

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 177

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement)	REPLY COMMENTS OF
Securitization of Early Retirement of)	THE PUBLIC STAFF
Subcritical Coal-Fired Generating)	
Facilities)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and pursuant to the Commission’s Order Requesting Comments and Proposed Rules issued October 14, 2021, respectfully submits its reply comments.

Background

On October 13, 2021, Governor Roy Cooper signed into law House Bill 951 (S.L. 2021-165). Part III, Section 5 of S.L. 2021-165 authorizes the Commission to establish rules by April 11, 2022, for the securitization of costs associated with the early retirement of subcritical coal-fired generating facilities (Coal Plant Retirement Securitization Rules) to achieve the authorized carbon reduction goals set forth in Part I, Section 1 of S.L. 2021-165 (Carbon Plan).

On October 14, 2021, the Commission issued an Order stating that parties, including the Public Staff, may file comments and proposed rules on or before November 22, 2021, and may file reply comments on or before December 20, 2021.

On November 22, 2021, in this docket, the Public Staff filed its initial comments; Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (together, the Companies) filed proposed rules; and other intervenors filed initial comments and, in the case of the Southern Environmental Law Center (on behalf of the Sierra Club and the National Resources Defense Council), proposed rules.

Comments

Based upon a review of the proposed rules and initial comments, the Public Staff offers its own rule set forth in Exhibit A hereto. The Public Staff also provides the following comments:

1. Consistent with the Public Staff's initial comments, there appears to be strong consensus in the initial comments of the need to seek independent bond counsel guidance as to the sufficiency of adopting rules pursuant to S.L. 2021-165.
2. In Exhibit A, the Public Staff has provided a draft rule to conform to the requirement in Part III, Section 5 of S.L. 2021-165 that the Coal Plant Retirement Securitization Rules be "substantively identical to the provisions of Section 1 of S.L. 2019-244 [i.e., N.C. Gen. Stat. § 62-172 (the Storm Securitization Statute)], except with respect to the purposes for which securitization may be used under that section." In so doing, we are aware of the potential legal limitations of Commission rules obligating the State of North Carolina and other agencies as well as conferring jurisdiction on courts without more specific statutory guidance.
3. The Public Staff does agree with the Companies that the designation, review, and approval of coal plant retirement securitization costs are sufficiently unique as well as interwoven with the Carbon Plan; and there needs to be some

mechanism to review, evaluate, and audit costs that the Companies propose to securitize, and a determination of those costs by the Commission, before a securitization petition is filed by the Companies for coal plant retirement costs.

4. The Public Staff also generally agrees with the Companies' introduction of integral "bond advisory team" and "issuance advice letter" processes, though the Public Staff has revised those provisions and included additional "best practices" (such as independent certifications) not articulated in the Companies' proposed rules, but which were discussed in detail in the Commission's Financing Orders in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243, the Storm Securitization dockets. The Public Staff recognizes that not all aspects of coal plant retirement cost review, audit, approval, and securitization are realistically addressed in rules, and the Public Staff has not attempted to describe all steps in those processes. The Public Staff has also sought to make clear that the public utility shall not recover costs in both base rates and securitization charges for the same plant.

5. Importantly, the Public Staff recognizes that the Carbon Plan and interrelated timing and sequencing of retirements of subcritical coal-fired generating facilities will substantially impact the securitization of coal plant retirement costs. Securitization is a key consideration for optimal resource analyses in general, and the Carbon Plan in particular.

WHEREFORE, the Public Staff prays:

1. That the Commission take these reply comments into consideration when adopting Coal Plant Retirement Securitization Rules; and

2. For such other and further relief as the Commission may deem just and proper.

Respectfully submitted this the 20th day of December, 2021.

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Dianna W. Downey
Chief Counsel

Electronically submitted
/s/ William E. H. Creech
Staff Attorney

4326 Mail Service Center
Raleigh, North Carolina 27699-4300
Telephone: (919) 733-6110
zeke.creech@psncuc.nc.gov

CERTIFICATE OF SERVICE

I certify that a copy of these Reply Comments has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 20th day of December, 2021.

Electronically submitted
/s/ William E. H. Creech

Exhibit A to Public Staff Reply Comments

Rule R8-[]. FINANCING FOR EARLY RETIREMENT OF SUBCRITICAL COAL-FIRED GENERATING FACILITIES

- a. Purpose. — The purpose of this rule is to implement Part III, Section 5 of Session Law 2021-165, which directs the North Carolina Utilities Commission, with respect to securitization of costs associated with the early retirement of subcritical coal-fired electric generating facilities, to develop rules to determine costs to be securitized at fifty percent (50%) of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired to achieve the authorized carbon reduction goals set forth in Part I, Section 1 of S.L. 2021-165.
- b. Definitions. — The following definitions apply in this Rule:
1. Ancillary agreement. — A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with coal plant retirement bonds.
 2. Assignee. — A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to coal plant retirement property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to coal plant retirement property.
 3. Bond advisory team. — An advisory body of representatives from the public utility, Commission, and Public Staff to provide input and advice to the public utility regarding all aspects of the structuring, marketing, and pricing of the coal retirement bonds, and such other matters as described in the Commission's financing order.
 4. Bondholder. — A person who holds a coal plant retirement bond.
 5. Coal plant retirement. — The specific retirement of a subcritical coal-fired electric generating plant by a public utility as part of the utility's carbon reduction plan approved by the Commission pursuant to Section 1 of S.L. 2021-165.
 6. Coal plant retirement activity. — An activity or activities by a public utility, its affiliates, or its contractors, directly and specifically in connection with a coal plant retirement.
 7. Coal plant retirement bonds. — Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved coal plant retirement costs and financing costs,

and that are secured by or payable from coal plant retirement property. If certificates of participation or ownership are issued, references in this Rule to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

8. Coal plant retirement charge. – The amounts authorized by the Commission to repay, finance, or refinance coal plant retirement costs and financing costs and that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all existing or future retail customers receiving service at transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this State.
9. Coal plant retirement costs. – All of the following:
 - a. The remaining net book value of all of a public utility's subcritical coal fired-electric generating facilities retired early or to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of S.L. 2021-165.
 - b. The public utility's cost of capital from the date of the applicable coal plant retirement to the date the coal plant retirement bonds are issued calculated using the public utility's weighted average cost of capital as defined in its most recent base rate case proceeding before the Commission net of applicable income tax savings related to the interest component; provided, however, if the coal plant is included in base rates in the interval between the public utilities' petition for financing order and the corresponding issuance of coal plant retirement bonds, coal plant retirement costs shall not include the public utility's cost of capital until such time the plant has been removed from the base rate calculation of rates.
 - c. Coal plant retirement costs shall be net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the public utility for coal plant retirement or coal plant retirement activities, such as government grants, or aid of any kind and where determined appropriate by the Commission. Coal plant retirement costs include costs of repurchasing equity or retiring any existing indebtedness relating to the coal plant retirement.
 - d. With respect to coal plant retirement costs that the public utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other rate-making adjustments appropriate to fairly and reasonably assign or allocate coal plant retirement to customers over time, shall be addressed in a future general rate proceeding, as may be facilitated by other orders of the

Commission issued at the time or prior to such proceeding; provided, however, that the Commission's adoption of a financing order and approval of the issuance of coal plant retirement bonds may not be revoked or otherwise modified.

10. Coal plant retirement property. – All of the following:
 - a. All rights and interests of a public utility or successor or assignee of the public utility under a financing order, including the right to impose, bill, charge, collect, and receive coal plant retirement charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.
 - b. All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.
11. Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.
12. Commission. – The North Carolina Utilities Commission.
13. Financing costs. – All of the following:
 - a. Interest and acquisition, defeasance, or redemption premiums payable on coal plant retirement bonds.
 - b. Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to coal plant retirement bonds.
 - c. Any other cost related to issuing, supporting, repaying, refunding, and servicing coal plant retirement bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of coal plant retirement bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order.
 - d. Any taxes and license fees or other fees imposed on the revenues generated from the collection of the coal plant retirement charge or otherwise resulting from the collection of coal plant retirement charges, in any such case whether paid, payable, or accrued.
 - e. Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid,

- payable, or accrued.
- f. Any costs incurred by the Commission or Public Staff for any outside consultants or counsel retained in connection with the securitization of coal plant retirement costs.
14. Financing order. – An order of the Commission that authorizes the issuance of coal plant retirement bonds; the imposition, collection, and periodic adjustments of a coal plant retirement charge; the creation of coal plant retirement property; and the sale, assignment, or transfer of coal plant retirement property to an assignee.
 15. Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
 16. Financing statement. – Defined in Article 9 of the Code.
 17. Lowest charge objectives. – Objectives to ensure that: (i) the proposed issuance of coal plant retirement bonds and the imposition of coal plant retirement charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal plant retirement bonds; and (ii) the structuring, marketing, and pricing of the coal plant retirement bonds are reasonably expected to result in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds are priced and the terms set forth in the financing order.
 18. Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to coal plant retirement property.
 19. Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
 20. Subcritical coal-fired plant. - A plant that utilizes pulverized coal combustion technology in which the steam pressure within the boiler is below 3200 pounds per square inch and the temperature is below 1025 degrees Fahrenheit (550 degrees Celsius) and has a conversion of the energy in the coal to electricity of no greater than 37%. The following shall be subcritical coal-fired plants for purposes of this Rule: Allen Plant Units 1, 2, 3, 4, 5; Cliffside Plant Unit 5 at Rogers Energy Complex; Marshall Plant Units 1 and 2; Mayo Plant Unit 1; and Roxboro Plant Units 1, 2, 3, 4.
- c. Coal Plant Retirement Costs Order.
 1. Petition for review and approval of the regulatory deferral of coal plant retirement costs.
 - a. Prior to a public utility filing a petition for financing order, the public utility shall obtain Commission review and approval of the regulatory deferral of applicable coal plant retirement costs proposed for financing, through one of the following mechanisms: (a) a general rate

- case order or (b) an order issued in a proceeding initiated for that purpose.
- b. A public utility shall file a petition for review and approval of the regulatory deferral of coal plant retirement costs at least 120 days prior to filing a petition for financing order for authority to issue coal plant retirement bonds and in accordance with the schedule set forth in the carbon reduction plan adopted by the Commission pursuant to Section 1 of S.L. 2021-165 in order to achieve securitization of 50% of the remaining net book value of all coal plant retirements.
 - c. Any petition for a review and approval of the regulatory deferral of coal plant retirement costs shall include all of the following:
 - (1) A description of the coal plant retirements.
 - (2) The amount of coal plant retirement costs, and the accounting for those costs that would be implemented in (a) the absence of regulatory asset approval, (b) the event of Commission-approved regulatory asset treatment, either prior to or in the absence of securitization, and (c) the approval and implementation of securitization.
 - (3) A description of the coal plant retirement activities that the public utility has undertaken or proposes to undertake and the reasons for undertaking the activities.
 - (4) The coal plant retirement costs and estimate of the costs of any coal plant retirement activities that are being undertaken but are not completed.
 - (5) Direct testimony and exhibits supporting the petition, if made during a general rate case, or a detailed and verified petition, if made in another proceeding.
 2. Procedural schedule. – Within 14 days after the date the petition for review and approval of the regulatory deferral of coal plant retirement costs is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 180 days after the petition for approval is filed. The procedural schedule shall establish a discovery period of no less than 120 days from the date the petition for review and approval is filed.
 3. Order approving the regulatory deferral of coal plant retirement costs. – An order approving the regulatory deferral of coal plant retirement costs issued by the Commission to a public utility shall include the following:
 - a. A determination and accounting of the amount of reasonable and prudent coal plant retirement costs, including any carrying costs, eligible to be securitized, subject to final review in a future general rate case or in the proceeding involving the request for a financing order.
 - b. Any other conditions not otherwise inconsistent with this Rule that the Commission determines are appropriate.
 - d. Financing Orders. –

1. A public utility shall petition the Commission for a financing order for those costs proposed or required to be securitized pursuant to Part III, Section 5 of S.L. 2021-165 and to meet the goals of Section 1 of S.L. 2021-165, as reflected in the carbon reduction plan approved by the Commission. The petition shall include all of the following:
 - a. A description of the coal plant retirement costs that the public utility intends to securitize as approved or upon approval by the Commission.
 - b. The coal plant retirement costs to be financed using coal plant retirement bonds. All estimated and/or actual costs associated with the financing of the coal plant retirement bonds.
 - c. An estimate of the coal plant retirement charges necessary to recover the coal plant retirement costs and financing costs and the period for recovery of such costs.
 - d. A comparison between the net present value of the revenue requirements to customers that are estimated to result from the issuance of coal plant retirement bonds and the revenue requirements that would result from the application of the traditional method of financing and recovering coal plant retirement costs from customers. The comparison should demonstrate that the issuance of coal plant retirement bonds and the imposition of coal plant retirement charges are expected to provide quantifiable benefits to customers.
 - e. Direct testimony and exhibits supporting the petition.
2. Petition and order.
 - a. Proceedings on a petition submitted pursuant to this subdivision begin with the petition by a public utility, filed subject to the time frame specified in this Rule, if applicable, and shall be disposed of in accordance with the requirements of this Rule and the other rules of the Commission, except as follows:
 - (1) Within 14 days after the date the petition is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition is filed.
 - (2) No later than 135 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance.
 - b. A financing order issued by the Commission to a public utility shall include all of the following elements:
 - (1) Except for changes made pursuant to the formula-based mechanism authorized under this section, the amount of coal plant retirement costs and financing costs to be securitized. In so doing, the Commission shall describe and estimate the amount of financing costs that may be recovered through coal plant retirement charges and specify the period over which coal plant retirement

costs and financing costs may be recovered.

- (2) A finding that the proposed issuance of coal plant retirement bonds and the imposition and collection of a coal plant retirement charge are expected to provide quantifiable benefits to customers as compared to the revenue requirements that would have been incurred absent the issuance of coal plant retirement bonds.
- (3) A finding that the structuring and pricing of the coal plant retirement bonds are reasonably expected to result in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds are priced and the terms set forth in such financing order.
- (4) A requirement that, for so long as the coal plant retirement bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of coal plant retirement charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.
- (5) A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal plant retirement charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of coal plant retirement bonds and financing costs and other required amounts and charges payable in connection with the coal plant retirement bonds.
- (6) The coal plant retirement property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure coal plant retirement bonds and all financing costs.
- (7) The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the coal plant retirement bonds and the issuance thereof, including, but not limited to, repayment schedules, expected interest rates, and other financing costs, as well as the timing of the issuance.
- (8) How coal plant retirement charges will be allocated among customer classes.
- (9) A requirement that, after the final terms of an issuance of coal plant retirement bonds have been established and before the issuance of coal plant retirement bonds, the public utility determines the resulting initial coal plant retirement charge in accordance with the financing order and that such initial coal plant retirement charge be

final and effective upon the issuance of such coal plant retirement bonds without further Commission action so long as the coal plant retirement charge is consistent with the financing order.

- (10) A method of tracing funds collected as coal plant retirement charges, or other proceeds of coal plant retirement property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any coal plant retirement property subject to a financing order under applicable law.
 - (11) A requirement that the underwriting agreement specify that a meaningful portion of each underwriter's compensation is tied to performance.
 - (12) A requirement that the public utility hire a structuring and financial modeler independent of the underwriters and to involve rating agencies early in the securitization process.
 - (13) Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.
- c. A financing order issued to a public utility may provide that creation of the public utility's coal plant retirement property is conditioned upon, and simultaneous with, the sale or other transfer of the coal plant retirement property to an assignee and the pledge of the coal plant retirement property to secure coal plant retirement bonds.
 - d. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of coal plant retirement charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of coal plant retirement bonds approved under the financing order. Within 30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical or clerical errors in its calculation. If the Commission informs the utility of mathematical or clerical errors in its calculation, the utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.
 - e. Subsequent to the transfer of coal plant retirement property to an assignee or the issuance of coal plant retirement bonds authorized thereby, whichever is earlier, a financing order is irrevocable and,

except for changes made pursuant to the formula-based mechanism authorized in this section, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust coal plant retirement charges approved in the financing order.

- f. Subsequent to the issuance of coal plant retirement bonds, and for ratemaking purposes, the coal plant retirement bonds issued pursuant to a financing order shall not be the debt of the public utility other than for federal income tax purposes and the coal plant retirement charges paid under the financing order shall not be the revenue of the public utility for any purpose and (subsequent to the issuance of the coal plant retirement bonds) the coal plant retirement costs or financing costs specified in the financing order shall not be the costs of the public utility.”
- g. Post-financing order process.
 - (1) Bond advisory team process. – The financing order shall establish a bond advisory team:
 - (a) Following issuance of a financing order, a bond advisory team shall be formed, consisting of representatives of the utility, the Commission, and the Public Staff, each of which may designate staff, counsel, and consultants to participate on the bond advisory team. However, the Public Staff, the Public Staff’s designees, the Commission, and the Commission’s designees are not agents of the public utility in any manner by their participation on a bond advisory team.
 - (b) The utility shall provide all members of the bond advisory team with timely information so they may be informed fully and in advance regarding all aspects of the structuring, marketing, and pricing of the of the coal retirement bonds.
 - (c) The members of the bond advisory team are entitled to be present during communications with underwriters, credit rating agencies, and investors. The public utility shall use reasonable means to invite the bond advisory team to such communications.
 - (d) The public utility shall invite all members of the bond advisory team to join all bond advisory team meetings to review and comment on all aspects of the structuring, pricing, and marketing of the coal plant retirement bonds, including the selection and retention of underwriters and other transaction participants; the terms of all transaction documents; the length of the terms of the coal plant retirement bonds; the interest rates of the coal plant retirement bonds (including whether the interest rate is floating or fixed); the capitalization of the coal plant retirement bonds; the transaction structure; the issuance strategy; appropriate credit enhancements; and the credit rating process. The public utility shall have sole right to select and engage all counsel and

- advisors for the public utility and the issuing entity.
- (e) The final structure of the transaction, including pricing, shall be subject to review by the Commission to ensure that all requirements of this Rule and the Commission's financing order have been met.
- (2) Issuance advice letter process.
- (a) The public utility shall file an issuance advice letter along with a true-up adjustment letter in final form with the Commission no later than one business day after actual pricing, which letters shall be substantially in the form prescribed in the financing order, that describes the final structure and terms of the coal plant retirement bond issuance, including an updated accounting of the up-front financing costs and the final carrying costs, if any.
 - (b) The issuance advice letter shall include certifications from the public utility that market timing of the issuance and the structuring, pricing, and marketing of the coal plant retirement bonds in fact achieved the lowest charge objectives.
 - (c) Unless the Commission issues an order stopping the coal plant retirement bond issuance before noon on the fourth business day after pricing because the Commission determines that the issuance advice letter and all required certifications have not been delivered or the transaction does not comply with the financing order, the transaction shall proceed without any further action of the Commission. The Commission may issue an order to stop the transaction if the Commission determines that (a) the transaction does not comply with the financing order, or (b) the Commission is not satisfied with the certifications it has received pursuant to this Rule.
- (3) Independent Certifications. – The financing order shall require the following certifications without material qualifications no later than one business day following the public utilities' filing of the issuance advice letter with the Commission:
- (a) Each lead underwriter shall file an independent certification with the Commission confirming that the structuring, marketing and pricing of the coal plant retirement bonds in fact resulted in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds were priced and the terms set forth in the financing order.
 - (b) The Commission's consultant and the Public Staff's consultant shall each separately and independently file a certification with the Commission confirming that the structuring, marketing, and pricing of the coal plant retirement bonds in fact resulted in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds were priced

and the terms set forth in the financing order or if the consultant is unable to give such certification, it shall fully explain the reasons in a written filing.

- (i) In the absence of a Public Staff consultant, the Public Staff shall instead file a letter with the Commission stating its opinion as to whether the structuring, marketing, and pricing of the coal plant retirement bonds in fact resulted in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds were priced and the terms set forth in the financing order, including an account or any action or inaction that the Public Staff believes caused the transaction or transactions not to achieve the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds were priced and the terms set forth in the financing order.
- (4) Implementation of coal retirement charges.
- (a) Ownership notification and separate line-item charge.
 - (i) The public utility's electric bills must explicitly reflect that a portion of the charges on such bill represent coal plant retirement charges approved in a financing order. The electric bill must also include a statement explaining who is the owner of the rights to the coal plant retirement charges and, if applicable, that the public utility is acting as servicer for the owner of the rights to the coal plant retirement charges.
 - (ii) The public utility shall identify amounts owed with respect to its coal retirement property as a separate line item on individual electric bills although if there are multiple series of coal retirement bonds, the several coal plant retirement charges may be consolidated into a single line item.
 - (iii) A coal plant retirement charge tariff must indicate the coal plant retirement charge and the ownership of that charge.
 - (b) True-up of coal plant retirement charges. Unless the Commission provides otherwise in a financing order:
 - (i) Coal plant retirement charges shall be adjusted at least semi-annually until 12 months prior to the last scheduled payment date of a series of the coal plant retirement bonds, at which point the coal plant retirement charges shall be at least quarterly, to ensure that the amount collected from coal plant retirement charges is sufficient to pay the debt service on the coal plant retirement bonds and all on-going financing costs.
 - (ii) Upon the filing of a true-up adjustment letter made pursuant to a financing order, the Commission shall either administratively approve the requested true-up calculation in writing or inform the servicer of the coal retirement bonds of

any mathematical or clerical errors in its calculation as expeditiously as possible but no later than 30 days following the servicer's true-up filing; and that notification and correction of any mathematical or clerical errors shall be made so that the true-up is implemented within 30 days of the servicer's filing of a true-up adjustment letter. No potential modification to correct an error in a true-up adjustment letter shall delay its effective date and any correction or modification which could not be made prior to the effective date shall be made in the next true-up adjustment letter. Upon administrative approval or the passage of 30 days without notification of a mathematical or clerical error, no further action of the Commission will be required prior to implementation of the true-up.

(iii) Upon any change to customer rates and charges stemming from the true-up mechanism, the public utility shall file appropriately revised tariff sheets, provided, however, that approval of the coal retirement charges shall not be delayed or otherwise adversely impacted by the Commission's decision with respect to the tariff.

(iv) Up-front financing costs.

1. Once up-front financing costs are known, if actual financing costs are in excess of the amounts estimated, the public utility shall be permitted to pay them on behalf of any issuing entity and shall establish a regulatory asset to defer any excess amounts of up-front financing costs, and preserve those costs to consider for later recovery in the public utility's next general rate case. In addition, the regulatory asset shall accrue carrying costs at the public utility's net-of-tax weighted average cost of capital returns.
2. Any excess or over-collection of up-front financing costs shall be set aside in a regulatory liability, accruing carrying costs at the public utility's net-of tax weighted average cost of capital returns, to be considered for return to customers in the public utility's next general rate case.

(v) On-going financing costs.

1. The on-going financing costs incurred for the purpose of executing a coal plant retirement-securitization shall be recovered from coal plant retirement charges, taking into account the public utility's true-up mechanism and in accordance with this Rule.
2. The public utility shall provide detailed invoices and other supporting documentation to the Public Staff, if

applicable, and narrative explanations for on-going financing charges on a monthly basis, fifteen (15) days after the end of the previous month. If the public utility did not receive any invoices in the previous month, the public utility will submit a letter notifying the Public Staff that no invoices were received

3. The Public Staff shall have the opportunity to perform an audit of the on-going financing costs (including auditing through additional data requests) for mathematical or clerical errors, or charges incurred as a result of gross negligence, recklessness, or willful misconduct by either the public utility or issuing entity, and the Public Staff shall complete said audit within forty-five (45) days of receipt of the supporting documentation.
 4. Upon receipt of any supporting documentation provided pursuant to subsection (v)2. above, the Public Staff shall have up to 10 days to object to the supporting documentation, if such supporting documents do not rise to an adequate level of detail necessary for the Public Staff to perform this limited audit of the on-going financing costs. An objection by the Public Staff shall suspend the above-described 45 day start date for the Public Staff's audit review to begin until adequate documentation is provided by the public utility. The Public Staff may choose to instead audit the expenses for which the 45 days window will not be complete by the filing of the public utility's true-up pursuant to the true-up mechanism; provided, however, any audit by the Public Staff shall not delay the implementation of the true-up mechanism nor shall it have any adverse effect on the coal plant retirement charges or coal plant retirement bonds.
 5. In cases where a resolution cannot be reached between the parties regarding the limited audit of the on-going financing costs, the Public Staff will make a filing with the Commission at the time the dispute arises so that the matter can be resolved by the Commission in the public utility's next general rate case. The filing will recommend that the disputed amount be returned to customers, along with carrying costs at the public utility's net-of-tax weighted average cost of capital.
- (vi) Servicing and administration fees. – The public utility will establish regulatory asset or regulatory liability accounts for, separate and apart from the regulatory assets and liabilities of other types of securitization-related costs and benefits for the purpose of tracking (as received and incurred) servicing and administrative fees received by the public utility from the

issuing entity and the incremental costs incurred by the public utility in fulfilling the required functions under the servicing and administrative agreements. Any regulatory asset or liability account established pursuant to this paragraph shall accrue carrying costs at the public utility's respective net-of-tax weighted average cost of capital, and be considered for recovery from or returned to customers in the public utility's next general rate case.

(vii) Tail-end collections. – All tail-end collections will be tracked separately and placed into a regulatory liability account, and accrue carrying costs at the public utility's net-of-tax weighted average cost of capital, to be considered for return to customers in the public utility's next general rate case.

(viii) Capital contributions. – The Commission may require that the public utility's capital contributions to an issuing entity earn a return at the interest rate of the longest maturing tranche of the coal retirement bonds, which is expected to be less than the public utility's weighted average cost of capital.

3. At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding coal plant retirement bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in this Rule for a financing order. Effective upon retirement of the refunded coal plant retirement bonds and the issuance of new coal plant retirement bonds, the Commission shall adjust the related coal plant retirement charges accordingly.
4. Within 60 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina. Review on appeal shall be based solely on the record before the Commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and State and federal law and is within the authority of the Commission.
5. Duration of financing order.
 - a. A financing order remains in effect and coal plant retirement property under the financing order continues to exist until coal plant retirement bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such coal plant retirement bonds have been recovered in full.
 - b. A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its

successors or assignees.

- e. Public Utility Duties. – The electric bills of a public utility that has obtained a financing order and caused coal plant retirement bonds to be issued must comply with the following provisions; however, the failure of a public utility to comply with these provisions does not invalidate, impair, or affect any financing order, coal plant retirement property, coal plant retirement charge, or coal plant retirement bonds. The public utility must do all of the following:
 1. Explicitly reflect that a portion of the charges on such bill represents coal plant retirement charges approved in a financing order issued to the public utility and, if the coal plant retirement property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to the coal plant retirement charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the coal plant retirement charge and the ownership of the charge.
 2. Include the coal plant retirement charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.
 3. Once the coal plant retirement costs are securitized, if the plant is still included in the calculation of the public utility's base rates, the public utility shall file tariffs with the Commission reducing the base rates in the same amount as the retired coal plant's coal plant retirement costs; the public utility shall not recover costs in both base rates and securitization charges for the same plant.
- f. Coal plant retirement property.
 1. Provisions applicable to coal plant retirement property.
 - a. All coal plant retirement property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of coal plant retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal plant retirement charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.
 - b. Coal plant retirement property specified in a financing order exists until coal plant retirement bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such coal plant retirement bonds have been recovered in full.
 - c. All or any portion of coal plant retirement property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned,

directly or indirectly, by the public utility and created for the limited purpose of acquiring, owning, or administering coal plant retirement property or issuing coal plant retirement bonds under the financing order. All or any portion of coal plant retirement property may be pledged to secure coal plant retirement bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of coal plant retirement property by a public utility, or an affiliate of the public utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission.

- d. If a public utility defaults on any required payment of charges arising from coal plant retirement property specified in a financing order, a court, upon application 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 coal plant retirement property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.
 - e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in coal plant retirement property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity.
 - f. Any successor to a public utility, 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 public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the coal plant retirement property. Nothing in this sub-subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.
 - g. Coal plant retirement bonds shall be nonrecourse to the credit or any assets of the public utility other than the coal plant retirement property as specified in the financing order and any rights under any ancillary agreement.
2. Provisions applicable to security interests.

- a. The creation, perfection, and enforcement of any security interest in coal plant retirement property to secure the repayment of the principal and interest and other amounts payable in respect of coal plant retirement bonds, amounts payable under any ancillary agreement and other financing costs are governed by this section and not by the provisions of the Code.
- b. A security interest in coal plant retirement property is created, valid, and binding and perfected at the later of the time: (i) the financing order is issued, (ii) a security agreement is executed and delivered by the debtor granting such security interest, (iii) the debtor has rights in such coal plant retirement property or the power to transfer rights in such coal plant retirement property, or (iv) value is received for the coal plant retirement property. The description of coal plant retirement property in a security agreement is sufficient if the description refers to this section and the financing order creating the coal plant retirement property.
- c. A security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of a financing statement with the office of the Secretary of State, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the coal plant retirement property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, and shall have priority over all competing claims other than any prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this section.
- d. The Secretary of State shall maintain any financing statement filed to perfect any security interest under this Rule in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of a financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code.
- e. The priority of a security interest in coal plant retirement property is not affected by the commingling of coal plant retirement charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all coal plant retirement charges that are deposited in any cash or deposit account of the qualifying utility in which coal plant retirement charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.
- f. No application of the formula-based adjustment mechanism as provided in this Rule will affect the validity, perfection, or priority of a security interest in or transfer of coal plant retirement property.

- (3) Any recourse that the purchaser may have against the seller.
 - (4) Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
 - (5) The obligation of the seller to collect coal plant retirement charges on behalf of an assignee.
 - (6) The transferor acting as the servicer of the coal plant retirement charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in coal plant retirement property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the coal plant retirement charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.
 - (7) The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
 - (8) The granting or providing to bondholders a preferred right to the coal plant retirement property or credit enhancement by the public utility or its affiliates with respect to such coal plant retirement bonds.
 - (9) Any application of the formula-based adjustment mechanism as provided in this Rule.
- c. Any right that a public utility has in the coal plant retirement property before its pledge, sale, or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in coal plant retirement property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such coal plant retirement property or the power to transfer rights in such coal plant retirement property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of coal plant retirement bonds, and (iv) the receipt of value for the coal plant retirement property. An enforceable transfer of an interest in coal plant retirement property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with this Rule. The transfer is perfected against third parties as of the date of filing.
- d. The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of coal plant retirement property under this Rule in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code.

- The filing of such a financing statement is the only method of perfecting a transfer of coal plant retirement property.
- e. The priority of a transfer perfected under this Rule is not impaired by any later modification of the financing order or coal plant retirement property or by the commingling of funds arising from coal plant retirement property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under this Rule, is terminated when they are transferred to a segregated account for the assignee or a financing party. If coal plant retirement property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.
 - f. The priority of the conflicting interests of assignees in the same interest or rights in any coal plant retirement property is determined as follows:
 - (1) Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with this Rule.
 - (2) A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.
 - (3) 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.'
 - e. Description or indication of property. – The description of coal plant retirement property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee 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 financing order that created the coal plant retirement property and states that the agreement or financing statement covers all or part of the property described in the financing order. This section applies to all purported transfers of, and all purported grants or liens or security interests in, coal plant retirement 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.
 - f. Financing statements. – All financing statements referenced in this section are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.
 - g. Choice of law. – The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any coal plant retirement property shall be the laws of this State.
 - h. Coal plant retirement bonds not public debt. – Neither the State nor its political subdivisions are liable on any coal plant retirement bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions,

- agencies, or instrumentalities, nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of coal plant retirement bonds does not, directly, 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 coal plant retirement bonds, other than in their capacity as consumers of electricity. All coal plant retirement bonds 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 North Carolina is pledged to the payment of the principal of, or interest on, this bond."
- i. Legal investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in coal plant retirement bonds:
1. Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.
 2. Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.
 3. Personal representatives, guardians, trustees, and other fiduciaries.
 4. All other persons authorized to invest in bonds or other obligations of a similar nature.
- j. Obligation of nonimpairment.
1. The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the coal plant retirement property, and other financing parties that the State and its agencies will not take any action listed in this subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the coal plant retirement charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:
 - a. Alter the nonimpairment provisions of this subsection j.1., which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create coal plant retirement property, and make the coal plant retirement charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
 - b. Take or permit any action that impairs or would impair the value of coal plant retirement property or the security for the coal plant retirement bonds or revises the coal plant retirement costs for which recovery is authorized.
 - c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
 - d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this Rule, reduce, alter, or impair coal

plant retirement charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related coal plant retirement bonds have been paid and performed in full.

2. Any person or entity that issues coal plant retirement bonds may include the language specified in this Rule in the coal plant retirement bonds and related documentation.
- k. Not a public utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this Rule.
- l. Conflicts. – If there is a conflict between this Rule and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in coal plant retirement property, this Rule shall govern.
- m. Consultation. – In making determinations under this Rule, the Commission or Public Staff or both may engage an outside consultant and counsel.
- n. Effect of invalidity. – If any provision of this Rule is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this Rule which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all coal plant retirement bonds issued or authorized in a financing order issued under this Rule before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.