDANCE WITH SECTION 40-253. THE APPLICATION FOR
36 REHEARING SHALL BE FILED NOT LATER THAN TWENTY DAYS AFTER A COMMISSION
37 DECISION ON AN APPLICATION FOR A FINANCING ORDER. IF THE COMMISSION DOES
38 NOT GRANT THE APPLICATION FOR REHEARING WITHIN TWENTY DAYS AFTER THE
39 APPLICATION IS FILED, THE APPLICATION IS DEEMED DENIED.

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

42 C. WITHIN TEN DAYS AFTER A REHEARING IS DENIED OR GRANTED AND NOT
43 AFTERWARDS, A PARTY THAT FILES A REHEARING APPLICATION PURSUANT TO
44 SUBSECTION A OF THIS SECTION MAY FILE, IN THE SUPERIOR COURT IN THE COUNTY
45 IN WHICH THE COMMISSION HAS ITS OFFICE, AN ACTION THAT SEEKS TO VACATE,

1 SET ASIDE, AFFIRM IN PART, REVERSE IN PART OR REMAND THE COMMISSION'S
2 DECISION REGARDING THE FINANCING APPLICATION. THE TIME FOR BRINGING ANY
3 ACTION AUTHORIZED BY THIS SUBSECTION MAY NOT BE TOLLED OR EXTENDED FOR ANY
4 REASON.

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

11 1. THE FINANCING ORDER OR OTHER COMMISSION DECISION UNDER THIS
12 CHAPTER IS UNLAWFUL.

13 2. THE FACTUAL FINDINGS MADE IN THE FINANCING ORDER OR OTHER
14 COMMISSION DECISION UNDER THIS CHAPTER IS UNSUPPORTED BY THE APPLICATION
15 OR EVIDENCE IN THE PROCEEDING BEFORE THE COMMISSION.

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

19 F. A PARTY MAY APPEAL A DECISION IN AN ACTION FILED UNDER THIS
20 SECTION ONLY TO THE SUPREME COURT. THE PARTY SHALL FILE THE NOTICE OF
21 APPEAL WITHIN FIVE DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE
22 ACTION. THE TIME FOR FILING THE NOTICE OF APPEAL MAY NOT BE TOLLED OR
23 EXTENDED FOR ANY REASON. THE SUPREME COURT SHALL ISSUE A DECISION ON THE
24 APPEAL PROMPTLY.

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

28 1. A FINANCING ORDER.

29 2. THE CREATION OF TRANSITION PROPERTY.

30 3. THE ISSUANCE OF TRANSITION BONDS.

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

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

34 40-612. Fees and taxes

35 FINANCING CHARGES ARE NOT SUBJECT TO EITHER:

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

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

41 40-613. Transition bonds; public debt prohibition; applicant;
42 cooperative

43 A. TRANSITION BONDS ARE NOT A PUBLIC DEBT, NOR A PLEDGE OF THE
44 FAITH AND CREDIT OR TAXING POWER OF THIS STATE OR OF ANY COUNTY,
45 MUNICIPALITY, OR OTHER LOCAL GOVERNMENT UNIT OF THIS STATE. THE APPROVAL

1 OF A FINANCING ORDER DOES NOT OBLIGATE THIS STATE OR ANY COUNTY,
2 MUNICIPALITY OR POLITICAL SUBDIVISION OF THIS STATE TO LEVY ANY TAX OR
3 MAKE ANY APPROPRIATION FOR PAYMENT OF ANY FINANCING COST, INCLUDING THE
4 PRINCIPAL AND INTEREST ON TRANSITION BONDS. HOLDERS OF TRANSITION BONDS
5 OR OWNERS OF TRANSITION PROPERTY DO NOT HAVE A RIGHT TO HAVE TAXES LEVIED
6 BY THIS STATE OR THE TAXING AUTHORITY OF ANY COUNTY, MUNICIPALITY OR
7 POLITICAL SUBDIVISION OF THIS STATE FOR THE PAYMENT OF THE PRINCIPAL OF,
8 INTEREST ON OR PREMIUM ON TRANSITION BONDS.

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

18 40-614. Transition bonds; legal investments

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

23 40-615. Obligations of successor to applicant

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

33 40-616. Choice of law; conflicts with other laws

34 THE LAWS OF THIS STATE GOVERN THE VALIDITY, ENFORCEABILITY,
35 ATTACHMENT, PERFECTION, PRIORITY AND EXERCISE OF REMEDIES WITH RESPECT TO
36 THE CREATION OR TRANSFER OF, OR OF ANY INTEREST IN, TRANSITION PROPERTY,
37 FINANCING CHARGES OR FINANCING REVENUES. IF THERE IS ANY CONFLICT BETWEEN
38 THIS CHAPTER AND ANY OTHER LAW REGARDING THE CREATION, ATTACHMENT,
39 TRANSFER, ASSIGNMENT OR PERFECTION OF, OR THE EFFECT OF PERFECTION ON OR
40 THE PRIORITY OF ANY SECURITY INTEREST IN TRANSITION PROPERTY, FINANCING
41 CHARGES OR FINANCING REVENUES, THIS CHAPTER GOVERNS TO THE EXTENT OF THE
42 CONFLICT.

43 40-617. Effect of invalidity on actions

44 IF ALL OR ANY PART OF THIS CHAPTER IS INVALIDATED, SUPERSEDED,
45 REPLACED, REPEALED OR EXPIRES FOR ANY REASON, THAT OCCURRENCE DOES NOT

1 AFFECT THE VALIDITY OF ANY PRIOR ACTION ALLOWED UNDER THIS CHAPTER,
2 WHETHER TAKEN BY THE COMMISSION, A PUBLIC SERVICE CORPORATION, A QUALIFIED
3 SPECIAL PURPOSE ENTITY OR ANY OTHER PERSON, AND DOES NOT AFFECT TRANSITION
4 BONDS THAT WERE ALREADY ISSUED OR TRANSITION PROPERTY THAT WAS ALREADY
5 CREATED.

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

8 47-9109. Scope

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

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

13 2. An agricultural lien;

14 3. A sale of accounts, chattel paper, payment intangibles or
15 promissory notes;

16 4. A consignment;

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

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

21 B. The application of this article to a security interest in a
22 secured obligation is not affected by the fact that the obligation is
23 itself secured by a transaction or interest to which this chapter does not
24 apply.

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

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

28 2. A statute of a foreign country or a governmental unit of a
29 foreign country, other than a statute generally applicable to security
30 interests, expressly governs creation, perfection, priority or enforcement
31 of a security interest created by that country or governmental unit; or

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

34 D. This chapter does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (b) Fixtures in section 47-9334;

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

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

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

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

33 14. A transfer, pledge, assignment, grant or similar action by this
34 state, another state or a governmental unit of this state or another
35 state;

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

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

40 17. A SECURITY INTEREST THAT IS SUBJECT TO SECTION 30-906 OR
41 40-607.