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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - SECURITIZATION ACT

Introduced By: Representative Brian P. Kennedy

Date Introduced: January 27, 2017

Referred To: House Corporations

(by request)

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 39-1-43, 39-1-44, 39-1-45, 39-1-46, 39-1-47, 39-1-48, 39-1-49,  
2 39-1-50, 39-1-51, 39-1-52, 39-1-53, 39-1-54, 39-1-55, 39-1-56, 39-1-57, 39-1-58, 39-1-59 and  
3 39-1-60 of the General Laws in Chapter 39-1 entitled "Public Utilities Commission" are hereby  
4 repealed.

5           ~~39-1-43. Legislative findings and declarations.~~

6           ~~The general assembly finds and declares that it is in the public interest to facilitate the~~  
7 ~~transition to a competitive retail market by providing a mechanism that will permit the more~~  
8 ~~efficient financing and recovery of certain utility costs arising out of the introduction of~~  
9 ~~competition on a basis that will achieve savings to electric ratepayers. This can be accomplished~~  
10 ~~by authorizing electric distribution companies to apply to the commission for securitization orders~~  
11 ~~to finance all or portions of the contract termination fees paid by electric distribution companies~~  
12 ~~to their wholesale power suppliers. To achieve its purpose, this chapter is to be construed in such~~  
13 ~~a manner as to give effect to the form and terms of the transactions effected pursuant to such~~  
14 ~~orders.~~

15           ~~39-1-44. Definitions.~~

16           ~~For the purpose of this chapter, the following terms shall have the following meanings:~~

17           ~~(1) "Assignee" shall mean any party to whom an electric distribution company shall have~~  
18 ~~assigned or transferred all or a portion of its interest, other than as security, in intangible~~  
19 ~~transition property (including, without limitation, affiliates of the electric distribution company or~~

1 ~~the electric distribution company's wholesale supplier or its affiliates), and any other party to~~  
2 ~~whom all or a portion of such interest shall subsequently be so assigned or transferred.~~

3 ~~(2) "Contract termination fees" shall mean the fees owed by the electric distribution~~  
4 ~~company to its wholesale supplier, authorized by § 39-1-27.4, and determined and approved by~~  
5 ~~the federal energy regulatory commission (FERC), which would include, if applicable, the~~  
6 ~~contract termination fees provided in a settlement (approved by the FERC) that may be entered~~  
7 ~~into between (i) an electric distribution company's wholesale power supplier and (ii) the division~~  
8 ~~or the commission, which settlement arises out of the contract termination proceedings at the~~  
9 ~~FERC referred to in § 39-1-27.1(b).~~

10 ~~(3) "Financing Party" shall mean a holder of transition bonds, including trustees,~~  
11 ~~collateral agents and other such parties acting for the benefit of such a holder.~~

12 ~~(4) "Intangible transition charges" shall mean the amounts authorized to be imposed and~~  
13 ~~collected from customers of the electric distribution company to recover qualified transition~~  
14 ~~expenditures pursuant to a securitization order, whether such charges are fixed, contingent or~~  
15 ~~unliquidated.~~

16 ~~(5) "Intangible transition property" shall mean the right, title and interest of an electric~~  
17 ~~distribution company or assignee in a securitization order, including all rights in, to, under and~~  
18 ~~pursuant to such order, which rights shall include all rights to revenues, collections, claims,~~  
19 ~~payments, money or other property and amounts arising from the imposition of intangible~~  
20 ~~transition charges pursuant to such order. The foregoing rights shall include, without limitation,~~  
21 ~~the right to require the electric distribution company to provide electric services, as contemplated~~  
22 ~~in the securitization order, but shall not include the right or duty to provide such services.~~  
23 ~~Property or amounts collected or recovered in respect of the foregoing rights or the disposition~~  
24 ~~thereof, including amounts arising from the temporary investment or reinvestment of such~~  
25 ~~amounts, are proceeds of the intangible transition property, whenever realized.~~

26 ~~(6) "Securitization order" shall mean an order of the commission, adopted in accordance~~  
27 ~~with the provisions of this chapter, approving an application of an electric distribution company~~  
28 ~~for the recovery of qualified transition expenditures incurred by or on behalf of an electric~~  
29 ~~distribution company or assignee, including any compliance orders associated therewith.~~

30 ~~(7) "Transition bonds" shall mean bonds, debentures, notes, certificates of participation or~~  
31 ~~beneficial interest, and other evidences of indebtedness or ownership, issued pursuant to an~~  
32 ~~executed trust indenture or other agreement of an electric distribution company or assignee, and~~  
33 ~~which are secured by or payable from intangible transition property.~~

34 ~~(8) "Qualified transition expenditures" shall mean (i) all of the contract termination fees~~

1 ~~owed by an electric distribution company to its wholesale power supplier, whether payable in~~  
2 ~~money or through the transfer of other property or rights, and (ii) any reasonable transaction costs~~  
3 ~~incurred to obtain, carry, or administer the financing and transactions of an electric distribution~~  
4 ~~company or assignee, whether or not an electric distribution company has proposed such~~  
5 ~~financing in an application for a securitization order, including without limitation, (A) interest~~  
6 ~~and premium, if any, or with respect to certificates of participation, beneficial interest, or~~  
7 ~~ownership, amounts corresponding thereto, (B) other transaction fees, and (C) any federal, state~~  
8 ~~or local tax expenses arising from the transactions.~~

9 **39-1-45. Securitization order -- General.**

10 ~~Notwithstanding any other provision of law, the commission is authorized to issue~~  
11 ~~securitization orders in accordance with the provisions of this chapter to facilitate the financing,~~  
12 ~~or financings, of qualified transition expenditures through the issuance of transition bonds,~~  
13 ~~subject to the following:~~

14 ~~(1) Voluntary filing. Each electric distribution company recovering transition charges~~  
15 ~~pursuant to § 39-1-27.4 shall have the option, but not be obligated, to file an application with the~~  
16 ~~commission for issuance of a securitization order. A securitization order may be issued by the~~  
17 ~~commission only upon the application of an electric distribution company, filed in accordance~~  
18 ~~with the procedures set forth in § 39-1-46; provided, however that if an electric distribution~~  
19 ~~company elects to finance qualified transition expenditures through the issuance of bonds or other~~  
20 ~~evidence of indebtedness without first seeking a securitization order, then all of the net savings~~  
21 ~~achieved through such financing shall be credited to the customer of the electric distribution~~  
22 ~~company in the same manner as if the electric distribution company had filed an application for a~~  
23 ~~securitization order in accordance with § 39-1-46. Such securitization order shall become~~  
24 ~~effective in accordance with its terms only after the electric distribution company files with the~~  
25 ~~commission the electric distribution company's written consent to all terms and conditions of such~~  
26 ~~order.~~

27 ~~(2) Irrevocability. (i) Notwithstanding any other provision of law, the securitization order~~  
28 ~~shall be irrevocable and neither the order nor the intangible transition charges authorized to be~~  
29 ~~imposed and collected thereunder shall be subject to reduction, postponement, impairment,~~  
30 ~~alteration, limitation or termination by any subsequent action of the commission, nor shall the~~  
31 ~~commission, the state, or any agency, employee or agent thereof take any action or make or~~  
32 ~~authorize any statement that would support such a modification of any intangible transition~~  
33 ~~charges or contract termination fees to which the securitization order may relate, or any finding~~  
34 ~~relating to such fees, after those fees have been approved by the federal energy regulatory~~

1 ~~commission or any successor thereto.~~

2 ~~(ii) Notwithstanding any other provision of law, any requirement under this chapter or a~~  
3 ~~securitization order that the commission take action with respect to the subject matter of a~~  
4 ~~securitization order shall be binding upon the commission, as it may be constituted from time to~~  
5 ~~time, and any successor agency exercising functions similar to the commission and the~~  
6 ~~commission shall have no authority to rescind, alter, or amend that requirement in a securitization~~  
7 ~~order.~~

8 ~~(3) Assignment — Pledge. Notwithstanding any other provision of law, all or portions of~~  
9 ~~the interest of an electric distribution company or assignee in a securitization order and in~~  
10 ~~intangible transition property arising therefrom may be sold or otherwise transferred to an~~  
11 ~~assignee, and may be pledged or assigned as security by an electric distribution company or~~  
12 ~~assignee to or for the benefit of one or more financing parties. To the extent that all or a portion~~  
13 ~~of any such interest is so sold or transferred, or is so pledged or assigned as security, the electric~~  
14 ~~distribution company shall be authorized to contract with and for the benefit of any such assignee~~  
15 ~~and/or financing party that it will continue to operate its system to provide electric services to its~~  
16 ~~customers and will impose and collect the applicable intangible transition charges for the benefit~~  
17 ~~and account of the assignee or financing party, and will account for and remit the same to or for~~  
18 ~~the account of such party.~~

19 ~~(4) Nonbypass. Notwithstanding any other provision of law, if the electric distribution~~  
20 ~~company contracts as provided in the preceding paragraph (3), then, such obligations of the~~  
21 ~~electric distribution company, (i) shall be binding upon the electric distribution company, its~~  
22 ~~successor and assigns, and (ii) shall be required by the commission to be undertaken and~~  
23 ~~performed by the electric distribution company and any other party who provides electric services~~  
24 ~~to a person who was a customer of the electric distribution company located within the authorized~~  
25 ~~service area of the electric distribution company on January 1, 1997, or who thereafter became a~~  
26 ~~customer of electric services within such area, and is still located within such area, as a condition~~  
27 ~~to the provision of services to such customer by such electric distribution company or party,~~  
28 ~~unless a termination charge shall have been paid by or on behalf of such customer, all in the~~  
29 ~~manner and on the basis specified in the application for a securitization order approved by the~~  
30 ~~commission.~~

31 ~~(5) Lapse. The irrevocable status of the securitization order, as provided in this chapter~~  
32 ~~shall lapse and terminate to the extent that a sale or other transfer and/or debt financing of the~~  
33 ~~intangible transition property resulting therefor has not commenced within any period or periods~~  
34 ~~specified in the securitization order.~~

1           ~~(6) No Cross Subsidies. Notwithstanding any other provision of law, in no event shall~~  
2 ~~any securitization order (i) authorize or require the customers of an electric distribution company~~  
3 ~~other than the electric distribution company applying for such securitization order to pay any~~  
4 ~~intangible transition charges or other amounts with respect to the transactions authorized by such~~  
5 ~~securitization order, or (ii) authorize, permit, or require that any amounts arising from the~~  
6 ~~transactions authorized by such securitization order be used to subsidize or benefit an electric~~  
7 ~~distribution company (or the customers thereof) other than the electric distribution company (and~~  
8 ~~the affiliates thereof) applying for such securitization order and its (or its affiliates') customers.~~

9           **39-1-46. Application and proceedings relating to securitization order.**

10           ~~(a) An electric distribution company seeking a securitization order shall file an~~  
11 ~~application with the commission. The contents of the application shall include:~~

12           ~~(1) A financing plan, including a description and the principal terms and conditions of the~~  
13 ~~transactions contemplated;~~

14           ~~(2) A statement and appropriate schedules defining the portion of the qualified transition~~  
15 ~~expenditures that will be financed;~~

16           ~~(3) An analysis showing the savings to the electric distribution company's customers that~~  
17 ~~are expected, on average, to be realized through the financing plan;~~

18           ~~(4) A statement and appropriate schedules setting forth the specific qualified transition~~  
19 ~~charges that will be charged in rates, on average, to the electric distribution company's customers~~  
20 ~~in lieu of the applicable portion of the original transition charges authorized by § 39-1-27.4;~~

21           ~~(5) A proposed adjustment procedure, as described in subsection (h) below; and~~

22           ~~(6) A statement regarding the use or uses of the proceeds of the transition bonds, and a~~  
23 ~~description of how the intangible transition charges are to be billed, collected, held, accounted~~  
24 ~~for, and paid over to a financing party in respect of the financing.~~

25           ~~(b) The commission shall review the application to determine whether the application~~  
26 ~~meets the following criteria: (1) the transaction(s) contemplated in the application, including~~  
27 ~~without limitation issuance of transition bonds, are reasonably certain to result, on average, in~~  
28 ~~quantifiable savings in the transition charges authorized by § 39-1-27.4 and paid to the electric~~  
29 ~~distribution company by its retail distribution customers; (2) the terms of the financing plan are~~  
30 ~~commercially reasonable; (3) all of the savings to be achieved by the financing plan, net of costs,~~  
31 ~~will be credited to the customer of the electric distribution company through the intangible~~  
32 ~~transition charges; and (4) the procedures and terms proposed in the application are consistent~~  
33 ~~with the terms and intent of this chapter.~~

34           ~~(c) The commission will take action to approve or disapprove the application within not~~

1 ~~more than one hundred and twenty (120) days after such application is filed by the electric~~  
2 ~~distribution company.~~

3 ~~(d) If the commission finds that the application meets the criteria specified in subsection~~  
4 ~~(b) above, the commission shall issue a securitization order approving the terms of the~~  
5 ~~application, consistent with the provisions of this chapter. If, however, the commission finds that~~  
6 ~~the application does not meet such criteria, the commission shall issue a written order denying the~~  
7 ~~application and specifying with reasonable particularity the reasons why the application does not~~  
8 ~~meet the criteria.~~

9 ~~(e) After the agreements that will be used to implement the financing plan have been~~  
10 ~~completed and executed, but before they become effective, the electric distribution company~~  
11 ~~applicant shall make a compliance filing with the commission containing the final executed~~  
12 ~~agreements. If requested by the applicant electric distribution company, the commission shall~~  
13 ~~issue a written compliance order within thirty (30) days after receiving the compliance filing~~  
14 ~~confirming whether the final agreements are materially consistent with the original application~~  
15 ~~that was approved by the commission in the securitization order.~~

16 ~~(f) In the event that the applicant electric distribution company submits a financing plan~~  
17 ~~that contemplates transition bond financings occurring in stages, the commission shall determine~~  
18 ~~whether the application meets the criteria specified in subsection (b) above and, if it so finds,~~  
19 ~~shall make such determination in the securitization order in connection with such financing plan~~  
20 ~~as provided above. The commission shall not, thereafter, in connection with any supplementary~~  
21 ~~compliance filings that may be contemplated in the application to carry out the stages of~~  
22 ~~financing, condition the approval of such compliance filings on the commission renewing any of~~  
23 ~~its findings that were made in the securitization order approving the financing plan.~~

24 ~~(g) An electric distribution company shall be permitted to designate in its application for~~  
25 ~~a securitization order the portions, sub parts, or components of qualified transition expenditures~~  
26 ~~that shall be the subject of the securitization order and subsequent related financing through the~~  
27 ~~issuance of transition bonds.~~

28 ~~(h) The application of the electric distribution company shall include a procedure through~~  
29 ~~which the commission will annually review the intangible transition charges authorized therein,~~  
30 ~~and within not more than thirty (30) days after each such review, adjust such charges if and to the~~  
31 ~~extent necessary to ensure the timely recovery of revenues sufficient to provide for the payment~~  
32 ~~for all principal, interest, premium, if any, and other charges, or, with respect to certificates of~~  
33 ~~beneficial interest, participation or ownership, amounts corresponding thereto, in respect of the~~  
34 ~~transition bonds proposed in the application; provided, however, that any such adjustments shall~~

1 ~~in no event require the acceleration of payments of any such charges or amounts related to the~~  
2 ~~securitization order.~~

3 (i) ~~The application may propose the principal terms and conditions upon which the~~  
4 ~~transition bonds may be refinanced, including the disposition of any savings achieved by it~~  
5 ~~thereby and the effect of such refinancing upon the intangible transition charges from such~~  
6 ~~refinancing.~~

7 ~~**39-1-47. Creation and existence of intangible transition property.**~~

8 ~~Intangible transition property shall arise and exist when the applicable securitization~~  
9 ~~order becomes effective in accordance with § 39-1-45(1) and shall thereafter continuously exist~~  
10 ~~as provided in the order, which shall be for a period at least equal to the period to which the~~  
11 ~~agreement of the state under § 39-1-53 applies with respect to the securitization order.~~

12 ~~**39-1-48. Security interests.**~~

13 ~~A security interest in intangible transition property of an electric distribution company or~~  
14 ~~assignee may be created and shall attach and be perfected only in accordance with the provisions~~  
15 ~~of this chapter.~~

16 ~~**39-1-49. Obligations.**~~

17 ~~Nothing in §§ 39-1-43—39-1-60, inclusive, shall be construed as relieving an electric~~  
18 ~~distribution company of any contractual obligations to which it would otherwise be subject.~~

19 ~~**39-1-50. Interpretation of securitization orders -- Judicial review of securitization**~~  
20 ~~**orders.**~~

21 ~~(a) The commission shall have jurisdiction over the interpretation of the terms and~~  
22 ~~conditions of a securitization order, including any petition of an electric distribution company,~~  
23 ~~assignee or financing party for clarification of the terms of the order. Such jurisdiction shall~~  
24 ~~include matters pertaining to enforcement of the obligations of an electric distribution company,~~  
25 ~~its successor, or any other party providing electric services as described in § 39-1-45(4), to~~  
26 ~~impose and collect intangible transition charges pursuant to such order. An assignee or financing~~  
27 ~~party shall be entitled, as of right, to be a party to any such proceeding. A securitization order~~  
28 ~~shall remain in full force and effect and, as an exercise of the commission's rate-making authority,~~  
29 ~~the jurisdiction of the commission with respect thereto shall continue unabated, notwithstanding~~  
30 ~~any bankruptcy, reorganization, dissolution or insolvency proceedings affecting the electric~~  
31 ~~distribution company or an assignee.~~

32 ~~(b) In order to preserve the customer rate savings expected to result from a securitization~~  
33 ~~order, which may be time sensitive to financial market conditions affecting the feasibility and~~  
34 ~~terms of transition bonds approved therein, any judicial review of a securitization order or~~

1 ~~commission decision regarding the terms or enforcement of a securitization order shall be in~~  
2 ~~accordance with the provisions of chapter 5 of title 39.~~

3 **39-1-51. Change of securitization order upon judicial review.**

4 ~~In the event that the terms and conditions of a securitization order initially approved by~~  
5 ~~the commission are required to be modified or set aside in any part as a result of judicial review~~  
6 ~~of that order under § 39-1-50, other than in any manner provided in the original terms of the~~  
7 ~~order, the order shall take effect only after the commission shall have adopted the terms and~~  
8 ~~conditions thereof as so modified and the electric distribution company shall have filed with the~~  
9 ~~commission its written consent to all terms and conditions of the order as modified.~~

10 **39-1-52. No effect on other industry restructuring provisions.**

11 ~~The provisions of §§ 39-1-43—39-1-60, inclusive, are not intended to alter the~~  
12 ~~provisions of law set forth in §§ 39-1-27—39-1-27.6, inclusive, and other provisions enacted~~  
13 ~~through the Utility Restructuring Act of 1996; provided, however, that intangible transition~~  
14 ~~charges authorized through the issuance of a securitization order shall be paid by all customers of~~  
15 ~~the applicant electric distribution company in lieu of the applicable portion of the original~~  
16 ~~transition charges that were authorized by § 39-1-27.4. In the event that only a portion of the~~  
17 ~~original transition charges are being securitized through the securitization order, the components~~  
18 ~~of the intangible transition charges and the remaining original transition charges will be~~  
19 ~~accounted for separately for purposes of implementing the financing plan approved by the~~  
20 ~~commission and performing any reconciliations thereof; provided, however, for purposes of § 39-~~  
21 ~~3-37.3, the aggregate amount of the components may be billed as one "transition charge" on bills~~  
22 ~~sent to customers.~~

23 **39-1-53. Agreement of the state.**

24 ~~The state of Rhode Island does hereby pledge to and agree with the holders of any~~  
25 ~~transition bonds issued under the authority of this chapter and with any electric distribution~~  
26 ~~company with respect to which a securitization order is adopted pursuant to this chapter and any~~  
27 ~~assignee or financing party who may enter into contracts with an electric distribution company or~~  
28 ~~assignee pursuant to such provisions of the general laws, that the state will not limit or alter the~~  
29 ~~rights vested in an electric distribution company or assignee or financing party pursuant to a~~  
30 ~~securitization order (including without limitation, the intangible transition charges, intangible~~  
31 ~~transition property, securitization orders, and all rights thereunder) until the principal of, interest~~  
32 ~~on and premium, if any, with respect to such transition bonds, or, with respect to certificates of~~  
33 ~~participation, beneficial interest or ownership, amounts corresponding thereto, and costs related~~  
34 ~~thereto, are fully paid and discharged and such contracts are fully performed on the part of all~~



1 ~~parties to the transactions contemplated in the financing plan approved by the commission,~~  
2 ~~including without limitation the electric distribution company, its successors and assigns and any~~  
3 ~~other party providing electric service as described in § 39-1-45(4); provided that, subject to other~~  
4 ~~requirements of law, nothing herein contained shall preclude such limitation or alteration if and~~  
5 ~~when full compensation, giving due effect to the payment of principle and interest (or amounts~~  
6 ~~corresponding thereto) and other costs and charges, shall be provided by law for the protection of~~  
7 ~~the electric distribution company, its successor, if any, the holders of such transition bonds, and~~  
8 ~~any assignee or financing party entering into such contracts with the electric distribution company~~  
9 ~~or an assignee. The electric distribution company or an assignee is authorized to include this~~  
10 ~~pledge and undertaking for the state in these obligations.~~

11 ~~**39-1-54. Intangible transition property -- The Uniform Commercial Code.**~~

12 ~~For purposes of § 6A-9-106 of the Uniform Commercial Code, title 6A, neither~~  
13 ~~intangible transition property nor any right, title or interest of an electric distribution company or~~  
14 ~~assignee of such property, whether before or after the issuance of the securitization order, shall be~~  
15 ~~considered "accounts" or "general intangibles"; nor, for purposes of Article 9 of the Uniform~~  
16 ~~Commercial Code (chapter 9 of title 6A) shall a securitization order or any such right, title or~~  
17 ~~interest pertaining thereto, including the associated intangible transition property and any~~  
18 ~~revenues, collections, claims, payments, money or other property and amounts arising from~~  
19 ~~intangible transition charges pursuant to such order, be deemed proceeds of any right or interest~~  
20 ~~other than such order and the intangible property arising therefrom.~~

21 ~~**39-1-55. Attachment and perfection of security interest.**~~

22 ~~A valid and enforceable security interest in intangible transition property shall be created~~  
23 ~~by the terms of the applicable securitization order, or by the execution and delivery of a security~~  
24 ~~agreement between the electric distribution company, or assignee, and a financing party, and shall~~  
25 ~~attach, and shall be perfected only by means of a separate filing with the commission, under the~~  
26 ~~rules as the commission establishes pursuant to § 39-1-56. For this purpose, the commission shall~~  
27 ~~provide that:~~

28 ~~(i) If transition bonds are issued to finance any qualified transition expenditures, as~~  
29 ~~specified in the applicable securitization order, the security interest securing such bonds shall~~  
30 ~~attach automatically to the intangible transition property relating to such expenditures from the~~  
31 ~~time that value is given for the issuance of the bonds;~~

32 ~~(ii) Such security interest shall thereupon and thereafter be deemed a valid and~~  
33 ~~enforceable security interest in the intangible transition property securing such transition bonds,~~  
34 ~~and, subject to compliance with such further conditions, if any, as may be stated in the~~

1 ~~securitization order, shall thereupon be deemed a continuously perfected security interest in such~~  
2 ~~property and in all revenues and other proceeds arising in respect of such property, whenever the~~  
3 ~~same may accrue or be identified, if, before the date of issuance specified in subparagraph (i) of~~  
4 ~~this section or within not more than ten (10) days thereafter, a filing shall have been made by or~~  
5 ~~on behalf of the financing party to protect that security interest in accordance with the procedures~~  
6 ~~prescribed by the commission pursuant to this section and other provisions of this chapter;~~

7 ~~(iii) Any filing, in accordance with the rules of the commission established pursuant to §~~  
8 ~~39-1-56, in respect of a security interest securing transition bonds issued pursuant to a~~  
9 ~~securitization order, shall have priority over any filing in respect of a security interest not~~  
10 ~~securing such bonds, whenever effected;~~

11 ~~(iv) Conflicting security interests securing transition bonds issued pursuant to a~~  
12 ~~securitization order shall rank according to priority in time of perfection;~~

13 ~~(v) The relative priority of a security interest in intangible transition property, when~~  
14 ~~perfected in accordance with the rules of the commission established pursuant to § 39-1-56, shall~~  
15 ~~not be adversely affected by subsequent changes to the securitization order or to the intangible~~  
16 ~~transition charges to be paid by any customer pursuant thereto, as contemplated in §§ 39-1-45 and~~  
17 ~~39-1-46; and~~

18 ~~(vi) A security interest in intangible transition property when perfected in accordance~~  
19 ~~with the rules of the commission established pursuant to § 39-1-56, shall have priority over the~~  
20 ~~claim of any judgment lien creditor or other lien creditor of the debtor, whose lien becomes~~  
21 ~~perfected or attached after perfection, of the security interest.~~

22 ~~**39-1-56. Filing system -- Commission rules.**~~

23 ~~By December 31, 1997, the commission shall establish a filing system and technical rules~~  
24 ~~for the administration of such system. The commission shall establish and maintain a separate~~  
25 ~~system of records to reflect the date and time of receipt of all filings made pursuant to this~~  
26 ~~chapter, and shall provide that transfers of intangible transition property to an assignee shall be~~  
27 ~~filed in accordance with such system.~~

28 ~~**39-1-57. Assignment.**~~

29 ~~(a) A transfer to an assignee of any interest in a securitization order, including any~~  
30 ~~intangible transition property arising therefrom, and any revenues or other proceeds arising in~~  
31 ~~respect of such property, whenever realized, shall be perfected as against third parties, including~~  
32 ~~any other purchaser from the transferor, when:~~

33 ~~(1) the related securitization order becomes effective;~~

34 ~~(2) a written instrument of assignment has been executed by the assignor and delivered to~~

1 ~~the assignee; and~~

2 ~~(3) a statement describing the assignment has been filed with the commission in~~  
3 ~~accordance with its rules established pursuant to § 39-1-56. A filing shall be effective as of the~~  
4 ~~date of assignment, if made on or before the date of the assignment or within ten (10) days~~  
5 ~~thereafter.~~

6 ~~(b) The relative priority of interest of two (2) or more assignees for value, and without~~  
7 ~~notice, who have filed in accordance with the rules of the commission, shall be determined by~~  
8 ~~reference to the order in which their statements have been filed; and, if an assignment with~~  
9 ~~respect to which a complying filing has been made shall for any purpose of law be treated as a~~  
10 ~~security interest, the filing shall be deemed effective as a filing with respect to such security~~  
11 ~~interest.~~

12 **39-1-58. Events of default; foreclosure.**

13 ~~Upon the occurrence of an event of default with respect to transition bonds issued~~  
14 ~~pursuant thereto and which are secured by a security interest perfected in accordance with this~~  
15 ~~chapter, the holders of such bonds or their authorized representatives shall have the same rights as~~  
16 ~~those of a secured party under Article 9 of the Uniform Commercial Code (as set forth in chapter~~  
17 ~~9 of title 6A); and, subject to the rights of other parties, if any, holding prior security interests~~  
18 ~~perfected in the manner provided in this chapter, shall be entitled to foreclose upon and otherwise~~  
19 ~~enforce their security interest in court and to request the sequestration and payment to the holders~~  
20 ~~or their authorized representatives of all revenues and other amounts arising from the imposition~~  
21 ~~of intangible transition charges included in the intangible transition property in which such~~  
22 ~~holders have a security interest.~~

23 **39-1-59. True sale.**

24 ~~(a) To better implement the purposes of §§ 39-1-43 — 39-1-60, inclusive, with a view to~~  
25 ~~maximizing customer savings intended to be accomplished thereby, in the event that all or a~~  
26 ~~portion of the interest of an electric distribution company or assignee in a securitization order,~~  
27 ~~including any intangible transition property arising therefrom, is transferred in a transaction that~~  
28 ~~is approved in the securitization order and which the governing documentation expressly states to~~  
29 ~~be a sale or other absolute transfer of the transferor's right, title and interest in the portion of such~~  
30 ~~order and intangible transition property so transferred, then such transfer shall be treated as a sale~~  
31 ~~or other absolute transfer of the interest so transferred, as in a true sale and not as a pledge or~~  
32 ~~other financing thereof and shall be deemed to constitute a sufficient transfer of dominion over~~  
33 ~~such transferred portion of the securitization order and the intangible transition property to~~  
34 ~~constitute a true sale. For this purpose, the absolute nature of such a sale or other transfer shall not~~

1 ~~be affected or impaired in any manner by, among other things: (i) the assignor's retention of bare~~  
2 ~~legal title to intangible transition property for the purpose of servicing or supervising the~~  
3 ~~servicing of such property and collections with respect thereto; (ii) the assignor's retention, or~~  
4 ~~acquisition, as a part of the assignment transaction or otherwise, of a de minimis equity interest~~  
5 ~~not exceeding five percent (5%) in the intangible transition property for investment purposes, or~~  
6 ~~the provision of credit enhancement at market rates for the same de minimis portion of such~~  
7 ~~property; (iii) any provision in the securitization order determining the order in which amounts~~  
8 ~~are deemed collected, on either a priority or ratable basis, in respect of intangible transition~~  
9 ~~charges and other rates or charges, excluding taxes, collected from customers of the electric~~  
10 ~~distribution company, in the event of partial payment; (iv) the fact that only a portion of the~~  
11 ~~intangible transition property is transferred; or (v) the fact that the electric distribution company~~  
12 ~~or an affiliate thereof acts as the collector of intangible transition charges in connection with~~  
13 ~~intangible transition property.~~

14 ~~(b) Notwithstanding such a sale or other absolute transfer of intangible transition~~  
15 ~~property, the consideration received by an electric distribution company or assignee in respect of~~  
16 ~~any such sale or transfer shall not be subject to any state or local taxes, or any surcharges based~~  
17 ~~on such taxes, now or hereafter imposed, nor shall the assignee of intangible transition property~~  
18 ~~be considered to be a public utility or a party providing electric services for purposes of this~~  
19 ~~chapter. The electric distribution company or other party providing electric services with respect~~  
20 ~~to which intangible transition charges are authorized and/or required to be imposed shall be the~~  
21 ~~party obligated to collect and/or be liable to pay each of the foregoing taxes with respect to such~~  
22 ~~charges. In addition, notwithstanding such sale or other absolute transfer, the commission shall~~  
23 ~~continue to have jurisdiction to take such further actions as are required or permitted to be taken~~  
24 ~~with respect to the securitization order in accordance with the terms of such order, and pursuant~~  
25 ~~to the provisions of this chapter, notwithstanding that the assignee or financing party is not an~~  
26 ~~electric distribution company or other party that would otherwise be subject to the jurisdiction of~~  
27 ~~the commission.~~

28 **39-1-60. Commingling.**

29 ~~The validity of the interest of an assignee or secured party in intangible transition~~  
30 ~~property, and in all revenues or other proceeds arising in respect of such property whenever~~  
31 ~~realized, as herein provided, and the relative priority of the security interest of a secured party~~  
32 ~~therein, when perfected in accordance with the rules of the commission established pursuant to §~~  
33 ~~39-1-56, shall not be defeated or adversely affected by the commingling of any such revenues or~~  
34 ~~other proceeds with other funds, including those of the electric distribution company or assignee,~~

1 ~~a successor to either such party, another party providing electric service as described in § 39-1-~~  
2 ~~45(4) or a party performing collection functions on behalf of any of the foregoing. All of the~~  
3 ~~foregoing parties shall for purposes of this section be referred to as a "collection party". Nor shall~~  
4 ~~such interest be defeated by the existence of any security interest in a deposit account of any such~~  
5 ~~collection party perfected under Article 9, commencing with § 9-101, of the Uniform Commercial~~  
6 ~~Code (chapter 9 of title 6A), in which such revenues or other proceeds may have been deposited;~~  
7 ~~and, to the extent that moneys of an assignee of intangible transition property are at any time held~~  
8 ~~in a deposit or other account of a collection party, such moneys shall be considered to be held in~~  
9 ~~trust for the benefit of such assignee. For this purpose:~~

10 ~~(1) An assignee of intangible transition property arising under a securitization order shall~~  
11 ~~have a perfected interest, and the holders of a perfected security interest in intangible transition~~  
12 ~~property of the electric distribution company or assignee arising under such order shall have a~~  
13 ~~perfected security interest, in all cash and deposit accounts of any collection party in which~~  
14 ~~amounts collected, recovered or received in respect of intangible transition charges pursuant to~~  
15 ~~such order have been deposited and commingled with other funds, provided, that any such~~  
16 ~~perfected security interest in deposit accounts of the electric distribution company or assignee or a~~  
17 ~~successor thereof, if such party is the debtor of the party holding the perfected security interest,~~  
18 ~~shall be subject to any applicable right of set-off and, in the event of insolvency of the electric~~  
19 ~~distribution company or assignee or a successor thereof, the perfected security interest in~~  
20 ~~intangible transition property of such insolvent party and any revenues or other proceeds arising~~  
21 ~~in respect of such property shall be limited to an amount not greater than the amounts collected or~~  
22 ~~recovered by such party in respect of intangible transition charges, whether or not actually~~  
23 ~~deposited in the deposit accounts of such party, within the twelve (12) months preceding the~~  
24 ~~commencement of insolvency proceedings, less the sum of such amounts paid to or for the~~  
25 ~~account of the holders of such security interest in intangible transition property, or transferred to a~~  
26 ~~segregated account held solely for their benefit, during such twelve (12) month period; and~~

27 ~~(2) In the event that proceeds of intangible transition property which have been~~  
28 ~~recovered, collected, or otherwise received by a collection party shall have been transferred by~~  
29 ~~such party from a commingled account that includes other funds to a segregated account~~  
30 ~~identified as held solely for the benefit of the holders of transition bonds, which bonds are~~  
31 ~~secured by a security interest, perfected in accordance with the rules of the commission~~  
32 ~~established pursuant to § 39-1-56, in the intangible transition property and all revenues and other~~  
33 ~~proceeds arising in respect of such property, the security interest of the holders of the transition~~  
34 ~~bonds shall apply to any such segregated account, and shall have priority over any other interest~~

1 ~~or security interest therein, and over the lien of any judgment lien creditor or other lien creditor to~~  
2 ~~which the security interest of the transition bonds is senior, in accordance with § 39-1-55(vi) of~~  
3 ~~this chapter.~~

4 SECTION 2. Sections 39-3-15, 39-3-24 and 39-3-28 of the General Laws in Chapter 39-3  
5 entitled "Regulatory Powers of Administration" are hereby amended to read as follows:

6 **39-3-15. Security issues for which permission required.**

7 A public utility, as defined in § 39-1-2, may not, without application to and authority  
8 from the division, issue stocks, bonds, notes, or other evidences of indebtedness, payable more  
9 than twelve (12) months from the date of issue, when necessary for the acquisition of property,  
10 the construction, completion, extension, or improvement of its facilities or for the improvement or  
11 maintenance of its service, or for the reorganization or readjustment of its indebtedness and/or  
12 capitalization, or for the discharge or lawful refunding of its obligations, or for the reimbursement  
13 of money actually expended from income or from any other money in the treasury of the public  
14 utility not secured or obtained from the issue of stocks, bonds, notes, or other evidences of  
15 indebtedness of the public utility.

16 ~~This section shall not apply to, and a public utility shall not be required to obtain the~~  
17 ~~approval of the division for, the issuance of transition bonds or engaging in any other transactions~~  
18 ~~that are set forth in an application for a securitization order that is approved by the commission~~  
19 ~~pursuant to § 39-1-46.~~

20 **39-3-24. Transactions between utilities for which approval required.**

21 With the consent and approval of the division, but not otherwise:

22 (1) Any two (2) or more public utilities doing business in the same municipality or  
23 locality within this state, or any two (2) or more public utilities whose lines intersect or parallel  
24 each other within this state, or furnish a like service or product within this state, may enter into  
25 contracts with each other that will enable the public utilities to operate their lines or plants in  
26 connection with each other.

27 (2) Any public utility may purchase or lease all or any part of the property, assets, plant,  
28 and business of any other public utility or merge with any other public utility, and in connection  
29 therewith may exercise and enjoy all of the rights, powers, easements, privileges, and franchises  
30 theretofore exercised and enjoyed by any other public utility with respect to the property, assets,  
31 plant, and business so purchased, leased, or merged.

32 (3) Any public utility may merge with any other public utility or sell or lease all or any  
33 part of its property, assets, plant, and business to any other public utility, provided that the merger  
34 or a sale or lease of all or substantially all of its property, assets, plant, and business shall be

1 authorized by a vote of at least two-thirds (2/3) in interest of its stockholders at a meeting duly  
2 called for the purpose. Any stockholder who shall not have voted in favor of the merger sale or  
3 lease, either in person or by proxy, shall be entitled to the rights, and the corporation shall be  
4 subject to the duties, obligations, and liabilities set forth in §§ 7-1.2-1201 and 7-1.2-1202 with  
5 respect to dissenting stockholders and to corporations which sell, lease, or exchange their entire  
6 assets respectively.

7 (4) Any public utility may directly or indirectly purchase the stock of any other public  
8 utility.

9 ~~(5) This section shall not apply to, and a public utility shall not be required to obtain the~~  
10 ~~consent and approval of the division for, the issuance of transition bonds or engaging in any other~~  
11 ~~transactions that are set forth in an application for a securitization order that is approved by the~~  
12 ~~commission pursuant to § 39-1-46.~~

13 **39-3-28. Filing of agreements with affiliates.**

14 The original or a verified copy of any contract or arrangement and of any modification  
15 thereof or a verified summary of any unwritten contract or arrangement, the consideration of  
16 which exceeds five hundred dollars (\$500), hereafter entered into between a public utility and an  
17 affiliate providing for the furnishing of managerial, supervisory, construction, engineering,  
18 accounting, purchasing, financial, or any other services, either to or by a public utility or an  
19 affiliate, shall be filed by the public utility with the division within ten (10) days after the date on  
20 which the contract is executed or the arrangement entered into. The division may also require a  
21 public utility to file in such form as the division may require full information with respect to any  
22 purchase from or sale to an affiliate, whether or not made in pursuance of a continuing contract or  
23 arrangement.

24 ~~This section and §§ 39-3-29 — 39-3-32, inclusive, shall not apply to, and a public utility~~  
25 ~~shall not be required to file with the division, any agreements or arrangements that are set forth in~~  
26 ~~an application for a securitization order that is approved by the commission pursuant to § 39-1-~~  
27 ~~46.~~

28 SECTION 3. This act shall take effect upon passage.

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LC000424  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T  
RELATING TO PUBLIC UTILITIES AND CARRIERS - SECURITIZATION ACT

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1           This act would repeal The Public Utility Securitization Act (39-1-43 to 60), passed in  
2 1997. There is currently no entity to whom application of this chapter would apply. The act  
3 would allow the PUC to repeal a set of obsolete rules.

4           This act would take effect upon passage.

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LC000424  
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