

Regular Session, 2006

ACT No. 64

HOUSE BILL NO. 887

BY REPRESENTATIVES PINAC, BRUCE, BURRELL, CROWE, DOERGE, RITCHIE,
GARY SMITH, STRAIN, THOMPSON, TRAHAN, WHITE, AND WINSTON
AND SENATOR NEVERS

1 AN ACT

2 To enact R.S. 10:9-109(c)(6) and Part V-B of Chapter 9 of Title 45 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 45:1230 through 1240, relative to electric
4 utilities; to provide for legislative intent and definitions; to provide with respect to
5 issuance of financing orders; to provide for appeals of financing orders; to provide
6 relative to a utility's interest in a financing order; to provide with respect to storm
7 recovery property; to provide for the sale of storm recovery property; to provide for
8 the perfection and true sale status of a sale of storm recovery property; to provide
9 with respect to subsidiaries of electric utilities; to provide for conflicts of laws; to
10 provide for the creation, perfection, and priority of security interests in storm
11 recovery property; to provide a state pledge of non-impairment of storm recovery
12 bonds; to provide that storm recovery bonds are not public debt; to provide an
13 exclusion from secured transactions provisions of the uniform commercial laws; to
14 provide that the jurisdiction of the commission is not impaired; and to provide for
15 related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 10:9-109(c)(6) is hereby enacted to read as follows:

18 §9-109. Scope

19 * * *

20 (c) Extent to which Chapter does not apply. This Chapter does not apply to
21 the extent that:

22 * * *

23 (6) R.S. 45:1230 through 1240, the Louisiana Electric Utility Storm
24 Recovery Securitization Act, expressly governs the creation, perfection, priority, or

1 enforcement of a security interest in storm recovery property as defined therein or
 2 any interest or right in any storm recovery property, but except to the extent contrary
 3 to express provisions in said Act.

4 (A) Part 5 of this Chapter applies with respect to financing statements
 5 pertaining to storm recovery property.

6 (B) This Chapter applies to perfection, the effect of perfection or
 7 nonperfection, and the priority of a security interest held by a secured party having
 8 control of a deposit account or securities account as original collateral.

9 (C) This Chapter applies to the enforcement of security interests in storm
 10 recovery property.

11 Section 2. Part V-B of Chapter 9 of Title 45 of the Louisiana Revised Statutes of
 12 1950, comprised of R.S. 45:1230 through 1240, is hereby enacted to read as follows:

13 PART V-B. LOUISIANA ELECTRIC UTILITY STORM

14 RECOVERY SECURITIZATION ACT

15 §1230. Short title; purpose

16 A. This Part shall be known and may be cited as the "Louisiana Electric
 17 Utility Storm Recovery Securitization Act".

18 B. The purpose of this Part is to enable Louisiana electric utilities, if
 19 authorized by a financing order issued by the commission, to use securitization
 20 financing for storm recovery costs, because this type of debt may lower the financing
 21 costs or mitigate the impact on rates in comparison with conventional utility
 22 financing methods or alternative methods of recovery, thereby benefitting rate
 23 payers. The storm recovery bonds will not be public debt. The proceeds of the
 24 storm recovery bonds shall be used for the purposes of recovering storm recovery
 25 costs, solely as determined by the commission, to encourage and facilitate the
 26 rebuilding of utility infrastructure damaged by storms. Securitization financings for
 27 storm recovery costs are hereby recognized to be a valid public purpose. Federal tax
 28 laws and revenue procedures expressly require that special state legislation be
 29 enacted in order for such transactions to receive certain tax benefits. The legislature
 30 finds a need to promote such securitization financings, if authorized by the

1 commission, by providing clear and exclusive methods to create, transfer, and
2 encumber interests in storm recovery property as defined in this Part. This need can
3 be met by providing in this Part for such methods and by establishing that any
4 conflict between the rules governing sales, assignments, or transfers of, or security
5 interests, privileges, or other encumbrances of any nature upon, incorporeal movable
6 property under other Louisiana laws and the methods provided in this Part, including
7 without limitation with regard to creation, perfection, priority, or enforcement, shall
8 be resolved in favor of the rules and methods established in this Part with regard to
9 storm recovery property.

10 C. The intent of this Part is to provide benefits to Louisiana rate payers by
11 allowing a Louisiana electric utility, if authorized by a financing order, to achieve
12 certain tax and credit benefits of financing storm recovery costs, on a similar basis
13 with utilities in other states. This Part does not in any way limit, impair, or impact
14 the commission's plenary jurisdiction over the rates charged and services rendered
15 by the public utilities in this state. Instead, this Part addresses certain property,
16 security interests, and other matters to ensure that the financial and federal income
17 tax benefits of financing storm recovery costs through securitization are available in
18 Louisiana. The beneficial income tax and credit characteristics that may be achieved
19 include the following:

20 (1) Treating the storm recovery bonds as debt of the electric utility for
21 income tax purposes.

22 (2) Treating the storm recovery charges as gross income to the electric utility
23 recognized under the utility's usual method of accounting for federal and state
24 income taxes, rather than recognizing gross income upon the receipt of the financing
25 order or of cash in exchange for the sale of the storm recovery property or the
26 issuance of the storm recovery bonds.

27 (3) Avoiding the recognition of debt on the electric utility's balance sheet for
28 certain credit and regulatory purposes by reason of the storm recovery bonds.

29 (4) Treating the sale, assignment, or transfer of the storm recovery property
30 by the electric utility as a true sale for state law and bankruptcy purposes.

1 (5) Avoiding any adverse impact of the financing on the electric utility's
 2 credit rating.

3 §1231. Definitions

4 As used in this Part:

5 (1) "Ancillary agreement" means any bond, insurance policy, letter of credit,
 6 reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or
 7 credit support arrangement, or other financial arrangement entered into in connection
 8 with the issuance of storm recovery bonds.

9 (2) "Assignee" means any legal or commercial entity, including but not
 10 limited to a corporation, limited liability company, partnership, limited partnership,
 11 or other legally recognized entity to which an electric utility sells, assigns, or
 12 transfers, other than as security, all or a portion of its interest in or right to storm
 13 recovery property. The term also includes any legal or commercial entity to which
 14 an assignee sells, assigns, or transfers, other than as security, all or a portion of its
 15 interest in or right to storm recovery property.

16 (3) "Commission" means the Public Service Commission or, solely with
 17 respect to an electric utility furnishing electric service within the city of New
 18 Orleans, the council of the city of New Orleans. Each such commission will issue
 19 orders under this Part pertaining to those electric utilities subject to that
 20 commission's powers of regulation and supervision.

21 (4) "Electric utility" or "utility" has the same meaning as that provided in
 22 R.S. 45:121 and in addition includes any person furnishing electric service within the
 23 city of New Orleans.

24 (5) "Financing costs" means:

25 (a) Interest and acquisition, defeasance, or redemption premiums that are
 26 payable on storm recovery bonds;

27 (b) Any payment required under an ancillary agreement and any amount
 28 required to fund or replenish reserve or other accounts established under the terms
 29 of any indenture, ancillary agreement, or other financing documents pertaining to
 30 storm recovery bonds;

1 (c) Any other cost related to issuing, supporting, repaying, and servicing
2 storm recovery bonds, including but not limited to servicing fees, accounting and
3 auditing fees, trustee fees, legal fees, consulting fees, administrative fees, placement
4 and underwriting fees, capitalized interest, rating agency fees, stock exchange listing
5 and compliance fees, and filing fees, including costs related to obtaining the
6 financing order;

7 (d) Any income taxes and license fees imposed on the revenues generated
8 from the collection of storm recovery charges or otherwise resulting from the
9 collection of storm recovery charges, in any such case whether paid, payable, or
10 accrued; or

11 (e) Any state and local taxes, franchise, gross receipts, and other taxes or
12 similar charges including but not limited to regulatory assessment fees, in any such
13 case whether paid, payable, or accrued.

14 (6) "Financing order" means an order of the commission, if granted by the
15 commission in its sole discretion, which allows for:

16 (a) The issuance of storm recovery bonds.

17 (b) The imposition, collection, and periodic adjustments of storm recovery
18 charges.

19 (c) The creation of storm recovery property.

20 (d) The sale, assignment, or transfer of storm recovery property to an
21 assignee.

22 (7) "Financing party" means any holder of storm recovery bonds and any
23 trustee, collateral agent, or other person acting for the benefit of holders of storm
24 recovery bonds.

25 (8) "Financing statement" has the same meaning as that provided in the
26 Uniform Commercial Code—Secured Transactions (Chapter 9 of Title 10 of the
27 Louisiana Revised Statutes of 1950). All financing statements referenced in this Part
28 shall be filed in accordance with Part 5 of Chapter 9 of Title 10 of the Louisiana
29 Revised Statutes of 1950 and shall be filed in this state.

1 (9) "Lien creditor" has the same meaning as that provided in the Uniform
2 Commercial Code—Secured Transactions (Chapter 9 of Title 10 of the Louisiana
3 Revised Statutes of 1950).

4 (10) "Secured party" means a financing party in favor of which an electric
5 utility or its successors or assignees creates a security interest in all or any portion
6 of its interest in or right to storm recovery property. A secured party may be granted
7 a security interest in storm recovery property under this Part and a security interest
8 in other collateral subject to the Uniform Commercial Code – Secured Transactions
9 in one security agreement.

10 (11) "Security interest" means a pledge, hypothecation, or other
11 encumbrance of or other right over any portion of storm recovery property created
12 by contract to secure the payment or performance of an obligation.

13 (12) "Storm" means a named tropical storm or hurricane, ice or snow storm,
14 flood, or other significant weather or natural disaster that occurred during calendar
15 year 2005 or that occurs thereafter.

16 (13) "Storm recovery activity" means any activity or activities by or on
17 behalf of an electric utility in connection with the restoration of service associated
18 with electric power outages affecting customers of an electric utility as the result of
19 a storm or storms, including but not limited to mobilization, staging, and
20 construction, reconstruction, replacement, or repair of electric generation,
21 transmission, or distribution facilities.

22 (14) "Storm recovery bonds" means bonds, debentures, notes, certificates of
23 participation, certificates of ownership, or other evidences of indebtedness or
24 ownership that are issued pursuant to an indenture, contract, or other agreement of
25 an electric utility or an assignee pursuant to a financing order, the proceeds of which
26 are used directly or indirectly to provide, recover, finance, or refinance
27 commission-approved storm recovery costs, financing costs, and costs to replenish
28 or fund a storm recovery reserve to such level as the commission may authorize in
29 a financing order, and which are secured by or payable from storm recovery
30 property. If certificates of participation or ownership are issued, references in this

1 Part to principal, interest, or premium shall be construed to refer to comparable
2 amounts under those certificates. Storm recovery bonds shall be nonrecourse to the
3 credit or any assets of the electric utility other than the storm recovery property as
4 specified in the financing order and any rights under any ancillary agreement. Storm
5 recovery bonds shall be legal investments for all governmental units, financial
6 institutions, insurance companies, fiduciaries, and other persons that require statutory
7 authority regarding legal investment.

8 (15) "Storm recovery charge" means the amounts authorized by the
9 commission to recover, finance, or refinance storm recovery costs, financing costs,
10 and costs to replenish or fund a storm recovery reserve to such level as the
11 commission may authorize in a financing order. If determined appropriate by the
12 commission and provided for in a financing order, such amounts are to be imposed
13 on customer bills and collected by an electric utility or its successors or assignees,
14 or a collection agent, in full through a charge, which may be collected as part of the
15 electric utility's base rates or in any other manner deemed appropriate by the
16 commission, for the time period specified in the financing order, paid by existing and
17 future customers receiving transmission or distribution service, or both, from the
18 electric utility or its successors or assignees under rate schedules or special contracts
19 approved by the commission. The commission may provide for payment of such
20 charges even if the customer elects to purchase electricity from an alternative
21 electricity supplier including as the result of a fundamental change in the manner of
22 regulation of public utilities in this state.

23 (16) "Storm recovery costs" means, if requested by the electric utility, and
24 as may be approved by the commission, costs incurred or to be incurred by an
25 electric utility in undertaking a storm recovery activity. Such costs, as may be
26 approved by the commission, may be net of applicable insurance proceeds, tax
27 benefits, and any other amounts intended to reimburse the electric utility for storm
28 recovery activities such as governmental grants or aid of any kind and, where
29 determined appropriate by the commission, may include adjustments for normal
30 capital replacement and operating costs, or other potential offsetting adjustments.

1 If the commission deems appropriate, storm recovery costs may include the costs to
2 fund and finance any storm recovery reserves and costs of repurchasing equity or
3 retiring any existing indebtedness relating to storm recovery activities.

4 (17) "Storm recovery property" means the contract right constituting
5 incorporeal movable property newly created pursuant to this Part which may consist
6 of any of the following:

7 (a) All rights and interests of an electric utility or successor or assignee of
8 the electric utility under a financing order, including the right to impose, bill, charge,
9 collect, and receive storm recovery charges authorized in the financing order and to
10 obtain periodic adjustments to such charges as may be provided in the financing
11 order.

12 (b) All revenues, collections, claims, rights to payments, payments, money,
13 or proceeds arising from the rights and interests specified in Subparagraph (a) of this
14 Paragraph, regardless of whether such revenues, collections, claims, rights to
15 payment, payments, money, or proceeds are imposed, billed, received, collected, or
16 maintained together with or commingled with other revenues, collections, rights to
17 payment, payments, money, or proceeds.

18 (18) "Storm recovery reserve" means an electric utility's storm reserve or
19 such other similar reserve established pursuant to order or rule of the commission.

20 (19) "Uniform Commercial Code—Secured Transactions" means Chapter
21 9 of Title 10 of the Louisiana Revised Statutes of 1950.

22 §1232. Financing orders

23 A. An electric utility may petition the commission for a financing order.
24 Application by an electric utility for authority for the electric utility or its affiliate or
25 other assignee to issue storm recovery bonds shall be made in such form as the
26 commission prescribes. Every application shall be made under oath and shall be
27 signed and filed on behalf of the electric utility by its president or by a vice
28 president, treasurer, or other executive officer having knowledge of the matters set
29 forth. No electric utility or affiliate or other assignee shall issue any storm recovery
30 bonds until it has been specifically authorized to do so by order of the commission.

1 No electric utility shall, without the consent of the commission granted in a
2 commission order, apply any proceeds of storm recovery bonds to any purpose not
3 specified in the commission's order or supplemental order, or to any purpose in
4 excess of the amount allowed for such purpose in the order or supplemental order,
5 or to any purpose in contravention of the order or supplemental order.

6 B. The commission may grant an application under Subsection A of this
7 Section in whole or in part by a financing order, and with such modifications thereto
8 and upon such terms and conditions as the commission prescribes, and may from
9 time to time, after opportunity for hearing and for good cause shown, make such
10 supplemental orders in the premises as it finds necessary or appropriate, subject, if
11 the commission so provides, to Paragraph (C)(5) of this Section. If the commission
12 issues a financing order approving any issue of storm recovery bonds under this Part,
13 the commission may consider whether the proposed structuring, expected pricing,
14 and financing costs of the storm recovery bonds are reasonably expected to result in
15 lower overall costs or would avoid or mitigate rate impacts to customers as compared
16 with traditional methods of financing or recovering storm recovery costs. The
17 commission may determine what degree of flexibility to afford to the electric utility
18 in establishing the terms and conditions of the storm recovery bonds, including but
19 not limited to repayment schedules, interest rates, and other financing costs. A copy
20 of any financing order made and entered by the commission under this Part duly
21 certified by the secretary or clerk, as applicable, of the commission shall be sufficient
22 evidence for all purposes of whole and complete compliance by the electric utility
23 with all procedural and other matters required precedent to the entry of the order.

24 C. For a financing order issued to an electric utility by the commission to
25 create storm recovery property, the financing order shall:

26 (1) Specify the amount of storm recovery costs and any level of storm
27 recovery reserves, taking into consideration, to the extent the commission deems
28 appropriate, any other methods used to recover these costs and any offsets or credits
29 to those costs, and provide with respect to the amount of financing costs which may

1 be recovered through storm recovery charges and specify the time period over which
2 all such costs may be recovered.

3 (2) Specify and create the storm recovery property of an electric utility or its
4 successors or assignees that shall be used to pay or secure storm recovery bonds and
5 financing costs.

6 (3) Provide that such storm recovery property shall be sold, assigned, or
7 transferred by the electric utility to a subsidiary which is wholly owned, directly or
8 indirectly, by the electric utility and which will be the issuer of the storm recovery
9 bonds.

10 (4) Provide that the storm recovery charges shall be sufficient at all times to
11 pay the principal of and interest on the storm recovery bonds as the same shall
12 become due and payable and all other financing costs and, if determined appropriate
13 by the commission, establish a true-up mechanism requiring that the storm recovery
14 charges be reviewed and adjusted at least annually to correct any overcollection or
15 undercollection during the period since the issuance or preceding adjustment and to
16 ensure the projected recovery of amounts sufficient to provide timely payment of all
17 financing costs.

18 (5) Provide and pledge that after the earlier of the transfer of storm recovery
19 property to an assignee or the issuance of storm recovery bonds authorized thereby,
20 a financing order is irrevocable until the indefeasible payment in full of the storm
21 recovery bonds and the financing costs and, provide that, except as provided in
22 Subsection F of this Section or to implement any true-up mechanism adopted by the
23 commission as described in Paragraph (C)(4) of this Section, the commission may
24 not amend, modify, or terminate the financing order by any subsequent action or
25 reduce, impair, postpone, terminate, or otherwise adjust storm recovery charges
26 approved in the financing order, provided nothing shall preclude limitation or
27 alteration if and when full compensation is made for the full protection of the storm
28 recovery charges collected pursuant to a financing order and the full protection of the
29 holders of storm recovery bonds and any assignee or financing party.

1 (6) Specify how amounts collected from a customer shall be allocated
2 between storm recovery charges and other charges.

3 (7) Provide that a financing order remains in effect until the storm recovery
4 bonds issued pursuant to the order have been indefeasibly paid in full and the
5 financing costs of such bonds have been recovered in full.

6 (8) Provide that a financing order shall remain in effect and unabated
7 notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, or
8 merger or sale, of the applicable electric utility or its successors or assignees.

9 (9) Authorize and require the electric utility, to the extent that any interest
10 in storm recovery property is sold or assigned, to contract with the assignee or any
11 financing party that it will continue to operate its system to provide service to its
12 customers, will collect amounts in respect of the storm recovery charges for the
13 benefit and account of such assignee or financing party, and will account for and
14 remit such amounts to or for the account of such assignee or financing party,
15 including pursuant to a sequestration order authorized by this Part.

16 D. In a financing order issued to an electric utility, the commission may:

17 (1) Prescribe any limitations on potential assignees of storm recovery
18 property.

19 (2) Authorize an assignee organized under the laws of this state which is a
20 subsidiary of an electric utility and which issues storm recovery bonds to provide and
21 establish in its articles of incorporation, partnership agreement, or operating
22 agreement, as applicable, that in order for a person to file a voluntary bankruptcy
23 petition on behalf of that assignee, the prior unanimous consent of the directors,
24 partners, or managers, as applicable, shall be required. If so authorized in a
25 financing order:

26 (a) Any such provision set forth in the articles of incorporation, partnership
27 agreement, or operating agreement of such an assignee shall constitute a legal, valid,
28 and binding agreement of the shareholder(s), partners, or member(s), as applicable,
29 of such assignee and is enforceable against such shareholder(s), partners, or
30 member(s).

1 (b) A person shall have authority under the laws of this state to file a
2 voluntary bankruptcy petition on behalf of such assignee only after compliance with
3 any such provision and prerequisite.

4 (3) Provide that the creation of the electric utility's storm recovery property
5 pursuant to Paragraph (C)(2) of this Section is conditioned upon, and shall be
6 simultaneous with, the sale, assignment, or other transfer of the storm recovery
7 property to an assignee and the security interest created in the storm recovery
8 property to secure storm recovery bonds.

9 (4) Otherwise provide with respect to any matters pertaining to and within
10 the Public Service Commission's constitutional jurisdiction over electric utilities and
11 plenary power to regulate electric utilities or such other jurisdiction as may be
12 conferred on the commission by law, or in the case of the council of the City of New
13 Orleans otherwise provide with respect to any matters pertaining to and within its
14 Home Rule Charter jurisdiction and authority over electric utilities providing service
15 within the city of New Orleans.

16 E. After the issuance of a financing order, and within such time and subject
17 to any other limitations set forth in the financing order, the electric utility retains
18 discretion regarding whether to sell, assign, or otherwise transfer storm recovery
19 property or to cause the storm recovery bonds to be issued, including the right to
20 defer or postpone such sale, assignment, transfer, or issuance, provided that nothing
21 herein shall limit in any manner the commission's authority to review any such
22 decision for rate-making purposes.

23 F. At the request of an electric utility or on its own motion or the motion of
24 any party affected by the financing order, the commission may commence a
25 proceeding and issue a subsequent financing order that provides for the refinancing,
26 retiring, or refunding of storm recovery bonds issued pursuant to the original
27 financing order if the commission finds that the subsequent financing order satisfies
28 all of the criteria specified in Subsection B of this Section or that provides for an
29 accounting, refunding, or crediting to rate payers of the proceeds of any true-up
30 mechanism adopted by the commission consistent with Paragraph (C)(4) of this

1 Section. Effective on retirement of the refunded storm recovery bonds and the
2 issuance of new storm recovery bonds, the commission may adjust the related storm
3 recovery charges accordingly or establish substitute storm recovery charges.

4 G. All financing orders by the commission shall be operative and in full
5 force and effect from the time fixed for them to become effective by the commission.

6 H. An aggrieved party or intervenor may as its sole remedy, within fifteen
7 days after the financing order or a supplemental order made by the commission
8 becomes effective, file in the district court of the domicile of the commission, a
9 petition setting forth the particular cause of objection to the order complained of.
10 When a timely application for a rehearing has been made at the commission, the
11 fifteen-day time for such appeal does not commence until the effective date of the
12 commission order disposing of the rehearing application. Inasmuch as delay in the
13 determination of the appeal of a financing order may delay the issuance of storm
14 recovery bonds, thereby diminishing savings to customers which might be achieved
15 if such bonds were issued as contemplated by a financing order, all such cases shall
16 be given precedence over all other civil cases in the court and shall be heard and
17 determined as speedily as possible. No appeal to the supreme court shall be allowed
18 unless the petition therefor is filed within fifteen days from the date on which the
19 judgment of the district court is entered and only if the party taking the appeal has
20 the record certified to the supreme court and his brief filed therein within twenty
21 days from the date on which the judgment of the district court is entered. Review on
22 appeal from the Public Service Commission otherwise shall be in accordance with
23 R.S. 45:1193 through 1195. However, the immediately preceding two sentences of
24 this Subsection shall have no application to appeals of any order of the council of the
25 City of New Orleans, which shall proceed in the manner provided therefor by
26 applicable law.

27 §1233. Storm recovery property

28 A. All storm recovery property that is specified in a financing order shall
29 constitute an existing, present contract right constituting an individualized, separate
30 incorporeal movable susceptible of ownership, sale, assignment, transfer, and

1 security interest, including without limitation for purposes of contracts concerning
2 the sale of property and security interests in property, notwithstanding that the value
3 of the property and the imposition and collection of storm recovery charges depends
4 on future acts such as the electric utility to which the order is issued performing its
5 servicing functions relating to the collection of storm recovery charges and on future
6 electricity consumption. Such property shall exist whether or not the revenues or
7 proceeds arising from the property have been billed, have accrued, or have been
8 collected and notwithstanding the fact that the value or amount of the property is or
9 may be dependent on the future provision of service to customers by the electric
10 utility or its successors or assignees and the future consumption by customers of
11 electricity.

12 B. Storm recovery property specified in a financing order shall continue to
13 exist until the storm recovery bonds issued pursuant to the financing order are paid
14 in full and all financing costs of the bonds have been recovered in full.

15 C. All or any portion of storm recovery property specified in a financing
16 order issued to an electric utility may be sold, assigned, or transferred to a successor
17 or an assignee, including an affiliate or affiliates of the electric utility created for the
18 limited purpose of acquiring, owning, or administering storm recovery property or
19 issuing storm recovery bonds under the financing order. All or any portion of storm
20 recovery property may be encumbered by a security interest to secure storm recovery
21 bonds issued pursuant to the order and other financing costs. Each such sale,
22 assignment, transfer, or security interest granted by an electric utility or affiliate of
23 an electric utility or assignee is considered to be a transaction in the ordinary course
24 of business.

25 D. The description of storm recovery property being sold, assigned, or
26 transferred to an assignee in any sale agreement, purchase agreement, or other
27 transfer agreement, being encumbered to a secured party in any security agreement,
28 pledge agreement, or other security document, or indicated in any financing
29 statement is only sufficient if such description or indication refers to the specific
30 financing order that created the storm recovery property and states that such

1 agreement or financing statement covers all or part of such storm recovery property
2 described in such financing order. A description of storm recovery property in a
3 financing statement shall be sufficient if it refers to the financing order creating the
4 storm recovery property. This Subsection applies to all purported sales, assignments,
5 or transfers of, and all purported liens or security interests in, storm recovery
6 property, regardless of whether the related sale agreement, purchase agreement, other
7 transfer agreement, security agreement, pledge agreement, or other security
8 document was entered into, or any financing statement was filed, before or after the
9 effective date of this Part.

10 E.(1) Storm recovery property shall be an individualized, separate
11 incorporeal movable susceptible of ownership, sale, assignment, transfer, and
12 security interest encumbrance notwithstanding that:

13 (a) The storm recovery charges may be authorized by the commission and
14 included as part of the electric utility's base rate and are not shown as a separate line
15 item on individual electric bills.

16 (b) Notice is not given to customers that the storm recovery property has
17 been transferred to an assignee and that such assignee is the owner of the rights to
18 the storm recovery charges.

19 (c) Notice is not given to customers that the electric utility or another entity,
20 if applicable, is acting as a collection agent or servicer or in a similar capacity for an
21 assignee.

22 (2) A description of storm recovery property, and a sale, assignment, or
23 transfer thereof or grant of security interest therein, shall not be denied legal effect
24 or enforceability because the foregoing factors apply in whole or in part to such
25 storm recovery property.

26 F. If an electric utility defaults on any required payment of charges arising
27 from storm recovery property specified in a financing order, the court specified in
28 R.S. 45:1235(I), upon application by an interested party, and without limiting any
29 other remedies available to the applying party, shall order the sequestration and
30 payment of the revenues arising from the storm recovery property to the financing

1 parties or their representatives. Any such order shall remain in full force and effect
2 notwithstanding any reorganization, bankruptcy, or other insolvency proceedings
3 with respect to the electric utility or its successors or assignees.

4 G. To the extent provided in a financing order, the interest of an assignee or
5 secured party in storm recovery property specified in a financing order is not subject
6 to setoff, counterclaim, surcharge, or defense by the electric utility or any other
7 person or in connection with the reorganization, bankruptcy, or other insolvency of
8 the electric utility or any other entity.

9 H. To the extent provided in a financing order, any successor to an electric
10 utility, whether pursuant to any reorganization, bankruptcy, or other insolvency
11 proceeding or whether pursuant to any merger or acquisition, sale, or other business
12 combination, or transfer by operation of law, as a result of electric utility
13 restructuring or otherwise, shall perform and satisfy all obligations of, and have the
14 same rights under a financing order as the electric utility under the financing order
15 in the same manner and to the same extent as the electric utility, including collecting
16 and paying to the person entitled to receive them, the revenues, collections,
17 payments, or proceeds of the storm recovery property. Nothing in this Section is
18 intended to limit or impair any authority of the commission concerning the transfer
19 or succession of interests of electric utilities.

20 §1234. Sale

21 The sale, assignment, or transfer of storm recovery property is governed by
22 this Section. All of the following apply to a sale, assignment, or transfer under this
23 Section:

24 (1) The sale, assignment, or other transfer of storm recovery property by an
25 electric utility to an assignee that the parties have in the governing contract expressly
26 stated to be a sale or other absolute transfer is an absolute transfer and true sale of,
27 and not a security interest in, the transferor's right, title, and interest in, to, and under
28 the storm recovery property, other than for federal and state income tax purposes.
29 For all purposes other than federal and state income tax and state franchise tax
30 purposes, the parties' characterization of a transaction as a sale of an interest in storm

1 recovery property shall be conclusive that the transaction is a true sale and that
2 ownership has passed to the party characterized as the purchaser, regardless of
3 whether the purchaser has possession of any documents evidencing or pertaining to
4 the interest. After such a transaction, the storm recovery property is not subject to
5 any claims of the transferor or the transferor's creditors, other than creditors holding
6 a prior security interest in the storm recovery property perfected under R.S. 45:1235.

7 (2) The characterization of the sale, assignment, or other transfer as a true
8 sale or other absolute transfer under Paragraph (1) of this Section and the
9 corresponding characterization of the assignee's property interest shall be
10 determinative and conclusive irrespective of, and is not affected or impaired by, the
11 existence of any or all of the following circumstances:

12 (a) Commingling of amounts arising with respect to the storm recovery
13 property with other amounts.

14 (b) The retention by the transferor of a partial or residual interest, including
15 an equity interest or entitlement to any surplus, in the storm recovery property,
16 whether direct or indirect, or whether subordinate or otherwise.

17 (c) Any recourse that the assignee may have against the transferor, except
18 that any such recourse shall not be created, contingent upon, or otherwise occurring
19 or resulting from the inability or failure of one or more of the transferor's customers
20 to timely pay all or a portion of the storm recovery charge.

21 (d) Any indemnifications, obligations, or repurchase rights made or provided
22 by the transferor, except that such indemnity or repurchase rights shall not be based
23 solely upon the inability or failure of a transferor's customers to timely pay all or a
24 portion of the storm recovery charge.

25 (e) The transferor acting as the collector of the storm recovery charges or the
26 existence of any contract described in R.S. 45:1232(C)(9).

27 (f) The contrary or other treatment of the sale, assignment, or other transfer
28 for tax, financial reporting, or other purposes.

1 (g) The granting or providing to holders of the storm recovery bonds of a
2 preferred right to the storm recovery property or credit enhancement by the electric
3 utility or its affiliates with respect to the storm recovery bonds.

4 (h) The status of the assignee as a direct or indirect wholly owned subsidiary
5 or other affiliate of the electric utility. The separate juridical personality of any
6 assignee of storm recovery property which is a subsidiary or affiliate of the electric
7 utility shall not be disregarded due to the fact that the assignee and the electric utility
8 share any one or more incidents of control, including common managers, officers,
9 directors, members, accounting or administrative systems, consolidated tax returns,
10 or office space, that the assignee may be a disregarded entity for tax purposes, that
11 the utility caused the formation of the assignee, that a contract by the utility and the
12 assignee described in R.S. 45:1232(C)(9) exists, that the assignee has no other
13 business other than pertaining to the storm recovery property, that the capitalization
14 of the assignee is limited to amounts required for compliance with certain applicable
15 federal income tax laws and revenue procedures, or that other factors used in
16 applying a single business enterprise test to juridical persons are present.

17 (i) The matters described in R.S. 45:1233(E).

18 (j) Any other term of the contract under Paragraph (1) of this Section.

19 (3) Any right that an electric utility has in the storm recovery property prior
20 to its sale, assignment, or transfer is incorporeal movable property in the form of a
21 vested contract right notwithstanding any contrary treatment thereof for accounting
22 or tax purposes. The ownership of an interest in storm recovery property is
23 voluntarily transferred by a contract between the owner and the assignee that
24 purports to transfer the ownership of that interest. Unless otherwise provided, the
25 transfer of ownership takes place as between the parties as soon as there is written
26 agreement on the interest, the purchase price is fixed, and the financing order has
27 been issued. Such transfer shall be perfected and take effect against all third parties
28 including without limitation subsequent lien creditors when the transfer has become
29 effective between the parties and when a financing statement giving notice of the
30 sale, assignment, or transfer is filed in accordance with Paragraph (4) of this Section.

1 Delivery of such an interest in storm recovery property shall take place by operation
2 of law upon the filing of the financing statement.

3 (4) Financing statements required to be filed under this Section shall be filed,
4 indexed, maintained, and continued in the same manner and in the same system of
5 records maintained for the filing of financing statements under the Uniform
6 Commercial Code—Secured Transactions. The filing of such a financing statement
7 shall be the only method of perfecting a sale, assignment, or transfer of storm
8 recovery property. The sale, assignment, or transfer of an interest in storm recovery
9 property perfected by filing a financing statement is effective against the customers
10 owing payment of the storm recovery charges, creditors of the transferor, subsequent
11 transferees, and all other third persons notwithstanding the absence of actual
12 knowledge of or notice to the customers of the sale, assignment, or transfer.

13 (5) The priority of the conflicting ownership interests of assignees in the
14 same interest or rights in any storm recovery property is determined as follows:

15 (a) Conflicting perfected interests or rights of assignees rank according to
16 priority in time of perfection.

17 (b) A perfected interest or right of an assignee has priority over a conflicting
18 unperfected interest or right of an assignee.

19 (c) A perfected interest or right of an assignee has priority over a person who
20 becomes a lien creditor after the perfection of such assignee's interest or right.

21 (6) The priority of a sale, assignment, or transfer perfected under this Section
22 is not impaired by any later modification of the financing order or storm recovery
23 property or by the commingling of funds arising from storm recovery property with
24 other funds. Any other security interest that may apply to those funds, other than a
25 security interest perfected under R.S. 45:1235, shall be terminated when those funds
26 are transferred to a segregated account for the assignee or a financing party. If storm
27 recovery property has been transferred to an assignee or financing party, any
28 proceeds of that property shall be held for and delivered to the assignee or financing
29 party by any collector under any contract described in R.S. 45:1232(C)(9) as a
30 mandatary and fiduciary.

1 §1235. Security interests

2 A. The Uniform Commercial Code—Secured Transactions does not apply
 3 to storm recovery property or any right, title, or interest of a utility or assignee
 4 therein, whether before or after the issuance of the financing order, except to the
 5 extent specified in R.S. 45:1236(A). In addition, such right, title, or interest
 6 pertaining to a financing order including but not limited to the associated storm
 7 recovery property including any revenues, collections, claims, rights to payment,
 8 payments, money, or proceeds of or arising from storm recovery charges pursuant
 9 to such order, shall not be deemed proceeds of any right or interest other than of the
 10 financing order and the storm recovery property arising from the financing order.
 11 All revenues and collections resulting from storm recovery property shall constitute
 12 proceeds only of the storm recovery property arising from the financing order.

13 B. Except to the extent provided in this Part with respect to filings of
 14 financing statements or control of deposit accounts or investment property as original
 15 collateral, the creation, attachment, granting, perfection, and priority of security
 16 interests in storm recovery property to secure storm recovery bonds is governed
 17 solely by this Part and not by the Uniform Commercial Code—Secured Transactions.

18 C.(1) A security interest in storm recovery property is valid and enforceable
 19 against the electric utility and its successor or an assignee and third parties and
 20 attaches to storm recovery property only after all of the following conditions are met:

- 21 (a) The issuance of a financing order.
- 22 (b) The execution and delivery of a security agreement with a financing
 23 party in connection with the issuance of storm recovery bonds.
- 24 (c) The receipt of value for the storm recovery bonds.

25 (2) A security interest attaches to storm recovery property when all of the
 26 foregoing conditions have been met, unless the security agreement expressly
 27 postpones the time of attachment.

28 D. A security interest in storm recovery property is perfected only if it has
 29 attached and a financing statement indicating the storm recovery property collateral
 30 covered thereby has been filed. A financing statement must be filed to perfect all

1 security interests and liens in storm recovery property. A security interest in storm
2 recovery property is perfected when it has attached and when the applicable
3 financing statement has been filed. The interest of a secured party is not perfected
4 unless a financing statement sufficient under this Part and otherwise in accordance
5 with the Uniform Commercial Code – Secured Transactions is filed, and after
6 perfection the secured party's interest continues in the storm recovery property and
7 all proceeds of such storm recovery property, whether or not billed, accrued, or
8 collected, and whether or not deposited into a deposit account and however
9 evidenced. A security interest in proceeds of storm recovery property is a perfected
10 security interest if the security interest in the storm recovery property was perfected
11 under this Part. Financing statements required to be filed pursuant to this Section
12 shall be filed, indexed, maintained, and continued in the same manner and in the
13 same system of records maintained for the filing of financing statements under the
14 Uniform Commercial Code – Secured Transactions. The filing of such a financing
15 statement shall be the only method of perfecting a lien or security interest on storm
16 recovery property. The financing statement shall be filed as if the debtor named
17 therein were located in this state.

18 E. The priority of the conflicting security interests of secured parties in the
19 same interest or rights in any storm recovery property is determined as follows:

20 (1) Conflicting perfected security interests of secured parties rank according
21 to priority in time of perfection.

22 (2) A perfected security interest of a secured party has priority over a
23 conflicting unperfected security interest of a secured party.

24 (3) A perfected security interest of a secured party has priority over a person
25 who becomes a lien creditor after the perfection of such secured party's security
26 interest.

27 F. A perfected security interest in storm recovery property and all proceeds
28 of such storm recovery property, whether or not billed, accrued, or collected, and
29 whether or not deposited into a deposit account and however evidenced, shall have
30 priority over a conflicting lien or privilege of any nature in the same collateral

1 property, except a security interest is subordinate to the rights of a person that
2 becomes a lien creditor before the perfection of such security interest. A security
3 interest in storm recovery property which qualifies for priority over a conflicting
4 security interest, lien, or privilege also has priority over the conflicting security
5 interest, lien, or privilege in proceeds of the storm recovery property. The relative
6 priority of a perfected security interest of a secured party is not adversely affected
7 by any lien, privilege, or security interest in a deposit account of the electric utility
8 that is a collector as described in R.S. 45:1232(C)(9) and into which the revenues are
9 deposited. The priority of a security interest perfected under this Section is not
10 defeated or impaired by any later modification of the financing order or storm
11 recovery property or by the commingling of funds arising from storm recovery
12 property with other funds. Any other security interest that may apply to those funds
13 shall be terminated as to all funds transferred to a segregated account for the benefit
14 of an assignee or a financing party or to an assignee or financing party directly. The
15 perfection by control, the effect of perfection by control, and the priority of a
16 security interest granted by the issuer of and securing storm recovery bonds held by
17 a secured party having control of a segregated deposit account or securities account
18 as original collateral into which revenues, collections, or proceeds of storm recovery
19 property are deposited or credited shall be governed by the Uniform Commercial
20 Code—Secured Transactions including the choice of law rules in Part 3 thereof.

21 G. If a default occurs under the terms of the storm recovery bonds, the
22 secured party may foreclose on or otherwise enforce the security interest in any
23 storm recovery property as if it was a secured party under the Uniform Commercial
24 Code—Secured Transactions. A secured party holding a security interest in storm
25 recovery property shall be entitled to exercise all of the same rights and remedies as
26 are available to a secured party under the Uniform Commercial Code—Secured
27 Transactions, to the same extent as if those rights and remedies were set forth in this
28 Part. A court may order that amounts arising from storm recovery property be
29 transferred to a separate account of the secured party for the financing parties'
30 benefit, to which their security interest shall apply. On application by or on behalf

1 of a secured party to the court of this state specified in Subsection I of this Section,
 2 such court shall order the sequestration and payment to the financing parties of
 3 revenues arising from the storm recovery property.

4 H. A security interest created under this Part may provide for a security
 5 interest in after-acquired collateral. A security interest granted under this Part is not
 6 invalid or fraudulent against creditors solely because the grantor or the electric utility
 7 as collector or servicer has the right or ability to commingle the collateral or
 8 proceeds, or collect, compromise, enforce, and otherwise deal with collateral.

9 I. Any action arising under the provisions of this Part to enforce a security
 10 interest in any storm recovery property, or which otherwise asserts an interest in, or
 11 a right in, to or against any storm recovery property, wherever located or deemed
 12 located, or any security interest governed by this Part, shall be brought in the district
 13 court of the domicile of the commission. Such suits shall be governed by the
 14 provisions of the Code of Civil Procedure and other law applicable to executory
 15 proceedings, including provisional remedies, but only to the extent such laws are
 16 consistent with the language and purposes of this Part. Nothing in this Subsection
 17 shall be construed to deny to the Public Service Commission any jurisdiction
 18 conferred upon it by law or the Constitution of Louisiana or to the council of the City
 19 of New Orleans any jurisdiction conferred upon it by its Home Rule Charter or the
 20 Constitution of Louisiana.

21 §1236. Choice of law; conflicts

22 A. The law governing the validity, enforceability, attachment, perfection,
 23 priority, exercise of remedies, and venue with respect to the sale, assignment, or
 24 transfer of an interest or right or the creation of a security interest in any storm
 25 recovery property shall be exclusively the laws of this state, without applying this
 26 state's law on conflicts of laws and notwithstanding any contrary contractual
 27 provision, except as provided in the last sentence of R.S. 45:1235(F). The validity,
 28 enforceability, attachment, perfection, priority, and exercise of remedies with respect
 29 to the sale, assignment, or transfer of an interest or right or the creation of a security
 30 interest in any storm recovery property shall be governed by this Part, and solely to

1 the extent not addressed by this Part, by the Uniform Commercial Code-Secured
 2 Transactions and other laws of this state. Without limiting the preceding sentence,
 3 this Part provides that the Uniform Commercial Code-Secured Transactions applies
 4 to the filings of financing statements referenced in this Part, to perfection, the effect
 5 of perfection or nonperfection, and the priority of security interests held by a secured
 6 party having control of deposit accounts or securities accounts as original collateral
 7 securing storm recovery bonds, notwithstanding that proceeds of storm recovery
 8 charges are deposited therein, and to the enforcement of security interests in storm
 9 recovery property, in each case subject to Subsection B of this Section.

10 B. In the event of conflict between this Part and any other law regarding the
 11 attachment, creation, perfection, the effect of perfection, or priority of, and sale,
 12 assignment, or transfer of, or security interest in, storm recovery property, or the
 13 exercise of remedies with respect thereto, this Part shall govern to the extent of the
 14 conflict.

15 C. This Section shall not be interpreted to conflict with or modify R.S.
 16 45:1235(B).

17 §1237. Storm recovery bonds not public debt

18 Storm recovery bonds are not a debt or a general obligation of the state or any
 19 of its political subdivisions, agencies, or instrumentalities and are not a charge on
 20 their full faith and credit. An issue of storm recovery bonds does not, directly or
 21 indirectly or contingently, obligate the state or any agency, political subdivision, or
 22 instrumentality of the state to levy any tax or make any appropriation for payment
 23 of the bonds, other than for paying storm recovery charges in their capacity as
 24 consumers of electricity. All storm recovery bonds authorized by a financing order
 25 by the Public Service Commission must contain on the face thereof a statement to
 26 the following effect: "Neither the full faith and credit nor the taxing power of the
 27 State of Louisiana is pledged to the payment of the principal of, or interest on, this
 28 bond." All storm recovery bonds authorized by a financing order by the council of
 29 the City of New Orleans must contain on the face thereof a statement to the
 30 following effect: "Neither the full faith and credit nor the taxing power of the State

1 of Louisiana or the City of New Orleans is pledged to the payment of the principal
 2 of, or interest on, this bond."

3 §1238. State pledge

4 A. For purposes of this Section, the term "bondholder" means a person who
 5 holds a storm recovery bond, including in book entry form.

6 B. The state pledges to and agrees with bondholders, the owners of the storm
 7 recovery property, and other financing parties that the state will not:

8 (1) Alter the provisions of this Part which authorize the commission to create
 9 a contract right by the issuance of a financing order, to create storm recovery
 10 property, and to make the storm recovery charges imposed by a financing order
 11 irrevocable, binding, and nonbypassable charges;

12 (2) Take or permit any action that impairs or would impair the value of storm
 13 recovery property; or

14 (3) Except as allowed under this Section and except for adjustments under
 15 any true-up mechanism established by the commission, reduce, alter, or impair storm
 16 recovery charges that are to be imposed, collected, and remitted for the benefit of the
 17 bondholders and other financing parties until any and all principal, interest,
 18 premium, financing costs and other fees, expenses, or charges incurred, and any
 19 contracts to be performed, in connection with the related storm recovery bonds have
 20 been paid and performed in full. Nothing in this Paragraph shall preclude limitation
 21 or alteration if and when full compensation is made by law for the full protection of
 22 the storm recovery charges collected pursuant to a financing order and full protection
 23 of the holders of storm recovery bonds and any assignee or financing party.

24 C. Any person or entity that issues storm recovery bonds may include the
 25 pledge specified in Subsection B of this Section and in R.S. 45:1232(C)(5) in the
 26 bonds and related documentation.

27 §1239. Not an electric utility

28 An assignee or financing party shall not be considered an electric utility or
 29 person providing electric service by virtue of engaging in the transactions described
 30 in this Part.

1 §1240. No impairment of commission jurisdiction

2 Nothing in this Part is intended to be nor shall be construed to constitute any
3 limitation, derogation, or diminution of the jurisdiction or authority of the
4 commission provided by law, including that provided in or exercised by the Public
5 Service Commission pursuant to the Constitution of Louisiana or the council of the
6 City of New Orleans pursuant to its Home Rule Charter.

7 Section 3. This Act shall become effective upon signature by the governor or, if not
8 signed by the governor, upon expiration of the time for bills to become law without signature
9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
11 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____