

ENERGY PRODUCTION FINANCING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill enacts the Energy Production Finance Act.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ establishes procedures for an electrical corporation to retire or replace an existing electric generating facility through:
 - the issuance of rate recovery bonds to cover the costs of approved rate recovery costs; and
 - the imposition of rate recovery charges paid by certain electric utility customers;
- ▶ requires the Public Service Commission to:
 - review an electrical corporation's application for the determination of the amount of rate recovery costs; and
 - review an electrical corporation's application for the approval of a financing order that authorizes the issuance of rate recovery bonds, the imposition, charging, adjustment, and collection of rate recovery charges, and the creation of rate recovery property;
- ▶ grants the Public Service Commission rulemaking authority to implement the review and approval processes;
- ▶ specifies procedures for the Public Service Commission to review, approve, modify, or deny an application for the determination of the rate recovery costs and approval of a financing order;
- ▶ specifies reporting requirements for an electrical corporation that has issued rate recovery bonds and is imposing a rate recovery charge on its customers;
- ▶ specifies requirements for property that is approved as rate recovery property in a financing order approved by the Public Service Commission;
- ▶ provides that rate recovery bonds are not public debt and holders of rate recovery

33 bonds do not have a right to have taxes levied by the state or a political subdivision
34 of the state for the payment of the principal or interest on rate recovery bonds; and
35 ▶ specifies procedures and requirements for establishing and enforcing property rights
36 and a security interest in rate recovery property.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 ENACTS:

- 43 54-24-101, Utah Code Annotated 1953
- 44 54-24-102, Utah Code Annotated 1953
- 45 54-24-103, Utah Code Annotated 1953
- 46 54-24-104, Utah Code Annotated 1953
- 47 54-24-201, Utah Code Annotated 1953
- 48 54-24-202, Utah Code Annotated 1953
- 49 54-24-203, Utah Code Annotated 1953
- 50 54-24-301, Utah Code Annotated 1953
- 51 54-24-302, Utah Code Annotated 1953
- 52 54-24-303, Utah Code Annotated 1953
- 53 54-24-304, Utah Code Annotated 1953
- 54 54-24-305, Utah Code Annotated 1953
- 55 54-24-306, Utah Code Annotated 1953
- 56 54-24-307, Utah Code Annotated 1953
- 57 54-24-308, Utah Code Annotated 1953
- 58 54-24-309, Utah Code Annotated 1953
- 59 54-24-310, Utah Code Annotated 1953
- 60 54-24-401, Utah Code Annotated 1953
- 61 54-24-402, Utah Code Annotated 1953
- 62 54-24-403, Utah Code Annotated 1953
- 63 54-24-404, Utah Code Annotated 1953

64 **54-24-501**, Utah Code Annotated 1953
 65 **54-24-502**, Utah Code Annotated 1953
 66 **54-24-503**, Utah Code Annotated 1953
 67 **54-24-504**, Utah Code Annotated 1953
 68 **54-24-505**, Utah Code Annotated 1953
 69 **54-24-506**, Utah Code Annotated 1953
 70 **54-24-601**, Utah Code Annotated 1953

71

72 *Be it enacted by the Legislature of the state of Utah:*

73 Section 1. Section **54-24-101** is enacted to read:

74 **CHAPTER 24. ENERGY PRODUCTION FINANCE ACT**

75 **Part 1. General Provisions**

76 **54-24-101. Title.**

77 This chapter is known as the "Energy Production Finance Act."

78 Section 2. Section **54-24-102** is enacted to read:

79 **54-24-102. Definitions.**

80 As used in this chapter:

81 (1) "Ancillary agreement" means a bond, insurance policy, letter of credit, reserve
 82 account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or
 83 credit support arrangement, or other financial arrangement that is:

84 (a) entered into in connection with issuance of rate recovery bonds; and

85 (b) designed to:

86 (i) promote the credit quality and marketability of rate recovery bonds; or

87 (ii) mitigate the risk of an increase in interest rates on rate recovery bonds.

88 (2) "Assignee" means any person to which an interest in rate recovery property is sold,
 89 assigned, transferred, or conveyed, other than as security, and any successor to or subsequent
 90 assigned of the person.

91 (3) "Bondholder" means any holder or owner of rate recovery bonds.

92 (4) "Customer" means any person that takes electric distribution or transmission

93 service from an electrical corporation or its successors for consumption of electricity within a

94 qualifying service area of that electrical corporation in the state,

95 (5) "Division" means the Division of Public Utilities within the Department of

96 Commerce created in Section 54-4a-1.

97 (6) "Electrical corporation" has the meaning as that term is defined in Section 54-2-1.

98 (7) (a) "Financing costs" means costs approved by the commission in a financing order.

99 (b) "Financing costs" include costs to issue, service, repay, or refinance rate recovery
100 bonds, whether incurred or paid upon the issuance of rate recovery bonds or over the life of rate
101 recovery bonds, including:

102 (i) principal, interest, and any redemption premiums that are payable on rate recovery
103 bonds;

104 (ii) any payment required under an ancillary agreement and any amount required to
105 fund or replenish a reserve account or other accounts established under the terms of an
106 indenture, ancillary agreement, or other financing document pertaining to rate recovery bonds;

107 (iii) any other demonstrable costs related to issuing, supporting, repaying, or refunding
108 rate recovery bonds and servicing rate recovery bonds or rate recovery property, including:

109 (A) servicing fees;

110 (B) administration fees;

111 (C) accounting and auditing fees;

112 (D) trustee fees;

113 (E) legal fees;

114 (F) consulting fees;

115 (G) financial advisor fees;

116 (H) placement and underwriting fees;

117 (I) capitalized interest;

118 (J) rating agency fees;

119 (K) stock exchange listing and compliance fees;

120 (L) security registration fees;

121 (M) filing fees;

122 (N) information technology programming costs; and

123 (O) any other demonstrable costs necessary to ensure and guarantee the timely payment
124 of rate recovery bonds or other amounts payable in connection with rate recovery bonds;

- 125 (iv) any income taxes and license fees imposed on rate recovery revenues;
126 (v) any state and local taxes, including franchise, sales and use, and other taxes or
127 similar charges, including regulatory assessment fees, whether paid, payable, or accrued on rate
128 recovery revenues; and
129 (vi) any costs incurred by the commission pursuant to Section 54-24-303 to retain
130 specialized consulting.
- 131 (8) "Financing order" means an order of the commission which grants, in whole or in
132 part, an application that is filed under Part 3, Financing Orders, and that authorizes:
133 (a) the issuance of rate recovery bonds in one or more series;
134 (b) the imposition, charging, adjustment, and collection of rate recovery charges; and
135 (c) the creation of rate recovery property, which may include any conditions that are
136 necessary to promote the public interest.
- 137 (9) "Financing party" means a holder of rate recovery bonds and trustees, the issuer of
138 rate recovery bonds, collateral agents, any party under an ancillary agreement, and any other
139 person acting for the benefit of holders of rate recovery bonds.
- 140 (10) "Non-bypassable" means that the payment of rate recovery charges required to
141 repay rate recovery bonds and related costs shall be paid by either:
142 (a) if the financing order applies to rate recovery costs associated with replaced assets,
143 as defined in Subsection 54-17-902(15), then notwithstanding Section 54-17-905, all existing
144 and future participating customers in the qualifying service area receiving transmission or
145 distribution service from the electrical corporation or its successors or assignees, even if:
146 (i) a participating customer in the future is allowed and elects to cease participating in a
147 community renewable energy program; and
148 (ii) a participating customer in the future is allowed and elects to purchase electricity
149 from an electricity supplier other than the electrical corporation; or
150 (b) if the financing order does not apply to rate recovery costs associated with replaced
151 assets as defined in Subsection 54-17-902(15), all existing and future customers in the
152 qualifying service area receiving transmission or distribution service from the electrical
153 corporation or its successors or assignees, even if a customer in the future is allowed and elects
154 to purchase electricity from an electricity supplier other than the electrical corporation, as well
155 as any person located within the electrical corporation's qualifying service area that may

156 subsequently receive retail electricity transmission or distribution service from another electric
157 utility operating in the same qualifying service area.

158 (11) "Office" means the Office of Consumer Services created in Section 54-10a-201.

159 (12) "Participating customer" has the meaning as that term is defined in Section
160 54-17-902.

161 (13) "Qualifying service area" means the geographic area within which the electrical
162 corporation provides retail electricity distribution or transmission service as of the issue date of
163 the series of rate recovery bonds.

164 (14) "Rate recovery bonds" means bonds or other evidences of indebtedness or
165 ownership that are issued by an electrical corporation or an assignee pursuant to a financing
166 order, the proceeds of which are secured by or payable from rate recovery property and which
167 are non-recourse to the electrical corporation.

168 (15) "Rate recovery charge" means a non-bypassable charge paid by some or all
169 customers of an electrical corporation for the recovery of rate recovery costs and financing
170 costs pursuant to a financing order issued by the commission under Part 3, Financing Orders.

171 (16) "Rate recovery costs" means costs, approved by the commission in accordance
172 with Part 2, Rate Recovery Cost Determination, which costs may be recovered from customers
173 through the issuance of rate recovery bonds.

174 (17) "Rate recovery property" means all rights and interests of an electrical corporation,
175 or successor or assignee of an electrical corporation, under a financing order issued under Part
176 3, Financing Orders, to impose, bill, collect, and receive rate recovery charges in an amount
177 necessary to provide for full payment and recovery of all rate recovery costs identified in a
178 financing order, including all revenues or other proceeds arising from those rights and interests.

179 (18) "Rate recovery revenue" means all revenue, receipts, collections, payments,
180 money, claims, or other proceeds arising from rate recovery property.

181 (19) "Replacement resource" means an incremental electricity supply-side or
182 demand-side resource that, when included in an electrical corporation's generation or
183 transmission portfolio, produces the lowest-risk, least-cost among alternative resources,
184 considering both short-term and long-term costs and assessing the likelihood of changes in
185 future fuel prices and future environmental requirements, among other considerations, and
186 acquired in accordance with Title 54, Chapter 17, Energy Resource Procurement Act.

187 (20) "Retired electric generating facility costs" means costs that the electrical
188 corporation has incurred, or will incur, and that are or will be included in the electrical
189 corporation's rate base with respect to any electric generating facility which has been or will be
190 retired prior to the date when the electrical corporation's rate base for that facility is scheduled
191 to be recovered in full through depreciation or amortization allowances, including reasonable
192 and prudent decommissioning and reclamation costs.

193 (21) (a) "Successor" means, with respect to any legal entity, another legal entity that
194 succeeds by operation of law or by contract to the rights and obligations of that legal entity.

195 (b) "Successor" includes, in connection with an electrical corporation, any legal entity
196 that succeeds to the rights and obligations of an electrical corporation to provide retail
197 electricity distribution or transmission service in the qualifying service area, including
198 succession:

199 (i) by consensual agreement;

200 (ii) by eminent domain;

201 (iii) through a bankruptcy, reorganization, restructuring, or other insolvency
202 proceeding; or

203 (iv) through a merger, acquisition, consolidation, or sale or transfer of assets,
204 regardless of whether the merger, acquisition, consolidation, or sales or transfer of assets
205 occurs due to a restructuring of the electric power industry or otherwise.

206 (22) "System restoration costs" means reasonable and necessary costs the electrical
207 corporation has prudently incurred or will prudently incur in connection with the restoration of
208 service and infrastructure associated with electric power outages affecting customers of the
209 electrical corporation as the result of an earthquake, tornado, ice or snow storm, flood, or other
210 weather-related event or natural disaster that occurred on or after January 1, 2021, including:

211 (a) costs of mobilization, staging, and construction, reconstruction, replacement, or
212 repair of electric generation, transmission, distribution, or general plant facilities;

213 (b) costs of an activity conducted by or on behalf of the electrical corporation in
214 connection with the restoration of service or infrastructure associated with electric power
215 outages; and

216 (c) carrying costs at the electrical corporation's weighted average cost of capital as last
217 approved by the commission in a general rate proceeding from the date on which the system

218 restoration costs were incurred until the date that rate recovery bonds are issued or until system
219 restoration costs are otherwise recovered.

220 Section 3. Section **54-24-103** is enacted to read:

221 **54-24-103. Purpose -- Commission responsibilities.**

222 (1) The Legislature finds that it is in the interest of the state and its citizens to
223 encourage and facilitate the use of rate recovery bonds as a method for enabling electrical
224 corporations to lower the cost of financing the retirement or replacement of electric generating
225 infrastructure or utilities.

226 (2) In accordance with the requirements of this chapter, the commission shall:

227 (a) review an electrical corporation's application for the determination of the amount of
228 rate recovery costs in accordance with the requirements of Part 2, Rate Recovery Cost
229 Determination; and

230 (b) review an electrical corporation's application for the approval of a financing order
231 in accordance with the requirements of Part 3, Financing Orders, that authorizes:

232 (i) the issuance of rate recovery bonds in one or more series;

233 (ii) the imposition, charging, adjustment, and collection of rate recovery charges; and

234 (iii) the creation of rate recovery property, which may include any conditions that are
235 necessary to promote the public interest.

236 Section 4. Section **54-24-104** is enacted to read:

237 **54-24-104. Rulemaking.**

238 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
239 commission shall make rules necessary for the implementation of this chapter.

240 (2) The rules under Subsection (1) shall include:

241 (a) rules made in accordance with Section 53-24-202 establishing the application
242 requirements for a determination of the amount of rate recovery charges that an electrical
243 corporation may recover; and

244 (b) rules made in accordance with Section 53-24-302 establishing the application
245 requirements for a financing order.

246 (3) The commission may take action under this chapter before the commission makes a
247 rule, including:

248 (a) approving an amount of rate recovery costs consistent with the requirements of this

249 chapter;

250 (b) issuing a financing order consistent with the requirements of this chapter; or

251 (c) establishing a methodology for calculating net present value customer savings from
252 the issuance of rate recovery bonds.

253 Section 5. Section **54-24-201** is enacted to read:

254 **Part 2. Rate Recovery Cost Determination**

255 **54-24-201. Definitions.**

256 As used in this part, "complete filing" means an application:

257 (1) filed by an electrical corporation for a determination of the amount of rate recovery
258 costs that may be recovered from customers; and

259 (2) that substantially complies with the minimum filing requirements established by the
260 commission under this part.

261 Section 6. Section **54-24-202** is enacted to read:

262 **54-24-202. Commission approval of rate recovery costs.**

263 (1) Before submitting an application for a financing order issued under Part 3,

264 Financing Orders, an electrical corporation shall request, in accordance with the requirements
265 of this part, a commission determination of just and reasonable rate recovery costs that may be
266 recovered from customers through the issuance of rate recovery bonds pursuant to a financing
267 order.

268 (2) (a) To request a determination described in Subsection (1), the electrical
269 corporation shall file an application with the commission for the determination of the amount
270 of rate recovery costs that may be recovered from customers.

271 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
272 commission shall make rules establishing the minimum requirements to be met for an
273 application for a determination of the amount of rate recovery costs that may be recovered from
274 customers to be considered a complete filing.

275 (3) Rate recovery costs may include:

276 (a) pretax retired electric generating facility costs, provided that if the costs are
277 estimates at the time of filing, the costs:

278 (i) will be subject to reconciliation after actual costs are known; and

279 (ii) may not exceed the maximum approved costs unless the electrical corporation

280 provides additional evidence that the incremental costs are prudent and in the public interest;

281 (b) pretax system restoration costs, provided that if the costs are estimates at the time
282 of filing, the costs:

283 (i) will be subject to a reconciliation process after actual costs are known; and

284 (ii) may not exceed the maximum approved costs unless the electrical corporation
285 provides additional evidence that the incremental costs are prudent and in the public interest;

286 (c) pretax costs the electrical corporation has incurred with respect to the buyout,
287 buydown, restructuring, or renegotiation of power purchase obligations; and

288 (d) any reasonable and necessary administrative and operating costs as required by a
289 financing order.

290 (4) Rate recovery costs may not include any monetary penalty, fine, or forfeiture
291 assessed against an electrical corporation by a government agency or court under a federal or
292 state environmental statute, rule, or regulation.

293 (5) (a) To the extent an electrical corporation receives insurance proceeds,
294 governmental grants, or any other source of funding that compensates the electrical corporation
295 for costs included in rate recovery costs, those amounts shall be used to reduce the electrical
296 corporation's rate recovery costs.

297 (b) The commission shall take the following amounts into account in the electrical
298 corporation's next general rate case, or any subsequent proceeding, other than a proceeding in
299 which the commission adjusts rate recovery charges to reconcile the final actual rate recovery
300 costs and financing costs with the projected rate recovery costs and financing costs approved
301 by the financing order, if:

302 (i) the timing of an electrical corporation's receipt of the amounts described in
303 Subsection (1) prevents their inclusion as a reduction to the amount of rate recovery costs that
304 are financed by rate recovery bonds; or

305 (ii) the commission later determines, as a result of the reconciliation process for system
306 restoration costs, that actual rate recovery costs incurred are less than approved rate recovery
307 costs.

308 (6) To the extent the electrical corporation receives insurance proceeds, governmental
309 grants, or any other source of funding that is used to reduce rate recovery costs, the commission
310 shall impute interest on those amounts at the same cost of capital included in the electrical

311 corporation's system restoration costs until the date that those amounts are used to reduce the
312 amount of rate recovery costs that are financed by rate recovery bonds or otherwise reflected in
313 the rates of the electrical corporation.

314 (7) The commission may make a determination of rate recovery costs in a general rate
315 case or in a separate proceeding.

316 (8) A final order of the commission approving rate recovery costs may be conditioned
317 upon the rate recovery costs being financed by rate recovery bonds pursuant to a financing
318 order issued under Part 3, Financing Orders.

319 Section 7. Section 54-24-203 is enacted to read:

320 **54-24-203. Rate recovery cost order -- Request for review.**

321 (1) An order approving, disapproving, or modifying rate recovery costs is a final order
322 of the commission.

323 (2) A party aggrieved by the issuance of a rate recovery cost order shall comply with
324 Section 54-7-15 before seeking judicial review.

325 (3) In a petition for judicial review of a rate recovery cost order, the court shall proceed
326 to hear and determine the action as expeditiously as practicable and shall give the action
327 precedence over other matters not accorded similar precedence by law.

328 Section 8. Section 54-24-301 is enacted to read:

329 **Part 3. Financing Orders**

330 **54-24-301. Definitions.**

331 As used in this part, "complete filing" means an application:

332 (1) filed by an electrical corporation for a financing order issued under this part; and

333 (2) that substantially complies with minimum filing requirements established by the
334 commission under this part.

335 Section 9. Section 54-24-302 is enacted to read:

336 **54-24-302. Application for a financing order.**

337 (1) After the commission has adopted a final order approving an amount of rate
338 recovery costs pursuant to Part 2, Rate Recovery Cost Determination, for an electrical
339 corporation, the electrical corporation may apply to the commission for a financing order with
340 respect to some or all of the rate recovery costs.

341 (2) The commission may require the electrical corporation to show cause for not

342 seeking a financing order if, on its own motion or pursuant to a request for agency action, the
343 commission determines that financing rate recovery costs through the issuance of rate recovery
344 bonds is likely to result in net present value customer savings compared to traditional electrical
345 corporation financing mechanisms.

346 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
347 commission shall make rules establishing the minimum requirements to be met for an
348 application for a financing order to be considered a complete filing.

349 (4) The rules under Subsection (3) shall require that an application for a financing
350 order include the following information:

351 (a) an estimated schedule for the retirement of any electric generating facility or
352 electric transmission facility included in rate recovery costs;

353 (b) a description of the qualifying service area;

354 (c) a designation of customers in the qualifying service that will be obligated to pay the
355 rate recovery charge and a proposed methodology for allocating the revenue requirement for
356 the rate recovery charge among customer classes;

357 (d) a description of the non-bypassable rate recovery charges required to be paid by
358 designated customers within the electrical corporation's qualifying service area for recovery of
359 rate recovery costs and financing costs;

360 (e) a proposed mechanism for making periodic adjustments in rate recovery charges
361 that are necessary to correct for any over or under collection of rate recovery charges in past
362 periods, or otherwise to guarantee the timely payment of rate recovery bonds and financing
363 costs and other required amounts payable in connection with rate recovery bonds;

364 (f) an estimate of the net present value of electrical corporation customer savings
365 expected to result if the financing order is issued, as determined by a net present value
366 comparison between:

367 (i) the costs to customers that are expected to result from the financing with rate
368 recovery bonds, including financing costs; and

369 (ii) the costs to customers that would result from the application of traditional electrical
370 corporation financing mechanisms for the same purposes;

371 (g) a statement proposing how the electrical corporation will expend amounts the
372 electrical corporation receives as consideration for its transfer of rate recovery property in a

373 manner that demonstrably benefits customer interests as follows:

374 (i) to repurchase or redeem outstanding debt or equity of the electrical corporation;

375 (ii) to pay or reimburse prudently incurred system restoration costs;

376 (iii) to pay or reimburse costs the electrical corporation has prudently incurred in the
377 buyout, buydown, restructuring, or renegotiation of the electrical corporation's power purchase
378 obligations;

379 (iv) to make prudent purchases of power to replace electricity generated by the electric
380 generating facilities that were retired in connection with the issuance of rate recovery bonds, if
381 the commission determines that the purchased power is a replacement resource;

382 (v) to make prudent purchases of electric transmission service to replace transmission
383 capability provided by transmission facilities that were retired in connection with the issuance
384 of rate recovery bonds, if the commission determines that the purchased transmitted power is a
385 replacement resource;

386 (vi) to acquire or construct and own electric generating facilities or electric
387 transmission facilities that are prudent replacement resources;

388 (vii) to acquire or construct and own prudent electricity storage capacity to the extent
389 that such investment is either required by law or rule or is needed to increase the amount of
390 replacement resources;

391 (viii) to prudently help customers invest in energy efficiency, including financing
392 assistance; or

393 (ix) to prudently invest in network modernization to the extent that the modernization
394 is necessary to increase the amount of replacement resources;

395 (h) one or more alternative financing scenarios in addition to the preferred scenario
396 contained in the application; and

397 (i) any additional information that the commission determines is necessary.

398 Section 10. Section **54-24-303** is enacted to read:

399 **54-24-303. Commission due diligence -- Expert consultation.**

400 (1) The commission shall perform comprehensive due diligence in its evaluation of an
401 application for a financing order and shall oversee the process used to structure, market, and
402 price rate recovery bonds.

403 (2) (a) In performing its duties under Subsection (1) and Section 54-24-307, the

404 commission may retain a specialized consultant experienced in securitized electrical
405 corporation ratepayer-backed bond financing, to advise the commission on the proposed
406 issuance of rate recovery bonds.

407 (b) Upon request of the commission, the specialized consultant shall:

408 (i) review and determine the reasonableness of all proposed up front and ongoing
409 financing costs;

410 (ii) ensure that the structuring, marketing, and pricing of rate recovery bonds optimizes
411 net present value customer savings, consistent with market conditions and the terms of the
412 financing order; and

413 (iii) be available to testify under oath before the commission in any proceeding
414 concerning the approval of a financing order for the issuance of rate recovery bonds.

415 (3) The commission, and the specialized consultant if retained in accordance with
416 Subsection (2)(a), shall use all reasonable efforts not to delay the approval of a financing order
417 or the issuance of rate recovery bonds.

418 (4) The commission shall make documentation provided by the specialized consultant
419 available to the electrical corporation, the division, the office, or other interested persons under
420 the terms and conditions determined appropriate by the commission.

421 (5) (a) The commission and the specialized consultant shall execute contracts approved
422 by the commission with terms and conditions approved by the commission.

423 (b) Unless otherwise provided by contract, invoices for the specialized consultant's
424 services shall be sent to the division for review and approval.

425 (c) After approval under Subsection (5)(b), the invoices shall be forwarded to the
426 affected electrical corporation for payment to the specialized consultant.

427 (6) (a) The costs incurred by the electrical corporation for payment to the specialized
428 consultant may be included as financing costs in a financing order.

429 (b) If the costs incurred by the electrical corporation for payment to the specialized
430 consultant are not included as financing costs pursuant to a financing order:

431 (i) the affected electrical corporation may, in a general rate case or other appropriate
432 commission proceeding, include recovery by the affected electrical corporation of any amount
433 paid by the affected electrical corporation for the specialized consultant; and

434 (ii) the commission shall allow recovery by the affected electrical corporation of any

435 amount paid by the affected electrical corporation for the specialized consultant.

436 Section 11. Section **54-24-304** is enacted to read:

437 **54-24-304. Public interest determination.**

438 (1) The commission may issue a financing order if the commission finds:

439 (a) that the financing order is in the public interest, taking into consideration whether
440 the issuance of rate recovery bonds and the imposition and collection of rate recovery charges:

441 (i) are just and reasonable; and

442 (ii) will provide benefits to customers that are greater than the benefits that would be
443 achieved absent issuance of rate recovery bonds;

444 (b) that the proposed structure, marketing, and pricing of the rate recovery bonds will:

445 (i) lower the overall costs to customers or mitigate rate impacts to customers relative to
446 traditional methods of financing; and

447 (ii) achieve the maximum net present value savings, consistent with market conditions
448 at the time of sale and the terms of the financing order; and

449 (c) that the proposed upfront and ongoing financing costs are just and reasonable.

450 (2) The commission may:

451 (a) attach any conditions to the approval of a financing order that the commission
452 deems appropriate to:

453 (i) promote the public interest;

454 (ii) maximize the financial benefits or minimize the financial risks of the transaction to
455 customers and directly impacted Utah workers and communities; and

456 (iii) ensure that the structuring, marketing, and pricing of rate recovery bonds will
457 result in the lowest rate recovery charge consistent with:

458 (A) prevailing market conditions at the time of pricing the rate recovery bonds; and

459 (B) the structure and terms of rate recovery bonds approved pursuant to the financing
460 order;

461 (b) grant relief that is different from that which was requested in the application; and

462 (c) specify details of the process used to structure, market, and price rate recovery
463 bonds, including the selection of the underwriter or underwriters.

464 Section 12. Section **54-24-305** is enacted to read:

465 **54-24-305. Financing order authorizing issuance of rate recovery bonds.**

- 466 (1) In the financing order, the commission shall:
- 467 (a) determine the maximum amount of rate recovery costs that may be financed from
468 proceeds of rate recovery bonds authorized to be issued pursuant to the financing order;
- 469 (b) describe the customer billing mechanism for rate recovery charges and include a
470 finding that the mechanism is:
- 471 (i) consistent with Part 4, Customer Billing and Reporting; and
- 472 (ii) just and reasonable;
- 473 (c) describe the financing costs that may be recovered through proceeds of rate
474 recovery bonds or through rate recovery charges;
- 475 (d) describe the rate recovery property that may be used to pay and secure the payment
476 of the rate recovery bonds and financing costs authorized in the financing order;
- 477 (e) subject to the restriction in Subsection (2), authorize the electrical corporation to
478 finance rate recovery costs through the issuance of one or more series of rate recovery bonds;
- 479 (f) describe the mechanism for making periodic adjustments in the rate recovery
480 charges to correct for any over or under collection of rate recovery charges and to provide for
481 timely payment of scheduled principal of and interest on the rate recovery bonds and the
482 payment and recovery of financing costs;
- 483 (g) include provisions to ensure that the structuring, marketing, and pricing of rate
484 recovery bonds results in the lowest rate recovery charge consistent with:
- 485 (i) prevailing market conditions at the time of pricing the rate recovery bonds; and
- 486 (ii) the structure and terms of rate recovery bonds approved pursuant to the financing
487 order, including any conditions for the approval of a financing order that the commission
488 deems appropriate to maximize the financial benefits or to minimize the financial risks of the
489 transaction to customers and directly impacted Utah workers and communities;
- 490 (h) subject to the requirement in Subsection (3), specify the degree of flexibility
491 afforded to the electrical corporation in establishing the terms and conditions of the rate
492 recovery bonds, including repayment schedules, expected interest rates, and other financing
493 costs;
- 494 (i) specify the timing of actions required by the financing order so that:
- 495 (i) the rate recovery bonds are issued as soon as feasible following the issuance of the
496 financing order, independent of the schedule of closing and de-commissioning of any electric

497 generating facility or electric transmission facility; and

498 (ii) the electrical corporation files to adjust its rates as required in Subsection (1)(f)
499 simultaneously with the inception of the rate recovery charges and independently of the
500 scheduled closing and decommissioning of any electric generating facility or electric
501 transmission facility;

502 (j) specify how amounts received by the electrical corporation in connection with its
503 transfer of rate recovery property shall be prudently used by the electrical corporation,
504 consistent with the potential uses described in Subsection 54-24-302(4)(g);

505 (k) subject to the restriction in Subsection (4), specify a future ratemaking process to
506 reconcile any difference between the projected rate recovery costs and financing costs included
507 in the amount financed by rate recovery bonds and the final actual rate recovery costs and
508 financing costs approved by the financing order, which may affect the electrical corporation's
509 base rates, including any rider adopted under Subsection (6); and

510 (l) include any additional findings or conclusions deemed appropriate by the
511 commission.

512 (2) The commission may not require an electrical corporation to secure a separate
513 financing order for each issuance of rate recovery bonds or for each scheduled phase of the
514 previously approved retirement of electric generating facilities and electric transmission
515 facilities approved in a financing order.

516 (3) The scheduled final maturity of the rate recovery bonds shall be the earlier of:

517 (a) thirty years from the issue date of the rate recovery bonds; or

518 (b) as late as possible, consistent with obtaining AAA ratings on the rate recovery
519 bonds while concurrently ensuring that the structuring, marketing, and pricing of rate recovery
520 bonds will result in the lowest rate recovery charge consistent with:

521 (i) prevailing market conditions at the time of pricing the rate recovery bonds; and

522 (ii) the structure and terms of rate recovery bonds approved pursuant to the financing
523 order.

524 (4) A future ratemaking process to reconcile any difference between the projected rate
525 recovery costs and financing costs included in the amount financed by rate recovery bonds and
526 the final actual rate recovery costs and financing costs approved by the financing order under
527 Subsection (1)(k) may not affect the amount of the rate recovery bonds or the associated rate

528 recovery charges to be paid by customers.

529 (5) A financing order shall permit, and may require, the creation of an electrical
530 corporation's rate recovery property to be conditioned upon, and simultaneous with, the sale or
531 other transfer of rate recovery property to an assignee and the pledge of rate recovery property
532 to secure rate recovery bonds.

533 (6) A financing order shall require the electrical corporation, simultaneously with the
534 imposition of rate recovery charges, to reduce its rates through a reduction in base rates or by a
535 negative rider or surcharge on customer bills in an amount equal to the revenue requirement
536 associated with the electrical corporation's assets being financed by rate recovery bonds.

537 Section 13. Section **54-24-306** is enacted to read:

538 **54-24-306. Financing order is a final order -- Request for review.**

539 (1) A financing order is a final order of the commission.

540 (2) A party aggrieved by the issuance of a financing order shall comply with Section
541 54-7-15 before seeking judicial review.

542 (3) In a petition for judicial review of a final financing order, the court shall:

543 (a) proceed to hear and determine the action as expeditiously as practicable; and

544 (b) give the action precedence over other matters not accorded similar precedence by
545 law.

546 Section 14. Section **54-24-307** is enacted to read:

547 **54-24-307. Duration of effectiveness of financing order.**

548 (1) A financing order shall remain in effect until:

549 (a) the rate recovery bonds authorized by the financing order have been legally
550 defeased or paid in full; and

551 (b) all financing costs relating to the rate recovery bonds have been paid in full.

552 (2) A financing order shall remain in effect and unabated notwithstanding the
553 bankruptcy, reorganization, or insolvency of:

554 (a) the electrical corporation to which the financing order applies; or

555 (b) any affiliate of the electrical corporation described in Subsection (2)(a) or successor
556 or assignee.

557 (3) (a) A financing order issued under this part is irrevocable.

558 (b) The commission may not reduce, impair, postpone, or terminate rate recovery

559 charges approved in a financing order or impair rate recovery property or the collection or
560 recovery of rate recovery revenue if the rate recovery bonds secured by the rate recovery
561 property are outstanding.

562 (4) Notwithstanding Subsection (1), upon application by the electrical corporation or
563 request for agency action, the commission may amend a financing order to provide for the
564 financing, retiring, or refunding of all or a portion of an outstanding series of rate recovery
565 bonds issued pursuant to the original financing order if the commission determines that:

566 (a) the amended financing order meets the same criteria as specified in the original
567 financing order; and

568 (b) the modification provided for in the amended financing order does not impair the
569 covenants and terms of the rate recovery bonds to be refinanced, retired, or refunded.

570 Section 15. Section **54-24-308** is enacted to read:

571 **54-24-308. Post-issuance review.**

572 (1) Within 120 days after the issuance of rate recovery bonds, the applicant electrical
573 corporation shall file with the commission information regarding the actual upfront and
574 ongoing financing costs of the rate recovery bonds.

575 (2) The commission shall review the prudence of the electrical corporation's actions to
576 determine whether the structuring, marketing, and pricing of rate recovery bonds resulted in the
577 lowest rate recovery charge consistent with:

578 (a) prevailing market conditions at the time of pricing the rate recovery bonds; and

579 (b) the structure and terms of rate recovery bonds approved pursuant to the financing
580 order.

581 (3) If the commission determines that the electrical corporation's actions were not
582 prudent, that the structuring, marketing, and pricing of rate recovery bonds did not in fact result
583 in the lowest rate recovery charge consistent with prevailing market conditions at the time of
584 pricing the rate recovery bonds, and consistent with the structure and terms of rate recovery
585 bonds approved pursuant to the financing order, or otherwise were inconsistent with the
586 financing order, the commission may apply any remedies that are available to it, including:

587 (a) imposing financial penalties on the electrical corporation for failure to comply with
588 commission orders;

589 (b) imposing injunctive orders against the electrical corporation; or

590 (c) reducing other electrical corporation rates and charges by reducing the
591 non-securitized revenue requirement of the electrical corporation.

592 Section 16. Section **54-24-309** is enacted to read:

593 **54-24-309. Periodic adjustments.**

594 (1) The commission shall periodically approve adjustments of the rate recovery charges
595 pursuant to the adjustment mechanism approved in the financing order to:

596 (a) correct for any over or under collection; and

597 (b) provide for the timely payment of:

598 (i) scheduled principal of and interest on the rate recovery bonds; and

599 (ii) the payment and recovery of financing costs in accordance with the financing order.

600 (2) At least semi-annually, or more frequently as specified in the financing order, the
601 electrical corporation shall file with the commission:

602 (a) a calculation estimating:

603 (i) whether the existing rate recovery charge is sufficient to provide for timely payment
604 of scheduled principal of and interest on the rate recovery bonds and the payment and recovery
605 of other financing costs in accordance with the financing order; and

606 (ii) if either an over collection or under collection is projected; and

607 (b) a calculation showing the adjustment to the rate recovery charge to correct for any
608 existing over collection or under collection.

609 (3) The adjustment mechanism shall remain in effect until the rate recovery bonds and
610 financing costs have been fully paid and recovered or legally defeased.

611 (4) On the same day the electrical corporation files its calculation of the adjustment to
612 the rate recovery charge with the commission, the electrical corporation shall cause notice of
613 the filing to be given to the parties of record in the case in which the financing order was
614 issued.

615 Section 17. Section **54-24-310** is enacted to read:

616 **54-24-310. Restrictions on commission related to financing order.**

617 (1) Except as otherwise provided in Subsection (2), if the commission issues a
618 financing order to an electrical corporation, the commission may not, in exercising its powers
619 and carrying out its duties:

620 (a) consider the rate recovery bonds issued under the financing order to be debt of the

621 electrical corporation, other than for income tax purposes, unless it is necessary to consider the
622 rate recovery bonds to be such debt to achieve consistency with prevailing utility debt rating
623 methodologies;

624 (b) consider the rate recovery charges paid under the financing order to be revenue of
625 the electrical corporation;

626 (c) consider rate recovery costs or financing costs specified in the financing order to be
627 regulated costs or assets of the electrical corporation; or

628 (d) determine any prudent action taken by the electrical corporation that is consistent
629 with the financing order to be unjust or unreasonable.

630 (2) Nothing in Subsection (1) shall:

631 (a) affect the authority of the commission to apply or modify any billing mechanism
632 designed to recover rate recovery charges;

633 (b) prevent or preclude the commission from investigating the compliance of an
634 electrical corporation with the terms and conditions of a financing order and requiring
635 compliance with the financing order; or

636 (c) prevent or preclude the commission from imposing regulatory sanctions against an
637 electrical corporation for failure to comply with the terms and conditions of a financing order
638 or requirements of this chapter.

639 (3) (a) As provided in Subsection 54-24-202(8) and except as provided in Subsection
640 (3)(b), the commission may condition its approval of the recovery of a portion of rate recovery
641 costs upon the issuance of rate recovery bonds to finance approved rate recovery costs.

642 (b) The commission may not refuse to allow the recovery of any costs associated with
643 the retirement of one or more electric generating facilities or electric transmission facilities by
644 an electrical corporation solely because the electrical corporation has elected to finance those
645 activities through a financing mechanism other than rate recovery bonds.

646 Section 18. Section 54-24-401 is enacted to read:

647 **Part 4. Customer Billing and Reporting**

648 **54-24-401. Cost allocation of rate recovery charges.**

649 An electrical corporation that has obtained a financing order shall allocate the revenue
650 requirement for rate recovery charges among the electrical corporation's customer classes in a
651 manner that is consistent with the cost allocation methodology approved in the most recent

652 general rate case.

653 Section 19. Section **54-24-402** is enacted to read:

654 **54-24-402. Annual report on rate recovery revenues.**

655 (1) An electrical corporation that has obtained a financing order and caused rate
656 recovery bonds to be issued shall demonstrate in an annual filing with the commission that rate
657 recovery revenues have been applied to:

658 (a) the repayment of rate recovery bonds;

659 (b) other financing costs; and

660 (c) any other purposes approved in the financing order.

661 (2) The annual filing described in Subsection (1) shall outline the impact that the
662 issuance or rate recovery bonds has had on customer rates.

663 Section 20. Section **54-24-403** is enacted to read:

664 **54-24-403. Customer bills shall inform customers of rate recovery charges and**
665 **property.**

666 The electric bills of customers of an electrical corporation that has obtained a financing
667 order and caused rate recovery bonds to be issued shall:

668 (1) inform customers that a portion of the charges on the bill represent rate recovery
669 charges approved in a financing order issued to the electrical corporation;

670 (2) inform customers if the rate recovery property has been transferred to an assignee
671 or successor; and

672 (3) include a statement that:

673 (a) the assignee or successor is the owner of the rights to rate recovery charges; and

674 (b) the electrical corporation or other entity is acting as a collection agent or servicer
675 for the assignee or successor.

676 Section 21. Section **54-24-404** is enacted to read:

677 **54-24-404. Benefits of financing order shall accrue to customers paying**
678 **non-bypassable rate recovery charge.**

679 (1) If an electrical corporation has obtained a financing order, the electrical corporation
680 shall remove from rates any costs associated with the rate recovery property that is the subject
681 of a financing order at the same time that the electrical corporation imposes the rate recovery
682 costs as a non-bypassable rate recovery charge on the electric bills of its customers.

683 (2) If the financing order applies to rate recovery costs associated with replaced assets,
684 as defined in Subsection 54-17-902(15), and a participating customer is allowed and elects to
685 cease participating in a community renewable energy program:

686 (a) the customer shall continue to pay the non-bypassable rate recovery charge for rate
687 recovery bonds issued pursuant to a previously adopted financing order; and

688 (b) the electrical corporation may not include any costs associated with the rate
689 recovery property that is the subject of a financing order in the customer's rates.

690 Section 22. Section 54-24-501 is enacted to read:

691 **Part 5. Rate Recovery Property and Bonds**

692 **54-24-501. Rate recovery property an existing present property right.**

693 (1) Rate recovery property that is described in a financing order shall constitute an
694 existing present property right and interest for all purposes even though the imposition and
695 collection of rate recovery charges depends on the electrical corporation to which the financing
696 order is issued performing its servicing functions relating to the collection of rate recovery
697 charges and on future electricity consumption.

698 (2) The property right and interest described in Subsection (1) exists:

699 (a) regardless of whether revenues arising from the rate recovery property have been
700 billed, have accrued, or have been collected; and

701 (b) notwithstanding the fact that the value or amount of the property right and interest
702 is dependent on the future provision of service to customers by the electrical corporation or by
703 a successor or assignee of the electrical corporation.

704 (3) All or any portion of rate recovery property described in a financing order issued to
705 an electrical corporation may be transferred, sold, conveyed, or assigned to a successor or
706 assignee that is wholly-owned, directly or indirectly, by the electrical corporation and is created
707 for the limited purpose of acquiring, owning, or administering rate recovery property and
708 issuing rate recovery bonds as authorized by the financing order.

709 (4) All or any portion of rate recovery property may be pledged to secure:

710 (a) rate recovery bonds issued under a financing order;

711 (b) amounts payable to financing parties and to counterparties under any ancillary
712 agreements; and

713 (c) other financing costs.

714 (5) Each transfer, sale, conveyance, assignment, or pledge by an electrical corporation,
715 or an affiliate of an electrical corporation, is a transaction in the ordinary course of business.

716 (6) (a) If an electrical corporation defaults on any required remittance of rate recovery
717 revenue arising from rate recovery property described in a financing order, a court, upon
718 application by an interested party and without limiting any other remedies available to the
719 applying party, shall order the sequestration and payment of the rate recovery revenues arising
720 from the rate recovery property to the financing parties.

721 (b) A financing order described in Subsection (6)(a) remains in full force and effect
722 notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect
723 to the electrical corporation or its successors or assignees.

724 (7) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in rate
725 recovery property specified in a financing order issued to an electrical corporation, and in the
726 rate recovery revenue arising from that rate recovery property, is not subject to setoff,
727 counterclaim, surcharge, or defense by the electrical corporation or any other person or in
728 connection with the reorganization, bankruptcy, or other insolvency of the electrical
729 corporation or any other entity.

730 (8) A successor to an electrical corporation, whether pursuant to any reorganization,
731 bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition,
732 sale, other business combination, or transfer by operation of law, as a result of electrical
733 corporation restructuring or otherwise, shall:

734 (a) perform and satisfy all obligations of, and have the same duties and rights under a
735 financing order as, the electrical corporation to which the financing order applies; and

736 (b) perform the duties and exercise the rights in the same manner and to the same
737 extent as the electrical corporation, including collecting and paying to any person entitled to
738 receive them, the rate recovery revenues with respect to rate recovery property described in the
739 financing order.

740 Section 23. Section **54-24-502** is enacted to read:

741 **54-24-502. Rate recovery bonds are permitted investments, not public debt.**

742 (1) Banks, trust companies, savings and loan associations, insurance companies,
743 executors, administrators, guardians, trustees, and other fiduciaries may legally invest any
744 money within their control in rate recovery bonds.

745 (2) Political subdivisions may invest public funds in rate recovery bonds.

746 (3) Rate recovery bonds issued under a financing order are not debt of, or a pledge of,
747 the faith and credit or taxing power of the state, any agency of the state, or any county,
748 municipality, or other political subdivision of the state.

749 (4) Holders of rate recovery bonds have no right to have taxes levied by the state or by
750 a county, municipality, or other political subdivision of the state for the payment of the
751 principal or interest on rate recovery bonds.

752 (5) The issuance of rate recovery bonds may not directly, indirectly, or contingently
753 obligate the state, or a political subdivision of the state, to levy any tax or make any
754 appropriation for payment of principal or interest on the rate recovery bonds.

755 Section 24. Section **54-24-503** is enacted to read:

756 **54-24-503. Contract with bondholders.**

757 (1) The state of Utah hereby pledges to and agrees with bondholders that neither the
758 state, nor any of its instrumentalities, departments, or agencies, will:

759 (a) alter the provisions of this chapter which make rate recovery charges imposed by a
760 financing order irrevocable, binding, and non-bypassable;

761 (b) take or permit any action that impairs or would impair the value of rate recovery
762 property or revises the rate recovery costs for which recovery is authorized; or

763 (c) except as authorized under this chapter, reduce, alter, or impair rate recovery
764 charges that are to be imposed, collected, and remitted for the benefit of bondholders and other
765 financing parties until any and all principal, interest, redemption premium, financing costs and
766 other fees, expenses, or charges incurred, and any contracts to be performed in connection with
767 the related rate recovery bonds have been paid and performed in full.

768 (2) This section does not preclude limitation or alteration if full compensation is made
769 by law for the full protection of the rate recovery charges collected pursuant to a financing
770 order of bondholders, of financing parties, and of any assignee or successor financing parties.

771 (3) A person or entity that issues rate recovery bonds may include the pledge specified
772 in this section in the rate recovery bonds and related documentation.

773 Section 25. Section **54-24-504** is enacted to read:

774 **54-24-504. Other financing parties not subject to commission regulation.**

775 An assignee, successor, or financing party that is not regulated by the commission may

776 not become subject to commission regulation solely as a result of engaging in a transaction
777 authorized by or described in this chapter.

778 Section 26. Section **54-24-505** is enacted to read:

779 **54-24-505. Conflicts of law provisions -- Severability.**

780 (1) This chapter shall govern if any provision of this chapter conflicts with any other
781 law, including Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions,
782 regarding the attachment, assignment, perfection, effect of perfection, or priority of any
783 security interest in or transfer of rate recovery property.

784 (2) Effective on the date that rate recovery bonds are first issued, if any provision of
785 this chapter is held to be invalid or is invalidated, the invalidity does not affect any action
786 allowed under this chapter that was lawfully taken by the commission, an electrical
787 corporation, a successor, an assignee, a collection agent, a financing party, a bondholder, or a
788 party to an ancillary agreement before the occurrence, and any such action remains in full force
789 and effect.

790 Section 27. Section **54-24-506** is enacted to read:

791 **54-24-506. Absolute transfer of rate recovery property and perfected sale of rate**
792 **recovery property.**

793 (1) A sale, assignment, or transfer of rate recovery property is an absolute transfer and
794 true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and
795 interest in, to, and under the rate recovery property if the documents governing the transaction
796 expressly state that the transaction is a sale or other absolute transfer.

797 (2) A transfer of an interest in rate recovery property may be created only when all of
798 the following have occurred:

799 (a) the financing order creating and describing the rate recovery property has become
800 effective;

801 (b) the documents evidencing the transfer of the rate recovery property have been
802 executed and delivered to the assignee; and

803 (c) value has been received.

804 (3) Upon the filing of a financing statement with the Division of Corporations and
805 Commercial Code, a transfer of an interest in rate recovery property is perfected against all
806 third persons, including any judicial lien or other lien creditors or any claims of the seller or

807 creditors of the seller, other than creditors holding a prior security interest, ownership interest,
808 or assignment in the rate recovery property previously perfected.

809 (4) The characterization of a sale, assignment, or transfer as an absolute transfer and
810 true sale and the corresponding characterization of the property interest of the assignee shall
811 not be affected or impaired by the existence or occurrence of any of the following:

812 (a) commingling of rate recovery revenue with other money;

813 (b) the retention by the seller of a partial or residual interest, including an equity
814 interest in the rate recovery property, whether direct or indirect, or whether subordinate or
815 otherwise;

816 (c) the right to recover costs associated with taxes, franchise fees, or license fees
817 imposed on the collection of rate recovery revenue;

818 (d) any indemnification rights, obligations, or repurchase rights made or provided by
819 the seller;

820 (e) an obligation of the seller to collect rate recovery revenues on behalf of an assignee;

821 (f) the treatment of the sale, assignment, or transfer for tax, financial reporting, or other
822 purposes;

823 (g) any subsequent financing order amending a financing order; or

824 (h) any application of an adjustment mechanism as authorized by Subsection
825 54-24-304(1)(f).

826 Section 28. Section 54-24-601 is enacted to read:

827 **Part 6. Security Interests in Rate Recovery Property**

828 **54-24-601. Security interest in rate recovery property and perfection of security**
829 **interests.**

830 (1) All of the following apply to any security interest in rate recovery property to secure
831 the repayment of the principal and interest on rate recovery bonds, amounts payable under any
832 ancillary agreement, and other financing costs:

833 (a) the description or indication of rate recovery property in a transfer or security
834 agreement and a financing statement is sufficient only if the description or indication refers to
835 this chapter and the financing order creating the rate recovery property;

836 (b) a security interest in rate recovery property is created, valid, and binding as soon as
837 all of the following events have occurred:

- 838 (i) the financing order that describes the rate recovery property is issued;
839 (ii) a security agreement is executed and delivered; and
840 (iii) value is received for the rate recovery bonds;
841 (c) once a security interest in rate recovery property is created under this section, the
842 security interest attaches without any physical delivery of collateral or any other act;
843 (d) the security interest is perfected against all parties having claims of any kind in tort,
844 contract or otherwise against the person granting the security interest, regardless of whether
845 such parties have notice of the lien, upon the filing of a financing statement with the Division
846 of Corporations and Commercial Code in accordance with Title 70A, Chapter 9a, Uniform
847 Commercial Code - Secured Transactions;
848 (e) the Division of Corporations and Commercial Code shall maintain a financing
849 statement filed under this section in accordance with Title 70A, Chapter 9a, Uniform
850 Commercial Code - Secured Transactions;
851 (f) a perfected security interest in rate recovery property is a continuously perfected
852 security interest and has priority over any other lien, created by operation of law or otherwise,
853 which may subsequently attach to the rate recovery property unless the holder of the security
854 interest has agreed in writing otherwise;
855 (g) the validity or priority of a security interest in rate recovery property shall not be
856 affected by the commingling of rate recovery property or rate recovery revenue with other
857 money;
858 (h) an assignee, bondholder, or financing party shall have a security interest in all rate
859 recovery property or rate recovery revenue that is pledged for the payment of rate recovery
860 bonds, even if the rate recovery property or rate recovery revenue is deposited in a cash or
861 deposit account of the electrical corporation in which the rate recovery revenue is commingled
862 with other money, and any other security interest that applies to the other money does not apply
863 to the rate recovery revenue; and
864 (i) neither a subsequent order of the commission amending a financing order, nor
865 application of an adjustment mechanism, shall affect the validity, perfection, or priority of a
866 security interest in or transfer of rate recovery property.
867 (2) Sections 70A-9a-204 and 70A-9a-205 shall apply to a pledge of rate recovery
868 property.

869 (3) If an event of default occurs under the security agreement covering the rate
870 recovery property, the secured party, subject to the terms of the security agreement, shall:

871 (a) have all rights and remedies of a secured party upon default under Title 70A,
872 Chapter 9a, Uniform Commercial Code - Secured Transactions; and

873 (b) be entitled to foreclose or otherwise enforce its security interest in the rate recovery
874 property, subject to the rights of any third parties holding prior security interests in the rate
875 recovery property perfected in the manner provided in this section.

876 (4) A perfected security interest in rate recovery property is a continuously perfected
877 security interest in all rate recovery revenue, whether or not the rate recovery revenue has
878 accrued.

879 (5) The preceding paragraphs of this section set forth the terms by which a consensual
880 security interest can be created and perfected in rate recovery property.

881 (6) (a) Unless otherwise ordered by the commission with respect to any series of rate
882 recovery bonds on or prior to the issuance of the series, there shall exist a statutory lien as
883 provided in this Subsection (6).

884 (b) (i) Upon the effective date of the financing order, there shall exist a first priority
885 lien on all rate recovery property and rate recovery revenue then existing or thereafter arising:

886 (A) pursuant to the terms of the financing order; and

887 (B) whether or not any rate recovery revenue has accrued.

888 (ii) The lien created in this Subsection (6) arises automatically without any action on
889 the part of the electrical corporation, any affiliate thereof, the financing party, or any other
890 person.

891 (c) The lien described in this Subsection (6) shall secure all obligations, then existing
892 or subsequently arising, to:

893 (i) the holders of the rate recovery bonds issued pursuant to the financing order;

894 (ii) the trustee or representative for the holders described in Subsection (6)(c)(i); and

895 (iii) any other entity specified in the financing order.

896 (d) The persons for whose benefit the lien described in this Subsection (6) is
897 established shall, upon the occurrence of any defaults specified in the financing order:

898 (i) have all rights and remedies of a secured party upon default under Title 70A,
899 Chapter 9a, Uniform Commercial Code - Secured Transactions; and

900 (ii) be entitled to foreclose or otherwise enforce this statutory lien in the rate recovery
901 property.

902 (e) The lien described in this Subsection (6) shall:

903 (i) attach to the rate recovery property regardless of who owns, or is subsequently
904 determined to own, the rate recovery property; and

905 (ii) be valid, perfected, and enforceable against the owner of the rate recovery property
906 and all third parties upon the effectiveness of the financing order without any further public
907 notice or filing.