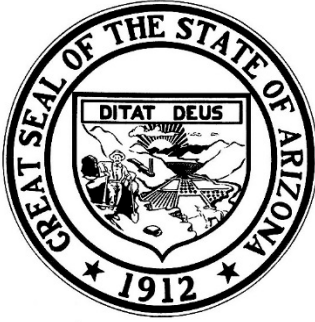




Bill Number: H.B. 2679

Sundareshan #2 Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Sawyer Bessler

FLOOR AMENDMENT EXPLANATION

1. Requires the Arizona Corporation Commission (ACC) to establish a prudency review process to review the assets to be securitized by a public power entity, public service corporation or a member-owned cooperative.
2. Determines that the purpose of the prudency review is to ensure that the need for securitization is not a result of imprudent action by a public power entity, public service corporation or member-owned cooperative.
3. Allows the ACC to adopt rules to implement the prudency review.
4. Requires a servicer, on January 1 and June 1 of each year, to file a report with the governing body of the public power entity or the ACC that includes the total number of transition bonds that were issued and the total amount of payments that were collected from utility consumers.
5. Requires the governing body of a public power entity or the ACC to appoint an individual to serve as a consumer protection advocate who must:
 - a) advise the public power entity or the ACC in securitization transactions, including marketing and pricing a transaction, bond negotiations and rate increases; and
 - b) represent the public interest of electric customers of a public power entity or a public service corporation who use electric service in Arizona.
6. Adds, to the conditions that determine that the transition benefit test is satisfied, the showing of an outlined condition and that the projected net present value over the term of the transition bonds of the financing charges minus, to the extent applicable, the revenue requirement credits that arise from any deferred income tax balances associated with the transition cost will be smaller in absolute value than the projected net present value that is calculated at the same discount rate of the portion of the annual revenue requirements of the applicant that is associated with the transition cost, if the transition cost were to be financed directly by the applicant.

7. Removes, from the definition of *transition asset*, that the transition asset is planned to be sold by the public power entity or applicant as of the date of the financing resolution or application.
8. Adds, to the definition of *transition asset*, an asset that, as of the date of the financing resolution or application, is contracted to be sold by the public power entity for at least 80 percent of the transition asset's book value within 10 years after the date of the application or financing resolution.
9. Modifies the definition of *significant event recovery costs* to stipulate that the outlined significant events occurred due to forces or actions outside of the applicant's control.
10. Stipulates that *transition costs* relating to public service corporations do not include any monetary penalty, fine or forfeiture that is assessed against a public service corporation by a governmental agency or court under a federal or state law, rule or regulation.
11. Modifies the statement of public policy.

SUNDARESHAN #2 FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2679
(Reference to House engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.

[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

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:

1 (i) A PUBLIC POWER ENTITY.

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

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

8 (b) REGARDLESS OF THE IDENTITY OF THE PERSON'S OR ENTITY'S ELECTRIC
9 GENERATION SUPPLIER AND WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY
10 ALSO RECEIVES SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR
11 ENTITY MAINTAINS AN INTERCONNECTION WITH THE ELECTRIC DISTRIBUTION
12 FACILITIES OF A PUBLIC POWER ENTITY THAT ALLOWS THAT PERSON OR ENTITY TO
13 RECEIVE RETAIL ELECTRIC UTILITY SERVICE, WHETHER BUNDLED OR UNBUNDLED AND
14 WHETHER SUPPLY OR DELIVERY, OR BOTH, FROM ANY OF THE FOLLOWING:

15 (i) A PUBLIC POWER ENTITY.

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

17 (iii) ANY OTHER PERSON OR ENTITY, PUBLIC SERVICE CORPORATION,
18 COOPERATIVE OR MUNICIPAL ENTITY THAT ASSUMES THE RESPONSIBILITY TO PROVIDE
19 ELECTRIC UTILITY SERVICE IN A PUBLIC POWER ENTITY'S SERVICE TERRITORY AS
20 THE SERVICE TERRITORY EXISTS ON THE DATE THE GOVERNING BODY OF A PUBLIC
21 POWER ENTITY ADOPTS A FINANCING RESOLUTION.

22 (c) WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY ALSO RECEIVES
23 SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR ENTITY IS A
24 COOPERATIVE THAT PROVIDES RETAIL ELECTRIC SERVICE TO MEMBERS AND THAT
25 RECEIVES ELECTRICITY, WHETHER AT RETAIL OR A WHOLESALE PRICE, FROM A
26 PUBLIC POWER ENTITY THAT PROVIDES WHOLESALE ELECTRIC SUPPLY AND
27 TRANSMISSION SERVICES.

28 3. "FINANCING CHARGES" MEAN NONBYPASSABLE CHARGES THAT ARE PAID OR
29 PAYABLE BY ALL CUSTOMERS TO A QUALIFIED SPECIAL PURPOSE ENTITY TO RECOVER
30 ONGOING FINANCING COSTS IN ACCORDANCE WITH THIS CHAPTER. FINANCING
31 CHARGES CAN BE ADJUSTED FROM TIME TO TIME IN ACCORDANCE WITH THE TRUE-UP
32 MECHANISM.

33 4. "FINANCING COST":

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

39 (b) INCLUDES ANY OF THE FOLLOWING:

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

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

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

8 (iv) THE COSTS THAT ARE INCURRED UNDER AN ANCILLARY AGREEMENT AND
9 ANY AMOUNT THAT IS REQUIRED TO REFUND OR REPLENISH A RESERVE ACCOUNT OR
10 OTHER ACCOUNT ESTABLISHED UNDER AN ANCILLARY AGREEMENT OR OTHER DOCUMENT
11 RELATING TO TRANSITION BONDS.

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

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

20 (vii) THE COSTS THAT ARE INCURRED TO PROTECT THE STATUS OF
21 TRANSITION PROPERTY, THE RIGHT TO IMPOSE AND COLLECT FINANCING CHARGES OR
22 THE RIGHT TO RECEIVE FINANCING REVENUES, INCLUDING COSTS RELATED TO ANY
23 JUDICIAL OR OTHER PROCEEDINGS THAT ARE NECESSARY TO PROTECT THE TRANSITION
24 PROPERTY OR COLLECT FINANCING REVENUES.

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

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

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

35 7. "FINANCING REVENUES" MEANS ANY MONEY AND OTHER PROPERTY RECEIVED
36 OR TO BE RECEIVED, DIRECTLY OR INDIRECTLY, IN PAYMENT OF OR ON ACCOUNT OF
37 FINANCING CHARGES, INCLUDING ALL OF THE PROCEEDS OF THE INVESTMENT
38 THEREOF.

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

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

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

3 9. "ONGOING FINANCING COSTS":

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

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

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

13 11. "QUALIFIED SPECIAL PURPOSE ENTITY":

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

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

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

22 13. "SERVICER":

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

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

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

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

31 (b) INCLUDES:

32 (i) A PUBLIC POWER ENTITY.

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

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

36 14. "SIGNIFICANT EVENT RECOVERY COSTS" MEANS COSTS, FEES AND
37 EXPENSES THAT ARE INCURRED OR TO BE INCURRED THROUGH THE DATE OF ADOPTION
38 OF A FINANCING RESOLUTION BY A PUBLIC POWER ENTITY AND THAT ARE ASSOCIATED
39 WITH OR THAT ARISE FROM WEATHER, WILDFIRE OR PUBLIC HEALTH EMERGENCY
40 EVENTS OR INCIDENTS OR OTHER EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO
41 CAUSE SIGNIFICANT LOSS OF LIFE, INJURY TO PERSON OR PROPERTY, HUMAN
42 SUFFERING OR FINANCIAL LOSS [BY FORCES OR ACTION OUTSIDE OF THE PUBLIC
43 POWER ENTITY'S CONTROL].

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

4 16. "TRANSITION ASSET" MEANS ANY ELECTRIC POWER GENERATION,
5 TRANSMISSION OR DISTRIBUTION FACILITY, INCLUDING OTHER PROPERTY OR
6 EQUIPMENT USED IN CONNECTION WITH SUCH GENERATION, TRANSMISSION OR
7 DISTRIBUTION OF THE PUBLIC POWER ENTITY THAT IS IDENTIFIED IN A
8 SECURITIZATION PROPOSAL AND FINANCING RESOLUTION, AND THAT EITHER:

9 (a) HAS BEEN RETIRED AND NO LONGER PROVIDES SERVICE~~[, IN WHOLE OR~~
10 ~~IN PART]~~.

11 (b) AS OF THE DATE OF THE FINANCING RESOLUTION, IS PLANNED TO BE
12 RETIRED, ~~[SOLD,]~~ DISPOSED OF, ABANDONED OR OTHERWISE REMOVED FROM SERVICE
13 BY THE PUBLIC POWER ENTITY~~[, IN WHOLE OR IN PART,]~~ WITHIN ~~[TEN]~~[FIVE]
14 YEARS AFTER THE DATE OF THE FINANCING RESOLUTION.

15 (c) HAS OTHERWISE BEEN DESTROYED, DAMAGED OR RENDERED INOPERABLE~~[-~~
16 ~~IN WHOLE OR IN PART,]~~ BY FORCES OR ACTION OUTSIDE OF THE PUBLIC POWER
17 ENTITY'S REASONABLE CONTROL.

18 17. "TRANSITION ASSET RETIREMENT COSTS":

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

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

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

29 19. "TRANSITION BILLING SERVICES TARIFF":

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

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

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

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

42 (a) TRANSITION ASSET RETIREMENT COSTS.

43 (b) UNRECOVERED FUEL COSTS.

44 (c) SIGNIFICANT EVENT RECOVERY COSTS.

45 22. "TRANSITION PROPERTY":

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

5 (b) INCLUDES ANY OF THE FOLLOWING:

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

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

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

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

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

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

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

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

33 25. "UNRECOVERED FUEL COSTS":

34 (a) MEANS:

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

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

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

45 26. "UPFRONT FINANCING COSTS":

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

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

7 30-902. Statement of public policy

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

14 1. THE UNRECOVERED COST OF TRANSITION ASSETS THAT ARE SUBJECT TO
15 POTENTIAL RETIREMENT, ABANDONMENT, [~~SALE,~~] DISPOSITION[,] [~~OR~~] TRANSITION
16 [~~OR OTHERWISE REMOVED FROM SERVICE~~] OR THAT HAVE BEEN DAMAGED OR
17 DESTROYED, INCLUDING ASSOCIATED LIABILITIES.

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

19 3. THE COSTS ARISING FROM OR RELATED TO WEATHER, WILDFIRE OR OTHER
20 SIGNIFICANT EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO CAUSE
21 SIGNIFICANT LOSS OF LIFE, INJURY TO PERSON OR PROPERTY, HUMAN SUFFERING OR
22 FINANCIAL LOSS [~~BY FORCES OR ACTION OUTSIDE OF THE PUBLIC POWER ENTITY'S~~
23 ~~CONTROL~~].

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

30 [C. AFFORDABILITY AND RELIABILITY OF THIS STATE'S ELECTRIC SYSTEM IS
31 FUNDAMENTAL TO THE HEALTH AND WELFARE OF THIS STATE AND THIS STATE'S
32 CITIZENRY AND ECONOMY. AS SECURITIZATION CREATES BROAD NEW AUTHORITY FOR
33 ELECTRIC SERVICE PROVIDERS, IT IS IN THE BEST INTEREST OF THIS STATE AND
34 THIS STATE'S ELECTRIC CUSTOMERS FOR THE GOVERNING BODY TO CONDUCT THE
35 SECURITIZATION PROCESS TO ENSURE THAT THIS NEW FINANCIAL TOOL IS BEING
36 USED PRUDENTLY AND IS NOT NEGATIVELY IMPACTING THE AFFORDABILITY OF
37 ELECTRICITY FOR THIS STATE'S ELECTRIC CUSTOMERS.]

38 30-903. Securitization transactions; public meeting; notice;
39 securitization proposal; financing resolution
40 adoption; report

41 A. A PUBLIC POWER ENTITY MAY INITIATE A SECURITIZATION TRANSACTION
42 BY PROVIDING PUBLIC NOTICE OF THE PUBLIC POWER ENTITY'S INTENT TO ADOPT A
43 FINANCING RESOLUTION. THE PUBLIC NOTICE SHALL IDENTIFY THE DATE, TIME AND
44 LOCATION OF THE PUBLIC MEETING OF THE GOVERNING BODY, WHICH SHALL OCCUR
45 NOT LESS THAN THIRTY DAYS AND NOT MORE THAN SIXTY DAYS AFTER THE NOTICE IS

1 PUBLISHED. AFTER THE PUBLIC NOTICE IS PUBLISHED, THE PUBLIC POWER ENTITY
2 SHALL MAKE THE SECURITIZATION PROPOSAL AVAILABLE AT THE PUBLIC POWER
3 ENTITY'S MAIN OFFICE AND ON ITS PUBLICLY ACCESSIBLE WEBSITE.

4 B. THE PUBLIC POWER ENTITY SHALL PROVIDE THE PUBLIC NOTICE
5 PRESCRIBED IN SUBSECTION A OF THIS SECTION BY COMPLETING ALL OF THE
6 FOLLOWING:

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

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

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

13 C. THE SECURITIZATION PROPOSAL SHALL:

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

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

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

21 (i) SUPPLY SHORTAGES.

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

23 (iii) MARKET VOLATILITY.

24 (iv) SUBSTANTIAL CUSTOMER LOAD GROWTH.

25 (v) ANY OTHER REASONABLY UNFORESEEN CIRCUMSTANCE.

26 2. ESTIMATE THE TRANSITION COSTS AND FINANCING COSTS.

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

28 4. PROVIDE THE PROJECTED FINANCING CHARGES AND EXPLAIN HOW THE
29 FINANCING CHARGES WILL RESULT IN THE COLLECTION OF FINANCING REVENUES IN
30 AMOUNTS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ENABLE THE TIMELY AND
31 COMPLETE RECOVERY AND PAYMENT OF ALL ONGOING FINANCING COSTS.

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

40 6. DESCRIBE THE PROPOSED TRUE-UP MECHANISM AND HOW THE TRUE-UP
41 MECHANISM WILL ADJUST THE FINANCING CHARGES AND UNIT FINANCING CHARGES
42 OVER TIME TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF
43 FINANCING REVENUES.

44 7. IDENTIFY THE QUALIFIED SPECIAL PURPOSE ENTITY.

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

5 9. IDENTIFY ANY ANTICIPATED ANCILLARY AGREEMENTS, INDIVIDUALLY OR
6 BY DESCRIPTION.

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

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

12 (b) ANY REGULATORY ASSET OR RECORDED LIABILITY THAT IS ASSOCIATED
13 WITH TRANSITION BONDS TO RECOVER UNRECOVERED FUEL COSTS OR SIGNIFICANT
14 EVENT RECOVERY COSTS IN EXCHANGE FOR THE NET PROCEEDS OF THE TRANSITION
15 BONDS.

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

18 12. DESCRIBE THE PROCESS TO NOTIFY THE PUBLIC OF THE FINAL
19 STRUCTURE AND PRICING OF THE TRANSITION BONDS.

20 13. COMMIT TO PROVIDING A STATEMENT OF ACTUAL UPFRONT FINANCING
21 COSTS.

22 14. COMMIT TO PROVIDING AN UPDATED CALCULATION OF THE ESTIMATED
23 FINANCING CHARGES AND UNIT FINANCING CHARGES OVER THE LIFE OF THE
24 TRANSITION BONDS.

25 15. PROVIDE A PROPOSED FORM OF FINANCING RESOLUTION.

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

30 1. THE REPRESENTATIVES OF THE PUBLIC POWER ENTITY'S MANAGEMENT WITH
31 AN OPPORTUNITY TO EXPLAIN THE SECURITIZATION PROPOSAL AND ANSWER
32 QUESTIONS.

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

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

38 E. ON REVIEW OF THE INFORMATION AND COMMENTS GATHERED IN COMPLIANCE
39 WITH THIS SECTION, THE GOVERNING BODY OF A PUBLIC POWER ENTITY SHALL ADOPT
40 A FINANCING RESOLUTION THAT APPROVES, REJECTS OR APPROVES WITH CONDITIONS
41 THE INITIATION OF THE PROPOSED TRANSACTION. THE GOVERNING BODY MAY
42 APPROVE OR APPROVE WITH CONDITIONS THE INITIATION OF THE PROPOSED
43 TRANSACTION ONLY IF THE GOVERNING BODY FINDS THAT ALL OF THE FOLLOWING
44 APPLY:

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

3 ~~[2. THE TRANSITION BENEFIT TEST HAS BEEN SATISFIED. THE TRANSITION~~
4 ~~BENEFIT TEST IS SATISFIED ON A SHOWING THAT THE PROPOSED STRUCTURE AND~~
5 ~~PROJECTED PRICING OF THE TRANSITION BONDS ARE REASONABLY EXPECTED TO~~
6 ~~RESULT, ON A NET PRESENT VALUE BASIS OVER THE LIFE OF THE TRANSITION~~
7 ~~BONDS, IN THE LOWEST FINANCING CHARGES THAT ARE COMMERCIALY AVAILABLE~~
8 ~~CONSISTENT WITH MARKET CONDITIONS AT THE TIME THE TRANSITION BONDS ARE~~
9 ~~PRICED AND WITH THE TERMS OF THE FINANCING RESOLUTION.]~~

10 [2. THE TRANSITION BENEFIT TEST IS SATISFIED. THE TRANSITION BENEFIT
11 TEST IS SATISFIED ON A SHOWING OF BOTH OF THE FOLLOWING:

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

20 (b) THE PROPOSED STRUCTURE AND PROJECTED PRICING OF THE TRANSITION
21 BONDS ARE REASONABLY EXPECTED TO RESULT, ON A NET PRESENT VALUE BASIS OVER
22 THE LIFE OF THE TRANSITION BONDS, IN THE LOWEST FINANCING CHARGES THAT ARE
23 COMMERCIALY AVAILABLE CONSISTENT WITH THE MARKET CONDITIONS AT THE TIME
24 THE TRANSITION BONDS ARE PRICED AND WITH THE TERMS OF THE FINANCING
25 RESOLUTION.]

26 3. ANY PROPOSED TRANSITION BILLING SERVICES TARIFF SUPPORTS
27 AFFORDABILITY AND RELIABILITY, IS IN THE PUBLIC INTEREST AND SHOULD BE
28 PLACED INTO EFFECT.

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

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

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

13 [F. ON JANUARY 1 AND JUNE 1 OF EACH YEAR, A SERVICER SHALL FILE A
14 REPORT WITH THE GOVERNING BODY OF THE PUBLIC POWER ENTITY THAT INCLUDES
15 THE TOTAL NUMBER OF TRANSITION BONDS THAT WERE ISSUED AND THE TOTAL AMOUNT
16 OF PAYMENTS THAT WERE COLLECTED FROM UTILITY CONSUMERS.]

17 30-904. Transition property; property rights; default on
18 transition bonds

19 A. TRANSITION PROPERTY IS IMMEDIATELY CREATED BY OPERATION OF LAW
20 ON THE LATTER OF THE APPROVAL OF A FINANCING RESOLUTION, THE CREATION AND
21 CAPITALIZATION OF A QUALIFIED SPECIAL PURPOSE ENTITY AND THE ISSUANCE AND
22 RECEIPT OF VALUE FOR THE APPLICABLE TRANSITION BONDS. TRANSITION PROPERTY
23 CONTINUES TO EXIST UNTIL THE CORRESPONDING TRANSITION BONDS AND ALL
24 ONGOING FINANCING COSTS RELATED TO THE TRANSITION BONDS HAVE BEEN FULLY
25 PAID. ON CREATION, TRANSITION PROPERTY BELONGS TO THE QUALIFIED SPECIAL
26 PURPOSE ENTITY. A QUALIFIED SPECIAL PURPOSE ENTITY MAY NOT PROVIDE
27 UTILITY SERVICE AND IS NOT A PUBLIC SERVICE CORPORATION, PUBLIC POWER
28 ENTITY OR COOPERATIVE. A QUALIFIED SPECIAL PURPOSE ENTITY SHALL NOT
29 CONDUCT ANY BUSINESS UNRELATED TO OWNING, PROTECTING AND ADMINISTERING THE
30 TRANSITION PROPERTY OR ISSUING, MARKETING, PLACING, AUTHORIZING,
31 SUPPORTING, REPAYING REFINANCING, SERVICING, ADMINISTERING OR REFUNDING
32 TRANSITION 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 TRANSITION PROPERTY MAY
36 DEPEND ON, OR BE AFFECTED BY, EVENTS OR ACTIONS THAT HAVE NOT YET
37 OCCURRED. TRANSITION PROPERTY SHALL NOT BE AN ASSET OF THE PUBLIC POWER
38 ENTITY.

39 C. A PUBLIC POWER ENTITY MAY NOT HAVE AN OWNERSHIP OR BENEFICIAL
40 INTEREST OR ANY CLAIM OF RIGHT IN THE TRANSITION PROPERTY, OTHER THAN THE
41 REQUIREMENT TO CALCULATE, IMPOSE, CHARGE, COLLECT AND RECEIVE THE
42 FINANCING CHARGES AS A SERVICER AND TRANSFER THE RESULTING FINANCING
43 REVENUES TO THE QUALIFIED SPECIAL PURPOSE ENTITY THAT IS ENTITLED TO
44 RECEIVE THOSE FINANCING 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, A PUBLIC POWER ENTITY, A
8 CREDITOR OF A PUBLIC POWER ENTITY, A CREDITOR OF THE QUALIFIED SPECIAL
9 PURPOSE ENTITY OR ANY OTHER PERSON, OR IN CONNECTION WITH ANY DEFAULT,
10 BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY PROCEEDING OF ANY SUCH
11 PERSON.

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

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

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

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

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

32 A. AFTER APPROVAL OF A FINANCING RESOLUTION PURSUANT TO SECTION
33 30-903, A QUALIFIED SPECIAL PURPOSE ENTITY IS AUTHORIZED TO ISSUE ONE OR
34 MORE SERIES, CLASSES OR TRANCHES OF TRANSITION BONDS AND TO PLEDGE
35 TRANSITION PROPERTY TO SECURE THE PAYMENT OF ONGOING FINANCING COSTS. ON
36 ISSUANCE OF THE TRANSITION BONDS, THE QUALIFIED SPECIAL PURPOSE ENTITY
37 SHALL TRANSFER TO THE PUBLIC POWER ENTITY THE NET PROCEEDS OF THE
38 TRANSITION BONDS MINUS THE UPFRONT FINANCING COSTS PAID BY THE QUALIFIED
39 SPECIAL PURPOSE ENTITY.

40 B. THE APPROVAL OF A FINANCING RESOLUTION DOES NOT OBLIGATE A PUBLIC
41 POWER ENTITY OR A QUALIFIED SPECIAL PURPOSE ENTITY TO ENGAGE IN THE
42 APPROVED TRANSACTION, AND NEITHER A PUBLIC POWER ENTITY NOR A QUALIFIED
43 SPECIAL PURPOSE ENTITY SHALL BE SUBJECT TO ANY REGULATORY CONDITIONS,
44 REGULATORY SANCTIONS OR OTHER PENALTIES FOR NOT ENGAGING IN AN APPROVED
45 TRANSACTION. IF THE QUALIFIED SPECIAL PURPOSE ENTITY DETERMINES NOT TO

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

8 30-906. Transition property; security interest; lien;
9 priority

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

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

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

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

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

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

42 D. A TRANSFER OF AN INTEREST, INCLUDING A GRANT OF A LIEN OR
43 SECURITY INTEREST, IN TRANSITION PROPERTY IS PERFECTED AGAINST ALL THIRD
44 PERSONS. A SECURITY INTEREST IN TRANSITION PROPERTY IS A CONTINUOUSLY
45 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 MONIES, 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 RESOLUTION OR CHANGES IN A CUSTOMER'S FINANCING CHARGES.

16 30-907. 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 FINANCING RESOLUTION.

28 C. ADJUSTMENTS TO THE FINANCING CHARGES AND UNIT FINANCING CHARGES
29 RESULTING FROM THE APPLICATION OF THE TRUE-UP MECHANISM ARE EFFECTIVE
30 WITHOUT ANY ORDER OR ACTION OF THE GOVERNING BODY OF THE PUBLIC POWER
31 ENTITY OR ANY OTHER BODY, EXCEPT AS PROVIDED IN SUBSECTION D OF THIS
32 SECTION.

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

44 E. THE JURISDICTION AND AUTHORITY OF THE SUPERIOR COURT IN AN
45 ACTION UNDER THIS SECTION IS LIMITED TO DETERMINING THE FINANCING CHARGES

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

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

28 G. ANY ADJUSTMENTS THAT ARE MADE PURSUANT TO THE TRUE-UP MECHANISM,
29 ANY REVIEW OF THE CALCULATIONS OF THOSE ADJUSTMENTS OR ANY ACTION BROUGHT
30 TO DETERMINE WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR
31 IN THE APPLICATION OF THE TRUE-UP MECHANISM SHALL NOT AFFECT THE
32 IRREVOCABILITY OF THE TRANSITION PROPERTY, THE FINANCING RESOLUTION, THE
33 NONBYPASSABILITY OF THE FINANCING CHARGES AND UNIT FINANCING CHARGES OR
34 THE NONIMPAIRMENT PLEDGES PRESCRIBED IN SECTION 30-909.

35 H. REGARDLESS OF WHETHER FINANCING CHARGES ARE ADMINISTERED, BILLED
36 OR COLLECTED BY A SERVICER THAT IS A PUBLIC POWER ENTITY, THE FINANCING
37 CHARGES ARE NOT RATES OR CHARGES IMPOSED BY OR MADE BY A PUBLIC POWER
38 ENTITY FOR UTILITY SERVICE. THE RIGHT TO RECEIVE FINANCING CHARGES AND TO
39 COLLECT FINANCING REVENUES IS INDEPENDENT OF ANY RATE THAT IS ESTABLISHED,
40 MADE OR CHARGED BY A PUBLIC POWER ENTITY FOR PUBLIC UTILITY SERVICES,
41 INCLUDING COLLECTED REVENUES. FINANCING REVENUES ARE THE PROPERTY OF THE
42 QUALIFIED SPECIAL PURPOSE ENTITY AND ARE NOT THE PROPERTY OF THE SERVICER
43 OR ANY OTHER PUBLIC POWER ENTITY.

44 I. THE SERVICER, AS AGENT FOR THE QUALIFIED SPECIAL PURPOSE ENTITY,
45 AT A MINIMUM SEMIANNUALLY AND QUARTERLY DURING THE TWO-YEAR PERIOD

1 PRECEDING THE FINAL MATURITY DATE OF THE TRANSITION BONDS OR THE FINAL
2 MATURITY DATE OF THE SERIES, CLASS OR TRANCHE OF SUCH BONDS WITH THE
3 LATEST FINAL MATURITY DATE, IF MORE THAN ONE SERIES, CLASS OR TRANCHE HAS
4 BEEN ISSUED, SHALL PERFORM CALCULATIONS FOR BOTH OF THE FOLLOWING:

5 1. ESTIMATING WHETHER THE EXISTING FINANCING CHARGES AND RESULTING
6 FINANCING REVENUES ARE SUFFICIENT TO PROVIDE FOR A TIMELY AND COMPLETE
7 PAYMENT OF ANY ONGOING FINANCING COSTS OR WHETHER AN OVERCOLLECTION OR
8 UNDERCOLLECTION OF FINANCING REVENUES IS PROJECTED.

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

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

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

31 30-908. Public power entity as servicer; transition billing
32 services tariffs; AAA rating

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

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

44 C. IF A SERVICER FAILS TO MAKE ANY REQUIRED PAYMENT OF FINANCING
45 REVENUES TO A QUALIFIED SPECIAL PURPOSE ENTITY OR FAILS TO FULFILL ITS

1 SERVICING OBLIGATIONS UNDER AN APPLICABLE TRANSITION BILLING SERVICES
2 TARIFF, THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE HOLDERS OF THE
3 TRANSITION BONDS MAY REQUEST THAT THE SUPERIOR COURT ORDER THE
4 SEQUESTRATION AND PAYMENT OF THE FINANCING REVENUES FOR THE BENEFIT OF ANY
5 FINANCING PARTIES OR THEIR ASSIGNEES AND MAY REQUEST ANY OTHER APPLICABLE
6 RELIEF. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING
7 ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR RECEIVERSHIP
8 PROCEEDINGS OF THE SERVICER OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

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

16 30-909. Transition bonds; irrevocability; public policy;
17 noncompliance

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

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

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

39 2. THE IMPOSITION OF FINANCING CHARGES AND UNIT FINANCING CHARGES
40 BY THE QUALIFIED SPECIAL PURPOSE ENTITY.

41 3. THE OPERATION OF THE TRUE-UP MECHANISM TO ADJUST FINANCING
42 CHARGES AND UNIT FINANCING CHARGES.

43 4. THE COLLECTION OF FINANCING REVENUES IN PAYMENT OF FINANCING
44 CHARGES AND UNIT FINANCING CHARGES.

45 5. THE PAYMENT OF FINANCING COSTS.

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

7 D. ON AND AFTER THE ISSUANCE OF THE TRANSITION BONDS, THE FAILURE
8 OF A PUBLIC POWER ENTITY OR A QUALIFIED SPECIAL PURPOSE ENTITY TO COMPLY
9 WITH THIS CHAPTER OR THE FINANCING RESOLUTION DOES NOT INVALIDATE, IMPAIR
10 OR AFFECT THE FINANCING RESOLUTION, THE TRANSITION PROPERTY, FINANCING
11 CHARGES, TRANSITION BONDS OR FINANCING COSTS.

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

14 1. THE BANKRUPTCY, REORGANIZATION, SALE, DISSOLUTION OR INSOLVENCY
15 OF THE PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE
16 SUCCESSORS OR ASSIGNS OF THE PUBLIC POWER ENTITY OR THE QUALIFIED SPECIAL
17 PURPOSE ENTITY.

18 2. THE COMMENCEMENT OF ANY PROCEEDING FOR BANKRUPTCY OR THE
19 APPOINTMENT OF A RECEIVER AS TO EITHER THE PUBLIC POWER ENTITY, THE
20 QUALIFIED SPECIAL PURPOSE ENTITY OR THE SUCCESSORS OF THE PUBLIC POWER
21 ENTITY OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

22 30-910. Financing resolution; application for rehearing;
23 judicial review

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

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

40 C. A PARTY THAT SEEKS TO VACATE, SET ASIDE OR OTHERWISE CHALLENGE A
41 FINANCING RESOLUTION OR OTHER GOVERNING BODY DECISION UNDER THIS CHAPTER,
42 IN WHOLE OR IN PART, BEARS THE BURDEN OF PROOF. IN AN ACTION THAT
43 CHALLENGES A FINANCING RESOLUTION OR RELATED DECISION THAT RESULTED FROM A
44 FINANCING RESOLUTION, RELIEF MAY BE AWARDED ONLY IF THE SUPERIOR COURT

1 DETERMINES, BASED ON CLEAR AND SATISFACTORY EVIDENCE, THAT EITHER OF THE
2 FOLLOWING APPLIES:

3 1. THE FINANCING RESOLUTION OR OTHER GOVERNING BODY DECISION UNDER
4 THIS CHAPTER IS UNLAWFUL.

5 2. THE FACTUAL FINDINGS MADE IN THE FINANCING RESOLUTION ARE
6 UNSUPPORTED BY THE FINANCING RESOLUTION OR EVIDENCE THAT WAS PRESENTED
7 BEFORE THE GOVERNING BODY.

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

11 E. A PARTY MAY APPEAL A DECISION IN AN ACTION FILED UNDER THIS
12 SECTION ONLY TO THE SUPREME COURT. THE PARTY SHALL FILE THE NOTICE OF
13 APPEAL WITHIN FIVE DAYS AFTER THE DECISION OF THE SUPERIOR COURT IN THE
14 ACTION. THE TIME FOR FILING THE NOTICE OF APPEAL MAY NOT BE TOLLED OR
15 EXTENDED FOR ANY REASON. THE SUPREME COURT SHALL ISSUE A DECISION ON THE
16 APPEAL PROMPTLY.

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

20 1. A FINANCING RESOLUTION.

21 2. THE CREATION OF TRANSITION PROPERTY.

22 3. THE ISSUANCE OF TRANSITION BONDS.

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

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

27 30-911. Fees and taxes

28 FINANCING CHARGES ARE NOT SUBJECT TO EITHER:

29 1. A FRANCHISE FEE THAT IS IMPOSED BY A MUNICIPALITY, COUNTY OR
30 OTHER LOCAL GOVERNMENT UNIT AS A RESULT OF A FRANCHISE AGREEMENT OR LAWFUL
31 ORDINANCE.

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

34 30-912. Transition bonds; public debt prohibition

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

1 B. TRANSITION BONDS ARE NOT AN OBLIGATION, DEBT, LIEN OR PLEDGE OF
2 THE ASSETS OR REVENUES OF THE PUBLIC POWER ENTITY. APPROVAL IS NOT
3 REQUIRED UNDER SECTION 40-302 OR ANY OTHER PROVISION OF LAW FOR THE
4 APPROVAL OF A FINANCING RESOLUTION, FOR THE ISSUANCE OF TRANSITION BONDS,
5 FOR THE SALE OF TRANSITION BONDS OR FOR AN ASSIGNMENT OR TRANSFER OF
6 TRANSITION PROPERTY OR ANY INTEREST IN TRANSITION PROPERTY THAT IS
7 AUTHORIZED BY THIS CHAPTER.

8 30-913. Transition bonds; legal investments

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

13 30-914. Obligations of successor to public power entity

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

23 30-915. Choice of law; conflicts with other laws

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

33 30-916. Effect of invalidity on actions

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

40 <<30-917. Consumer protection advocate; duties

41 [THE GOVERNING BODY OF A PUBLIC POWER ENTITY SHALL APPOINT AN
42 INDIVIDUAL TO SERVE AS A CONSUMER PROTECTION ADVOCATE WHO SHALL:

43 1. ADVISE THE PUBLIC POWER ENTITY IN THE FOLLOWING AREAS:

44 (a) SECURITIZATION TRANSACTIONS, INCLUDING MARKETING AND PRICING A
45 TRANSACTION.

1 (b) BOND NEGOTIATIONS.

2 (c) RATE INCREASES.

3 2. REPRESENT THE PUBLIC INTEREST OF ELECTRIC CUSTOMERS OF A PUBLIC
4 POWER ENTITY OR A PUBLIC SERVICE CORPORATION WHO USE ELECTRIC SERVICE IN
5 THIS STATE.]>>

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

8 CHAPTER 3

9 UTILITY SECURITIZATION

10 ARTICLE 1. GENERAL PROVISIONS

11 40-601. Definitions

12 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

14 (a) A BOND.

15 (b) AN INSURANCE POLICY.

16 (c) A LETTER OF CREDIT.

17 (d) A RESERVE ACCOUNT.

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

19 (f) A HEDGING ARRANGEMENT.

20 (g) A LIQUIDITY OR CREDIT SUPPORT ARRANGEMENT.

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

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

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

30 (b) A GROUP OF TWO OR MORE MEMBER-OWNED COOPERATIVES SEEKING
31 APPROVAL OF A COMBINED COOPERATIVE SECURITIZATION. FOR THE PURPOSES OF
32 THIS SUBDIVISION, EACH PARTICIPATING COOPERATIVE MAY BE REFERRED TO
33 INDIVIDUALLY AS THE APPLICANT OR THE GROUP OF COOPERATIVES MAY BE REFERRED
34 TO COLLECTIVELY AS THE APPLICANT AS THE CONTEXT INDICATES.

35 3. "COMBINED COOPERATIVE SECURITIZATION" MEANS A SECURITIZATION
36 TRANSACTION UNDER THIS CHAPTER THAT INVOLVES TWO OR MORE MEMBER-OWNED
37 COOPERATIVES ACTING TOGETHER INCLUDING A GENERATION AND TRANSMISSION
38 COOPERATIVE AND ONE OR MORE OF ITS MEMBER DISTRIBUTION COOPERATIVES EVEN
39 IF ALL APPLICABLE TRANSITION COSTS ARE INCURRED OR WILL BE PASSED DOWN TO
40 THE DISTRIBUTION COOPERATIVES.

41 4. "COMMISSION" MEANS THE CORPORATION COMMISSION.

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

44 (a) REGARDLESS OF THE IDENTITY OF THE PERSON'S OR ENTITY'S ELECTRIC
45 GENERATION SUPPLIER AND WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY

1 ALSO RECEIVES SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR
2 ENTITY RECEIVES RETAIL ELECTRIC SERVICE, WHETHER DIRECTLY OR INDIRECTLY,
3 WHETHER BUNDLED OR UNBUNDLED AND WHETHER SUPPLY OR DELIVERY, OR BOTH, FROM
4 ANY OF THE FOLLOWING:

5 (i) AN APPLICANT.

6 (ii) A SUCCESSOR TO AN APPLICANT.

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

11 (b) REGARDLESS OF THE IDENTITY OF THE PERSON'S OR ENTITY'S ELECTRIC
12 GENERATION SUPPLIER AND WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY
13 ALSO RECEIVES SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR
14 ENTITY MAINTAINS AN INTERCONNECTION WITH THE ELECTRIC DISTRIBUTION
15 FACILITIES OF AN APPLICANT THAT ALLOWS THAT PERSON OR ENTITY TO RECEIVE
16 RETAIL ELECTRIC SERVICE, WHETHER BUNDLED OR UNBUNDLED AND WHETHER SUPPLY
17 OR DELIVERY, OR BOTH, FROM ANY OF THE FOLLOWING:

18 (i) AN APPLICANT.

19 (ii) A SUCCESSOR TO AN APPLICANT.

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

24 (c) WITHOUT REGARD TO WHETHER THE PERSON OR ENTITY ALSO RECEIVES
25 SERVICE FROM OTHER ELECTRIC SERVICE PROVIDERS, THE PERSON OR ENTITY IS A
26 COOPERATIVE THAT PROVIDES RETAIL ELECTRIC SERVICE TO MEMBERS AND THAT
27 RECEIVES ELECTRICITY FROM AN APPLICANT THAT PROVIDES WHOLESALE ELECTRIC
28 GENERATION AND TRANSMISSION SERVICES.

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

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

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

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

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

4 (d) THE COSTS THAT ARE INCURRED UNDER AN ANCILLARY AGREEMENT AND
5 ANY AMOUNT THAT IS REQUIRED TO REFUND OR REPLENISH A RESERVE ACCOUNT OR
6 OTHER ACCOUNT ESTABLISHED UNDER AN ANCILLARY AGREEMENT OR OTHER DOCUMENT
7 RELATING TO TRANSITION BONDS.

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

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

16 (g) THE COSTS THAT ARE INCURRED TO PROTECT THE STATUS OF TRANSITION
17 PROPERTY, THE RIGHT TO IMPOSE AND COLLECT FINANCING CHARGES OR THE RIGHT
18 TO RECEIVE FINANCING REVENUES, INCLUDING COSTS RELATED TO ANY JUDICIAL OR
19 OTHER PROCEEDINGS THAT ARE NECESSARY TO PROTECT THE TRANSITION PROPERTY OR
20 COLLECT FINANCING REVENUES.

21 (h) FEDERAL, STATE AND OTHER TAXES THAT ARE IMPOSED ON THE
22 APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY, WITH RESPECT TO THE
23 FINANCING CHARGES OR FINANCING REVENUES WITHOUT DUPLICATION, AND ADJUSTED
24 TO REFLECT ANY UNRECOVERED DEFERRED INCOME TAX BALANCE ASSOCIATED WITH THE
25 TRANSITION COSTS, AND ANY OTHER FEES, CHARGES OR OTHER ASSESSMENTS THAT
26 ARE IMPOSED ON TRANSITION BONDS.

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

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

32 10. "FINANCING REVENUES" MEANS ANY MONEY AND OTHER PROPERTY
33 RECEIVED OR TO BE RECEIVED, DIRECTLY OR INDIRECTLY, IN PAYMENT OF OR ON
34 ACCOUNT OF THE FINANCING CHARGES, INCLUDING ALL OF THE PROCEEDS OF THE
35 INVESTMENT THEREOF.

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

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

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

45 12. "ONGOING FINANCING COSTS":

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

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

6 13. "QUALIFIED SPECIAL PURPOSE ENTITY":

7 (a) MEANS A LEGAL ENTITY THAT:

8 (i) IS ESTABLISHED BY AND WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY
9 AN APPLICANT IN WHICH AN INTEREST IN TRANSITION PROPERTY IS CREATED
10 PURSUANT TO THIS CHAPTER AND WHICH ISSUES TRANSITION BONDS THAT ARE
11 SECURED BY TRANSITION PROPERTY.

12 (ii) DOES NOT PROVIDE ELECTRIC SERVICE.

13 (iii) IS NOT A PUBLIC SERVICE CORPORATION.

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

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

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

25 14. "SERVICER":

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

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

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

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

34 (b) INCLUDES:

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

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

38 15. "SIGNIFICANT EVENT RECOVERY COSTS":

39 (a) MEANS COSTS, FEES AND EXPENSES THAT ARE INCURRED OR TO BE
40 INCURRED THROUGH THE DATE OF ISSUANCE OF A FINANCING ORDER BY A PUBLIC
41 SERVICE CORPORATION AND THAT ARE ASSOCIATED WITH OR THAT ARISE FROM
42 WEATHER, WILDFIRE OR PUBLIC HEALTH EMERGENCY EVENTS OR INCIDENTS OR OTHER
43 EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO CAUSE SIGNIFICANT LOSS OF
44 LIFE, INJURY TO PERSON OR PROPERTY, HUMAN SUFFERING OR FINANCIAL LOSS [BY
45 FORCES OR ACTION OUTSIDE OF THE APPLICANT'S CONTROL].

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

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

10 17. "TRANSITION ASSET" MEANS ANY ELECTRIC POWER GENERATION,
11 TRANSMISSION OR DISTRIBUTION FACILITIES, INCLUDING OTHER PROPERTY OR
12 EQUIPMENT THAT IS ~~USED~~OWNED BY THE APPLICANT AND THAT IS IDENTIFIED IN
13 AN APPLICATION FOR A FINANCING ORDER, AND THAT EITHER:

14 (a) HAS BEEN RETIRED AND NO LONGER PROVIDES SERVICE~~[, IN WHOLE OR~~
15 ~~IN PART]~~.

16 (b) AS OF THE DATE OF THE APPLICATION, IS PLANNED TO BE RETIRED,
17 ~~SOLD,~~ DISPOSED OF, ABANDONED OR OTHERWISE REMOVED FROM SERVICE BY THE
18 APPLICANT~~[, IN WHOLE OR IN PART]~~, WITHIN ~~TEN~~FIVE YEARS AFTER THE DATE
19 OF THE APPLICATION.

20 (c) HAS OTHERWISE BEEN DESTROYED, DAMAGED OR RENDERED INOPERABLE~~;~~
21 ~~IN WHOLE OR IN PART,~~ BY FORCES OR ACTION OUTSIDE OF THE APPLICANT'S
22 REASONABLE CONTROL.

23 18. "TRANSITION ASSET RETIREMENT COSTS":

24 (a) MEANS THE UNDEPRECIATED VALUE, UNRECOVERED BALANCE OR PORTION
25 THEREOF AS TO ANY TRANSITION ASSET THAT IS INCLUDED IN THE APPLICANT'S
26 RATE BASE OR THAT IS RECOVERED THROUGH RATES THAT WILL BE PERMANENTLY
27 REDUCED WHEN THE TRANSITION BONDS ARE ISSUED AND THE APPLICANT RECEIVES
28 THE TRANSFER OF FUNDS AS DESCRIBED IN SECTION 40-606, SUBSECTION A IN
29 CONNECTION WITH A TRANSACTION AUTHORIZED BY THIS CHAPTER AND ANY COSTS,
30 FEES AND EXPENSES INCURRED TO RETIRE, ABANDON OR REDUCE THE UNDEPRECIATED
31 BOOK VALUE OF SUCH TRANSITION ASSET IN CONNECTION WITH A TRANSACTION UNDER
32 THIS CHAPTER, INCLUDING WITHOUT LIMITATION DECOMMISSIONING, REMEDIATION OR
33 RESTORATION COSTS ASSOCIATED WITH THE TRANSITION ASSET.

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

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

42 20. "TRANSITION BILLING SERVICES TARIFF":

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

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

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

22. "TRANSITION COSTS"[:]

[(a)] INCLUDES ANY OF THE FOLLOWING:

~~[(a)]~~[(i)] TRANSITION ASSET RETIREMENT COSTS.

~~[(b)]~~[(ii)] UNRECOVERED FUEL COSTS.

~~[(c)]~~[(iii)] SIGNIFICANT EVENT RECOVERY COSTS.

[(b) DOES NOT INCLUDE ANY MONETARY PENALTY, FINE OR FORFEITURE THAT IS ASSESSED AGAINST A PUBLIC SERVICE CORPORATION BY A GOVERNMENTAL AGENCY OR COURT UNDER A FEDERAL OR STATE LAW, RULE OR REGULATION.]

23. "TRANSITION PROPERTY":

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

(b) INCLUDES ANY OF THE FOLLOWING:

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

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

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

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

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

24. "TRUE-UP MECHANISM":

(a) MEANS A FORMULA, DESCRIBED IN THE APPLICATION FOR A FINANCING ORDER AND ESTABLISHED BEFORE OR CONCURRENT WITH THE ISSUANCE OF TRANSITION BONDS, THAT ADJUSTS FINANCING CHARGES OVER TIME TO CORRECT FOR ANY OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES SO THAT A

1 QUALIFIED SPECIAL PURPOSE ENTITY TIMELY AND COMPLETELY RECOVERS ALL
2 ONGOING FINANCING COSTS.

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

7 25. "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 AND MAY DIFFER BETWEEN CUSTOMERS AND GROUPS OF CUSTOMERS, BUT IF
11 THEY DO, EACH CUSTOMER GROUP AND HOW IT IS DEFINED SHALL ALSO BE DESCRIBED
12 IN THE APPLICATION. UNIT FINANCING CHARGES ARE DETERMINED, AND IMPOSED,
13 WITHOUT REGARD TO WHETHER, OR TO WHAT EXTENT, A CUSTOMER USES THE SERVICES
14 OF ANY PUBLIC SERVICE CORPORATION DURING THE PERIOD IN WHICH A PARTICULAR
15 UNIT FINANCING CHARGE WILL APPLY.

16 26. "UNRECOVERED FUEL COSTS":

17 (a) MEANS FOR ANY APPLICANT:

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

20 (ii) THE UNRECOVERED AMOUNTS OF PREVIOUSLY INCURRED COSTS, FEES AND
21 EXPENSES TO PURCHASE ELECTRICITY, CAPACITY OR ANY OTHER COMPONENT OF
22 WHOLESALE ELECTRICITY TRANSACTIONS FROM A THIRD PARTY, INCLUDING IN
23 TRANSACTIONS BETWEEN COOPERATIVES.

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

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

32 27. "UPFRONT FINANCING COSTS":

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

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

39 40-602. Statement of public policy

40 A. IT IS THE PUBLIC POLICY OF THIS STATE TO GAIN THE BENEFITS OF
41 SECURITIZATION BY ESTABLISHING IRREVOCABLE FINANCING CHARGES THAT ARE
42 PAYABLE TO A QUALIFIED SPECIAL PURPOSE ENTITY AND BY CREATING AND VESTING
43 A PRESENT AND ALIENABLE PROPERTY INTEREST IN FINANCING REVENUES IN A
44 QUALIFIED SPECIAL PURPOSE ENTITY. THOSE BENEFITS INCLUDE REDUCING ALL OF
45 THE FOLLOWING:

1 1. THE CONTRIBUTION OF ASSETS, WHICH ARE SUBJECT TO POTENTIAL
2 RETIREMENT, ABANDONMENT, [~~SALE,~~] DISPOSITION[.] [~~OR~~] TRANSITION [~~OR~~
3 OTHERWISE REMOVED FROM SERVICE], OR THAT HAVE BEEN DAMAGED OR DESTROYED,
4 TO THE RATE BASE, OR AS WOULD OTHERWISE BE RECOVERED THROUGH RATES, OF
5 PUBLIC SERVICE CORPORATIONS AND ANY ASSOCIATED LIABILITIES.

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

7 3. THE COSTS ARISING FROM OR RELATED TO WEATHER, WILDFIRE OR OTHER
8 SIGNIFICANT EVENTS OR INCIDENTS THAT CAUSE OR THREATEN TO CAUSE
9 SIGNIFICANT LOSS OF LIFE, INJURY TO PERSON OR PROPERTY, HUMAN SUFFERING OR
10 FINANCIAL LOSS [BY FORCES OR ACTION OUTSIDE OF THE APPLICANT'S CONTROL].

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

16 [C. AFFORDABILITY AND RELIABILITY OF THIS STATE'S ELECTRIC SYSTEM IS
17 FUNDAMENTAL TO THE HEALTH AND WELFARE OF THIS STATE AND THIS STATE'S
18 CITIZENRY AND ECONOMY. AS SECURITIZATION CREATES BROAD NEW AUTHORITY FOR
19 ELECTRIC SERVICE PROVIDERS, IT IS IN THE BEST INTEREST OF THIS STATE AND
20 THIS STATE'S ELECTRIC CUSTOMERS FOR THE COMMISSION TO CONDUCT THE
21 SECURITIZATION PROCESS TO ENSURE THAT THIS NEW FINANCIAL TOOL IS BEING
22 USED PRUDENTLY AND IS NOT NEGATIVELY IMPACTING THE AFFORDABILITY OF
23 ELECTRICITY FOR THIS STATE'S ELECTRIC CUSTOMERS.]

24 40-603. Securitization transactions; initiation; financing
25 order; application requirements; transition benefit
26 test; timeframes; report

27 A. AN APPLICANT MAY REQUEST PERMISSION TO INITIATE A SECURITIZATION
28 TRANSACTION FROM THE COMMISSION BY SUBMITTING AN APPLICATION FOR A
29 FINANCING ORDER. THE APPLICATION SHALL:

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

33 (a) INCLUDES AMOUNTS OF UNRECOVERED FUEL OR PURCHASED POWER
34 EXPENSES WITH ASSOCIATED DEBT OR OTHER CARRYING COSTS.

35 (b) AS DETERMINED BY THE COMMISSION, SHALL BE SIGNIFICANT AND ARISE
36 FROM ANY OF THE FOLLOWING:

37 (i) SUPPLY SHORTAGES.

38 (ii) DISRUPTIONS IN THE TRANSPORTATION INFRASTRUCTURE OR SUPPLY
39 CHAINS.

40 (iii) MARKET VOLATILITY.

41 (iv) SUBSTANTIAL CUSTOMER LOAD GROWTH.

42 (v) ANY OTHER REASONABLY UNFORESEEN CIRCUMSTANCE.

43 2. ESTIMATE THE TRANSITION COSTS AND FINANCING COSTS.

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

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

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

3 2. THE TRANSITION BENEFIT TEST IS SATISFIED. THE TRANSITION
4 BENEFIT TEST IS SATISFIED ON A SHOWING OF ALL OF THE FOLLOWING:

5 (a) THE PROJECTED NET PRESENT VALUE OVER THE TERM OF THE TRANSITION
6 BONDS OF THE FINANCING CHARGES MINUS, TO THE EXTENT APPLICABLE, THE
7 REVENUE REQUIREMENT CREDITS THAT ARISE FROM ANY DEFERRED INCOME TAX
8 BALANCES ASSOCIATED WITH THE TRANSITION COST WILL BE SMALLER IN ABSOLUTE
9 VALUE THAN THE PROJECTED NET PRESENT VALUE THAT IS CALCULATED AT THE SAME
10 DISCOUNT RATE OF THE PORTION OF THE ANNUAL REVENUE REQUIREMENTS OF THE
11 APPLICANT THAT IS ASSOCIATED WITH THE TRANSITION COST, IF THE COST WERE TO
12 BE FINANCED DIRECTLY BY THE APPLICANT.

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

18 (c) FOR A FINANCING APPLICATION THAT INVOLVES A TRANSITION ASSET
19 THAT IS AN ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS BEEN
20 RETIRED, SOLD, ABANDONED, DISPOSED OF OR OTHERWISE REMOVED FROM SERVICE OF
21 THE APPLICANT'S CUSTOMERS, IN WHOLE OR IN PART, AS PROVIDED IN SECTION
22 40-601, PARAGRAPH 17, SUBDIVISIONS (a) AND (b), THE REPLACEMENT MEANS OF
23 SATISFYING THE CUSTOMER LOAD SERVED BY THE ELECTRIC POWER GENERATION
24 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE IS MORE
25 COST-EFFECTIVE FOR THE APPLICANT'S CUSTOMERS THAN CONTINUED RELIANCE ON OR
26 OPERATION OF THE ELECTRIC POWER GENERATION FACILITY THAT WILL BE OR HAS
27 BEEN REMOVED FROM SERVICE. COST-EFFECTIVENESS SHALL BE DETERMINED BY
28 COMPARING THE SUM OF THE NET PRESENT VALUE OF ALL THE COSTS AND EXPENSES
29 OF RELIABLE REPLACEMENT GENERATION OF EQUAL OR GREATER CONTRIBUTION TOWARD
30 THE UTILITY'S RESOURCE ADEQUACY THAN THE ELECTRIC POWER GENERATION
31 FACILITY THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER THE
32 REPLACEMENT GENERATION'S EXPECTED USEFUL LIFE COMBINED WITH THE PROJECTED
33 NET PRESENT VALUE TO RATEPAYERS OF THE TOTAL EXPECTED COST OF THE
34 TRANSITION BONDS OVER THE TERM OF SUCH BONDS, AS COMPARED TO THE NET
35 PRESENT VALUE TO RATEPAYERS OF THE COST, INCLUDING ANY UNRECOVERED COSTS
36 ASSOCIATED WITH UNDEPRECIATED VALUE OR UNRECOVERED BALANCES OF THE
37 TRANSITION ASSET IF SUCH COSTS WERE TO BE FINANCED DIRECTLY BY THE
38 APPLICANT, OF CONTINUING TO OPERATE THE ELECTRIC POWER GENERATION FACILITY
39 THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE OVER AN EQUIVALENT TIME
40 FRAME REGARDLESS OF THE FUEL SOURCE OF THE POWER GENERATION. THE
41 COST-EFFECTIVE EVALUATION SHALL INCLUDE A DESCRIPTION OF A PORTFOLIO THAT
42 CONTAINS NEW AND EXISTING RESOURCES THAT WILL PROVIDE RELIABLE REPLACEMENT
43 GENERATION OF EQUIVALENT RESOURCE ADEQUACY AS THE ELECTRIC POWER
44 GENERATION THAT WILL BE OR HAS BEEN REMOVED FROM SERVICE.

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

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

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

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

13 [E. ON JANUARY 1 AND JUNE 1 OF EACH YEAR, A SERVICER SHALL FILE A
14 REPORT WITH THE COMMISSION THAT INCLUDES THE TOTAL NUMBER OF TRANSITION
15 BONDS THAT WERE ISSUED AND THE TOTAL AMOUNT OF PAYMENTS THAT WERE
16 COLLECTED FROM UTILITY CUSTOMERS.]

17 40-604. Commission authority; jurisdiction

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

21 1. ANY UNDEPRECIATED VALUE OF THE TRANSITION ASSETS ON THE
22 APPLICANT'S BOOKS ARE REDUCED BY THE CORRESPONDING AMOUNT, INCLUDING ANY
23 REDUCTIONS IN ASSOCIATED REGULATORY ASSETS OR RECORDED LIABILITIES, AS
24 APPLICABLE.

25 2. ANY REGULATORY ASSETS THAT ARE RELATED TO UNRECOVERED FUEL COSTS
26 OR SIGNIFICANT EVENT RECOVERY COSTS ARE REDUCED BY THAT CORRESPONDING
27 AMOUNT.

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

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

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

34 2. INVESTIGATE THE PRACTICES OF PUBLIC SERVICE CORPORATIONS.

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

39 4. INVESTIGATE AN APPLICANT'S COMPLIANCE WITH THE TERMS AND
40 CONDITIONS OF A FINANCING ORDER AND TO REQUIRE THAT THE APPLICANT COMPLY
41 WITH THE FINANCING ORDER.

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

44 C. THE COMMISSION SHALL NOT ORDER OR REQUIRE, DIRECTLY OR AS A
45 CONDITION FOR ANY OTHER ACTION OR FINDING, A PUBLIC SERVICE CORPORATION TO

1 APPLY FOR PERMISSION TO INITIATE A SECURITIZATION TRANSACTION UNDER THIS
2 CHAPTER OR TO ENGAGE IN A TRANSACTION AUTHORIZED BY THIS CHAPTER.

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

8 40-605. Transition property; property rights; default on
9 transition bonds

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

22 B. TRANSITION PROPERTY CONSTITUTES A VESTED, EXISTING, PRESENT,
23 CONTINUING AND IRREVOCABLE PROPERTY RIGHT FOR ALL PURPOSES,
24 NOTWITHSTANDING THE FACT THAT THE VALUE OF THE PROPERTY MAY DEPEND ON, OR
25 BE AFFECTED BY, EVENTS OR ACTIONS THAT HAVE NOT YET OCCURRED. TRANSITION
26 PROPERTY SHALL NOT BE AN ASSET OF THE APPLICANT OR ANY OTHER PUBLIC
27 SERVICE CORPORATION.

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

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

37 E. TRANSITION PROPERTY, FINANCING CHARGES, FINANCING REVENUES AND
38 THE INTERESTS OF A FINANCING PARTY OR ANY OTHER PERSON IN TRANSITION
39 PROPERTY OR IN FINANCING REVENUES ARE NOT SUBJECT TO OFFSET, COUNTERCLAIM,
40 SURCHARGE OR DEFENSE BY A SERVICER, A CUSTOMER, AN APPLICANT, A CREDITOR
41 OF AN APPLICANT, A CREDITOR OF THE QUALIFIED SPECIAL PURPOSE ENTITY OR ANY
42 OTHER PERSON, OR IN CONNECTION WITH ANY DEFAULT, BANKRUPTCY,
43 REORGANIZATION OR OTHER INSOLVENCY PROCEEDING OF ANY SUCH PERSON.

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

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

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

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

17 40-606. Transition bonds; issuance; authority of qualified
18 special purpose entity; reimbursement of costs

19 A. AFTER APPROVAL OF A FINANCING ORDER ISSUED PURSUANT TO SECTION
20 40-603, THE QUALIFIED SPECIAL PURPOSE ENTITY IS AUTHORIZED TO ISSUE ONE OR
21 MORE SERIES, CLASSES OR TRANCHES OF TRANSITION BONDS AND TO PLEDGE
22 TRANSITION PROPERTY TO SECURE THE PAYMENT OF ONGOING FINANCING COSTS. ON
23 ISSUANCE OF THE TRANSITION BONDS, THE QUALIFIED SPECIAL PURPOSE ENTITY
24 SHALL TRANSFER TO THE APPLICANT THE NET PROCEEDS OF THE TRANSITION BONDS
25 MINUS THE UPFRONT FINANCING COSTS PAID BY THE QUALIFIED SPECIAL PURPOSE
26 ENTITY.

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

40 40-607. Transition property; security interest; lien;
41 priority

42 A. THIS SECTION APPLIES TO ALL PURPORTED TRANSFERS OF, GRANTS OF
43 LIENS ON, OR SECURITY INTERESTS IN TRANSITION PROPERTY. EXCEPT AS
44 OTHERWISE PROVIDED IN THIS SECTION, THE CREATION, PERFECTION AND
45 ENFORCEMENT OF A SECURITY INTEREST IN TRANSITION PROPERTY THAT IS PLEDGED

1 TO SECURE THE PAYMENT OF THE ONGOING FINANCING COSTS ARE GOVERNED BY THIS
2 SECTION.

3 B. THE DESCRIPTION OF OR REFERENCE TO TRANSITION PROPERTY IN A
4 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS SUFFICIENT IF
5 AND ONLY IF THE DESCRIPTION OR REFERENCE REFERS TO THIS CHAPTER AND THE
6 FINANCING ORDER DESCRIBING THE TRANSITION PROPERTY. A SECURITY INTEREST
7 IN TRANSITION PROPERTY IS CREATED, VALID, BINDING AND ENFORCEABLE AT THE
8 LATEST OF ANY OF THE FOLLOWING:

9 1. WHEN THE TRANSITION BONDS ARE ISSUED BY THE QUALIFIED SPECIAL
10 PURPOSE ENTITY.

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

13 3. WHEN VALUE IS RECEIVED BY THE QUALIFIED SPECIAL PURPOSE ENTITY
14 FOR THE TRANSITION BONDS.

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

29 D. A TRANSFER OF AN INTEREST, INCLUDING A GRANT OF A LIEN OR
30 SECURITY INTEREST, IN TRANSITION PROPERTY IS PERFECTED AGAINST ALL THIRD
31 PERSONS. A SECURITY INTEREST IN TRANSITION PROPERTY IS A CONTINUOUSLY
32 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN THAT MAY
33 SUBSEQUENTLY ATTACH TO THE TRANSITION PROPERTY UNLESS THE HOLDER OF THE
34 SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

35 E. THE PRIORITY OF A SECURITY INTEREST IN TRANSITION PROPERTY IS
36 NOT AFFECTED BY THE COMMINGLING OF FINANCING REVENUES WITH OTHER FUNDS.
37 ANY PLEDGEE OR SECURED PARTY HAS A PERFECTED SECURITY INTEREST IN THE
38 AMOUNT OF ALL FINANCING REVENUES THAT ARE DEPOSITED IN ANY ACCOUNT OF THE
39 SERVICER IN WHICH FINANCING REVENUES HAVE BEEN COMMINGLED WITH OTHER
40 FUNDS, AND ANY OTHER SECURITY INTEREST THAT MAY APPLY TO SUCH FINANCING
41 REVENUES IS TERMINATED WHEN THOSE FUNDS ARE TRANSFERRED TO A SEGREGATED
42 ACCOUNT FOR A FINANCING PARTY OR ASSIGNEE OF A FINANCING PARTY.

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

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

4 40-608. Financing charges; true-up mechanism; civil action

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

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

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

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

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

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

34 2. THE CALCULATION OF THE RESULTING FINANCING CHARGES AND UNIT
35 FINANCING CHARGES.

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

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

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

20 H. ANY ADJUSTMENTS THAT ARE MADE PURSUANT TO THE TRUE-UP MECHANISM,
21 ANY REVIEW OF THE CALCULATIONS OF THOSE ADJUSTMENTS OR ANY ACTION BROUGHT
22 TO DETERMINE WHETHER THERE HAS BEEN A MATHEMATICAL OR ADMINISTRATIVE ERROR
23 IN THE APPLICATION OF THE TRUE-UP MECHANISM SHALL NOT AFFECT THE
24 IRREVOCABILITY OF THE TRANSITION PROPERTY, THE FINANCING CHARGES, THE
25 FINANCING ORDER, THE NONBYPASSIBILITY OF THE FINANCING CHARGES AND UNIT
26 FINANCING CHARGES OR THE NONIMPAIRMENT PLEDGES PRESCRIBED IN SECTION
27 40-610.

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

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

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

1 PAYMENT OF 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 PROJECTED TO CORRECT FOR
5 ANY OVERCOLLECTION OR UNDERCOLLECTION OF FINANCING REVENUES.

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

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

24 40-609. Public service corporation as servicer; transition
25 billing services tariffs; AAA rating

26 A. IF A SERVICER IS A PUBLIC SERVICE CORPORATION, THE PUBLIC
27 SERVICE CORPORATION SHALL USE ITS RESOURCES AND SYSTEMS TO PERFORM THE
28 DUTIES OF A SERVICER UNDER A TRANSITION BILLING SERVICES TARIFF. THE
29 COMMISSION HAS CONTINUING JURISDICTION OVER THE TERMS OF A TRANSITION
30 BILLING SERVICES TARIFF THAT IS FILED AND MAINTAINED BY A PUBLIC SERVICE
31 CORPORATION.

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

40 C. IF A SERVICER FAILS TO MAKE ANY REQUIRED PAYMENT OF FINANCING
41 REVENUES TO A QUALIFIED SPECIAL PURPOSE ENTITY OR FAILS TO FULFILL ITS
42 SERVICING OBLIGATIONS UNDER AN APPLICABLE TRANSITION BILLING SERVICES
43 TARIFF, THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE HOLDERS OF THE
44 TRANSITION BONDS MAY REQUEST THAT THE SUPERIOR COURT ORDER THE
45 SEQUESTRATION AND PAYMENT OF THE FINANCING REVENUES FOR THE BENEFIT OF ANY

1 FINANCING PARTIES OR THEIR ASSIGNEES AND MAY REQUEST ANY OTHER APPLICABLE
2 RELIEF. THE ORDER SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING
3 ANY BANKRUPTCY, REORGANIZATION OR OTHER INSOLVENCY OR RECEIVERSHIP
4 PROCEEDINGS OF THE SERVICER OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

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

11 40-610. Transition bonds; irrevocability; public policy;
12 noncompliance

13 A. ON OR AFTER THE ISSUANCE OF TRANSITION BONDS, THE TRANSITION
14 PROPERTY, THE TRUE-UP MECHANISM AND THE FINANCING CHARGES ARE IRREVOCABLE,
15 FINAL, NONDISCRETIONARY AND EFFECTIVE WITHOUT THE NEED FOR FURTHER ACTION
16 BY THE COMMISSION OR ANY OTHER PERSON, AND SUCH FINANCING CHARGES SHALL
17 NOT BE SUBJECT TO RESCISSION, ALTERATION, AMENDMENT, REDUCTION, IMPAIRMENT
18 OR ADJUSTMENT BY FURTHER ACTION OF THE COMMISSION OR ANY OTHER PERSON
19 EXCEPT PURSUANT TO THE TRUE-UP MECHANISM, INCLUDING PURSUANT TO SECTION
20 40-252.

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

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

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

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

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

40 5. THE PAYMENT OF FINANCING COSTS.

41 C. IT IS THE INTENTION OF THIS STATE THAT THE PLEDGES MADE UNDER
42 SUBSECTION B OF THIS SECTION CAN AND WILL BE RELIED ON BY THE APPLICANT,
43 THE QUALIFIED SPECIAL PURPOSE ENTITY, OTHER PERSONS THAT ENTER INTO AN
44 ANCILLARY AGREEMENT AND ANY FINANCING PARTY. THESE PLEDGES MAY BE

1 INCLUDED IN TRANSITION BONDS, ANCILLARY AGREEMENTS AND OTHER DOCUMENTATION
2 RELATED TO ISSUING, RATING AND MARKETING THE TRANSITION BONDS.

3 D. ON AND AFTER THE ISSUANCE OF THE TRANSITION BONDS, THE FAILURE
4 OF AN APPLICANT OR A QUALIFIED SPECIAL PURPOSE ENTITY TO COMPLY WITH THIS
5 CHAPTER OR A FINANCING ORDER DOES NOT INVALIDATE, IMPAIR OR AFFECT THE
6 FINANCING ORDER, THE TRANSITION PROPERTY, FINANCING CHARGES, TRANSITION
7 BONDS OR FINANCING COSTS.

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

10 1. THE BANKRUPTCY, REORGANIZATION, SALE, DISSOLUTION OR INSOLVENCY
11 OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY OR THE SUCCESSORS
12 OF THE APPLICANT OR THE QUALIFIED SPECIAL PURPOSE ENTITY.

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

17 40-611. Financing order; application for rehearing; judicial
18 review

19 A. A PARTY TO THE PROCEEDING WHO IS DISSATISFIED WITH A COMMISSION
20 DECISION AS TO AN APPLICATION FOR A FINANCING ORDER UNDER THIS CHAPTER OR
21 THE ATTORNEY GENERAL ON BEHALF OF THIS STATE MAY APPLY TO THE COMMISSION
22 FOR REHEARING IN ACCORDANCE WITH SECTION 40-253. THE APPLICATION FOR
23 REHEARING SHALL BE FILED NOT LATER THAN TWENTY DAYS AFTER A COMMISSION
24 DECISION ON AN APPLICATION FOR A FINANCING ORDER. IF THE COMMISSION DOES
25 NOT GRANT THE APPLICATION FOR REHEARING WITHIN TWENTY DAYS AFTER THE
26 APPLICATION IS FILED, THE APPLICATION IS DEEMED DENIED.

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

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

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

43 1. THE FINANCING ORDER OR OTHER COMMISSION DECISION UNDER THIS
44 CHAPTER IS UNLAWFUL.

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

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

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

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

- 16 1. A FINANCING ORDER.
17 2. THE CREATION OF TRANSITION PROPERTY.
18 3. THE ISSUANCE OF TRANSITION BONDS.
19 4. THE COMMISSION'S PERFORMANCE OF ITS DUTIES UNDER THIS CHAPTER.
20 H. THE ORDERS OR DECREES THAT ARE FIXED BY THE COMMISSION PURSUANT
21 TO THIS CHAPTER SHALL REMAIN IN FORCE PENDING THE DECISION OF THE COURT.

22 40-612. Fees and taxes
23 FINANCING CHARGES ARE NOT SUBJECT TO EITHER:
24 1. ANY ASSESSMENT OF A FRANCHISE FEE THAT IS IMPOSED BY A
25 MUNICIPALITY, COUNTY OR OTHER LOCAL GOVERNMENT UNIT PURSUANT TO A
26 FRANCHISE AGREEMENT OR LAWFUL ORDINANCE.
27 2. TAXES THAT ARE APPLICABLE TO SERVICES PROVIDED BY, OR RATES OF,
28 A PUBLIC SERVICE CORPORATION.

29 40-613. Transition bonds; public debt prohibition; applicant;
30 cooperative

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

42 B. TRANSITION BONDS ARE NOT AN OBLIGATION OF AN APPLICANT OR A
43 PLEDGE OF THE ASSETS OF AN APPLICANT. APPROVAL IS NOT REQUIRED UNDER
44 SECTION 40-302, OR ANY OTHER PROVISION OF LAW, FOR THE APPROVAL OF A
45 FINANCING ORDER, FOR THE ISSUANCE OF TRANSITION BONDS, OR FOR A SALE,

1 ASSIGNMENT OR TRANSFER OF TRANSITION PROPERTY OR AN INTEREST IN TRANSITION
2 PROPERTY AUTHORIZED BY THIS CHAPTER. NOTWITHSTANDING ANY OTHER LAW, A
3 CUSTOMER THAT IS A COOPERATIVE IS AUTHORIZED TO INCLUDE THE COSTS OF
4 PAYING FINANCING CHARGES IN THE COSTS IT IS AUTHORIZED TO RECOVER FROM
5 PERSONS WHO USE THE COOPERATIVE'S SERVICES.

6 40-614. Transition bonds; legal investments

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

11 40-615. Obligations of successor to applicant

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

21 40-616. Choice of law; conflicts with other laws

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

31 40-617. Effect of invalidity on actions

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

39 <<40-618. Consumer protection advocate; duties

40 [THE COMMISSION SHALL APPOINT THE DIRECTOR OF THE RESIDENTIAL
41 UTILITY CONSUMER OFFICE TO SERVE AS THE CONSUMER PROTECTION ADVOCATE WHO
42 SHALL:

43 1. ADVISE THE COMMISSION IN THE FOLLOWING AREAS:

44 (a) SECURITIZATION TRANSACTIONS, INCLUDING MARKETING AND PRICING A
45 TRANSACTION.

1 **(b) BOND NEGOTIATIONS.**

2 **(c) RATE INCREASES.**

3 **2. REPRESENT THE PUBLIC INTEREST OF ELECTRIC CUSTOMERS OF A PUBLIC**
4 **POWER ENTITY OR A PUBLIC SERVICE CORPORATION WHO USE ELECTRIC SERVICE IN**
5 **THIS STATE.]>>**

6 <<40-619. **Prudency review; securitization; rules**

7 **[A. THE COMMISSION SHALL ESTABLISH A PRUDENCY REVIEW PROCESS THAT**
8 **REVIEWS THE ASSETS THAT ARE TO BE SECURITIZED BY A PUBLIC POWER ENTITY, A**
9 **PUBLIC SERVICE CORPORATION OR A MEMBER-OWNED COOPERATIVE.**

10 **B. THE PURPOSE OF THE PRUDENCY REVIEW IS TO ENSURE THAT THE NEED FOR**
11 **SECURITIZATION IS NOT A RESULT OF IMPRUDENT ACTION BY A PUBLIC POWER**
12 **ENTITY, A PUBLIC SERVICE CORPORATION OR A MEMBER-OWNED COOPERATIVE.**

13 **C. THE COMMISSION MAY ADOPT RULES TO IMPLEMENT THIS SECTION.]>>**

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

16 **47-9109. Scope**

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

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

21 2. An agricultural lien;

22 3. A sale of accounts, chattel paper, payment intangibles or
23 promissory notes;

24 4. A consignment;

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

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

29 B. The application of this article to a security interest in a
30 secured obligation is not affected by the fact that the obligation is
31 itself secured by a transaction or interest to which this chapter does not
32 apply.

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

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

36 2. A statute of a foreign country or a governmental unit of a
37 foreign country, other than a statute generally applicable to security
38 interests, expressly governs creation, perfection, priority or enforcement
39 of a security interest created by that country or governmental unit; or

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

42 D. This chapter does not apply to:

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

- 1 2. A lien, other than an agricultural lien, given by statute or
2 other rule of law for services or materials, but section 47-9333 applies
3 with respect to priority of the lien;
- 4 3. An assignment of a claim for wages, salary or other compensation
5 of an employee;
- 6 4. A sale of accounts, chattel paper, payment intangibles or
7 promissory notes as part of a sale of the business out of which they
8 arose;
- 9 5. An assignment of accounts, chattel paper, payment intangibles or
10 promissory notes that is for the purpose of collection only;
- 11 6. An assignment of a right to payment under a contract to an
12 assignee that is also obligated to perform under the contract;
- 13 7. An assignment of a single account, payment intangible or
14 promissory note to an assignee in full or partial satisfaction of a
15 preexisting indebtedness;
- 16 8. A transfer of an interest in or an assignment of a claim under a
17 policy of insurance, other than an assignment by or to a health care
18 provider of a health-care-insurance receivable and any subsequent
19 assignment of the right to payment, but sections 47-9315 and 47-9322 apply
20 with respect to proceeds and priorities in proceeds;
- 21 9. An assignment of a right represented by a judgment, other than a
22 judgment taken on a right to payment that was collateral;
- 23 10. A right of recoupment or setoff, but:
24 (a) Section 47-9340 applies with respect to the effectiveness of
25 rights of recoupment or setoff against deposit accounts; and
26 (b) Section 47-9404 applies with respect to defenses or claims of
27 an account debtor;
- 28 11. The creation or transfer of an interest in or lien on real
29 property, including a lease or rents thereunder, except to the extent that
30 provision is made for:
31 (a) Liens on real property in sections 47-9203 and 47-9308;
32 (b) Fixtures in section 47-9334;
33 (c) Fixture filings in sections 47-9501, 47-9502, 47-9512, 47-9516
34 and 47-9519; and
35 (d) Security agreements covering personal and real property in
36 section 47-9604;
- 37 12. An assignment of a claim arising in tort, other than a
38 commercial tort claim, but sections 47-9315 and 47-9322 apply with respect
39 to proceeds and priorities in proceeds;
- 40 13. An assignment of a deposit account in a consumer transaction,
41 but sections 47-9315 and 47-9322 apply with respect to proceeds and
42 priorities in proceeds;
- 43 14. A transfer, pledge, assignment, grant or similar action by this
44 state, another state or a governmental unit of this state or another
45 state;

1 15. A claim or right to receive compensation for injuries or
2 sickness as described in 26 United States Code section 104a(1) or (2); or
3 16. A claim or right to receive benefits under a special needs
4 trust as described in 42 United States Code section 1396p(d)(4); OR ~~—~~
5 17. A SECURITY INTEREST THAT IS SUBJECT TO SECTION 30-906 OR
6 40-607.

7 Enroll and engross to conform
8 Amend title to conform

PRIYA SUNDARESHAN

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