

STATE OF NEW YORK

9339

IN SENATE

May 13, 2024

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to enacting the "New York utility corporation securitization act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York utility corporation securitization act".

3 § 2. The public service law is amended by adding a new article 12 to
4 read as follows:

ARTICLE 12

NEW YORK UTILITY CORPORATION SECURITIZATION ACT

Section 300. Short title.

8 301. Definitions.

9 302. Financing orders.

10 303. Recovery property.

11 304. Sale, assignment, or transfer of recovery property.

12 305. Security interests.

13 306. Choice of law; conflicts.

14 307. Recovery bonds not public debt.

15 308. State pledge.

16 309. Assignee not a utility corporation.

17 310. Effect of invalidity.

18 311. Effect of a financing order.

19 § 300. Short title. This article shall be known and may be cited as
20 the "New York utility corporation securitization act".

21 § 301. Definitions. As used in this article, the following terms shall
22 have the following meanings:

23 1. "Ancillary agreement" means any bond, insurance policy, letter of
24 credit, reserve account, surety bond, swap arrangement, hedging arrange-
25 ment, liquidity or credit support arrangement or other similar agreement
26 or arrangement entered into in connection with the issuance of recovery
27 bonds under this article.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 2. "Arrearage costs" means, if requested by a utility corporation and
2 as approved by the commission, an amount equal to the verified arrearag-
3 es, including residential and small business bad debt expense, that
4 exceed sixty days past due.

5 3. "Assignee" means any individual, corporation, limited liability
6 company, partnership or limited partnership, trust or other legally
7 recognized entity to which an interest in recovery property is created,
8 recognized, assigned, sold or transferred, other than as security,
9 including any assignee of such property.

10 4. "Consumer" means any individual, governmental body, trust, business
11 entity, nonprofit organization or other legally recognized entity that
12 takes:

13 (a) electric delivery service within the service area by means of
14 electric transmission or distribution facilities, whether those electric
15 transmission or distribution facilities are owned by a utility corpo-
16 ration or other entity;

17 (b) gas delivery service within the service area by means of distrib-
18 ution facilities owned by a gas corporation or other entity; or

19 (c) both electric delivery service and gas delivery service, as
20 described in paragraphs (a) and (b) of this subdivision.

21 5. "Financing costs" means:

22 (a) interest and acquisition, defeasance, or redemption premiums that
23 are payable on recovery bonds;

24 (b) any payment required under an ancillary agreement and any amount
25 required to fund or replenish reserve or other accounts established
26 under the terms of any indenture, ancillary agreement, or other financ-
27 ing documents pertaining to recovery bonds;

28 (c) any other cost related to issuing, supporting, repaying, and
29 servicing recovery bonds, including but not limited to servicing fees,
30 accounting and auditing fees, trustee fees, legal fees, consulting fees,
31 administrative fees, placement and underwriting fees, capitalized inter-
32 est, rating agency fees, stock exchange listing and compliance fees, and
33 filing fees, including costs related to obtaining a financing order; or

34 (d) any federal, state or local taxes, payments in lieu of taxes,
35 franchise fees or license fees imposed on recovery charge revenues.

36 6. "Financing order" means an order of the commission which author-
37 izes:

38 (a) the issuance of recovery bonds;

39 (b) the imposition, collection, and periodic adjustments of recovery
40 charges;

41 (c) the creation or recognition of recovery property; and/or

42 (d) the sale, assignment, or transfer of recovery property to an
43 assignee.

44 7. "Financing party" means any holder of recovery bonds and any trus-
45 tee, collateral agent, or other person acting for the benefit of holders
46 of recovery bonds.

47 8. "Financing statement" shall have the same meaning as that provided
48 in paragraph thirty-nine of subsection (a) of section 9-102 the uniform
49 commercial code. All financing statements under this article shall be
50 filed in accordance with section 9-501 of the uniform commercial code.

51 9. "Lien creditor" shall have the same meaning as that provided in
52 paragraph fifty-two of subsection (a) of section 9-102 of the uniform
53 commercial code.

54 10. "Recovery bonds" means bonds, debentures, notes, certificates of
55 participation, certificates of ownership, or other evidences of indebt-
56 edness or ownership that are issued pursuant to an indenture, contract,

1 or other agreement of a utility corporation or its assignee pursuant to
2 a financing order, the proceeds of which are used directly or indirectly
3 to provide, recover, finance, or refinance commission-approved recovery
4 costs, financing costs, and costs to replenish or fund a storm recovery
5 reserve to such level as the commission may authorize in a financing
6 order, and which are secured by or payable from recovery property. If
7 certificates of participation or ownership are issued, references in
8 this article to principal, interest, or premium shall be construed to
9 refer to comparable amounts under such certificates. Recovery bonds
10 shall be nonrecourse to the credit or any assets of the utility corpo-
11 ration other than the recovery property as specified in the financing
12 order and any rights under any ancillary agreement. Recovery bonds shall
13 be legal investments for all governmental units, financial institutions,
14 insurance companies, fiduciaries, and other persons that require statu-
15 tory authority regarding legal investment.

16 11. "Recovery charge" means the amounts authorized by the commission
17 to recover, finance, or refinance recovery costs and financing costs. If
18 provided for in a financing order, such amounts shall be imposed on
19 consumer bills and collected by a utility corporation or its successors
20 or assignees or a collection agent, in full, through a charge paid by
21 existing and future consumers receiving transmission or distribution
22 service, or both, from the utility corporation or its successors or
23 assignees under rate schedules or special contracts approved by the
24 commission. The recovery charge shall be non-bypassable and imposed on
25 all consumers in the service area and collected by the utility corpo-
26 ration or its successor, agent, subcontractor, assignee, or collection
27 agent or any other entity designated under the financing order.

28 12. "Recovery costs" means arrearage costs and/or storm recovery costs
29 identified for recovery in a financing order.

30 13. "Recovery property" (a) means the property rights and interests
31 created pursuant to this article, including but not limited to any and
32 all right, title, and interest:

33 (i) in and to recovery charges established pursuant to a financing
34 order, as adjusted from time to time in accordance with such financing
35 order;

36 (ii) in and to all revenues, collections, claims, payments, money, or
37 proceeds of or arising from the recovery charges or constituting recov-
38 ery charges that are the subject of a financing order, regardless of
39 whether such revenues, collections, claims, payments, money, or proceeds
40 are imposed, billed, received, collected, or maintained together with or
41 commingled with other revenues, collections, claims, payments, money, or
42 proceeds; and

43 (iii) in and to all rights to obtain periodic adjustments to the
44 recovery charges pursuant to the terms of the financing order; and

45 (b) shall constitute a vested, presently existing property right.

46 14. "Secured party" means a financing party in favor of which a utili-
47 ty corporation or its successors or assignees creates a security inter-
48 est in all or any portion of its interest in or right to recovery prop-
49 erty. A secured party may be granted a security interest in recovery
50 property under this article and a security interest in other collateral
51 subject to the uniform commercial code in a single security agreement.

52 15. "Security interest" means a pledge, hypothecation, or other encum-
53 brance of or other right over any portion of recovery property created
54 by contract to secure the payment or performance of an obligation.

1 16. "Service area" means the geographical area within which a utility
2 corporation provides electric or gas distribution services as of the
3 date of a financing order.

4 17. "Service interruption" means the loss of service for five minutes
5 or more, for one or more consumers, which is the result of one or more
6 component failures.

7 18. "Storm" means a period of adverse weather during which service
8 interruptions affect at least ten percent of the consumers in an operat-
9 ing area and/or result in consumers being without electric service for
10 durations of at least twenty-four hours.

11 19. "Storm recovery activity" means any activity or activities by or
12 on behalf of a utility corporation in connection with the restoration of
13 service and infrastructure associated with electric power outages
14 affecting consumers of a utility corporation as the result of a storm or
15 storms, including but not limited to mobilization, staging, and
16 construction, reconstruction, replacement, or repair of electric gener-
17 ation, transmission, or distribution facilities.

18 20. "Storm recovery costs" means, if requested by a utility corpo-
19 ration and approved by the commission, costs incurred or to be incurred
20 by a utility corporation in undertaking a storm recovery activity. Such
21 costs shall include the utility corporation's cost of capital from the
22 date of the applicable storm to the date the storm recovery bonds are
23 issued calculated using the utility corporation's weighted average cost
24 of capital as defined in its most recent base rate case proceeding
25 before the commission net of all applicable income tax savings related
26 to the interest component. Such costs may be net of applicable insur-
27 ance proceeds, tax benefits, and any other amounts intended to reimburse
28 the utility corporation for storm recovery activities such as govern-
29 mental grants or aid of any kind and may include adjustments for normal
30 capital replacement and operating costs, or other potential offsetting
31 adjustments. Storm recovery costs may include the costs to fund and
32 finance any storm recovery reserves and costs of repurchasing equity or
33 retiring any existing indebtedness relating to storm recovery activ-
34 ities.

35 21. "Storm recovery reserve" means a utility corporation's storm
36 reserve or such other similar reserve established pursuant to order or
37 rule of the commission.

38 § 302. Financing orders. 1. No utility corporation or its affiliate or
39 other assignee shall issue any recovery bonds unless it has been specif-
40 ically authorized to do so by a financing order issued pursuant to this
41 section. A utility corporation may petition the commission for a financ-
42 ing order granting such authority. Such petition shall be made under
43 oath and shall be signed and filed on behalf of the utility corporation
44 or its affiliate or other assignee by the president or by a vice presi-
45 dent, treasurer, or other executive officer having knowledge of the
46 matters set forth therein and shall be submitted in such form as the
47 commission shall prescribe.

48 2. Each petition filed under this section shall include all of the
49 following:

50 (a) A description of:

51 (i) the storm recovery activities that the utility corporation has
52 undertaken or proposes to undertake and the reasons for undertaking the
53 activities; and/or

54 (ii) the total amount of sixty day arrearages recorded by the utility
55 corporation.

1 (b) If a petition is filed by a utility corporation seeking to recover
2 storm recovery costs, the storm recovery costs and an estimate of the
3 costs of any storm recovery activities that are being undertaken but not
4 completed.

5 (c) If a petition is filed by a utility corporation seeking to recover
6 storm recovery costs, the level of the storm recovery reserve that the
7 utility corporation proposes to establish or replenish and has deter-
8 mined would be appropriate to recovery through recovery bonds and is
9 seeking to so recover and the level that the utility corporation is
10 funding or will seek to fund through other means, together with a
11 description of the factors and calculations used in determining such
12 amounts and methods of recovery.

13 (d) If a petition is filed by a utility corporation seeking to recover
14 arrearage costs, the total amount of arrearage costs through the date of
15 the petition, including all related carrying costs incurred by the util-
16 ity corporation.

17 (e) An indication of whether the utility corporation proposes to
18 finance all or a portion of the recovery costs using recovery bonds. If
19 the utility corporation proposes to finance a portion of such costs, the
20 utility corporation must identify the specific portion in the petition.
21 An election not to finance a portion of the recovery costs using recov-
22 ery bonds by a utility corporation shall not be deemed to waive its
23 right to recover such costs pursuant to a separate proceeding with the
24 commission.

25 (f) An estimate of the financing costs related to the recovery bonds.

26 (g) An estimate of the recovery charges necessary to recover the
27 recovery costs and financing costs and the period for recovery of such
28 costs.

29 (h) A comparison between the net present value of the costs to consum-
30 ers that are estimated to result from the issuance of recovery bonds and
31 the result from the application of the traditional method of financing
32 and recovering recovery costs from consumers. The comparison should
33 demonstrate that the issuance of recovery bonds and the imposition of
34 recovery charges are expected to provide quantifiable benefits to
35 consumers.

36 3. (a) The commission may grant a petition under subdivision one of
37 this section in whole or in part by issuing a financing order, with such
38 modifications thereto and upon such terms and conditions as the commis-
39 sion prescribes and that are consistent with this article. If the
40 commission issues a financing order approving the issuance of recovery
41 bonds under this article, the commission shall consider whether:

42 (i) the proposed issuance of recovery bonds and the imposition and
43 collection of a recovery charge are expected to provide quantifiable
44 benefits to consumers as compared to the costs that would have been
45 incurred absent the issuance of recovery bonds; and

46 (ii) the proposed structuring, expected pricing, and financing costs
47 of the recovery bonds are reasonably expected to result in the lowest
48 recovery charges consistent with market conditions at the time the
49 recovery bonds are priced and the terms of the financing order or would
50 avoid or mitigate rate impacts to consumers as compared with traditional
51 methods of financing or recovering recovery costs.

52 (b) The commission may determine what degree of flexibility to afford
53 to the utility corporation or assignees in establishing the terms and
54 conditions of the recovery bonds, including but not limited to repayment
55 schedules, interest rates, and other financing costs. A copy of any
56 financing order issued under this article duly certified by a commis-

1 sioner or other person authorized to act on behalf of the commission
2 shall be sufficient evidence for all purposes of whole and complete
3 compliance by the utility corporation with all procedural and other
4 matters required precedent to the issuance of the order.

5 4. Proceedings on a petition submitted pursuant to this section begin
6 with the petition for a financing order filed by a utility corporation
7 with the commission for review and approval within one hundred thirty-
8 five days of the filing of the petition and shall be disposed of in
9 accordance with the requirements of this article and the rules of the
10 commission. A party to such proceeding may petition the commission for
11 rehearing of this financing order within five days after the date of its
12 issuance.

13 5. A financing order issued by the commission to a utility corporation
14 shall:

15 (a) If a utility corporation is seeking to issue recovery bonds to
16 fund storm recovery costs, specify the amount of storm recovery costs,
17 including any level of storm recovery reserves, taking into consider-
18 ation, to the extent the commission deems appropriate, any other methods
19 used to recover these costs and any offsets or credits to those costs,
20 and provide with respect to the amount of financing costs which may be
21 recovered through recovery charges;

22 (b) Provide that the proposed issuance of recovery bonds and the impo-
23 sition and collection of recovery charges are expected to provide quan-
24 tifiable benefits to consumers as compared to the costs that would have
25 been incurred absent the issuance of the recovery bonds;

26 (c) Provide that the structuring and pricing of the recovery bonds are
27 expected to result in the lowest recovery charges consistent with market
28 conditions at the time the recovery bonds are priced and the terms set
29 forth in such financing order;

30 (d) Specify and create the recovery property of a utility corporation
31 or its successors or assignees that may be used to pay or secure recov-
32 ery bonds and financing costs;

33 (e) Provide that such recovery property may be: (i) sold, assigned, or
34 transferred by the utility corporation to (A) a subsidiary which is
35 wholly owned, directly or indirectly, by the utility corporation and
36 which will be the issuer of the recovery bonds or (B) another assignee
37 which will be the issuer of the recovery bonds; or

38 (ii) created or recognized as property of an assignee which will be
39 the issuer of the recovery bonds;

40 (f) Provide that the recovery charges shall be sufficient at all times
41 to pay the principal of and interest on the recovery bonds as the same
42 shall become due and payable and all other financing costs and establish
43 a true-up mechanism requiring that the recovery charges be reviewed and
44 adjusted at least annually to correct any overcollection or undercol-
45 lection during the period since the issuance or preceding adjustment and
46 to ensure the projected recovery of amounts sufficient to provide timely
47 payment of all principal, interest and other financing costs. Each
48 adjustment to the recovery charge, in amounts as calculated by or on
49 behalf of the owner of recovery property, shall automatically become
50 effective sixty days following the date on which the periodic adjustment
51 is filed with the commission unless the commission approves an earlier
52 effective date requested by the issuer of recovery bonds;

53 (g) Provide and pledge that after the earlier of the transfer of
54 recovery property to an assignee or the issuance of recovery bonds
55 authorized thereby, a financing order is irrevocable until the indefea-
56 sible payment in full of the recovery bonds and the financing costs and,

1 provided that, except as provided in subdivision eight of this section
2 or to implement any true-up mechanism adopted by the commission as
3 described in paragraph (f) of this subdivision, the commission may not
4 amend, modify, or terminate the financing order by any subsequent action
5 or reduce, impair, postpone, terminate, or otherwise adjust recovery
6 charges approved in the financing order, provided nothing shall preclude
7 limitation or alteration if and when full compensation, including full
8 cost recovery, is made for the full protection of the recovery charges
9 collected pursuant to a financing order and the full protection of the
10 holders of recovery bonds and any assignee or financing party;

11 (h) Specify how amounts collected from consumers shall be allocated
12 between recovery charges and other charges;

13 (i) Provide that a financing order remains in effect until the recov-
14 ery bonds issued pursuant to the order have been indefeasibly paid in
15 full and the financing costs of such bonds have been recovered in full;

16 (j) Provide that a financing order shall remain in effect and unabated
17 notwithstanding the reorganization, bankruptcy, or other insolvency
18 proceedings, or merger or sale, of the applicable utility corporation or
19 its successors or assignees; and

20 (k) Authorize and require the utility corporation, to the extent that
21 any interest in recovery property is sold or assigned, shall contract
22 with the assignee or any financing party to continue to operate its
23 system to provide service to its consumers, collect amounts in respect
24 of the recovery charges for the benefit and account of such assignee or
25 financing party, and account for and remit such amounts to or for the
26 account of such assignee or financing party, including pursuant to a
27 sequestration order authorized by subdivision six of section three
28 hundred three or subdivision seven of section three hundred five of this
29 article.

30 6. In each financing order issued to or on behalf of a utility corpo-
31 ration, the commission shall:

32 (a) Prescribe any limitations on potential assignees of recovery prop-
33 erty;

34 (b) Authorize an assignee which is a subsidiary of a utility corpo-
35 ration and which issues recovery bonds or another assignee which issues
36 recovery bonds to provide and establish in its organizational documents,
37 partnership agreement, or operating agreement, as applicable, that in
38 order for a person to file a voluntary bankruptcy petition on behalf of
39 such assignee, the prior unanimous consent of the directors, partners,
40 or managers, as applicable, shall be required. If so authorized in a
41 financing order, any such provision set forth in the organizational
42 documents, partnership agreement, or operating agreement of such an
43 assignee shall constitute a legal, valid, and binding agreement of the
44 shareholders, partners, or members, as applicable, of such assignee and
45 shall be enforceable against such shareholders, partners, or members;
46 and

47 (c) Provide that the creation of the recovery property pursuant to
48 paragraph (d) of subdivision five of this section shall be conditioned
49 upon, and shall be simultaneous with either: (i) the sale, assignment,
50 or other transfer of the recovery property to an assignee; or (ii) the
51 issuance of the recovery bonds and the security interest created in the
52 recovery property to secure recovery bonds.

53 7. After the issuance of a financing order, and within such time and
54 subject to any other limitations set forth in the financing order, the
55 utility corporation retains discretion regarding whether to sell,
56 assign, or otherwise transfer recovery property or to cause the recovery

1 bonds to be issued, including the right to defer or postpone such sale,
2 assignment, transfer, or issuance.

3 8. At the request of a utility corporation, the commission may
4 commence a proceeding and issue a subsequent financing order that
5 provides for the refinancing, retiring, or refunding of recovery bonds
6 issued by an affiliate of the utility corporation pursuant to the
7 original financing order if the commission finds that the subsequent
8 financing order satisfies all of the criteria specified in subdivision
9 three of this section or that provides for an accounting, refunding, or
10 crediting to consumers of the proceeds of any true-up mechanism adopted
11 by the commission in accordance with paragraph (f) of subdivision five
12 of this section. Effective on retirement of the refunded recovery bonds
13 and the issuance of new recovery bonds, the commission may adjust the
14 related recovery charges accordingly or establish substitute recovery
15 charges.

16 9. (a) The commission shall not, in exercising its powers and carrying
17 out its duties regarding any matter within its authority pursuant to
18 this article, consider the recovery bonds issued pursuant to a financing
19 order to be the debt of the utility corporation other than for federal
20 income tax purposes, consider the recovery charges paid under the
21 financing order to be the revenue of the utility corporation for any
22 purpose, or consider the recovery costs or financing costs specified in
23 the financing order to be the costs of the utility corporation, nor may
24 the commission determine any action taken by a utility corporation which
25 is not consistent with the financing order to be unjust or unreasonable.

26 (b) The commission may not order or otherwise directly or indirectly
27 require a utility corporation to use recovery bonds to finance any
28 project, addition, plant, facility, extension, capital improvement,
29 equipment, or any other expenditure. After the issuance of a financing
30 order, the utility corporation retains sole discretion whether to cause
31 the recovery bonds to be issued, including the right to defer or post-
32 pone such sale, assignment, transfer or issuance. Nothing shall prevent
33 the utility corporation from abandoning the issuance of recovery bonds
34 under the financing order by filing with the commission a statement of
35 abandonment and the reasons therefor.

36 The commission shall not refuse to allow a utility corporation to
37 recover recovery costs in an otherwise permissible fashion or refuse or
38 condition authorization or approval of the issuance and sale by a utili-
39 ty corporation of securities or the assumption by the utility corpo-
40 ration of liabilities or obligations, solely because of the potential
41 availability of recovery bond financing.

42 10. All financing orders issued by the commission shall be operative
43 and in full force and effect on the date of the issuance of such order.

44 11. Notwithstanding any other law to the contrary, any action, suit or
45 proceeding to which the commission or the recovery bond issuer may be a
46 party, in which any question arises as to the validity of this article
47 or any financing order, shall be preferred over all other civil causes
48 in all courts of the state, except election matters, and shall be heard
49 and determined in preference to all other civil business pending there-
50 in, except election matters, irrespective of position on the calendar.
51 Such preference shall also be granted upon petition of counsel to the
52 commission in any action or proceeding questioning the validity of any
53 financing order or other decision made by the commission under this
54 article in which such counsel may be allowed to intervene. Notwith-
55 standing any other provision of law to the contrary, the validity of any
56 financing order or other decision may only be challenged by an aggrieved

1 party pursuant to an action, suit or proceeding filed within thirty days
2 after such financing order becomes final; provided, however, that any
3 such action, suit or proceeding and all supporting papers shall be
4 commenced directly in the supreme court, appellate division, third judi-
5 cial department.

6 § 303. Recovery property. 1. All recovery property specified in a
7 financing order shall constitute an existing, present property right.
8 Such property shall exist whether or not the revenues or proceeds aris-
9 ing from the property have been billed, have accrued, or have been
10 collected.

11 2. Recovery property specified in a financing order shall continue to
12 exist until the recovery bonds issued pursuant to such order are paid in
13 full and all financing costs of the bonds have been recovered in full.

14 3. All or any portion of recovery property specified in a financing
15 order issued to a utility corporation may be sold, assigned, or trans-
16 ferred to a successor or an assignee, including an affiliate or affil-
17 iates of the utility corporation or any other assignee created for the
18 limited purpose of acquiring, owning, or administering recovery property
19 or issuing recovery bonds under the financing order. All or any portion
20 of recovery property may be encumbered by a security interest to secure
21 recovery bonds issued pursuant to the order and other financing costs.
22 Each such sale, assignment, transfer, or security interest granted by a
23 utility corporation or affiliate of a utility corporation or assignee
24 shall be considered to be a transaction in the ordinary course of busi-
25 ness.

26 4. The description of recovery property being sold, assigned, or
27 transferred to an assignee in any sale agreement, purchase agreement, or
28 other transfer agreement or created and recognized as property of an
29 assignee in accordance with subdivision nine of this section, being
30 encumbered to a secured party in any security agreement, pledge agree-
31 ment, or other security document, or indicated in any financing state-
32 ment is only sufficient if such description or indication refers to the
33 specific financing order that created the recovery property and states
34 that such agreement or financing statement covers all or part of such
35 recovery property described in such financing order. A description of
36 recovery property in a financing statement shall be sufficient if it
37 refers to the financing order creating the recovery property. This
38 subdivision shall apply to all purported sales, assignments, or trans-
39 fers of, and all purported liens or security interests in, recovery
40 property, regardless of whether the related sale agreement, purchase
41 agreement, other transfer agreement, security agreement, pledge agree-
42 ment, or other security document was entered into, or any financing
43 statement was filed, before or after the effective date of this article.

44 5. Every electric bill issued by a utility corporation that has
45 obtained a financing order and caused recovery bonds to be issued shall
46 comply with the provisions of this subdivision; provided, however, that
47 the failure of a utility corporation to comply with this subdivision
48 shall not invalidate, impair, or affect any financing order, recovery
49 property, recovery charge, or recovery bonds. Every such bill shall:

50 (a) Explicitly reflect that a portion of the charges on such bill
51 represents recovery charges approved in a financing order issued to the
52 utility corporation and, if the recovery property has been transferred
53 to, or created at, an assignee, must include a statement to the effect
54 that the assignee is the owner of the rights to recovery charges and
55 that the utility corporation or other entity, if applicable, is acting
56 as a collection agent or servicer for that assignee. The tariff appli-

1 cable to consumers must indicate the recovery charge and the ownership
2 of the charge.

3 (b) Include the recovery charge on each consumer's bill as a separate
4 line item and include either the rate or the amount of the charge on
5 each bill.

6 6. If a utility corporation defaults on any required payment of charg-
7 es arising from recovery property specified in a financing order, the
8 supreme court, Albany county, upon petition by an interested party, and
9 without limiting any other remedies available to the applying party,
10 shall order the sequestration and payment of the revenues arising from
11 the recovery property to the financing parties or their representatives.
12 Any such order shall remain in full force and effect notwithstanding any
13 reorganization, bankruptcy, or other insolvency proceedings with respect
14 to the utility corporation or its successors or assignees.

15 7. The interest of an assignee or secured party in recovery property
16 specified in a financing order shall not be subject to setoff, counter-
17 claim, surcharge, or defense by the utility corporation or any other
18 person, or in connection with the reorganization, bankruptcy, or other
19 insolvency of the utility corporation or any other entity.

20 8. Any successor to a utility corporation, whether pursuant to any
21 reorganization, bankruptcy, or other insolvency proceeding or whether
22 pursuant to any merger or acquisition, sale, or other business combina-
23 tion, or transfer by operation of law, as a result of utility corpo-
24 ration restructuring or otherwise, shall perform and satisfy all obli-
25 gations of, and have the same rights under a financing order as the
26 utility corporation under the financing order in the same manner and to
27 the same extent as the utility corporation, including collection and
28 payment of any revenues and proceeds of the recovery property to any
29 person entitled thereto.

30 9. Upon petition by the utility corporation, recovery property may be
31 immediately created by operation of law on the latter of the issuance of
32 a financing order, or the issuance of the recovery bonds by an assignee.
33 Recovery property created in accordance with this subdivision shall,
34 upon creation, belong to the assignee and such assignee will have the
35 same rights to and benefits arising from the recovery property as it
36 would have if it acquired such recovery property as a result of a
37 purchase, acquisition or other transfer from the utility corporation.

38 § 304. Sale, assignment, or transfer of recovery property. 1. The
39 sale, assignment, or other transfer of recovery property by a utility
40 corporation to an assignee that the parties have in the governing
41 contract expressly stated to be a sale or other absolute transfer shall
42 constitute an absolute transfer and true sale of, and not a security
43 interest in, the transferor's right, title, and interest in, to, and
44 under such recovery property, other than for federal and state income
45 tax purposes. The parties' characterization of such transaction as a
46 sale of an interest in recovery property shall be conclusive that the
47 transaction is a true sale and that ownership has passed to the party
48 characterized as the purchaser, regardless of whether the purchaser has
49 possession of any documents evidencing or pertaining to the interest.
50 After any such transaction, the recovery property shall not be subject
51 to any claims of the transferor or the transferor's creditors, other
52 than creditors holding a prior security interest in the recovery proper-
53 ty perfected under section three hundred seven of this article.

54 2. Notwithstanding any provision of law to the contrary, the charac-
55 terization of any sale, assignment, or other transfer as a true sale or
56 other absolute transfer pursuant to subdivision one of this section and

1 the corresponding characterization of the assignee's property interest
2 shall be determinative and conclusive irrespective of, and not affected
3 or impaired by, the existence of any or all of the following circum-
4 stances:

5 (a) Commingling of amounts arising with respect to the recovery prop-
6 erty with other amounts;

7 (b) The retention by the transferor of a partial or residual interest,
8 including an equity interest or entitlement to any surplus, in the
9 recovery property, whether direct or indirect, or whether subordinate or
10 otherwise;

11 (c) Any recourse that the assignee may have against the transferor,
12 except that any such recourse shall not be created, contingent upon, or
13 otherwise occurring or resulting from the inability or failure of one or
14 more of the transferor's consumers to timely pay all or a portion of the
15 recovery charge;

16 (d) Any indemnifications, obligations, or repurchase rights made or
17 provided by the transferor, except that such indemnity or repurchase
18 rights shall not be based solely upon the inability or failure of a
19 transferor's consumers to timely pay all or a portion of the recovery
20 charge;

21 (e) The transferor acting as the collector of the recovery charges or
22 the existence of any contract described in paragraph (k) of subdivision
23 five of section three hundred two of this article;

24 (f) The contrary or other treatment of the sale, assignment, or other
25 transfer for tax, financial reporting, or other purposes;

26 (g) The granting or providing to holders of the recovery bonds of a
27 preferred right to the recovery property or credit enhancement by the
28 utility corporation or its affiliates with respect to the recovery
29 bonds; or

30 (h) The status of the assignee as a direct or indirect wholly owned
31 subsidiary or other affiliate of the utility corporation. The separate
32 juridical personality of any assignee of recovery property which is a
33 subsidiary or affiliate of the utility corporation shall not be disre-
34 garded due to the fact that the assignee and the utility corporation
35 share any one or more incidents of control, including common managers,
36 officers, directors, members, accounting or administrative systems,
37 consolidated tax returns, or office space, that the assignee may be a
38 disregarded entity for tax purposes, that the electric corporation
39 caused the formation of the assignee, that a contract by the utility
40 corporation and the assignee described in paragraph (k) of subdivision
41 five of section three hundred two of this article exists, that the
42 assignee has no other business other than pertaining to the recovery
43 property, that the capitalization of the assignee is limited to amounts
44 required for compliance with certain applicable federal income tax laws
45 and revenue procedures, or that other factors used in applying a single
46 business enterprise test to juridical persons are present.

47 3. Any right that a utility corporation has in the recovery property
48 prior to its sale, assignment, or transfer shall be in the form of a
49 contractual right or chose in action notwithstanding any contrary treat-
50 ment thereof for accounting or tax purposes. The ownership of an inter-
51 est in recovery property is voluntarily transferred by a contract
52 between the owner and the assignee that purports to transfer the owner-
53 ship of that interest. Unless otherwise provided, the transfer of
54 ownership between the parties shall be effective as soon as there is
55 written agreement on the interest, the purchase price is fixed, and the
56 financing order has been issued. Such transfer shall be perfected and

1 take effect against all third parties including, but not limited to,
2 subsequent lien creditors when the transfer has become effective between
3 the parties and when a financing statement giving notice of the sale,
4 assignment, or transfer is filed in accordance with subdivision four of
5 this section. Delivery of such an interest in recovery property shall
6 take place by operation of law upon the filing of the financing state-
7 ment.

8 4. Financing statements required to be filed under this section shall
9 be filed, indexed, maintained, and continued in the same manner and in
10 the same system of records maintained for the filing of financing state-
11 ments under article nine of the uniform commercial code. The filing of
12 such financing statement shall be the only method of perfecting a sale,
13 assignment, or transfer of recovery property. The sale, assignment, or
14 transfer of an interest in recovery property perfected by filing a
15 financing statement shall be effective against any consumers owing
16 payment of the recovery charges, creditors of the transferor, subsequent
17 transferees, and all other third persons notwithstanding the absence of
18 actual knowledge of or notice to such consumers of such sale, assign-
19 ment, or transfer.

20 5. The priority of the conflicting ownership interests of assignees in
21 the same interest or rights in any recovery property shall be determined
22 as follows:

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

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

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

30 6. The priority of a sale, assignment, or transfer perfected under
31 this section shall not be impaired by any later modification of the
32 financing order or recovery property or by the commingling of funds
33 arising from recovery property with other funds. Any other security
34 interest that may apply to such funds, other than a security interest
35 perfected under section three hundred five of this article, shall be
36 terminated when those funds are transferred to a segregated account for
37 the assignee or a financing party. If recovery property has been trans-
38 ferred to an assignee or financing party, any proceeds of such property
39 shall be held for and delivered to the assignee or financing party by
40 any collector under any contract described in paragraph (k) of subdivi-
41 sion five of section three hundred two of this article as a mandatary
42 and fiduciary.

43 § 305. Security interests. 1. The provisions of article nine of the
44 uniform commercial code relating to secured transactions shall not apply
45 to recovery property or any right, title, or interest of a corporation
46 or assignee therein, whether before or after the issuance of a financing
47 order, except as provided in subdivision one of section three hundred
48 six of this article. In addition, such right, title, or interest
49 pertaining to a financing order, including but not limited to, the asso-
50 ciated recovery property, and any revenues, collections, claims, rights
51 to payment, payments, money, or proceeds of or arising from recovery
52 charges pursuant to such order, shall not be deemed proceeds of any
53 right or interest other than of the financing order and the recovery
54 property arising from the financing order. All revenues and collections
55 resulting from recovery property shall constitute proceeds only of the
56 recovery property arising from the financing order.

1 2. Except to the extent provided in this article with respect to
2 filings of financing statements or control of deposit accounts or
3 investment property as original collateral, the creation, attachment,
4 granting, perfection, and priority of security interests in recovery
5 property to secure recovery bonds shall be governed solely by this arti-
6 cle and not by the uniform commercial code.

7 3. (a) A security interest in recovery property is valid and enforcea-
8 ble against the utility corporation and its successor or an assignee and
9 third parties and attaches to recovery property only after all of the
10 following conditions are met:

11 (i) The issuance of a financing order;

12 (ii) The execution and delivery of a security agreement with a financ-
13 ing party in connection with the issuance of recovery bonds; and

14 (iii) The receipt of value for the recovery bonds.

15 (b) A security interest attaches to recovery property without physical
16 delivery of collateral or other act when all of the foregoing conditions
17 have been met, unless the security agreement expressly postpones the
18 time of attachment.

19 4. A security interest in recovery property is perfected only if it
20 has attached and a financing statement indicating the recovery property
21 collateral covered thereby has been filed. A financing statement must
22 be filed to perfect all security interests and liens in storm recovery
23 property under this article. A security interest in recovery property
24 is perfected when it has attached and when the applicable financing
25 statement has been filed. The interest of a secured party is not
26 perfected unless a financing statement sufficient under this article and
27 otherwise in accordance with the uniform commercial code is filed, and
28 after perfection the secured party's interest continues in the recovery
29 property and all proceeds of such recovery property, whether or not
30 billed, accrued, or collected, and whether or not deposited into a
31 deposit account and however evidenced. A security interest in proceeds
32 of recovery property is a perfected security interest if the security
33 interest in the recovery property was perfected under this article.
34 Financing statements required to be filed pursuant to this article shall
35 be filed, indexed, maintained, and continued in the same manner and in
36 the same system of records maintained for the filing of financing state-
37 ments under the uniform commercial code, except that the requirement as
38 to continuation statements does not apply. The filing of such a financ-
39 ing statement shall be the only method of perfecting a lien or security
40 interest on recovery property. The financing statement shall be filed
41 as if the debtor named therein were located in this state.

42 5. The priority of the conflicting security interests of secured
43 parties in the same interest or rights in any recovery property is
44 determined as follows:

45 (a) Conflicting perfected security interests of secured parties rank
46 according to priority in time of perfection;

47 (b) A perfected security interest of a secured party has priority over
48 a conflicting unperfected security interest of a secured party; and

49 (c) A perfected security interest of a secured party has priority over
50 a person who becomes a lien creditor after the perfection of such
51 secured party's security interest.

52 6. A perfected security interest in recovery property and all proceeds
53 of such recovery property, whether or not billed, accrued, or collected,
54 and whether or not deposited into a deposit account and however
55 evidenced, shall have priority over a conflicting lien or privilege of
56 any nature in the same collateral property, except a security interest

1 is subordinate to the rights of a person that becomes a lien creditor
2 before the perfection of such security interest. A security interest in
3 recovery property which qualifies for priority over a conflicting secu-
4 rity interest, lien, or privilege also has priority over the conflicting
5 security interest, lien, or privilege in proceeds of the recovery prop-
6 erty. The relative priority of a perfected security interest of a
7 secured party is not adversely affected by any lien, privilege, or secu-
8 rity interest in a deposit account of the utility corporation that is a
9 collector as described in paragraph (k) of subdivision five of section
10 three hundred two of this article and into which the revenues are depos-
11 ited. The priority of a security interest perfected under this section
12 shall not be defeated or impaired by any later modification of the
13 financing order or recovery property or by the commingling of funds
14 arising from recovery property with other funds. Any other security
15 interest that may apply to those funds shall be terminated as to all
16 funds transferred to a segregated account for the benefit of an assignee
17 or a financing party or to an assignee or financing party directly. The
18 perfection by control, the effect of perfection by control, and the
19 priority of a security interest granted by the issuer of and securing
20 recovery bonds held by a secured party having control of a segregated
21 deposit account or securities account as original collateral into which
22 revenues, collections, or proceeds of recovery property are deposited or
23 credited shall be governed by section 1-301 of uniform commercial code.

24 7. If a default occurs under the terms of any recovery bond, the
25 secured party may foreclose on or otherwise enforce the security inter-
26 est in any recovery property as if it was a secured party under the
27 uniform commercial code. A secured party holding a security interest in
28 recovery property shall be entitled to exercise all of the same rights
29 and remedies available to a secured party under the uniform commercial
30 code, to the same extent as if those rights and remedies were set forth
31 in this article. The court may order that amounts arising from recovery
32 property be transferred to a separate account of the secured party for
33 the financing parties' benefit, to which their security interest shall
34 apply. On petition by or on behalf of a secured party, the court shall
35 order the sequestration and payment to the financing parties of revenues
36 arising from the recovery property.

37 8. A security interest created under this section may provide for a
38 security interest in after-acquired collateral. Such security interest
39 shall not be invalid or fraudulent against creditors solely because the
40 grantor or the utility corporation as collector or servicer has the
41 right or ability to commingle the collateral or proceeds, or collect,
42 compromise, enforce, and otherwise deal with collateral.

43 9. Any action arising under the provisions of this article to enforce
44 a security interest in recovery property, or which otherwise asserts an
45 interest in, or a right in, to or against any recovery property, wherev-
46 er located or deemed located, or any security interest governed by this
47 article, shall be brought in the supreme court, Albany county. Such
48 actions shall be governed by the applicable provisions of the civil
49 practice law and rules and other law applicable to executory
50 proceedings, including provisional remedies, but only to the extent such
51 laws are consistent with the language and purposes of this article.

52 § 306. Choice of law; conflicts. 1. The law governing the validity,
53 enforceability, attachment, perfection, priority, exercise of remedies,
54 and venue with respect to the creation, recognition, sale, assignment,
55 or transfer of an interest or right or the creation of a security inter-
56 est in any recovery property shall be exclusively the laws of this

1 state, without applying this state's law on conflict of laws and
2 notwithstanding any contrary contractual provision, except as provided
3 in subdivision six of section three hundred five of this article. The
4 validity, enforceability, attachment, perfection, priority, and exercise
5 of remedies with respect to the creation, recognition, sale, assignment,
6 or transfer of an interest or right or the creation of a security inter-
7 est in any recovery property shall be governed by this article, and
8 solely to the extent not addressed by this article, by the uniform
9 commercial code and other laws of this state. Notwithstanding the
10 preceding sentence, this article provides that the uniform commercial
11 code applies to the filings of financing statements referenced in this
12 article, to perfection, the effect of perfection or nonperfection, and
13 the priority of security interests held by a secured party having
14 control of deposit accounts or securities accounts as original collat-
15 eral securing recovery bonds, notwithstanding that proceeds of recovery
16 charges are deposited therein, and to the enforcement of security inter-
17 ests in recovery property, in each case subject to subdivision two of
18 this section.

19 2. Insofar as the provisions of this article are inconsistent with the
20 provisions of any other law or part thereof regarding the attachment,
21 creation, perfection, the effect of perfection, or priority of, and
22 sale, assignment, or transfer of, or security interest in, recovery
23 property, or the exercise of remedies with respect thereto, the
24 provisions of this article shall be controlling.

25 3. Nothing in this section shall be construed so as to conflict with
26 the provisions of subdivision six of section three hundred five of this
27 article.

28 § 307. Recovery bonds not public debt. Recovery bonds are not a debt
29 or a general obligation of the state or any of its political subdivi-
30 sions, agencies, or instrumentalities and are not a charge on their full
31 faith and credit. An issue of recovery bonds shall not, directly or
32 indirectly or contingently, obligate the state or any agency, political
33 subdivision, or instrumentality of the state to levy any tax or make any
34 appropriation for payment of the bonds, other than for paying recovery
35 charges in their capacity as consumers of electricity. All recovery
36 bonds authorized by a financing order by the commission must contain on
37 the face thereof a statement to the following effect: "Neither the full
38 faith and credit nor the taxing power of the State of New York is
39 pledged to the payment of the principal of, or interest on, this bond."

40 § 308. State pledge. 1. The state pledges to and agrees with the hold-
41 ers of recovery bonds, any assignee and all financing parties that the
42 state will not in any way take or permit any action that limits, alters
43 or impairs the value of recovery property or, except as required by a
44 true-up mechanism described in the financing order, reduce, alter or
45 impair recovery charges that are imposed, collected and remitted for the
46 benefit of the owners of recovery bonds, any assignee, and all financing
47 parties, until all principal, interest and redemption premium in respect
48 of recovery bonds, all other financing costs and all amounts to be paid
49 to an assignee or financing party under an ancillary agreement are paid
50 or performed in full.

51 2. Any person that issues recovery bonds shall be permitted to include
52 the pledge specified in subdivision one of this section on the face of
53 such bonds and in any ancillary agreements or other documentation
54 related to the issuance and marketing of such bonds.

55 § 309. Assignee not a utility corporation. An assignee or financing
56 party shall not be considered a utility corporation as defined in subdi-

1 vision twenty-four of section two of this chapter solely by virtue of
2 engaging in any of the transactions described in this article.

3 § 310. Effect of invalidity. If any provision of this article is held
4 invalid or is invalidated, superseded, replaced repealed, or expires for
5 any reason, such occurrence shall not affect the validity of any action
6 allowed under this article taken by a utility corporation, or an assignee,
7 a financing party, a collection agent, or a party to an ancillary
8 agreement. Any such action shall remain in full force and effect with
9 respect to all recovery bonds issued or authorized in a financing order
10 issued pursuant to this article on or before the date that such
11 provision is held invalid or is invalidated, superseded, replaced, or
12 repealed, or expires for any reason.

13 § 311. Effect of a financing order. Section seventy of this chapter
14 shall not apply to: 1. Any sale, assignment or transfer of recovery
15 property or any equity position held by the utility corporation in an
16 assignee; or

17 2. Any other transaction contemplated by or approved in a financing
18 order issued by the commission pursuant to this article.

19 § 3. This act shall take effect immediately.