STATE OF NEW YORK

9339--A

IN SENATE

May 13, 2024

Introduced by Sens. COMRIE, HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to enact the "New York utility corporation securitization act"

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

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

§ 2. Definitions. As used in this act, the following terms shall have the following meanings:

1. "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of recovery bonds under this act, that is designed to promote the credit quality and marketability of such recovery bonds or to mitigate the risk of an increase in interest rates.

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

3. "Commission" means the public service commission.

4. "Consumer" means any individual, governmental body, trust, business entity, nonprofit organization or other legally recognized entity that takes electric delivery service within the service area by means of electric transmission or distribution facilities, whether those electric transmission or distribution facilities are owned by a utility corporation or other entity.

5. "Financing costs" means:

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

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

LBD05310-06-4

(b) any payment approved in the financing order and required under an ancillary agreement or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to recovery bonds;

(c) provided that recovery bonds shall be the only method used to recover the costs identified in this paragraph, any other cost related to issuing, supporting, repaying, and servicing recovery bonds, including but not limited to servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, and filing fees, including costs related to obtaining a financing order; or

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

6. "Financing order" means an order of the commission which authorizes:

(a) the issuance of recovery bonds;

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

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

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

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

8. "Financing statement" shall have the same meaning as that provided in paragraph 39 of subsection (a) of section 9-102 the uniform commercial code. All financing statements under this act shall be filed in accordance with section 9-501 of the uniform commercial code.

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

10. "Recovery bonds" means bonds, debentures, notes, certificates of participation, certificates of ownership, or other evidences of indebtedness or ownership that are issued pursuant to an indenture, contract, or other agreement of a utility corporation or its assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to provide, recover, finance, or refinance commission-approved recovery costs and financing costs, to such level as the commission may authorize in a financing order, and which are secured by or payable from recovery property, and that have a final maturity date of no longer than twenty years from the original issuance. If certificates of participation or ownership are issued, references in this act to principal, interest, or premium shall be construed to refer to comparable amounts under such certificates. Recovery bonds shall be nonrecourse to the credit or any assets of the utility corporation other than the recovery property as specified in the financing order and any rights under any ancillary agreement. Recovery bonds shall be legal investments for financial institutions, insurance companies, fiduciaries, and other persons that require statutory authority regarding legal investment.

11. "Recovery charge" means the amounts authorized by the commission to recover recovery costs and financing costs. If provided for in a financing order, such amounts shall be imposed on consumer bills and collected by a utility corporation or its successors or assignees or a collection agent, in full, through a charge paid by existing and future consumers receiving transmission or distribution service, or both, from

the utility corporation or its successors or assignees under rate schedules or special contracts approved by the commission. The recovery charge shall be non-bypassable and imposed on all consumers in the service area and collected by the utility corporation or its successor, agent, subcontractor, assignee, or collection agent or any other entity designated under the financing order.

12. "Recovery costs" means storm recovery costs identified for recovery in a financing order.

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

(i) in and to recovery charges established pursuant to a financing order, as approved by the commission and adjusted from time to time in accordance with such financing order;

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

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

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

14. "Secured party" means a financing party in favor of which a utility corporation or its successors or assignees creates a security interest in all or any portion of its interest in or right to recovery property. A secured party may be granted a security interest in recovery property under this act and a security interest in other collateral subject to the uniform commercial code in a single security agreement.

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

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

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

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

19. "Storm recovery activity" means any activity or activities by or on behalf of a utility corporation taken before July 1, 2024 in connection with the restoration of service and infrastructure associated with electric power outages affecting consumers of a utility corporation as the result of a storm or storms, including but not limited to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, or distribution facilities.

20. "Storm recovery costs" means, if requested by a utility corporation and approved by the commission, costs incurred before July 1, 2024 by a utility corporation in undertaking a storm recovery activity. Such costs may be net of applicable insurance proceeds, tax benefits, and any other amounts intended to reimburse the utility corporation for storm recovery activities such as governmental grants or aid of any kind

and may include adjustments for normal capital replacement and operating costs, or other potential offsetting adjustments. Storm recovery costs may include retiring any existing indebtedness relating to storm recovery activities.

21. "Utility corporation" means any electric corporations individually or collectively who are subsidiaries of the same corporation who jointly or collectively have storm recovery costs of $500 million or more as of July 1, 2024.

§ 3. Financing orders. 1. No utility corporation or its affiliate or other assignee shall issue any recovery bonds unless it has been specifically authorized to do so by a financing order issued pursuant to this section. No later than two years after the effective date of this act, a utility corporation may petition the commission for a financing order granting such authority. Such petition shall be made under oath and shall be signed and filed on behalf of the utility corporation or its affiliate or other assignee by the president or by a vice president, treasurer, or other executive officer having knowledge of the matters set forth therein and shall be submitted in such form as the commission shall prescribe.

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

(a) A description of the storm recovery activities that the utility corporation has undertaken and the reasons for undertaking the activities.

(b) The storm recovery costs the utility corporation has determined would be appropriate to recover through recovery bonds and is seeking to recover, and the level that the utility corporation is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining such amounts and methods of recovery.

(c) Whether the utility corporation proposes to finance all or a portion of the recovery costs using recovery bonds. If the utility corporation proposes to finance a portion of such costs, the utility corporation must identify the specific portion in the petition. An election not to finance a portion of the recovery costs using recovery bonds by a utility corporation shall not be deemed to waive its right to recover such costs pursuant to a separate proceeding with the commission pursuant to this act.

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

(e) An estimate of the recovery charges necessary to recover the recovery costs and financing costs and the period for recovery of such costs.

(f) A comparison between the net present value of the costs to consumers that are estimated to result from the issuance of recovery bonds and the result from the application of the traditional method of financing and recovering recovery costs from consumers. The comparison should demonstrate that the issuance of recovery bonds and the imposition of recovery charges are expected to provide quantifiable benefits to consumers.

3. (a) The commission may grant a petition under subdivision one of this section in whole or in part by issuing a financing order, with such modifications thereto and upon such terms and conditions as the commission prescribes and that are consistent with this act, provided such financing is prudent and would provide a net benefit to the consumer. If the commission issues a financing order approving the issuance of recovery bonds under this act, the commission shall consider whether:

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

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

(b) The commission may determine what degree of flexibility to afford to the utility corporation or assignees in establishing the terms and conditions of the recovery bonds, including but not limited to repayment schedules, interest rates, and other financing costs. A copy of any financing order issued under this act duly certified by a commissioner or other person authorized to act on behalf of the commission shall be sufficient evidence for all purposes of whole and complete compliance by the utility corporation with all procedural and other matters required precedent to the issuance of the order.

4. Proceedings on a petition submitted pursuant to this section begin with the petition for a financing order filed by a utility corporation with the commission for review and approval within 135 days of the filing of the petition and shall be disposed of in accordance with the requirements of this act and the rules of the commission.

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

(a) Specify the amount of storm recovery costs, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs and any offsets or credits to those costs, and provide with respect to the amount of financing costs which may be recovered through recovery charges;

(b) Provide that the proposed financing through issuance of recovery bonds and the imposition and collection of recovery charges are expected to provide quantifiable benefits to consumers as compared to the costs that would have been incurred absent the issuance of the recovery bonds and that the net present value of the costs to consumers that are estimated to result from the financing through issuance of recovery bonds is less than the net present value of costs of the application of the traditional method of financing and recovering recovery costs from consumers;

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

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

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

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

(f) Provide that the recovery charges shall be sufficient at all times to pay the principal of and interest on the recovery bonds as the same

shall become due and payable and all other financing costs and establish a true-up mechanism requiring that the recovery charges be reviewed and adjusted at least annually to correct any overcollection or undercollection during the period since the issuance or preceding adjustment and to ensure the projected recovery of amounts sufficient to provide timely payment of all principal, interest and other financing costs. Each adjustment to the recovery charge, in amounts as calculated by or on behalf of the owner of recovery property, pursuant to a method established in the financing order, shall automatically become effective 60 days following the date on which the periodic adjustment is filed with the commission unless the commission approves an earlier effective date requested by the issuer of recovery bonds;

(g) Provide and pledge that after the earlier of the transfer of recovery property to an assignee or the issuance of recovery bonds authorized thereby, a financing order is irrevocable until the indefeasible payment in full of the recovery bonds and the financing costs and, provided that, except as provided in subdivision 8 of this section or to implement any true-up mechanism adopted by the commission as described in paragraph (f) of this subdivision, the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust recovery charges approved in the financing order, provided nothing shall preclude limitation or alteration if and when full compensation, including full cost recovery, is made for the full protection of the recovery charges collected pursuant to a financing order and the full protection of the holders of recovery bonds and any assignee or financing party;

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

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

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

(k) Authorize and require the utility corporation, to the extent that any interest in recovery property is sold or assigned, shall contract with the assignee or any financing party to continue to operate its system to provide service to its consumers, collect amounts in respect of the recovery charges for the benefit and account of such assignee or financing party, and account for and remit such amounts to or for the account of such assignee or financing party, including pursuant to a sequestration order authorized by subdivision 6 of section four or subdivision 7 of section six of this act; and

(l) Provide that any cost to the consumer in connection with the financing order, that is not identified in and provided for in such financing order, shall not be recovered through any rates or recovery charges, and shall solely be the obligation of the utility corporation or its successors or assignees.

6. In each financing order issued to or on behalf of a utility corporation, the commission shall:

(a) Prescribe any limitations on potential assignees of recovery property;

(b) Authorize an assignee which is a subsidiary of a utility corporation and which issues recovery bonds or another assignee which issues recovery bonds to provide and establish in its organizational documents,

partnership agreement, or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition on behalf of such assignee, the prior unanimous consent of the directors, partners, or managers, as applicable, shall be required. If so authorized in a financing order, any such provision set forth in the organizational documents, partnership agreement, or operating agreement of such an assignee shall constitute a legal, valid, and binding agreement of the shareholders, partners, or members, as applicable, of such assignee and shall be enforceable against such shareholders, partners, or members; and

(c) Provide that the creation of the recovery property pursuant to paragraph (d) of subdivision 5 of this section shall be conditioned upon, and shall be simultaneous with either: (i) the sale, assignment, or other transfer of the recovery property to an assignee; or (ii) the issuance of the recovery bonds and the security interest created in the recovery property to secure recovery bonds.

7. After the issuance of a financing order, and within such time and subject to any other limitations set forth in the financing order, the utility corporation retains discretion regarding whether to sell, assign, or otherwise transfer recovery property or to cause the recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance.

8. At the request of a utility corporation, the commission may commence a proceeding and issue a subsequent financing order that provides for the refinancing, retiring, or refunding of recovery bonds issued by an affiliate of the utility corporation pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in subdivisions 3 and 5 of this section or that provides for an accounting, refunding, or crediting to consumers of the proceeds of any true-up mechanism adopted by the commission in accordance with paragraph (f) of subdivision 5 of this section. Effective on retirement of the refunded recovery bonds and the issuance of new recovery bonds, the commission may adjust the related recovery charges accordingly or establish substitute recovery charges, provided any such subsequent order shall be consistent with the provisions of subdivision 5 of this section.

9. (a) The commission shall not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this act, consider the recovery bonds issued pursuant to a financing order to be the debt of the utility corporation other than for federal income tax purposes, consider the recovery charges paid under the financing order to be the revenue of the utility corporation for any purpose, or consider the recovery costs or financing costs specified in the financing order to be the costs of the utility corporation.

(b) The commission may not order or otherwise directly or indirectly require a utility corporation to use recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. After the issuance of a financing order, the utility corporation retains sole discretion whether to cause the recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer or issuance. Nothing shall prevent the utility corporation from abandoning the issuance of recovery bonds under the financing order by filing with the commission a statement of abandonment and the reasons therefor. The commission shall not refuse to allow a utility corporation to recover recovery costs that would be otherwise permissible for recovery or refuse or condition authorization

or approval of the issuance and sale by a utility corporation of securities or the assumption by the utility corporation of liabilities or obligations, solely because of the potential availability of recovery bond financing.

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

11. Notwithstanding any other law to the contrary, any action, suit or proceeding to which the commission or the recovery bond issuer may be a party, in which any question arises as to the validity of this act or any financing order, shall be preferred over all other civil causes in all courts of the state, except election matters, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Such preference shall also be granted upon petition of counsel to the commission in any action or proceeding questioning the validity of any financing order or other decision made by the commission under this act in which such counsel may be allowed to intervene. Notwithstanding any other provision of law to the contrary, the validity of any financing order or other decision may only be challenged by an aggrieved party pursuant to an action, suit or proceeding filed within thirty days after such financing order becomes final; provided, however, that any such action, suit or proceeding and all supporting papers shall be commenced directly in the supreme court, appellate division, third judicial department.

12. A financing order shall require the recovery bond issuer or the assignee to file at least annually with the commission, the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, and the chair of the assembly ways and means committee, a periodic report showing the billing and collection of recovery charges, the application of recovery charge revenues to debt service on the recovery bonds and other ongoing financing costs, and the balances in any accounts required by the financing order, and any other information the commission deems necessary.

§ 4. Recovery property. 1. All recovery property specified in a financing order shall constitute an existing, present property right. Such property shall exist whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected.

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

3. All or any portion of recovery property specified in a financing order issued to a utility corporation may be sold, assigned, or transferred to a successor or an assignee, including an affiliate or affiliates of the utility corporation or any other assignee created for the limited purpose of acquiring, owning, or administering recovery property or issuing recovery bonds under the financing order. All or any portion of recovery property may be encumbered by a security interest to secure recovery bonds issued pursuant to the order and other financing costs. Each such sale, assignment, transfer, or security interest granted by a utility corporation or affiliate of a utility corporation or assignee shall be considered to be a transaction in the ordinary course of business.

4. The description of recovery property being sold, assigned, or transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement or created and recognized as property of an

assignee in accordance with subdivision nine of this section, being encumbered to a secured party in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the specific financing order that created the recovery property and states that such agreement or financing statement covers all or part of such recovery property described in such financing order. A description of recovery property in a financing statement shall be sufficient if it refers to the financing order creating the recovery property. This subdivision shall apply to all purported sales, assignments, or transfers of, and all purported liens or security interests in, recovery property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed, before or after the effective date of this act.

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

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

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

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

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

8. Any successor to a utility corporation, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of utility corporation restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as the utility corporation under the financing order in the same manner and to the same extent as the utility corporation, including collection and

payment of any revenues and proceeds of the recovery property to any person entitled thereto.

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

§ 5. Sale, assignment, or transfer of recovery property. 1. The sale, assignment, or other transfer of recovery property by a utility corporation to an assignee that the parties have in the governing contract expressly stated to be a sale or other absolute transfer shall constitute an absolute transfer and true sale of, and not a security interest in, the transferor's right, title, and interest in, to, and under such recovery property, other than for federal and state income tax purposes. The parties' characterization of such transaction as a sale of an interest in recovery property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. After any such transaction, the recovery property shall not be subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the recovery property perfected under section eight of this act.

2. Notwithstanding any provision of law to the contrary, the characterization of any sale, assignment, or other transfer as a true sale or other absolute transfer pursuant to subdivision 1 of this section and the corresponding characterization of the assignee's property interest shall be determinative and conclusive irrespective of, and not affected or impaired by, the existence of any or all of the following circumstances:

(a) Commingling of amounts arising with respect to the recovery property with other amounts;

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

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

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

(e) The transferor acting as the collector of the recovery charges or the existence of any contract described in paragraph (k) of subdivision 5 of section three of this act;

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

(g) The granting or providing to holders of the recovery bonds of a preferred right to the recovery property or credit enhancement by the

utility corporation or its affiliates with respect to the recovery bonds; or

(h) The status of the assignee as a direct or indirect wholly owned subsidiary or other affiliate of the utility corporation. The separate juridical personality of any assignee of recovery property which is a subsidiary or affiliate of the utility corporation shall not be disregarded due to the fact that the assignee and the utility corporation share any one or more incidents of control, including common managers, officers, directors, members, accounting or administrative systems, consolidated tax returns, or office space, that the assignee may be a disregarded entity for tax purposes, that the electric corporation caused the formation of the assignee, that a contract by the utility corporation and the assignee described in paragraph (k) of subdivision 5 of section three of this act exists, that the assignee has no other business other than pertaining to the recovery property, that the capitalization of the assignee is limited to amounts required for compliance with certain applicable federal income tax laws and revenue procedures, or that other factors used in applying a single business enterprise test to juridical persons are present.

3. Any right that a utility corporation has in the recovery property prior to its sale, assignment, or transfer shall be in the form of a contractual right or chose in action notwithstanding any contrary treatment thereof for accounting or tax purposes. The ownership of an interest in recovery property is voluntarily transferred by a contract between the owner and the assignee that purports to transfer the ownership of that interest. Unless otherwise provided, the transfer of ownership between the parties shall be effective as soon as there is written agreement on the interest, the purchase price is fixed, and the financing order has been issued. Such transfer shall be perfected and take effect against all third parties including, but not limited to, subsequent lien creditors when the transfer has become effective between the parties and when a financing statement giving notice of the sale, assignment, or transfer is filed in accordance with subdivision 4 of this section. Delivery of such an interest in recovery property shall take place by operation of law upon the filing of the financing statement.

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

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

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

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

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

6. The priority of a sale, assignment, or transfer perfected under this section shall not be impaired by any later modification of the financing order or recovery property or by the commingling of funds arising from recovery property with other funds. Any other security interest that may apply to such funds, other than a security interest perfected under section six of this act, shall be terminated when those funds are transferred to a segregated account for the assignee or a financing party. If recovery property has been transferred to an assignee or financing party, any proceeds of such property shall be held for and delivered to the assignee or financing party by any collector under any contract described in paragraph (k) of subdivision 5 of section three of this act as a mandatary and fiduciary.

§ 6. Security interests. 1. The provisions of article 9 of the uniform commercial code relating to secured transactions shall not apply to recovery property or any right, title, or interest of a corporation or assignee therein, whether before or after the issuance of a financing order, except as provided in subdivision 1 of section seven of this act. In addition, such right, title, or interest pertaining to a financing order, including but not limited to, the associated recovery property, and any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from recovery charges pursuant to such order, shall not be deemed proceeds of any right or interest other than of the financing order and the recovery property arising from the financing order. All revenues and collections resulting from recovery property shall constitute proceeds only of the recovery property arising from the financing order.

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

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

(i) The issuance of a financing order;

(ii) The execution and delivery of a security agreement with a financing party in connection with the issuance of recovery bonds; and

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

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

4. A security interest in recovery property is perfected only if it has attached and a financing statement indicating the recovery property collateral covered thereby has been filed. A financing statement must be filed to perfect all security interests and liens in storm recovery property under this act. A security interest in recovery property is perfected when it has attached and when the applicable financing statement has been filed. The interest of a secured party is not perfected unless a financing statement sufficient under this act and otherwise in accordance with the uniform commercial code is filed, and after

perfection the secured party's interest continues in the recovery property and all proceeds of such recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced. A security interest in proceeds of recovery property is a perfected security interest if the security interest in the recovery property was perfected under this act. Financing statements required to be filed pursuant to this act shall be filed, indexed, maintained, and continued in the same manner and in the same system of records maintained for the filing of financing statements under the uniform commercial code, except that the requirement as to continuation statements does not apply. The filing of such a financing statement shall be the only method of perfecting a lien or security interest on recovery property. The financing statement shall be filed as if the debtor named therein were located in this state.

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

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

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

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

6. A perfected security interest in recovery property and all proceeds of such recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced, shall have priority over a conflicting lien or privilege of any nature in the same collateral property, except a security interest is subordinate to the rights of a person that becomes a lien creditor before the perfection of such security interest. A security interest in recovery property which qualifies for priority over a conflicting security interest, lien, or privilege also has priority over the conflicting security interest, lien, or privilege in proceeds of the recovery property. The relative priority of a perfected security interest of a secured party is not adversely affected by any lien, privilege, or security interest in a deposit account of the utility corporation that is a collector as described in paragraph (k) of subdivision 5 of section three of this act and into which the revenues are deposited. The priority of a security interest perfected under this section shall not be defeated or impaired by any later modification of the financing order or recovery property or by the commingling of funds arising from recovery property with other funds. Any other security interest that may apply to those funds shall be terminated as to all funds transferred to a segregated account for the benefit of an assignee or a financing party or to an assignee or financing party directly. The perfection by control, the effect of perfection by control, and the priority of a security interest granted by the issuer of and securing recovery bonds held by a secured party having control of a segregated deposit account or securities account as original collateral into which revenues, collections, or proceeds of recovery property are deposited or credited shall be governed by section 1-301 of uniform commercial code.

7. If a default occurs under the terms of any recovery bond, the secured party may foreclose on or otherwise enforce the security interest in any recovery property as if it was a secured party under the uniform commercial code. A secured party holding a security interest in

recovery property shall be entitled to exercise all of the same rights and remedies available to a secured party under the uniform commercial code, to the same extent as if those rights and remedies were set forth in this act. The court may order that amounts arising from recovery property be transferred to a separate account of the secured party for the financing parties' benefit, to which their security interest shall apply. On petition by or on behalf of a secured party, the court shall order the sequestration and payment to the financing parties of revenues arising from the recovery property.

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

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

§ 7. Choice of law; conflicts. 1. The law governing the validity, enforceability, attachment, perfection, priority, exercise of remedies, and venue with respect to the creation, recognition, sale, assignment, or transfer of an interest or right or the creation of a security interest in any recovery property shall be exclusively the laws of this state, without applying this state's law on conflict of laws and notwithstanding any contrary contractual provision, except as provided in subdivision 6 of section six of this act. The validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the creation, recognition, sale, assignment, or transfer of an interest or right or the creation of a security interest in any recovery property shall be governed by this act, and solely to the extent not addressed by this act, by the uniform commercial code and other laws of this state. Notwithstanding the preceding sentence, this act provides that the uniform commercial code applies to the filings of financing statements referenced in this act, to perfection, the effect of perfection or nonperfection, and the priority of security interests held by a secured party having control of deposit accounts or securities accounts as original collateral securing recovery bonds, notwithstanding that proceeds of recovery charges are deposited therein, and to the enforcement of security interests in recovery property, in each case subject to subdivision 2 of this section.

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

3. Nothing in this section shall be construed so as to conflict with the provisions of subdivision 6 of section six of this act.

§ 8. Recovery bonds not public debt. Recovery bonds are not a debt or a general obligation of the state or any of its political subdivisions,

agencies, or instrumentalities and are not a charge on their full faith and credit. An issue of recovery bonds shall not, directly or indirectly or contingently, obligate the state or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the bonds, other than for paying recovery charges in their capacity as consumers of electricity. All recovery bonds authorized by a financing order by the commission must contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of New York is pledged to the payment of the principal of, or interest on, this bond."

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

2. Any person that issues recovery bonds shall be permitted to include the pledge specified in subdivision 1 of this section on the face of such bonds and in any ancillary agreements or other documentation related to the issuance and marketing of such bonds.

§ 10. Assignee not a utility corporation. An assignee or financing party shall not be considered a utility corporation as defined in subdivision 24 of section 2 of the public service law solely by virtue of engaging in any of the transactions described in this act.

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

§ 12. Effect of a financing order. Section 70 of the public service law shall not apply to: 1. Any sale, assignment or transfer of recovery property or any equity position held by the utility corporation in an assignee; or

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

§ 13. This act shall take effect immediately.