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**VIA ELECTRONIC FILING**

Ms. A. Shonta Dunston, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's  
Supplemental Reply Comments  
Docket No. E-100, Sub 177**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Supplemental Reply Comments.

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

/s/Kathleen H. Richard

Kathleen H. Richard

Enclosure

cc: Parties of Record

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Jan 12 2022

**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	) <b>DUKE ENERGY CAROLINAS, LLC'S</b>
Securitization of Early Retirement of	) <b>AND DUKE ENERGY PROGRESS,</b>
Subcritical Coal-Fired Generating Facilities	) <b>LLC'S SUPPLEMENTAL REPLY</b>
	) <b>COMMENTS</b>

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP” and together with DEC, the “Companies”) and hereby submit the following supplemental reply comments pursuant to the North Carolina Utilities Commission’s (“Commission”) January 4, 2021 *Order Granting, in Part, Motion for Leave*. The Companies respond herein to reply comments filed by the Public Staff—North Carolina Utilities Commission (“Public Staff”), Carolina Utilities Customers Association, Inc. (“CUCA”), North Carolina Clean Energy Association (“NCSEA”), Carolina Industrial Group for Fair Utility Rates II (“CIGFUR II”), together with the Carolina Industrial Group for Fair Utility Rates III (“CIGFUR III”) (collectively, “CIGFUR”), Sierra Club, together with the National Resource Defense Counsel (“Sierra Club/NRDC”), Apple Inc., together with Meta Platforms, Inc. and Google LLC (collectively, “Tech Customers”), and North Carolina Retail Merchants Association (“NCRMA”).

**SUPPLEMENTAL REPLY COMMENTS**

As first explained in the Companies’ reply comments, the Companies’ proposed Coal Retirement Securitization Rule represents a comprehensive prescription of the relevant provisions of the Storm Securitization Statute, storm securitization financing

orders, and Commission-approved storm securitization settlement agreement between the Companies and the Public Staff. The Companies' initially proposed rule therefore did not include any provisions (other than the cost provision contained in House Bill 951, Session Law 2021-165 ("HB 951")) not previously implemented or evaluated by the Commission.

The Companies continue to support their proposed Coal Retirement Securitization Rule as reasonable and appropriate, and believe the Coal Retirement Securitization Rule should adhere as closely as possible to N.C. Gen. Stat. § 62-172 (the "Storm Securitization Statute") and successful securitization process approved and executed in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (the "storm securitization proceeding") in accordance with HB 951's directives.<sup>1</sup> Therefore, the Companies have proposed only limited revisions to their Coal Retirement Securitization Rule in response to parties' reply comments, as discussed below. These limited revisions are illustrated in Attachment A, which is an updated version of the Companies' Coal Retirement Securitization Rule. Attachment B includes a redline version of the Companies' Coal Retirement Securitization Rule as compared to the Coal Retirement Securitization Rule proposed in reply comments.

The Companies also reject all other miscellaneous proposals or revisions to the Coal Retirement Securitization Rule proposed in reply comments by parties and not directly addressed herein. Accordingly, the Companies hereby request the Commission reject any such proposals and/or revisions to the Companies' Coal Retirement Securitization Rule and approve the rule as revised in Attachment A.

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<sup>1</sup> HB 951 states that "[r]ules, procedures, obligations, and protections adopted for securitization of costs associated with retirement of subcritical coal-fired generating facilities shall be substantively identical to the provisions of Section 1 of S.L. 2019-244, except with respect to the purposes for which securitization may be used under that section." (Emphasis added).

**I. The Public Staff's attempt to re-litigate unprecedented "best practices" and diminish the Companies' decision-making authority in the securitization process should be rejected by the Commission.**

In reply comments, the Public Staff proposed a coal retirement securitization rule that in many respects mirrored the Companies' proposed Coal Retirement Securitization Rule. However, the Public Staff's proposed rule seeks to greatly diminish the Companies' decision-making authority in the securitization process by expanding the Public Staff's role in the bond advisory team ("BAT") process, memorializing decisions that should be left to the Companies throughout the BAT process, ignoring or eliminating provisions in N.C. Gen. Stat. § 62-172 and the Coal Retirement Securitization Rule that grant the public utility necessary authority over a coal retirement bond issuance, and requiring certifications by a Public Staff consultant. Each of these provisions proposed by the Public Staff should be rejected. As was the case in the storm securitization proceeding, these provisions are unprecedented, unnecessary, and an encroachment upon the Companies' management function and the long-standing regulatory construct established between the Commission, regulated utilities, and intervening parties under the Public Utilities Act. More to the point, this Commission has already been presented with these additional so-called best practices – and has explicitly rejected them in the context of securitization of storm recovery costs. What's more, the Public Staff has offered no new justification or changed circumstances for adoption of these additional "best practices" in the context of the potential securitization of the early retirement of subcritical coal-fired generating facilities.<sup>2</sup>

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<sup>2</sup> The Public Staff should also be precluded from proposing and relitigating these previously rejected "best practices," since the Commission has already evaluated and adjudicated these issues in the storm securitization proceeding under the legal principles of stare decisis and collateral estoppel.

As background, and as recognized by other parties in this proceeding,<sup>3</sup> the Storm Securitization Statute does not contemplate Commission or intervenor involvement post-issuance of a financing order. Nevertheless, in the storm securitization proceeding, the Companies' Joint Petition provided the option to the Commission to be involved in the post-financing order process through the Issuance Advice Letter ("IAL") process.<sup>4</sup> In its pre-filed testimony in that proceeding, the Public Staff and its consultant rejected the Companies' proposal and advocated zealously for a series of "best practices" to be included in the storm securitization financing orders that the Public Staff argued were generally agreed upon by the utility industry or capital markets more broadly. The Public Staff's pre-filed testimony specifically requested that the Public Staff and/or its consultant be granted decision-making authority over the bond issuance process and authority to file certifications determining whether the Companies had adhered to the Storm Securitization Statute and Commission-issued financing orders.

In rebuttal testimony in that proceeding, DEC and DEP witness Heath established that the majority of the Public Staff consultant's so-called "best practices" were already present in the Companies' proposed financing orders and that the remaining "best practices" were unprecedented, unnecessary, and an encroachment upon the Companies' day-to-day management activities.<sup>5</sup> However, in the spirit of compromise, witness Heath proposed that the Commission create a BAT process similar to the Duke Energy Florida,

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<sup>3</sup> CUCA Reply Comments at 4-5.

<sup>4</sup> DEC and DEP Joint Petition for Financing Orders, Docket Nos. E-2, Sub 1262 and E-7 Sub 1243 (Oct. 26, 2020).

<sup>5</sup> Rebuttal Testimony of Thomas J. Heath, Jr. for DEC and DEP, at 12-18, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Jan. 11, 2021).

LLC (“DEF”) 2016 transaction, which the Public Staff heavily relied upon as precedent for its “best practices.”<sup>6</sup>

Following the filing of pre-filed testimony, the Companies worked with the Public Staff to reach a settlement agreement on a post-financing order process; however, the Public Staff would not agree to the Companies’ compromise proposal to create a BAT process similar to the DEF 2016 transaction. As a result, an evidentiary hearing on the post-financing order process became unavoidable.

Over the course of a couple of days, the Public Staff, its consultant, and the Companies’ witnesses testified before the Commission regarding the post-financing order process and the necessity (or not) of a BAT, the decision-making authority necessary for BAT members, and the certification process. After the hearing, both the Public Staff and the Companies extensively briefed issues regarding the post-financing order process. The Companies’ brief established that:

- (1) DEC and DEP have extensive experience in the long-term debt markets and consistently consider customer interests when operating in those markets;
- (2) The post-financing order process proposed by DEC and DEP to place storm recovery bonds is designed to be efficient and result in lowest cost;
- (3) Storm recovery bonds are not fundamentally different than traditional long-term debt issued by Duke Energy, Corp.;
- (4) Substantial protections are in place to ensure that the Companies achieve the lowest cost storm recovery charges for customers;
- (5) The Public Staff’s decision-making proposal is unprecedented in any securitization ever undertaken by a public utility and beyond the scope of their statutorily defined role;
- (6) The DEF bond team model is not what the Public Staff proposed for North Carolina;
- (7) The Public Staff’s BAT proposal raises serious concerns under federal securities law; and, among other things,
- (8) The Companies are willing to go beyond the certification requirements contained in the Storm Securitization Statute and that the Commission’s

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<sup>6</sup> *Id.* at 34-41.

acceptance of the Companies' certification should not be dependent upon any other intervening parties' certification.

Importantly, in the storm securitization financing orders, the Commission accepted the Companies' compromise BAT proposal and rejected the Public Staff's request for decision-making authority over the Companies and the transaction. The Commission also ordered that only the Companies, lead underwriters, and the Commission's financial consultant be required to file certifications regarding the bond issuances, but granted the Public Staff and/or its consultant the opportunity to file a letter opining on the issuance.

Following the issuance of the storm securitization financing orders and the rejection of the aforementioned Public Staff proposals, the Companies, Public Staff, Commission, and Commission consultant participated in an extensive BAT process over the course of six months. The BAT process consisted of approximately twenty-five weekly, formal, multi-hour meetings, numerous calls, and various additional communications with market participants. As was required by the storm securitization financing orders, the Companies allowed the Public Staff to actively comment on, and be present for all aspects of the transaction, including the structuring, marketing, and pricing of storm recovery bonds.

After pricing of the storm recovery bonds but prior to the issuance, the Companies, lead underwriters, and the Commission's consultant certified that the structuring, marketing, and pricing of the storm recovery bonds in fact resulted in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds were priced and the terms set forth in the financing order. Following the issuance, the Companies held an additional BAT meeting to discuss the results of the transaction and conclude the BAT process. At this meeting, the Companies received positive reviews from

both the Commission and Public Staff regarding the BAT process generally and results of the transaction.

As explained in the Companies' reply comments, the storm securitization and BAT process resulted in a successful transaction, with approximately 35% of customer savings achieved through the storm securitization transactions. Despite this success, however, the Public Staff now seeks to relitigate and impose, in this proceeding, its so-called "best practices" into the coal retirement securitization process. It does so without providing any additional evidence as to why this securitization process should be treated differently from the storm securitization process, and in the face of HB 951's directive that the proposed coal retirement securitization be "substantively identical" to the process established by the Storm Securitization Statute.

First, and as detailed above, the Companies have already shown, and the Commission has accepted, that the Public Staff's "best practices" and request to further complicate the securitization process and diminish the Companies' decision-making authority in the context of a public utility securitization is unprecedented, contrary to North Carolina law, and unnecessary. As explained in the Companies' brief:

- (1) No other public utility securitizations grant intervenors like the Public Staff decision-making authority over a securitization or require such parties to deliver certifications deciding whether a transaction in fact achieved the requisite statutory cost objectives;<sup>7</sup>
- (2) North Carolina law does not grant the Public Staff decision-making authority over a public utility; that such authority is left solely to the Commission;<sup>8</sup> and

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<sup>7</sup> DEC/DEP Post-Hearing Brief, at 18-33, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Feb. 18, 2021).

<sup>8</sup> *Id.* at 18-25.



(3) The Public Staff's BAT proposal, if implemented in the coal retirement securitization context, may raise serious concerns regarding federal securities laws.<sup>9</sup>

Second, the Commission has held that "the determination of an issue in a prior judicial or administrative proceeding precludes the re-litigation of that issue in a later action, provided the party against whom the estoppel is asserted enjoyed a full and fair opportunity to litigate that issue in the earlier proceeding." *Order Denying Halo's Motion to Dismiss*, Docket No. P-55, Sub 1841 (June 27, 2021) (citing *Whitacre Partnership*, 358 N.C. 1, at 15, 591 S.E.2d 870, at 880 (Feb. 6, 2004)). "A party attempting to assert collateral estoppel must show: that the earlier suit resulted in a final judgment on the merits, that the issue in question was identical to an issue actually litigated and necessary to the judgment, and that both [the party asserting collateral estoppel and the party against whom collateral estoppel is asserted] were either parties to the earlier suit or were in privity with parties." *Id.* (citing *State ex rel. Tucker v. Frinzi*, 344 N.C. 411, at 414, 474 S.E.2d 127, at 128-29 (1996)).<sup>10</sup> As detailed above, the Companies and the Public Staff have already (and very recently) extensively litigated the issue of a BAT, decision-making authority within a BAT, and certification requirements in the context of a public utility securitization. Both parties have filed pre-filed testimony, engaged in negotiations, participated in a three-day

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<sup>9</sup> *Id.* at 43-45.

<sup>10</sup> Note in the seminal case of *United States v. Utah Construction & Mining Co.*, 384 U.S. 394 (1966), the Supreme Court accepted the application of issue preclusion principles like collateral estoppel to administrative decisions. This case involved a breach of contract claim between Utah Construction & Mining Company and the Atomic Energy Commission. In applying administrative claim preclusion to the Atomic Energy Commission's findings, the Supreme Court articulated three requirements that courts should look to when determining whether claim preclusion should apply: (1) whether the agency was acting in a judicial capacity; (2) whether the agency resolved disputed issues properly before it, and (3) whether the parties had adequate opportunity to litigate the issues. North Carolina applies a similar test as reiterated in *State ex rel. Tucker*, 344 N.C. at 414, 474 S.E.2d at 128-29.

evidentiary hearing, and briefed the issues before the Commission. The Commission has also ruled upon these issues through its storm securitization financing orders, of which, importantly, the Public Staff chose not to appeal or request reconsideration. Even more importantly, the Public Staff has had the opportunity to participate in and experience the successes of the BAT process proposed by the Companies and approved by the Commission in the storm securitization proceeding. Accordingly, it is perplexing at best and inappropriate at worst for the Public Staff to even propose to include and relitigate the same so-called “best practices” in the coal retirement securitization rule that were rejected by the Commission in the storm securitization proceeding.

Even assuming it were appropriate for the Public Staff to raise these same issues in this proceeding, the Public Staff has presented no evidence as to why the coal retirement securitization process should be treated any differently than the storm securitization process. *State ex rel. Utilities Comm’n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998) states that a Commission may only modify a decision “due to a change of circumstances requiring it for the public interest. In the absence of any additional evidence or a change in conditions, the Commission has no power to reopen a proceeding and modify or set aside an order made by it.” (Internal citations omitted). No circumstances have changed since the issuance of the Commission’s storm securitization financing orders and no reason exists as to why the post-financing order process in the coal retirement securitization context should differ from the storm securitization proceeding. To the contrary, the success of the recent storm securitization transactions, as well as HB 951’s requirement that all rules, procedures, obligations, and protections in coal retirement securitization be substantively

identical to those used for storm cost securitization, necessitate a rejection of the Public Staff's proposal.

Given these facts and the controlling precedent, the Companies request that the Commission reject the Public Staff's proposals, and refrain from including any language in the Coal Retirement Securitization Rule that diminishes the Companies' decision-making authority, grants decision-making authority to the Public Staff, requires certifications by a Public Staff consultant, or seeks to memorialize post-financing order decisions in the rule that should be evaluated in the BAT process and ultimately determined by the Companies. Under no circumstances should the Commission include, or include without revision, the following Public Staff provisions in the Coal Retirement Securitization Rule:

- Public Staff rule provision b.3. defining "bond advisory team" and removing the Commission's authority to determine whether or not a BAT is necessary;
- Public Staff rule provision d.2.b.(11) requiring that underwriter compensation be tied to performance, which is a decision that should be evaluated by the BAT and determined by the Companies, as was done in the storm securitization BAT process;
- Public Staff rule provision d.2.b.(12) requiring that the public utility hire a structuring and financial modeler independent of the underwriters and to involve rating agencies early in the securitization process, as such was not done in the storm securitization BAT process;
- Public Staff rule provision d.2.f., which deletes language contained in the Storm Securitization Statute granting the public utility the "sole discretion" to determine whether to assign, sell, or otherwise transfer coal retirement property or to cause coal retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance. The Companies contend that deletion of this provision from the Coal Retirement Securitization Rule would be in direct contravention with HB 951's requirement that the rule be "substantively identical" to the Storm Securitization Statute; and,
- Public Staff rule provision d.2.g., which describes the post-financing order process. This provision should be deleted in its entirety as it goes beyond the Commission-approved financing orders in the storm securitization proceeding and seeks to diminish the public utility's decision-making authority. For example, this section

does not explicitly state that the public utility retains decision-making authority regarding the structuring, marketing, and pricing of coal retirements bonds, which is explicitly stated in the storm securitization orders. This provision also includes a requirement that the Public Staff's consultant provide a certification, a requirement which again was explicitly rejected in the storm securitization financing orders.

Instead, the Commission should approve the Companies' Coal Retirement Securitization Rule included as Attachment A to these supplemental reply comments as the rule most accurately reflects the Commission's previous determinations post-financing order securitization process.

**II. The Commission should accept the Companies' definition of "subcritical coal-fired generating facilities."**

HB 951 does not define "subcritical coal-fired generating facilities," and the Companies' initial Coal Retirement Securitization Rule did not include a definition for the term. However, in reply comments, the Companies revised the Coal Retirement Securitization Rule to include an industry standard definition for subcritical coal-fired generating facilities in response to concerns raised by CUCA. The Companies' reply comments define the term as follows:

A facility with boiler(s) where constant temperature boiling water cools the furnace enclosure, and the flow circuits are designed to accommodate a two-phase steam-water flow and boiling phenomena. Such boilers typically operate at a pressure near 2400 psi (16.5 MPa) with superheat and reheat steam temperatures ranging from 1000 to 1050F.

DEC and DEP continue to support their definition of subcritical coal-fired generating facilities as reasonable and appropriate.

The Public Staff's reply comments propose a similar, technical definition for subcritical coal-fired generating facilities as compared to the Companies' definition.<sup>11</sup> The similarities between the parties' two definitions evidence the fact that "subcritical" is a well-established, technical engineering term describing a particular type of coal combustion technology. Unlike the Companies' proposed definition, however, the Public Staff's definition goes a step further and lists each DEC and DEP coal unit meeting the technical definition of subcritical coal-fired generating facility. The plants the Public Staff identifies are 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, and 4. The Companies do not dispute that each of these units included in the Public Staff's definition of "subcritical coal-fired generating facility" meet the industry standard technical definition of that term, but the Companies reserve their rights with respect to whether each of these facilities are otherwise eligible for securitization under HB 951. The Companies' position in this regard is further explained below.

CUCA's and CIGFUR's reply comments, in contrast, do not define subcritical coal-fired generating facilities as a technical term but instead identify certain DEC and DEP coal plants that these parties contend "qualify" as subcritical coal-fired generating facilities for the specific purpose of securitizing coal retirement costs pursuant to HB 951. The plants CUCA and CIGFUR identify are Allen Plant, Units 1, 2, 4, and 5; Cliffside Plant, Unit 5; Marshall Plant, Units 1 and 2; Mayo Plant, Unit 1; and Roxboro Plant, Units 1, 2,

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<sup>11</sup> The Public Staff's proposed rule defines subcritical coal-fired generating facilities as follows: "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." Public Staff Proposed Rule at R8-[ ]b.20.

3, and 4.<sup>12</sup>

In support of this list, CIGFUR’s reply comments argue that the Companies have “every reason to want to include as few facilities in its definition of “subcritical” as possible.”<sup>13</sup> Without identifying any particular “reason” the Companies would want to include as few facilities in the definition of “subcritical” as possible, CIGFUR goes on to argue that “Duke may attempt to avoid securitizing the remaining costs associated with certain plants or units by attempting to obfuscate which plants within its coal fleet can and should be characterized as subcritical for purposes of early retirement securitization.”<sup>14</sup> Based on these hypothetical and unsubstantiated arguments, CIGFUR proposes that each subcritical coal-fired generating facility identified in Governor Cooper’s Clean Energy Plan A-1 Report and in service as of October 13, 2021—the date on which HB 951 was signed into law—qualify as “subcritical coal-fired generating facilities” whose retirement costs should be securitized pursuant to Section 5 of HB 951.<sup>15</sup> In other words, CIGFUR contends that retirement costs of all facilities meeting the technical definition of subcritical coal-fired generating facilities in service as of the date HB 951 was signed into law are eligible to be securitized pursuant to HB 951.

CUCA and CIGFUR’s “definitions” of “qualifying” subcritical coal-fired generating facilities are inconsistent with HB 951 and must be rejected. And while these comments assume some intent on DEC and DEP’s part to avoid securitization of some plant retirement costs, that assertion is irrelevant. The relevant question is whether the plant costs proposed for securitization qualify for such treatment under HB 951. CUCA

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<sup>12</sup> CUCA Reply Comments at 7-8; CIGFUR Reply Comments at 7-8.

<sup>13</sup> CIGFUR Reply Comments at 5.

<sup>14</sup> *Id.*

<sup>15</sup> CIGFUR Reply Comments at 7-8.

and CIGFUR, in their reply comments, argue for utilization of securitization to address the costs of plant closings that clearly do not qualify for such treatment under HB 951 and, therefore, must be rejected as contrary to the statute.

As an initial matter, although HB 951 does not define “subcritical coal-fired generating facilities,” the term is a well-defined, industry standard term as evidenced by the Companies’ and the Public Staff’s proposed definitions. Thus, whether a facility qualifies as a “subcritical coal-fired generating facility” is a matter of fact, not law. Second, Section 5 of HB 951 expressly limits securitization of costs to only those costs incurred from a subcritical coal-fired generating facility that was retired “to achieve the authorized reduction goals set forth in Section 1 [of HB 951].” HB 951 specifically states:

With respect to securitization of costs associated with early retirement of subcritical coal-fired electric generating facilities, the Commission shall 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 Section 1 of this act***, with any remaining non-securitized costs to be recovered through rates. (emphasis added).

CIGFUR’s and CUCA’s lists of “qualifying” subcritical coal-fired generating facilities do not meet this requirement and CIGFUR’s argument that the passage date of HB 951 be the determining factor of whether a facility is a “qualifying” subcritical coal-fired generating facility fails to consider this requirement completely.

For example, both CUCA and CIGFUR include Allen Plant, Units 2 and 4 as “qualifying” subcritical coal-fired generating facilities; however, these units were not retired early for the purpose of achieving the carbon reduction goals of HB 951. To detail, as part of DEC’s 2020 Integrated Resource Plan (“IRP”) filed on September 1, 2020, DEC conducted a detailed coal plant retirement analysis to determine the most economical

retirement dates for each of the Company's coal assets.<sup>16</sup> This analysis utilized traditional "least cost" economic planning considerations. The results of the "least cost" coal plant retirement analysis indicated that the most economic retirement dates for Allen Units 2, 3, and 4 were on or by January 1, 2022.<sup>17</sup> Thus, as early as September 1, 2020, DEC determined it was most economical to retire Allen Units 2—4 on or before January 1, 2022.

In accordance with the 2020 IRP analysis, DEC retired Allen Unit 3 on March 31, 2021, and Allen Units 2 and 4 on December 31, 2021. As described in DEC's updates<sup>18</sup> to the Commission regarding these unit's retirements, these units served customers for "well over 60 years," but based on their "condition and economic evaluations," had reached the end of their useful lives. Thus, these units were not retired for the purpose of achieving the Carbon Plan goals outlined in Section 1 of HB 951. Accordingly, these units' retirement costs do not meet the threshold requirement of HB 951 for securitization pursuant to Section 5. CIGFUR's and CUCA's attempt to qualify these subcritical coal generating facilities' retirement costs as eligible for securitization pursuant to HB 951—or any other plants not meeting this statutory requirement or technical definition of subcritical coal-fired generating facilities—should therefore be dismissed.

Although the Public Staff's list of DEC and DEP plants included in its definition of subcritical coal-fired generating facilities is not limited to plants retired early to achieve the authorized carbon reduction goals set forth in Section 1 of HB 951, the Companies interpret the Public Staff's rules as addressing the statutory requirement through their

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<sup>16</sup> DEC 2020 Integrated Resource Plan, at Chapter 11, Docket No. E-100, Sub 165 (Sept. 1, 2020).

<sup>17</sup> *Id.* at Table 11-B.

<sup>18</sup> DEC Update to Allen Unit 3 Retirement Date, Docket No. E-100, Sub 165 (Feb. 2, 2021); DEC Update to Allen Units 2 & 4 Retirement Date, Docket No. E-100, Sub 165 (Dec. 3, 2021).



added definition of “coal plant retirement.” The Public Staff’s proposed rule at section b.5. defines “coal plant retirement costs” as:

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.*

By defining “coal plant retirement” as a specific retirement undertaken and approved by the Commission as part of the Carbon Plan pursuant to HB 951, the Companies believe the Public Staff’s rule appropriately incorporates the statutory requirements that a subcritical coal-fired generating facility be retired pursuant to Section 1 of HB 951 for its associated costs to be securitized. Therefore, and although the Companies continue to support their revised Coal Retirement Rule as presented in reply comments and Attachment A, the Companies do not oppose the Public Staff’s definition of “subcritical coal-fired generating facilities” so long as the Public Staff’s additional definition of “coal plant retirement” is also included in the Coal Retirement Securitization Rule.

**III. The Companies do not oppose the Public Staff’s definition of “coal plant retirement costs.”**

Both the Companies’ and the Public Staff’s proposed definition of “coal retirement costs” directly includes language from HB 951 and the Storm Securitization Statute. However, the Public Staff’s proposed definition differentiates from the Companies’ definition in several ways.

First, subpart (a) of the Public Staff’s definition deletes the language from the Securitization Statute stating that “non-securitized costs shall be recovered through rates that are appropriate for recovery from existing and future retail customers receiving transmission or distribution service from such public utility.” Notably, Tech Customers also request the Companies delete such language from the proposed Coal Retirement

Securitization Rule. The Companies do not oppose this change and have updated the proposed Coal Retirement Securitization Rule to include this deletion.

Second, the Public Staff's proposed rule includes an additional subpart (b), which addresses the public utility's cost of capital and helps make clear that the public utility shall not "double recover" its cost of capital in both base rates and through the securitization process. The Companies do not object to including this provision in the proposed definition of coal retirement costs and have updated the proposed Coal Retirement Securitization Rule to include this language.

Third, subpart (c) of the Public Staff's definition deletes language (which is included in the Storm Securitization Statute under the corresponding storm recovery cost definition) stating that coal retirement costs "may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the public utility's most recent general rate proceeding." The Companies agree with the Public Staff that this provision can be deleted in the context of a coal retirement securitization as compared to a storm securitization, and have updated the proposed Coal Retirement Securitization Rule accordingly. Regarding this same provision of the coal retirement cost definition, Tech Customers argue that the following language should be deleted: "repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility." Specifically, Tech Customers state that it "is unclear (a) why Duke would be compelled to repurchase equity or retire debt upon the retirement of coal facilities, (b) what additional costs would be associated with such refinancing, and (c) why Duke would undertake such refinancing if it

imposed any additional costs on ratepayer.”<sup>19</sup> The Companies (and inherently, the Public Staff) believe this language is essential to include in the definition of coal retirement costs, and note that this language is included in the Storm Securitization Statute. Moreover, the Companies require the ability to manage their equity and debt balances in accordance with capital structures approved by the Commission. Specifically, and pursuant to DEC’s and DEP’s most recent rate case orders, the Companies are permitted to maintain capital structures of 52 percent equity and 48 percent debt. The subcritical coal-fired generating facilities subject to this rulemaking have all been financed and maintained with long-term equity and debt funding. When securitization proceeds are received by the Companies to recover the early retired subcritical coal-fired generating facilities, those proceeds will be used to affect a balanced recapitalization of the Companies to maintain their capital structures. This balanced recapitalization will include repurchasing outstanding equity and retiring outstanding debt of the Companies. The Companies will make best efforts to align debt maturities with expected securitization proceeds to minimize any additional costs to customers. However, any additional cost of repurchasing outstanding equity or retiring outstanding debt should be treated as a coal retirement cost as those costs would not otherwise be incurred in the absence of a securitization financing. For these reasons, this language should be included in the Coal Retirement Securitization Rule.

The Companies have revised the Coal Retirement Securitization Rule to reflect most of the Public Staff’s proposed definition and request the Commission accept the Companies’ proposed coal retirement cost definition as revised.

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<sup>19</sup> Tech Customers Reply Comments at 5.

**IV. The Companies will provide a securitization plan upon the early retirement of a subcritical coal-fired generating facility pursuant to HB 951; however, the Companies require maximum flexibility as to the timing of securitization to ensure the greatest cost savings for customers is achieved.**

Several commenters in reply comments seek to restrict the Companies' flexibility as to the timing of when a petition for a financing order is filed and issuance of coal retirement bonds executed. For example, the Public Staff's proposed rule at provision c.1.b. states that the public utility shall file a petition for review and approval of the regulatory deferral of coal plant retirement costs "in accordance with the schedule set forth in the carbon reduction plan adopted by the Commission." Also at proposed rule section d.2.b.(7), the Public Staff requests the Commission include in its financing order "the degree of flexibility to be afforded to the public utility in establishing...the timing of the issuance." Additionally, and as first mentioned above, the Public Staff's rule proposes to delete language included in the Storm Securitization Statute that the utility "retain the sole discretion" to determine "whether to assign, sell, or otherwise transfer coal retirement property or to cause coal retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance."

CIGFUR states that it "reads [the Companies'] proposed securitization of coal asset early retirement rules to be permissive in nature, with the decisions of whether or not the applicable electric public utility files either a petition for review and approval of coal retirement costs or petition for a financing order being left to the discretion of the utility."<sup>20</sup> CIGFUR goes on to recommend that the Commission "adopt a rule that clearly requires [the Companies] to pursue financing for the maximum amount of coal retirement costs

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<sup>20</sup> CIGFUR Reply Comments at 4-5.

authorized to be securitized under S.L. 2021-165.”<sup>21</sup> Tech Customers similarly comment that the Companies’ “proposed rule appears to leave the timing of the securitization of coal-retirement costs to the utility’s discretion,” and recommends the Commission “adopt rules that create some safeguard to ensure a utility seeks securitization in a timely manner.”<sup>22</sup> Tech Customers additionally argue that the utility should not retain “sole discretion” “as to whether and when to transfer coal retirement property or cause the bonds to be issued,” since such language would “allow a utility to secure a financing order and then indefinitely table an issuance without any recourse by the Commission or stakeholders.”<sup>23</sup>

The Companies understand that parties request assurances that the Companies will securitize coal retirement costs within a reasonable period of time. Therefore, the Companies propose to add the following provision to the Coal Retirement Securitization Rule requiring a public utility to file a securitization plan no later than one-hundred and twenty (120) days following the retirement of a subcritical coal-fired generating facility pursuant to HB 951:

Securitization Plan.

Upon approval of a Carbon Plan and the retirement of a subcritical coal-fired generating facilit(ies) pursuant to such Carbon Plan, the utility shall file a plan no later than one-hundred and twenty days (120) days from the retirement date to securitize the subcritical coal-fired generating facilit(ies)’ eligible coal retirement costs. The securitization plan shall include a general timeline for the public utility’s filing for approval of coal retirement costs, petition for financing order, and proposed issuance. The securitization plan shall also include the reasoning behind the public utility’s proposed timeline, including whether the public utility proposes to securitize multiple subcritical coal-fired generating facilit(ies)’ costs at once

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<sup>21</sup> *Id.*

<sup>22</sup> Tech Customers Reply Comments at 6.

<sup>23</sup> *Id.* at 8.

through simultaneous issuances, and how such will impact expected customer savings.

In doing so, however, the Companies reiterate the need for maximum flexibility throughout the securitization process in order to guarantee and certify that the lowest coal retirement charges are achieved for customers, and reject any proposed rule revisions seeking to limit such flexibility.

The Securitization Statute specifically memorializes a public utility's need for flexibility in section (3)(b)b.8, which requires the Commission to specify a degree of flexibility to be afforded to the utility in establishing the terms and conditions of storm recovery bonds. As recognized by the Public Staff's consultant during the storm securitization evidentiary hearing, a requirement of flexibility is found "in almost every [utility securitization] statute" that the consultant has "dealt with."<sup>24</sup> As further explained by the Public Staff's consultant during that hearing, flexibility is required by the utility because "the precise bond structure, interest rates and other costs cannot be known with certainty at the time the financing orders are issued."<sup>25</sup> Most importantly, and as agreed to by the Public Staff's consultant in the storm securitization hearing, granting the public utility flexibility in a securitization is for the benefit of customers.<sup>26</sup>

For example, even after retiring a subcritical coal-fired generating facility early pursuant to HB 951, customers may benefit financially from the Companies waiting until additional facilities are retired and "bundling" such facilities together in a single, large transaction. Such bundling may have the effect of creating a Bloomberg Barclay Corporate Utility Index-eligible transaction and/or a transaction of a larger size as compared to similar

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<sup>24</sup> DEC/DEP Post-Hearing Brief at 52.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 55.

transactions in the market. Assuming there are provisions included in the Coal Retirement Securitization Rule requiring a public utility to file a petition for a financing order at a certain time, the Companies' ability to pursue such "bundling" and potentially increase potential customer savings would be limited.

Similarly, removing the public utility's sole discretion as to whether to execute the issuance and at what time would also create the potential for diminished customer savings. For example, following the issuance of a financing order, and depending on the market, it may be most beneficial to customers to either pursue an issuance more quickly or wait until a later date when market conditions are more favorable. Provisions requiring the utility to pursue an issuance by a date certain may result in the utility being forced to enter the market when it is most competitive or "slow," and to the detriment of customers. Thus, any proposed revisions by commenters to restrict the Companies' flexibility regarding the timing of securitization should be rejected, and the Commission should grant maximum flexibility to the Companies in order to achieve maximize customer savings. Importantly, while decisions regarding the ultimate timing of a transaction will reside with the Companies, these timing decisions will be subject to the advisement and input of the Commission and Public Staff through the BAT process.

The Companies' Coal Retirement Securitization Rule proposed in reply comments mirrors the Storm Securitization Statute's terms regarding flexibility. As recognized by the General Assembly in enacting these provisions as well as the Public Staff's consultant during the storm securitization hearing, these provisions are necessary in order to maximize customer savings. Additionally, any alteration to these provisions in the Coal Retirement Securitization Rule raises questions as to whether such alterations adhere to HB 951's

requirement that the rule be “substantively identical” to the Securitization Statute. For these reasons, the Companies request that the Commission approve the Companies’ flexibility provisions as first presented in reply comments and updated in the revised Coal Retirement Securitization Rule included as Attachment A to these supplemental reply comments, as well as reject the Public Staff’s proposed edits to these provisions seeking to limit the Companies’ flexibility.

### **CONCLUSION**

WHEREFORE, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC respectfully request the Commission consider the foregoing supplemental reply comments, approve the proposed Coal Retirement Rule included as Attachment A, and grant any other relief the Commission deems reasonable and appropriate.

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# **ATTACHMENT A**

## **Coal Retirement Securitization Rule Clean Version**

**Docket No. E-100, Sub 177**

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

- (a) Purpose. — The purpose of this rule is to establish guidelines for the application of Section 5 of House Bill 951, which directs the North Carolina Utilities Commission to develop rules for securitization of costs associated with the early retirement of subcritical coal-fired generating facilities that are substantively identical to the provisions of G.S. 62-172, except with respect to the purpose for which securitization may be used under that statute, and consistent with the public policy of this State as set forth in G.S. 62-2.
- (b) Definitions.
1. Administration fees. — any fees meant to cover expenses associated with administrative functions a public utility may provide to the issuing entity, which functions may include, among others, maintaining the general accounting records, preparation of quarterly and annual financial statements, arranging for annual audits of the entity's financial statements, preparing all required external financial filings, preparing any required income or other tax returns, and related support.
  2. 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 retirement bonds.
  3. 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 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 retirement property.
  4. Bond advisory team. — An advisory body of representatives from the public utility, Commission, and Public Staff established at the Commission's discretion to provide input and advice to the public utility regarding the public utility's decisions on structuring, marketing, and pricing of the coal retirement bonds.
  5. Bondholder. — A person who holds a coal retirement bond.
  6. Capital contribution. — the amount contributed to the issuer of the coal retirement bonds by the public utility.
  7. Coal 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 retirement costs and financing costs, and that are secured by or payable from coal 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 retirement charge. — The amounts authorized by the Commission to repay, finance, or refinance coal 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 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 retirement costs. – All of the following:
  - a. Up to fifty percent (50%) of 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 House Bill 951.
  - 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 retirement costs shall be net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the public utility for the early retirement of a subcritical coal-fired generating facility such as government grants, or aid of any kind and where determined appropriate by the Commission. Coal retirement costs includes costs of repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility.
  - d. With respect to coal 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 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 retirement bonds may not be revoked or otherwise modified.
10. Coal 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 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 payment, 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. – The term includes all of the following:
  - a. Interest and acquisition, defeasance, or redemption premiums payable on coal 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 retirement bonds.
  - c. Any other cost related to issuing, supporting, repaying, refunding, and servicing coal 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 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 retirement charge or otherwise resulting from the collection of coal 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 retirement costs.
14. Financing order. – An order that authorizes the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal 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. House Bill 951: Session Law 2021-165 signed by the State Governor on October 13, 2021.
18. Issuance advice letter. – a letter filed no later than one business day after pricing of coal retirement bonds by the public utility detailing the final terms of the pricing and issuance of the coal retirement bonds.
19. Issuance advice letter process. – A procedure, following the issuance of a financing order but prior to the issuance of coal retirement bonds, where the public utility certifies that the structuring, marketing, and pricing of the coal retirement bonds fully satisfy the statutory cost objectives.

20. Ongoing financing costs. – Expenses incurred throughout the coal retirement securitization transaction including servicing fees; return on invested capital; administration fees; accounting and auditing fees; regulatory fees; legal fees; rating agency surveillance fees; trustee fees; independent director or manager fees; and other miscellaneous fees associated with the servicing of the coal retirement bonds.
21. Petition for financing order. – A public utility petition requesting a financing order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
22. Petition for review and approval of coal retirement costs. – A public utility petition requesting Commission review and approval of coal retirement costs that are subject to a settlement agreement or review and approval of proposed coal retirement costs generally.
23. 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 retirement property.
24. Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
25. Securitizable Balance. – The total amount of costs to be financed, including but not limited to coal retirement costs, financing costs, and carrying charges through the date of issuance.
26. Servicing fee. – In consideration for its servicing responsibilities, a periodic fee paid to the servicer (which may be the public utility) of an issuing entity to be recovery through coal retirement charges. To support bankruptcy analysis necessary to achieve the highest credit rating, the servicing fees must be on arm's length terms and at market-based rates. Such servicing responsibilities will include, without limitation: (i) billing, monitoring, collecting and remitting securitization charges, (ii) reporting requirements imposed by the servicing agreement, (iii) implementing the true-up mechanism, (iv) procedures required to coordinate required audits related to the public utility's role as servicer, (v) legal and accounting functions related to the servicing obligation, and (vi) communication with rating agencies.
27. Statutory cost objectives. – The objectives that: (i) a proposed issuance of coal retirement bonds and the imposition of coal retirement charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds; and (ii) the structuring, marketing, and pricing of coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
28. Subcritical coal-fired generating facilities. – A facility with boiler(s) where constant temperature boiling water cools the furnace enclosure, and the flow circuits are designed to accommodate a two-phase steam-water flow and boiling phenomena. Such boilers typically operate at a pressure near 2400 psi (16.5 MPa) with superheat and reheat steam temperatures ranging from 1000 to 1050F.
29. Tail-end collections. – Collections of coal retirement charges after the coal retirement bonds and all related financing costs have been repaid in full.
30. Transaction documents. – Forms of any purchase and sale agreements, administration agreements, servicing agreements, limited liability company

agreements, indentures, or any other documents necessary to execute the issuance of coal retirement bonds.

31. True-up adjustment letter. – A letter applying the formulaic true-up mechanism proposed by a public utility and approved by the Commission in a financing order to be filed at least annually with the Commission to ensure coal retirement charges are at a sufficient level to meet the public utility's coal retirement bond payment obligations.
32. Up-front financing costs. – Up-front financing costs, which will be financed from the proceeds of the coal retirement bonds, include the fees and expenses to obtain the financing orders, as well as the fees and expenses associated with the structuring, marketing and issuance of each series of coal retirement bonds, including: external and incremental internal legal fees, structuring advisory fees and expenses, any interest rate lock or swap fees and costs (including the cost, if any, associated with interest rate hedges), underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting fees, information technology programming costs, servicer's set-up costs, printing and marketing expenses, stock exchange listing fees and compliance fees, filing and registration fees, and the costs of the outside consultant and counsel, if any, retained by the Commission or the Public Staff. Up-front financing costs include reimbursement to the public utility for amounts advanced for payment of such costs.

(c) Securitization Plan.

1. Upon approval of a Carbon Plan and the retirement of a subcritical coal-fired generating facilit(ies) pursuant to such Carbon Plan, the public utility shall file a plan no later than one-hundred and twenty (120) days from the retirement date to securitize the subcritical coal-fired generating facilit(ies)' eligible coal retirement costs. The securitization plan shall include a general timeline for the public utility's filing for approval of coal retirement costs, petition for financing order, and proposed issuance. The securitization plan shall also include the reasoning behind the public utility's proposed timeline, including whether the public utility proposes to securitize multiple subcritical coal-fired generating facilit(ies)' costs at once through simultaneous issuances, and how such will impact expected customer savings.

(d) Procedure for Coal Retirement Securitization Proceeding.

1. Coal retirement cost review and approval schedule.
  - a. A public utility shall file a petition for review and approval of coal retirement costs at least 90 days prior to filing a petition for financing order for authority to issue coal retirement bonds.
  - b. Within 14 days after the date the petition for review and approval of coal 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 of coal retirement costs is filed. The procedural schedule shall establish a discovery period of no longer than 60 days from the date the petition for review and approval of coal retirement costs is filed.
2. Financing order issuance schedule.
  - a. A public utility may file a petition for a financing order no sooner than 90 days after filing a petition for review and approval of coal retirement costs, if a petition for review and approval of coal retirement costs is filed.



- b. Within 14 days after the date the petition for a financing order is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition for a financing order is filed.
  - c. 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.
  - d. A party to the securitization proceeding may petition the Commission for reconsideration of a financing order within five days after the date of its issuance.
  - e. 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.
- (e) Petition for approval of coal retirement costs.
- 1. Application of rule.
    - a. Prior to a public utility filing for a petition for financing order, the public utility shall obtain Commission review and approval of applicable coal retirement costs proposed for financing, through one of the following mechanisms: (a) a prior general rate case order; (b) an order issued in a proceeding initiated for that purpose pursuant to a petition for review and approval of coal retirement costs; or (c) an order issued in a proceeding initiated for approval of a settlement agreement that governs the type and amount of principal costs that could be included in coal retirement costs and the public utility proposes to finance all or a portion of the principal costs using coal retirement bonds.
    - b. Any petition for review and approval of coal retirement costs under Rule R8-[ ](d)1.a. (b) or (c) above shall be filed in a unique sub-docket of the requesting public utility.
  - 2. Filing requirements.
    - a. Any such petition shall include all of the following:
      - i. A description of the subcritical coal-fired generating facilities retired early or proposed to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of House Bill 951,
      - ii. The amount of coal retirement costs.
    - b. A public utility seeking review and approval of proposed coal retirement costs must file a petition at least 90 days prior to the filing of a petition for financing order with respect to such costs.
- (f) Order approving coal retirement costs.
- 1. An order reviewing and approving coal retirement costs issued by the Commission to a public utility shall include the following:
    - a. A determination of the amount of reasonable and prudent coal retirement costs, including any carrying costs, eligible to be securitized.
    - b. If the coal retirement costs are the subject of a settlement, approval of the settlement.
- (g) Petition for approval of financing order.



1. Application of rule.

- a. Prior to a public utility issuing coal retirement bonds and implementing a coal retirement charge, the public utility shall obtain a Commission order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
- b. Any petition for a financing order shall be made in a unique sub-docket of the public utility's docket number; however, if a public utility has previously filed a petition for review and approval of coal retirement costs that are the subject coal retirement costs of a petition for financing order, the petition for financing order shall be filed in the same sub-docket as the petition for review and approval of coal retirement costs.

2. Filing requirements.

- a. A public utility may petition the Commission for issuance of a financing order. The petition shall include all of the following:
  - i. A description of subcritical electric generating facilities that the public utility has retired early or proposes to retire early for the purpose of achieving the authorized carbon reduction goals set forth in Section 1 of House Bill 951, or if the public utility is subject to a settlement agreement governing coal retirement costs, a description of the settlement agreement.
  - ii. The coal retirement costs.
  - iii. An estimate of the financing costs related to the coal retirement bonds.
  - iv. An estimate of the coal retirement charges necessary to recover the coal retirement costs and financing costs and the period for recovery of such costs.
  - v. A comparison between the net present value of the costs to customers that are estimated to result from the issuance of coal retirement bonds and the costs that would result from the application of the traditional method of financing and recovering coal retirement costs from customers. The comparison should demonstrate that the issuance of coal retirement bonds and the imposition of coal retirement charges are expected to provide quantifiable benefits to customers. For purposes of this comparison, the traditional method of financing and recovering net book value of coal plants upon retirement shall mean the establishment of a regulatory asset and recovery of the amortization expenses over a period to be determined by the Commission plus a return on the unamortized balance at the public utility's weighted average cost of capital, as defined in its most recent base rate case proceeding before the Commission.
  - vi. Direct testimony and exhibits supporting the petition.
  - vii. If the public utility has received a Commission order reviewing and approving coal retirement costs pursuant to any of the mechanisms identified above, a description of the order reviewing and approving the coal retirement costs.

- viii. A proposed transaction structure including, a request for flexibility to tailor the structure to the then-existing market conditions, rating agency considerations, and investor preferences, in order that the issuance of coal retirement bonds achieve the statutory cost objectives.
- ix. A proposed issuance advice letter, true-up adjustment letter, and explanation of the proposed issuance advice letter procedure.
- x. A proposed formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal retirement charges.
- xi. A proposed coal retirement charge tariff.
- xii. A description of how coal retirement charges will be allocated among customer classes.
- xiii. At the public utility's option, a request to establish a regulatory asset to defer any prudently incurred excess amounts of financing costs to preserve for later recovery in the public utility's next general rate case proceeding.
- xiv. At the public utility's option, a request for a regulatory liability account to refund any amounts collected in excess of actual financing costs in the next general rate proceeding.
- xv. Proposed form of transaction documents.
- xvi. A summary of the securitizable balance.
- xvii. A proposed registration, rating agency, and issuance timeline.
- xviii. A proposed financing order containing the elements listed in subpart [(g)(1)] of this Rule.

(h) Financing order.

1. A financing order issued by the Commission to a public utility shall include all of the following:
  - a. Except for changes made pursuant to the formula-based mechanism authorized under this Rule, the amount of coal retirement costs to be financed using coal retirement bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through coal retirement charges and specify the period over which coal retirement costs and financing costs may be recovered.
  - b. A finding that the proposed issuance of coal retirement bonds and the imposition and collection of a coal retirement charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds.
  - c. A finding that the structuring and pricing of the coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in such financing order.
  - d. A requirement that, for so long as the coal retirement bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of coal 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.
- e. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal 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 retirement bonds and financing costs and other required amounts and charges payable in connection with the coal retirement bonds.
  - f. The coal 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 retirement bonds and all financing costs.
  - g. The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the coal retirement bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.
  - h. How coal retirement charges will be allocated among customer classes.
  - i. A requirement that, after the final terms of an issuance of coal retirement bonds have been established and before the issuance of coal retirement bonds, the public utility determines the resulting initial coal retirement charge in accordance with the financing order and that such initial coal retirement charge be final and effective upon the issuance of such coal retirement bonds without further Commission action so long as the coal retirement charge is consistent with the financing order.
  - j. A method of tracing funds collected as coal retirement charges, or other proceeds of coal 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 retirement property subject to a financing order under applicable law.
  - k. Any other conditions not otherwise inconsistent with this Rule that the Commission determines are appropriate.
  - l. A finding that the petition for financing order meets the requirements of this Rule.
  - m. A State of North Carolina pledge of nonimpairment in accordance with section (o) of this Rule.
  - n. A statement that coal retirement bonds are not public debt in accordance with section (m) of this Rule.
  - o. Approval and description of the issuance advice letter process.
  - p. Approval and copy of a proposed issuance advice letter, true-up adjustment Letter, and coal retirement charge tariff.
  - q. Approval of the form of transaction documents.
  - r. Findings regarding any required certifications and opinion letters to be given during the issuance advice letter process.
2. A financing order issued to a public utility may provide that creation of the public utility's coal retirement property is conditioned upon, and simultaneous with, the

sale or other transfer of the coal retirement property to an assignee and the pledge of the coal retirement property to secure coal retirement bonds.

3. 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 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 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.
  4. Subsequent to the transfer of coal retirement property to an assignee or the issuance of coal 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 Rule, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust coal retirement charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer coal retirement property or to cause coal retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.
  5. Duration of financing order. –
    - a. A financing order remains in effect and coal retirement property under the financing order continues to exist until coal 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 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.
- (i) Post-financing order process.
1. Bond advisory team process.
    - a. If the Commission determines that it is necessary to achieve the statutory cost objectives, a financing order may establish a bond advisory team:
      - i. Following issuance of a financing order, bond advisory team meetings shall be held to provide timely information to members regarding aspects of the structuring, marketing, and pricing of the coal retirement bonds.

- ii. The public utility, the Commission, and the Public Staff shall designate staff, counsel, and consultants to participate on the bond advisory team on their behalf. However, the Public Staff, the Public Staff's designees, the Commission, and the Commission designees are not agents of the public utility in any manner by their participation on a bond advisory team.
    - iii. The bond advisory team may be present during communications with underwriters, credit rating agencies, and investors, the public utility shall use reasonable means to invite bond advisory team to such communications; the public utility shall invite members of the Bond advisory team to join bond advisory team meetings to review and comment on material aspects of the structuring, pricing, and marketing of the coal retirement bonds, including without limitation the following: the selection and retention of underwriters and other transaction participants; the terms of all transaction documents; the length of the bond terms; the interest rates of the bonds (including whether the interest rate is floating or fixed); the capitalization of the bonds; the transaction structure; the issuance strategy; appropriate credit enhancements; and the credit rating process.
  - b. The public utility shall have the sole right to select all counsel and advisors for the public utility, the underwriters and any issuing entity.
  - c. The public utility shall retain all decision-making authority with respect to the structuring, marketing, and pricing of the coal retirement bonds.
2. Issuance advice letter process.
- a. No later than one day after pricing of the coal retirement bonds, the public utility shall provide an issuance advice letter to the Commission so that the Commission can determine whether the coal retirement bonds comply with the requirements set forth in the public utility's financing order.
  - b. No later than the day the public utility's issuance advice letter is filed, the public utility and each lead underwriter of the coal retirement bonds shall file with the Commission separate certifications confirming that the structuring, marketing, and pricing of coal retirement bonds resulted in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
  - c. The initial coal retirement charges and the final terms of the coal retirement bonds described in the issuance advice letter and true-up adjustment letter will be final unless, before noon on the third business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with the terms of the public utility's financing order.
3. 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 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 retirement charges and, if applicable, that the public utility is acting as servicer for the owner of the rights to the coal 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 retirement charges may be consolidated into a single line item.
- iii. A coal retirement charge tariff must indicate the coal retirement charge and the ownership of that charge.

b. True-up of coal retirement charges.

- i. Coal 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 retirement bonds, at which point the coal retirement charges may be adjusted at the request of the public utility, to ensure that the amount collected from coal retirement charges is sufficient to pay the debt service on the coal retirement bonds and all 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. That 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 may 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 may 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 retirement-securitization shall be recovered from coal retirement charges, taking into account the public utility's true-up mechanism and in accordance with this Rule.
- (2) If determined necessary by the Commission, the public utility may provide detailed invoices and other supporting documentation, if applicable, and narrative explanations of 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 may notify the Public Staff that no invoices were received where determined necessary by the Commission.
- (3) If determined necessary by the Commission, the Public Staff may have the opportunity to audit on-going financing costs (including auditing through possible 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) If determined necessary by the Commission, the Public Staff may have the option to choose to audit the expense during review of the public utility's next true-up mechanism filing.
- (5) If determined necessary by the Commission, the Public Staff may discuss with the public utility any concerns or proposed changes to the on-going financing cost expenses in an effort to reach an appropriate resolution regarding such on-going financing costs provided, however, that any resolution shall not impair the value of the coal retirement property, the coal retirement charges or the coal retirement bonds. In cases where a resolution cannot be reached between the public utility and Public Staff, the Public Staff will file a recommendation with the Commission, at the time the dispute arises, that the disputed amount be returned to customers, with carrying costs at the public utility's respective net-of-tax weighted average cost of capital returns, in the public utility's next general rate cases, with the issue to be resolved by the Commission in that proceeding.

vi. Servicing and administration fees.

- (1) If determined necessary by the Commission, the public utility may 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, 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.

- (1) The Commission may require that any tail-end collections by the public utility 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 recovery in the public utility's next general rate case.

viii. Capital contributions.

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

c. Coal retirement charge collection period.

- i. A financing order and the coal retirement charges authorized thereby shall remain in effect until the coal retirement bonds and all financing costs (including tail-end collections and tax liabilities) related thereto have been paid or recovered in full.
- ii. A financing order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of the public utility or its successors or assignees.

4. Additional financing orders.

- a. 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 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 retirement bonds and the issuance of new coal retirement bonds, the Commission shall adjust the related coal retirement charges accordingly.

(j) Coal retirement property.

1. Provisions applicable to coal retirement property.

- a. All coal 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 retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal 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. All coal 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 retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal 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.
- c. Coal retirement property specified in a financing order exists until coal retirement bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such coal retirement bonds have been recovered in full.
- d. All or any portion of coal 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 retirement property or issuing coal retirement bonds under the financing order. All or any portion of coal retirement property may be pledged to secure coal 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 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.
- e. If a public utility defaults on any required payment of charges arising from coal 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 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.
- f. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in coal 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. 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 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 retirement bonds shall be nonrecourse to the credit or any assets of the public utility other than the coal 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 retirement property to secure the repayment of the principal and interest and other amounts payable in respect of coal retirement bonds; amounts payable under any ancillary agreement and other financing costs are governed by this Rule and not by the provisions of the Code.

b. A security interest in coal 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 retirement property or the power to transfer rights in such coal retirement property, or (iv) value is received for the coal retirement property. The description of coal retirement property in a security agreement is sufficient if the description refers to this Rule and the financing order creating the coal 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 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 Rule.

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 retirement property is not affected by the commingling of coal retirement charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the

amount of all coal retirement charges that are deposited in any cash or deposit account of the qualifying utility in which coal 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 retirement property.

g. If a default or termination occurs under the coal retirement bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any coal retirement property as if they were secured parties with a perfected and prior lien under the Code, and the Commission may order amounts arising from coal retirement charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the coal retirement charges.

3. Provisions applicable to the sale, assignment, or transfer of coal retirement property.

a. Any sale, assignment, or other transfer of coal retirement property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the coal retirement property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in coal retirement property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in coal retirement property may be created only when all of the following have occurred: (i) the financing order creating the coal retirement property has become effective, (ii) the documents evidencing the transfer of coal retirement property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the coal retirement property. After such a transaction, the coal retirement property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the coal retirement property perfected in accordance with this Rule.

b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:

- i. Commingling of coal retirement charges with other amounts.
- ii. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the coal retirement property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right

- to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of coal retirement charges.
- iii. Any recourse that the purchaser may have against the seller.
  - iv. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
  - v. The obligation of the seller to collect coal retirement charges on behalf of an assignee.
  - vi. The transferor acting as the servicer of the coal retirement charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in coal 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 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.
  - vii. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
  - viii. The granting or providing to bondholders a preferred right to the coal retirement property or credit enhancement by the public utility or its affiliates with respect to such coal retirement bonds.
  - ix. Any application of the formula-based adjustment mechanism as provided in this Rule.
- c. Any right that a public utility has in the coal retirement property before its pledge, sale, or transfer or any other right created under this Rule or created in the financing order and assignable under this Rule 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 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 retirement property or the power to transfer rights in such coal retirement property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of coal retirement bonds, and (iv) the receipt of value for the coal retirement property. An enforceable transfer of an interest in coal 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 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 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 retirement property or by the commingling of funds arising from coal 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 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 retirement property is determined as follows:
  - i. 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.
  - ii. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.
  - iii. 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.
- (k) Description or indication of property. – The description of coal 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 retirement property and states that the agreement or financing statement covers all or part of the property described in the financing order. This Rule applies to all purported transfers of, and all purported grants or liens or security interests in, coal 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.
- (l) Financing statements. – All financing statements referenced in this Rule are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.
- (m) 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 retirement property shall be the laws of this State.
- (n) Coal retirement bonds not public debt. – Neither the State nor its political subdivisions are liable on any coal 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 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 retirement bonds, other than in their capacity as consumers of electricity. All coal 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."



- (o) Legal investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in coal 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
- (p) Obligation of nonimpairment.
1. The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the coal 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 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 provisions of this Rule, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create coal retirement property, and make the coal 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 retirement property or the security for the coal retirement bonds or revises the coal 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 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 retirement bonds have been paid and performed in full.
  2. Any person or entity that issues coal retirement bonds may include the language specified in this Rule in the coal retirement bonds and related documentation.
- (q) 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.
- (r) 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 retirement property, this Rule shall govern.
- (s) Consultation. – In making determinations under this Rule, the Commission or public staff or both may engage an outside consultant and counsel.

- (t) 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 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.

# **ATTACHMENT B**

## **Coal Retirement Securitization Rule Redline Version**

**Docket No. E-100, Sub 177**



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

- (a) Purpose. — The purpose of this rule is to establish guidelines for the application of Section 5 of House Bill 951, which directs the North Carolina Utilities Commission to develop rules for securitization of costs associated with the early retirement of subcritical coal-fired generating facilities that are substantively identical to the provisions of G.S. 62-172, except with respect to the purpose for which securitization may be used under that statute, and consistent with the public policy of this State as set forth in G.S. 62-2.
- (b) Definitions.
1. Administration fees. — any fees meant to cover expenses associated with administrative functions a public utility may provide to the issuing entity, which functions may include, among others, maintaining the general accounting records, preparation of quarterly and annual financial statements, arranging for annual audits of the entity's financial statements, preparing all required external financial filings, preparing any required income or other tax returns, and related support.
  2. 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 retirement bonds.
  3. 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 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 retirement property.
  4. Bond advisory team. — An advisory body of representatives from the public utility, Commission, and Public Staff established at the Commission's discretion to provide input and advice to the public utility regarding the public utility's decisions on structuring, marketing, and pricing of the coal retirement bonds.
  5. Bondholder. — A person who holds a coal retirement bond.
  6. Capital contribution. — the amount contributed to the issuer of the coal retirement bonds by the public utility.
  7. Coal 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 retirement costs and financing costs, and that are secured by or payable from coal 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 retirement charge. — The amounts authorized by the Commission to repay, finance, or refinance coal 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 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 retirement costs. – All of the following:

a. Up to fifty percent (50%) of 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 House Bill 951, ~~with any remaining non-securitized costs to be recovered through rates, that are appropriate for recovery from existing and future retail customers receiving transmission or distribution service from such public utility.~~

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.

~~b.c.~~ Coal retirement costs shall be net of applicable insurance proceeds, tax benefits and any other amounts intended to reimburse the public utility for the early retirement of a subcritical coal-fired generating facility such as government grants, or aid of any kind and where determined appropriate by the Commission, ~~and may include adjustments for capital replacement and operating costs previously considered in determining normal amounts in the public utility's most recent general rate proceeding.~~ Coal retirement costs includes costs of repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility.

~~e.d.~~ With respect to coal 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 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 retirement bonds may not be revoked or otherwise modified.

10. Coal 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 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 payment, 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. – The term includes all of the following:
    - a. Interest and acquisition, defeasance, or redemption premiums payable on coal 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 retirement bonds.
    - c. Any other cost related to issuing, supporting, repaying, refunding, and servicing coal 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 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 retirement charge or otherwise resulting from the collection of coal 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 retirement costs.
  14. Financing order. – An order that authorizes the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal 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. House Bill 951: Session Law 2021-165 signed by the State Governor on October 13, 2021.
  18. Issuance advice letter. – a letter filed no later than one business day after pricing of coal retirement bonds by the public utility detailing the final terms of the pricing and issuance of the coal retirement bonds.

19. Issuance advice letter process. – A procedure, following the issuance of a financing order but prior to the issuance of coal retirement bonds, where the public utility certifies that the structuring, marketing, and pricing of the coal retirement bonds fully satisfy the statutory cost objectives.
20. Ongoing financing costs. – Expenses incurred throughout the coal retirement securitization transaction including servicing fees; return on invested capital; administration fees; accounting and auditing fees; regulatory fees; legal fees; rating agency surveillance fees; trustee fees; independent director or manager fees; and other miscellaneous fees associated with the servicing of the coal retirement bonds.
21. Petition for financing order. – A public utility petition requesting a financing order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.
22. Petition for review and approval of coal retirement costs. – A public utility petition requesting Commission review and approval of coal retirement costs that are subject to a settlement agreement or review and approval of proposed coal retirement costs generally.
23. 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 retirement property.
24. Public utility. – A public utility, as defined in G.S. 62-3, that sells electric power to retail electric customers in the State.
25. Securitizable Balance. – The total amount of costs to be financed, including but not limited to coal retirement costs, financing costs, and carrying charges through the date of issuance.
26. Servicing fee. – In consideration for its servicing responsibilities, a periodic fee paid to the servicer (which may be the public utility) of an issuing entity to be recovery through coal retirement charges. To support bankruptcy analysis necessary to achieve the highest credit rating, the servicing fees must be on arm's length terms and at market-based rates. Such servicing responsibilities will include, without limitation: (i) billing, monitoring, collecting and remitting securitization charges, (ii) reporting requirements imposed by the servicing agreement, (iii) implementing the true-up mechanism, (iv) procedures required to coordinate required audits related to the public utility's role as servicer, (v) legal and accounting functions related to the servicing obligation, and (vi) communication with rating agencies.
27. Statutory cost objectives. – The objectives that: (i) a proposed issuance of coal retirement bonds and the imposition of coal retirement charges will provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds; and (ii) the structuring, marketing, and pricing of coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
28. Subcritical coal-fired generating facilities. – A facility with boiler(s) where constant temperature boiling water cools the furnace enclosure, and the flow circuits are designed to accommodate a two-phase steam-water flow and boiling phenomena. Such boilers typically operate at a pressure near 2400 psi (16.5 MPa) with superheat and reheat steam temperatures ranging from 1000 to 1050F.

29. Tail-end collections. – Collections of coal retirement charges after the coal retirement bonds and all related financing costs have been repaid in full.
30. Transaction documents. – Forms of any purchase and sale agreements, administration agreements, servicing agreements, limited liability company agreements, indentures, or any other documents necessary to execute the issuance of coal retirement bonds.
31. True-up adjustment letter. – A letter applying the formulaic true-up mechanism proposed by a public utility and approved by the Commission in a financing order to be filed at least annually with the Commission to ensure coal retirement charges are at a sufficient level to meet the public utility's coal retirement bond payment obligations.
32. Up-front financing costs. – Up-front financing costs, which will be financed from the proceeds of the coal retirement bonds, include the fees and expenses to obtain the financing orders, as well as the fees and expenses associated with the structuring, marketing and issuance of each series of coal retirement bonds, including: external and incremental internal legal fees, structuring advisory fees and expenses, any interest rate lock or swap fees and costs (including the cost, if any, associated with interest rate hedges), underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting fees, information technology programming costs, servicer's set-up costs, printing and marketing expenses, stock exchange listing fees and compliance fees, filing and registration fees, and the costs of the outside consultant and counsel, if any, retained by the Commission or the Public Staff. Up-front financing costs include reimbursement to the public utility for amounts advanced for payment of such costs.

(c) Securitization Plan.

- 32.1. Upon approval of a Carbon Plan and the retirement of a subcritical coal-fired generating facilit(ies) pursuant to such Carbon Plan, the public utility shall file a plan no later than one-hundred and twenty (120) days from the retirement date to securitize the subcritical coal-fired generating facilit(ies)' eligible coal retirement costs. The securitization plan shall include a general timeline for the public utility's filing for approval of coal retirement costs, petition for financing order, and proposed issuance. The securitization plan shall also include the reasoning behind the public utility's proposed timeline, including whether the public utility proposes to securitize multiple subcritical coal-fired generating facilit(ies)' costs at once through simultaneous issuances, and how such will impact expected customer savings.

(e)(d) Procedure for Coal Retirement Securitization Proceeding.

1. Coal retirement cost review and approval schedule.
  - a. A public utility shall file a petition for review and approval of coal retirement costs at least 90 days prior to filing a petition for financing order for authority to issue coal retirement bonds.
  - b. Within 14 days after the date the petition for review and approval of coal 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 of coal retirement costs is filed. The procedural schedule shall establish a discovery period of no longer than 60 days from the date the petition for review and approval of coal retirement costs is filed.
2. Financing order issuance schedule.



- a. A public utility may file a petition for a financing order no sooner than 90 days after filing a petition for review and approval of coal retirement costs, if a petition for review and approval of coal retirement costs is filed.
- b. Within 14 days after the date the petition for a financing order is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition for a financing order is filed.
- c. 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.
- d. A party to the securitization proceeding may petition the Commission for reconsideration of a financing order within five days after the date of its issuance.
- e. 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.

~~(d)~~(e) Petition for approval of coal retirement costs.

1. Application of rule.

- a. Prior to a public utility filing for a petition for financing order, the public utility shall obtain Commission review and approval of applicable coal retirement costs proposed for financing, through one of the following mechanisms: (a) a prior general rate case order; (b) an order issued in a proceeding initiated for that purpose pursuant to a petition for review and approval of coal retirement costs; or (c) an order issued in a proceeding initiated for approval of a settlement agreement that governs the type and amount of principal costs that could be included in coal retirement costs and the public utility proposes to finance all or a portion of the principal costs using coal retirement bonds.
- b. Any petition for review and approval of coal retirement costs under Rule R8-[ ](d)1.a. (b) or (c) above shall be filed in a unique sub-docket of the requesting public utility.

2. Filing requirements.

- a. Any such petition shall include all of the following:
  - i. A description of the subcritical coal-fired generating facilities retired early or proposed to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of House Bill 951,
  - ii. The amount of coal retirement costs.
- b. A public utility seeking review and approval of proposed coal retirement costs must file a petition at least 90 days prior to the filing of a petition for financing order with respect to such costs.

~~(e)~~(f) Order approving coal retirement costs.

- 1. An order reviewing and approving coal retirement costs issued by the Commission to a public utility shall include the following:
  - a. A determination of the amount of reasonable and prudent coal retirement costs, including any carrying costs, eligible to be securitized.

b.If the coal retirement costs are the subject of a settlement, approval of the settlement.

~~(f)~~(g) Petition for approval of financing order.

1. Application of rule.

a.Prior to a public utility issuing coal retirement bonds and implementing a coal retirement charge, the public utility shall obtain a Commission order authorizing the issuance of coal retirement bonds; the imposition, collection, and periodic adjustments of a coal retirement charge; the creation of coal retirement property; and the sale, assignment, or transfer of coal retirement property to an assignee.

b.Any petition for a financing order shall be made in a unique sub-docket of the public utility's docket number; however, if a public utility has previously filed a petition for review and approval of coal retirement costs that are the subject coal retirement costs of a petition for financing order, the petition for financing order shall be filed in the same sub-docket as the petition for review and approval of coal retirement costs.

2. Filing requirements.

a.A public utility may petition the Commission for issuance of a financing order. The petition shall include all of the following:

- i. A description of subcritical electric generating facilities that the public utility has retired early or proposes to retire early for the purpose of achieving the authorized carbon reduction goals set forth in Section 1 of House Bill 951, or if the public utility is subject to a settlement agreement governing coal retirement costs, a description of the settlement agreement.
- ii. The coal retirement costs.
- iii. An estimate of the financing costs related to the coal retirement bonds.
- iv. An estimate of the coal retirement charges necessary to recover the coal retirement costs and financing costs and the period for recovery of such costs.
- v. A comparison between the net present value of the costs to customers that are estimated to result from the issuance of coal retirement bonds and the costs that would result from the application of the traditional method of financing and recovering coal retirement costs from customers. The comparison should demonstrate that the issuance of coal retirement bonds and the imposition of coal retirement charges are expected to provide quantifiable benefits to customers. For purposes of this comparison, the traditional method of financing and recovering net book value of coal plants upon retirement shall mean the establishment of a regulatory asset and recovery of the amortization expenses over a period to be determined by the Commission plus a return on the unamortized balance at the public utility's weighted average cost of capital, as defined in its most recent base rate case proceeding before the Commission.

vi. Direct testimony and exhibits supporting the petition.

vii. If the public utility has received a Commission order reviewing and approving coal retirement costs pursuant to any of the mechanisms

- identified above, a description of the order reviewing and approving the coal retirement costs.
- viii. A proposed transaction structure including, a request for flexibility to tailor the structure to the then-existing market conditions, rating agency considerations, and investor preferences, in order that the issuance of coal retirement bonds achieve the statutory cost objectives.
  - ix. A proposed issuance advice letter, true-up adjustment letter, and explanation of the proposed issuance advice letter procedure.
  - x. A proposed formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal retirement charges.
  - xi. A proposed coal retirement charge tariff.
  - xii. A description of how coal retirement charges will be allocated among customer classes.
  - xiii. At the public utility's option, a request to establish a regulatory asset to defer any prudently incurred excess amounts of financing costs to preserve for later recovery in the public utility's next general rate case proceeding.
  - xiv. At the public utility's option, a request for a regulatory liability account to refund any amounts collected in excess of actual financing costs in the next general rate proceeding.
  - xv. Proposed form of transaction documents.
  - xvi. A summary of the securitizable balance.
  - xvii. A proposed registration, rating agency, and issuance timeline.
  - xviii. A proposed financing order containing the elements listed in subpart [(g)(1)] of this Rule.

~~(g)~~(h) Financing order.

1. A financing order issued by the Commission to a public utility shall include all of the following:
  - a. Except for changes made pursuant to the formula-based mechanism authorized under this Rule, the amount of coal retirement costs to be financed using coal retirement bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through coal retirement charges and specify the period over which coal retirement costs and financing costs may be recovered.
  - b. A finding that the proposed issuance of coal retirement bonds and the imposition and collection of a coal retirement charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal retirement bonds.
  - c. A finding that the structuring and pricing of the coal retirement bonds are reasonably expected to result in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in such financing order.
  - d. A requirement that, for so long as the coal retirement bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of coal 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.

- e. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal 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 retirement bonds and financing costs and other required amounts and charges payable in connection with the coal retirement bonds.
- f. The coal 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 retirement bonds and all financing costs.
- g. The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the coal retirement bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.
- h. How coal retirement charges will be allocated among customer classes.
- i. A requirement that, after the final terms of an issuance of coal retirement bonds have been established and before the issuance of coal retirement bonds, the public utility determines the resulting initial coal retirement charge in accordance with the financing order and that such initial coal retirement charge be final and effective upon the issuance of such coal retirement bonds without further Commission action so long as the coal retirement charge is consistent with the financing order.
- j. A method of tracing funds collected as coal retirement charges, or other proceeds of coal 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 retirement property subject to a financing order under applicable law.
- k. Any other conditions not otherwise inconsistent with this Rule that the Commission determines are appropriate.
- l. A finding that the petition for financing order meets the requirements of this Rule.
- m. A State of North Carolina pledge of nonimpairment in accordance with section (o) of this Rule.
- n. A statement that coal retirement bonds are not public debt in accordance with section (m) of this Rule.
- o. Approval and description of the issuance advice letter process.
- p. Approval and copy of a proposed issuance advice letter, true-up adjustment Letter, and coal retirement charge tariff.
- q. Approval of the form of transaction documents.
- r. Findings regarding any required certifications and opinion letters to be given during the issuance advice letter process.

2. A financing order issued to a public utility may provide that creation of the public utility's coal retirement property is conditioned upon, and simultaneous with, the sale or other transfer of the coal retirement property to an assignee and the pledge of the coal retirement property to secure coal retirement bonds.
3. 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 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 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.
4. Subsequent to the transfer of coal retirement property to an assignee or the issuance of coal 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 Rule, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust coal retirement charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer coal retirement property or to cause coal retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.
5. Duration of financing order. –
  - a. A financing order remains in effect and coal retirement property under the financing order continues to exist until coal 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 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.

~~(h)~~(i) Post-financing order process.

1. Bond advisory team process.
  - a. If the Commission determines that it is necessary to achieve the statutory cost objectives, a financing order may establish a bond advisory team:
    - i. Following issuance of a financing order, bond advisory team meetings shall be held to provide timely information to members

- regarding aspects of the structuring, marketing, and pricing of the coal retirement bonds.
- ii. The public utility, the Commission, and the Public Staff shall designate staff, counsel, and consultants to participate on the bond advisory team on their behalf. However, the Public Staff, the Public Staff's designees, the Commission, and the Commission designees are not agents of the public utility in any manner by their participation on a bond advisory team.
  - iii. The bond advisory team may be present during communications with underwriters, credit rating agencies, and investors, the public utility shall use reasonable means to invite bond advisory team to such communications; the public utility shall invite members of the Bond advisory team to join bond advisory team meetings to review and comment on material aspects of the structuring, pricing, and marketing of the coal retirement bonds, including without limitation the following: the selection and retention of underwriters and other transaction participants; the terms of all transaction documents; the length of the bond terms; the interest rates of the bonds (including whether the interest rate is floating or fixed); the capitalization of the bonds; the transaction structure; the issuance strategy; appropriate credit enhancements; and the credit rating process.
- b. The public utility shall have the sole right to select all counsel and advisors for the public utility, the underwriters and any issuing entity.
  - c. The public utility shall retain all decision-making authority with respect to the structuring, marketing, and pricing of the coal retirement bonds.
2. Issuance advice letter process.
- a. No later than one day after pricing of the coal retirement bonds, the public utility shall provide an issuance advice letter to the Commission so that the Commission can determine whether the coal retirement bonds comply with the requirements set forth in the public utility's financing order.
  - b. No later than the day the public utility's issuance advice letter is filed, the public utility and each lead underwriter of the coal retirement bonds shall file with the Commission separate certifications confirming that the structuring, marketing, and pricing of coal retirement bonds resulted in the lowest coal retirement charges consistent with market conditions at the time the coal retirement bonds are priced and the terms set forth in a financing order.
  - c. The initial coal retirement charges and the final terms of the coal retirement bonds described in the issuance advice letter and true-up adjustment letter will be final unless, before noon on the third business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with the terms of the public utility's financing order.
3. 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 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 retirement charges and, if applicable, that the public utility is acting as servicer for the owner of the rights to the coal 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 retirement charges may be consolidated into a single line item.
- iii. A coal retirement charge tariff must indicate the coal retirement charge and the ownership of that charge.

b. True-up of coal retirement charges.

- i. Coal 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 retirement bonds, at which point the coal retirement charges may be adjusted at the request of the public utility, to ensure that the amount collected from coal retirement charges is sufficient to pay the debt service on the coal retirement bonds and all 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. That 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 may 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 may 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 retirement-securitization shall be recovered from coal retirement charges, taking into account the public utility's true-up mechanism and in accordance with this Rule.
  - (2) If determined necessary by the Commission, the public utility may provide detailed invoices and other supporting documentation, if applicable, and narrative explanations of 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 may notify the Public Staff that no invoices were received where determined necessary by the Commission.
  - (3) If determined necessary by the Commission, the Public Staff may have the opportunity to audit on-going financing costs (including auditing through possible 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) If determined necessary by the Commission, the Public Staff may have the option to choose to audit the expense during review of the public utility's next true-up mechanism filing.
  - (5) If determined necessary by the Commission, the Public Staff may discuss with the public utility any concerns or proposed changes to the on-going financing cost expenses in an effort to reach an appropriate resolution regarding such on-going financing costs provided, however, that any resolution shall not impair the value of the coal retirement property, the coal retirement charges or the coal retirement bonds. In cases where a resolution cannot be reached between the public utility and Public Staff, the Public Staff will file a recommendation with the Commission, at the time the dispute arises, that the disputed amount be returned to customers, with carrying costs at the public utility's respective net-of-tax weighted average cost of capital returns, in the public utility's next general rate cases, with the issue to be resolved by the Commission in that proceeding.
- vi. Servicing and administration fees.
  - (1) If determined necessary by the Commission, the public utility may 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, 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.

- (1) The Commission may require that any tail-end collections by the public utility 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 recovery in the public utility's next general rate case.

viii. Capital contributions.

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

c. Coal retirement charge collection period.

- i. A financing order and the coal retirement charges authorized thereby shall remain in effect until the coal retirement bonds and all financing costs (including tail-end collections and tax liabilities) related thereto have been paid or recovered in full.
- ii. A financing order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of the public utility or its successors or assignees.

4. Additional financing orders.

- a. 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 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 retirement bonds and the issuance of new coal retirement bonds, the Commission shall adjust the related coal retirement charges accordingly.

~~(j)~~ Coal retirement property.

1. Provisions applicable to coal retirement property.

- a. All coal 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 retirement charges depends on the public utility, to which the financing order is issued,



performing its servicing functions relating to the collection of coal 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. All coal 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 retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal 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.
- c. Coal retirement property specified in a financing order exists until coal retirement bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such coal retirement bonds have been recovered in full.
- d. All or any portion of coal 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 retirement property or issuing coal retirement bonds under the financing order. All or any portion of coal retirement property may be pledged to secure coal 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 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.
- e. If a public utility defaults on any required payment of charges arising from coal 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 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.
- f. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in coal 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 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 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 retirement bonds shall be nonrecourse to the credit or any assets of the public utility other than the coal 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 retirement property to secure the repayment of the principal and interest and other amounts payable in respect of coal retirement bonds; amounts payable under any ancillary agreement and other financing costs are governed by this this Rule and not by the provisions of the Code.

b. A security interest in coal 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 retirement property or the power to transfer rights in such coal retirement property, or (iv) value is received for the coal retirement property. The description of coal retirement property in a security agreement is sufficient if the description refers to this Rule and the financing order creating the coal 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 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 Rule.

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 retirement property is not affected by the commingling of coal retirement charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all coal retirement charges that are deposited in any cash or deposit account of the qualifying utility in which coal 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 retirement property.
  - g. If a default or termination occurs under the coal retirement bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any coal retirement property as if they were secured parties with a perfected and prior lien under the Code, and the Commission may order amounts arising from coal retirement charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the coal retirement charges.
3. Provisions applicable to the sale, assignment, or transfer of coal retirement property.
- a. Any sale, assignment, or other transfer of coal retirement property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the coal retirement property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in coal retirement property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in coal retirement property may be created only when all of the following have occurred: (i) the financing order creating the coal retirement property has become effective, (ii) the documents evidencing the transfer of coal retirement property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the coal retirement property. After such a transaction, the coal retirement property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the coal retirement property perfected in accordance with this Rule.
  - b. The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:
    - i. Commingling of coal retirement charges with other amounts.

- ii. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the coal retirement property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of coal retirement charges.
  - iii. Any recourse that the purchaser may have against the seller.
  - iv. Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
  - v. The obligation of the seller to collect coal retirement charges on behalf of an assignee.
  - vi. The transferor acting as the servicer of the coal retirement charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in coal 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 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.
  - vii. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
  - viii. The granting or providing to bondholders a preferred right to the coal retirement property or credit enhancement by the public utility or its affiliates with respect to such coal retirement bonds.
  - ix. Any application of the formula-based adjustment mechanism as provided in this Rule.
- c. Any right that a public utility has in the coal retirement property before its pledge, sale, or transfer or any other right created under this Rule or created in the financing order and assignable under this Rule 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 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 retirement property or the power to transfer rights in such coal retirement property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of coal retirement bonds, and (iv) the receipt of value for the coal retirement property. An enforceable transfer of an interest in coal 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 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 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 retirement property or by the commingling of funds arising from coal 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 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 retirement property is determined as follows:
  - i. 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.
  - ii. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.
  - iii. 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.

~~(j)~~(k) Description or indication of property. – The description of coal 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 retirement property and states that the agreement or financing statement covers all or part of the property described in the financing order. This Rule applies to all purported transfers of, and all purported grants or liens or security interests in, coal 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.

~~(k)~~(l) Financing statements. – All financing statements referenced in this Rule are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.

~~(j)~~(m) 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 retirement property shall be the laws of this State.

~~(m)~~(n) Coal retirement bonds not public debt. – Neither the State nor its political subdivisions are liable on any coal 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 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 retirement bonds, other than in their capacity as consumers of electricity. All coal 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."

~~(n)~~(o) Legal investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in coal 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

~~(e)~~(p) Obligation of nonimpairment.

1. The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the coal 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 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 provisions of this Rule, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create coal retirement property, and make the coal 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 retirement property or the security for the coal retirement bonds or revises the coal 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 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 retirement bonds have been paid and performed in full.
2. Any person or entity that issues coal retirement bonds may include the language specified in this Rule in the coal retirement bonds and related documentation.

~~(p)~~(q) 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.

~~(q)~~(r) 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 retirement property, this Rule shall govern.

- ~~(r)~~(s) Consultation. – In making determinations under this Rule, the Commission or public staff or both may engage an outside consultant and counsel.
- ~~(s)~~(t) 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 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.