

**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	)	
Securitization of Early Retirement of	)	ORDER ADOPTING RULE R8-74
Subcritical Coal-Fired Generating Facilities	)	

BY THE COMMISSION: On October 13, 2021, The Governor signed into law House Bill 951, S.L. 2021-165 (HB 951). Section 5 of HB 951 requires the Commission to establish rules no later than April 11, 2022, for securitization of costs associated with the early retirement of subcritical coal-fired generating facilities as a result of the Carbon Plan required to be developed by Section 1 of HB 951.

On October 14, 2021, the Commission issued an Order Requesting Comments and Proposed Rules in the above-captioned proceeding (Rulemaking Order), making Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP, and together with DEC, Duke), parties to this docket. The Rulemaking Order gave other interested parties the opportunity to become formal parties to the proceeding by filing a petition to intervene.

Petitions to intervene were filed by the following parties and were granted by orders of the Commission: Carolina Industrial Group for Fair Utility Rates II and III (CIGFUR); Carolina Utility Customers Association, Inc. (CUCA); North Carolina Sustainable Energy Association (NCSEA); North Carolina Retail Merchants Association (NCRMA); the Sierra Club and Natural Resources Defense Council (NRDC); and Tech Customers. In addition, a Notice of Intervention was filed by the North Carolina Attorney General's Office. The Public Staff's intervention is recognized pursuant to N.C. Gen. Stat. § 62-15(d) and Commission Rule R1-19(e).

On November 22, 2021, Duke filed a Proposed Coal Plant Retirement Securitization Rule. On that same day, the Public Staff, CIGFUR, CUCA, NCSEA, the Sierra Club and NRDC, and the Tech Customers filed proposed rules and initial comments.

On December 20, 2021, the Public Staff, CIGFUR, CUCA, NCSEA, NCRMA, the Sierra Club and NRDC, Tech Customers, and Duke filed proposed rules and reply comments.

On January 4, 2022, the Commission issued an Order Granting, In Part, Motion for Leave allowing the parties to file supplemental reply comments.

On January 12, 2022, the Public Staff, CIGFUR, CUCA, NCSEA, the Sierra Club and NRDC, and Duke filed proposed rules and supplemental reply comments.

After careful consideration of the proposed rules of the parties, along with their initial, reply, and supplemental comments, the Commission adopts under new Article 12 - Securitization, Commission Rule R8-74, which is attached to this Order as Appendix A.

The balance of this Order discusses provisions that the parties advocated for inclusion in the Rule and provides the Commission's decision regarding those issues.

## DISCUSSION AND CONCLUSIONS

### **The Form of the Rules**

HB 951 Section 5 provides in part 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 [N.C.G.S. § 62-172], except with respect to the purposes for which securitization may be used under that section.” Accordingly, the Commission has not adopted the rules jointly proposed by the Sierra Club and NRDC, nor does it accept CUCA's proposal, endorsed by CIGFUR, to draw upon an earlier draft of HB 951 that was not enacted into law. Instead, the Commission takes N.C.G.S. § 62-172 as the model for Rule R8-74.

### **Provisions Required by the Purposes for Which Securitization May Be Used**

As noted, the Commission has hewed closely to N.C.G.S. § 62-172 in formulating Rule R8-74. Two alterations to that statutory language necessitated by the differences between securitizing storm costs and securitizing the costs associated with early subcritical coal-fired plant retirements and discussed by the parties in their comments and proposed rules are the definition of “subcritical coal-fired generating facilities” and the description of the costs to be securitized.

#### ***Definition of Subcritical Coal-Fired Generating Facilities***

Both Duke and the Public Staff include definitions of subcritical coal-fired plant in proposed rules attached to their respective supplemental reply comments. Both proposed rules include a technical definition. Duke states that “‘subcritical’ is a well-established, technical engineering term describing a particular type of coal combustion technology.” Duke's Supplemental Reply Comments at 12. The Public Staff's proposed definition lists the subcritical facilities by name: Allen Plant Units 1, 2, 3, 4, and 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. CIGFUR, CUCA, and the Tech Customers also propose that the rule implementing Section 5 of HB 951 should list the plants that qualify as subcritical coal-fired generating facilities.

Duke states in its supplemental reply comments that it does not dispute that each of the units listed in the Public Staff's definition meets the industry standard technical definition of the term. However, Duke opposes listing the specific units in the definition of subcritical coal-fired facilities because it wishes to avoid the implication that the retirement costs of all of its subcritical coal-fired facilities are eligible for securitization under HB 951.

In its supplemental reply comments, CUCA contends that the General Assembly did not intend the term "subcritical" in a technical, engineering sense, but rather intended to include plants that are no longer necessary to meet Duke's load. The Commission rejects this argument. When a statute uses a term that has a commonly understood meaning outside the statute, then unless the statute provides a different meaning, the commonly understood meaning should be used. This is especially so with respect to terms that have specific meanings in technical contexts. The terms "supercritical" and "subcritical" have well-accepted meanings in the field of fluid dynamics and, as applied to pressurized coal-fired boilers, electric generating facilities. The Commission also agrees with Duke that naming specific generating units in the definition could incorrectly be perceived to imply that all costs associated with closing those units are eligible for securitization. For costs to be eligible for securitization they must not only be associated with a "subcritical" coal-fired generating unit, they must also be associated with a unit that has been retired, that has been retired "early," and whose early retirement is required in order to achieve the carbon reduction goals set forth in Section 1 of HB 951. Each of these additional elements — retirement, early retirement, and retirement to meet the goals of the statute — must be satisfied before costs are eligible for securitization.

The Commission determines that the Public Staff's definition of subcritical coal-fired facility is reasonable and includes this definition in Rule R8-74. The Commission determines it is not necessary to enumerate a list of Duke's subcritical coal-fired plants at this time. Duke agrees with the list of subcritical coal-fired plants identified by the Public Staff in its comments.

### ***Determining Fifty Percent of Remaining Net Book Value***

Section 5 of HB 951 provides that 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."

The Public Staff in its initial comments raised the question whether net book value (NBV) would be assessed plant-by-plant at the time of retirement or across the aggregate of all retiring subcritical plants. The Public Staff takes the position that the calculation should be performed in a manner that is most favorable to ratepayers. In their joint reply comments the Sierra Club and NRDC concur.

Duke asserts that the NBV of the retiring plants should be assessed at the time the plant is transferred on the Companies' books from plant in service to a regulatory asset, a date which it states will be determined by the Commission as part of the Carbon Plan.

The Commission declines to adopt Duke's proposed revision of the statutory language to include the phrase "up to 50%" in Rule R8-74. As the intervenors observe, Duke's language is contradicted by the express language of HB 951. Both the identification of the subcritical coal-fired plants to be retired under the Carbon Plan and the timing of their retirement will be determined in the future. If at that time there are disputes about the correct method for determining the amount of costs eligible for securitization, the Commission will make a determination on a fully developed factual record.

### ***Securitizing the Cost of Repurchasing Equity or Retiring Debt***

Both Duke and the Public Staff include in their proposed rules as costs that can be securitized the "costs of repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility." This provision is also found in N.C.G.S. § 62-172.

The Tech Customers questioned why securitization plant retirement costs would necessitate repurchasing equity or retiring debt. Duke explains that the subcritical coal-fired plants have all been financed and maintained with long-term equity and debt funding and that the proceeds from the securitization bond will be used in part to "affect [sic] a balanced recapitalization of the Companies to maintain their capital structures." Duke Supplemental Reply Comments at 18.

The Commission determines that it is reasonable to include the cost of repurchasing equity or retiring debt as a category of costs that may be securitized under Rule R8-74(b)(7)(b). The Public Staff agrees that this category of costs is reasonable and appropriate to include. These costs were included among securitizable storm recovery costs in N.C.G.S. § 62-172. As with any other cost for which cost recovery is sought, the public utility will have the burden of demonstrating that any cost of repurchasing equity or retiring debt was reasonably and prudently incurred.

### **Whether Securitization of Early Coal Plant Retirement Is Permissive or Mandatory**

Several intervenors seek to have the rule implementing Section 5 of HB 951 create an affirmative obligation for Duke to securitize the retirement costs of subcritical coal-fired facilities that are retired early in connection with the Carbon Plan. The Public Staff includes in its proposed rules language providing that a public utility "shall petition the Commission" for a financing order. The Public Staff, the Tech Customers, and CIGFUR all urge the Commission not to include in the implementing rules the provisions in N.C.G.S. § 62-172 that state that the public utility retains sole discretion not to issue bonds even after the Commission grants a petition for a financing order.

Duke contends the mandatory securitization position taken by the Public Staff and intervenors violates the requirement in HB 951 that these rules be substantively identical to N.C.G.S. § 62-172, which gave the public utility the option to petition for a financing order, N.C.G.S. § 62-172(b), and gave the public utility sole discretion to decline to issue

the securitization bonds even after a financing order had been issued. N.C.G.S. § 62-172(b)(3)(e), (c)(2).

The Commission determines that HB 951 does not require Duke to securitize coal plant retirement costs. The only mandatory language in Section 5 of HB 951 is that the Commission itself issue implementing rules, and that the rules, procedures, obligations, and protections adopted for securitization of costs associated with retirement of subcritical coal-fired generating facilities be substantively identical to the provisions of N.C.G.S. § 62-172. As noted, the provisions of N.C.G.S. § 62-172 are permissive with respect to securitization, not mandatory.

Intervenors generally presume securitization of coal plant retirement costs will benefit ratepayers. However, in its initial comments the Public Staff states that factors related to the amounts and timing of possible securitization may be an integral part of determining the lowest present value revenue requirements achievable and “will need to be combined with the resolution of the question as to whether securitization is in fact more beneficial to the ratepayer in each instance than retirement without securitization.” Initial Comments of the Public Staff at 5.

Duke takes the position that before a financing petition is approved, it should be determined that securitization will be more favorable when compared to traditional ratemaking, and Duke embodies that position in its proposed rule. Duke emphasizes the need for maximum flexibility in order to guarantee and certify the lowest coal plant retirement charges have been achieved for ratepayers. For instance, Duke states that ratepayers might benefit from bundling the costs of multiple retired plants into a single bond offering rather than multiple issues for each retired plant.

The Commission determines it is reasonable to include the permissive language of N.C.G.S. § 62-172 in Rule R8-74. The appropriate amount of coal plant retirement costs to be securitized under HB 951 and the appropriate timing of securitization will be determined based on a fully developed factual record.

### **Bond Advisory Team**

Most parties, including Duke and the Public Staff, either provide for a bond advisory team in their proposed rules or advocate for one in their comments. These parties propose a bond advisory team consisting of representatives of the public utility, the Commission, and the Public Staff who would be able to receive relevant information and provide comments on all material aspects of the structuring, pricing, and marketing of the coal plant retirement bonds during the period of time following the issuance of a financing order and culminating in the issuance of the coal plant retirement bonds.

With respect to a bond advisory team, there are two significant differences between Duke’s proposed rule, as submitted with its supplemental reply comments, and the proposals of intervenors. First, Duke provides that the Commission may establish a bond advisory team in a financing order if it concludes that it is necessary to achieve the

objectives of providing quantifiable benefits to ratepayers as compared to the costs that would have been incurred absent the issuance of coal plant retirement bonds and that the structuring, marketing, and pricing of the coal plant retirement bonds are reasonably expected to result in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds are priced and terms set out in the financing order.

Intervenors, including the Public Staff and the Sierra Club and NRDC, propose rules that would make a bond advisory team mandatory.

Second, in Duke's proposed rule, the public utility has the ultimate responsibility and authority with respect to the structuring, marketing, and pricing of the coal plant retirement bonds. The Public Staff's proposed rule, attached to its supplemental reply comments, omits this provision. NCSEA suggests in its reply comments that it would be appropriate for there to be "bond counsel oversight" of the bond advisory team.

The Commission included provisions for a bond advisory team in the Financing Orders issued on May 10, 2021, in *Petition of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, for Issuance of a Storm Cost Recovery Docket Financing Order*, Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Storm Cost Financing Orders). The Commission found the bond advisory team process as provided in the Storm Cost Financing Orders to be helpful in those proceedings and believes it could be helpful in securitizations of the costs of early-retired subcritical coal-fired facilities under HB 951.

The Commission determines that the inclusion of a bond advisory team in Rule R8-74 should not be mandatory, as that would be inconsistent with the requirement of HB 951 to promulgate a rule "substantively identical" to N.C.G.S. § 62-172. Nevertheless, a provision that allows, but does not require, the Commission to provide for a bond advisory team is consistent with N.C.G.S. § 62-172(b)(3)(b)(12), which allows the Commission to include in a storm cost securitization financing order "[a]ny other conditions not otherwise inconsistent with this section that the Commission determines are appropriate." Given that most parties recommend the creation of a bond advisory team and no party opposes it, the Commission has included the option for a bond advisory team in Rule R8-74.

Further, as it provided in the Storm Cost Financing Orders, the Commission determines that it is appropriate for the public utility to have the authority and the responsibility for final decisions with respect to securitized bonds that it issues. See DEC Storm Cost Financing Order at 61. The Public Staff's statutory role is as an advocate for ratepayers, N.C.G.S. § 62-15(d), and not to make decisions on behalf of North Carolina's public utilities. If parties to a future docket involving a coal plant retirement securitization petition see the need for the Commission to take a particular action following issuance of a financing order, then the proper route is to file a motion in the docket, on an expedited basis if necessary.

For similar reasons the Commission does not include other provisions recommended by the Public Staff and endorsed by other intervenors, including CIGFUR

and CUCA, as “best practices” for securitization, such as requiring independent certifications from Commission and Public Staff consultants or mandating performance-based compensation for underwriters. See Public Staff Initial Comments at 2-3; Public Staff Supplemental Reply Comments at 6-8, 10-11. First, these provisions are not found in N.C.G.S. § 62-172. Second, the Commission was not persuaded to adopt the particulars of many of these measures as championed by the Public Staff in Docket Nos. E-2, Sub 1262 and E-7, Sub 1243 (Storm Cost Securitization Dockets), despite the lengthy record addressing such proposals in those dockets. In the meantime, Duke has now successfully issued storm cost securitization bonds. Finally, as the Public Staff noted in its reply comments, it is not possible or realistic to address all aspects of coal plant retirement cost review, audit, approval, and securitization in rules. The Commission finds that it is preferable for Rule R8-74 to be less prescriptive in order to allow the parties and the Commission flexibility to address changing conditions as they arise. Rule R8-74(c)(3)(b)(xii) contains the language found in N.C.G.S. § 62-172 that permits the Commission to include in a coal plant securitization financing order “[a]ny other conditions not otherwise inconsistent with this Rule that the Commission determines are appropriate.”

### **Procedure for Review of Costs to Be Securitized**

In their respective proposed rules both Duke and the Public Staff include procedures for the review, evaluation, and audit of costs that the public utility proposes to securitize, and a determination of those costs by the Commission, before a securitization petition is filed by the public utility for coal plant retirement costs. No intervenor opposes this position.

The Commission agrees that the 135-day timeline for issuance of a financing order after the filing of a petition is an insufficient amount of time both to establish the appropriateness of the costs to be securitized and to issue a financing order. However, as with many other issues the parties raised in this proceeding, because rules for review and Commission determination of eligible securitization costs are not included in N.C.G.S. § 62-172, the Commission likewise does not include them in Rule R8-74. Rather, the costs that may be eligible for securitization will be determined in a separate proceeding, either a general rate case, a proceeding associated with the Carbon Plan, or some other proceeding, prior to the filing of a petition under Rule R8-74.

### **Provisions Not Specifically Discussed**

This Order does not explicitly address every proposal raised by the parties in their comments and proposed orders. Both Duke and the Public Staff include in their proposed rules provisions that were in the Storm Cost Financing Orders, for instance provisions that allow the Public Staff to audit financing costs incurred after issuance of the Financing Order. The Commission found such terms reasonable and appropriate at the time the Storm Cost Financing Orders were issued. The parties suggest other proposals that they believe may lead to ratepayer savings, such as the proposal by the Tech Customers for

Duke to issue the coal plant retirement securities under Environmental, Social, and Governance criteria.

Provisions not specifically discussed in this Order and not included in Rule R8-74 are excluded from Rule R8-74 for several reasons. First, they were not in the text of N.C.G.S. § 62-172, and so their inclusion in Rule R8-74 would violate the requirement in HB 951 for the implementing rules to be “substantively identical” to the provisions of that statute. Second, Rule R8-74 contains the flexibility necessary to include the provisions that were in the Storm Cost Financing Orders along with other beneficial provisions, as the Commission finds reasonable and appropriate. However, locking those provisions in at this time may serve to reduce the Commission’s flexibility in the future. Third, in future proceedings, different entities may intervene and bring different ideas and perspectives to bear. For instance, in this rulemaking docket, NCRMA disagreed with a proposed provision offered by Duke that was also part of a stipulation with the Public Staff in the Storm Cost Securitization Dockets, namely the provision allowing Duke to receive a return on its capital contributions at the interest rate of the longest tranche of the coal plant retirement bonds.

Accordingly, the omission of any proposal or suggested provision offered by a party in this docket does not necessarily mean that the Commission rejects that proposal conceptually, but may simply indicate that the Commission does not deem it appropriate for inclusion in Rule R8-74 at this time.

## **Conclusion**

Based upon the foregoing and the entire record in this proceeding, the Commission adopts Rule R8-74, as set forth in Appendix A to this Order, effective as of the date of this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of April, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Erica N. Green". The signature is written in a cursive, flowing style.

Erica N. Green, Deputy Clerk



**R8-74. FINANCING FOR COSTS ASSOCIATED WITH THE EARLY RETIREMENT OF SUBCRITICAL COAL-FIRED GENERATING FACILITIES**

(a) Purpose. – The purpose of this Rule is to implement and comply with Section 5 of House Bill 951, S.L. 2021-165, relating to securitization of costs associated with early retirement of subcritical coal-fired electric generating facilities owned by any electric public utility as defined in N.C. Gen. Stat. § 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2021.

(b) Definitions. – The following definitions apply in this Rule:

- (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with coal plant retirement bonds.
- (2) Assignee. – A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to coal plant retirement property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to coal plant retirement property.
- (3) Bond advisory team. – An advisory body of representatives from the public utility, Commission, and Public Staff 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 plant retirement bonds.
- (4) Bondholder. – A person who holds a coal plant retirement bond.
- (5) Coal plant retirement activity. – An activity or activities by a public utility, its affiliates, or its contractors, directly and specifically in connection with early retirement of subcritical coal-fired electric generating facilities.
- (6) Coal plant retirement bonds. – Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidence of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved coal plant retirement costs and financing costs, and that are secured by or payable from coal plant retirement property. If certificates of participation or ownership are issued, references in this Rule to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.
- (7) Coal plant retirement charge. – The amounts authorized by the Commission to repay, finance, or refinance coal plant retirement costs and financing costs and that are nonbypassable charges (i) imposed on and part

of all retail customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all existing or future retail customers receiving 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.

- (8) Coal plant retirement costs. – All of the following, as determined by the Commission in a separate proceeding:
- (a) 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 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.
  - (c) Coal plant retirement costs shall be net of applicable insurance proceeds, tax benefits, and any other amounts intended to reimburse the public utility for coal plant retirement activities such as government grants, or aid of any kind and where determined appropriate by the Commission. Coal plant retirement costs include costs of repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility.
  - (d) With respect to coal plant retirement costs that the public utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other ratemaking adjustments appropriate to fairly and reasonably assign or allocate coal plant retirement cost recovery to customers over time, shall be addressed in a future general rate proceeding, as may be facilitated by other orders of the Commission issued at the time or prior to such proceeding; provided, however, that the

Commission's adoption of a financing order and approval of the issuance of coal plant retirement bonds may not be revoked or otherwise modified.

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

- (e) Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued.
  - (f) Any costs incurred by the Commission or Public Staff for any outside consultants or counsel retained in connection with the securitization of coal plant retirement costs.
- (13) Financing order. – An order that authorizes the issuance of coal plant retirement bonds; the imposition, collection, and periodic adjustments of a coal plant retirement charge; the creation of coal plant retirement property; and the sale, assignment, or transfer of coal plant retirement property to an assignee.
  - (14) Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
  - (15) Financing statement. – Defined in Article 9 of the Code.
  - (16) House Bill 951. – Session Law 2021-165 signed by the State Governor on October 13, 2021.
  - (17) Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to coal plant retirement property.
  - (18) Public utility. – A public utility, as defined in N.C.G.S. § 62-3, that sells electric power to retail electric customers in the State.
  - (19) Subcritical coal-fired generating facility. – 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%.
- (c) Financing Orders. –
- (1) A public utility may petition the Commission for a financing order. The petition shall include all of the following:
    - (a) A description of the subcritical coal-fired 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 as contemplated by subsection (c)(2) of this Rule, a description of the settlement agreement.
    - (b) The coal plant retirement costs and estimate of the costs of any coal plant retirement activities that are being undertaken but are not completed.
    - (c) An estimate of the financing costs related to the coal plant retirement bonds.

- (d) An estimate of the coal plant retirement charges necessary to recover the coal plant retirement costs and financing costs and the period for recovery of such costs.
  - (e) A comparison between the net present value of the costs to customers that are estimated to result from the issuance of coal plant retirement bonds and the costs that would result from the application of the traditional method of financing and recovering coal plant retirement costs from customers. The comparison should demonstrate that the issuance of coal plant retirement bonds and the imposition of coal plant retirement charges are expected to provide quantifiable benefits to customers.
  - (f) Direct testimony and exhibits supporting the petition.
- (2) If a public utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in coal plant retirement costs, then the public utility must file a petition with the Commission for review and approval of those costs no later than 90 days before filing a petition for a financing order pursuant to this Rule.
- (3) Petition and order. –
- (a) Proceedings on a petition submitted pursuant to this subdivision begin with the petition by a public utility, filed subject to the time frame specified in Rule R8-74(c)(2), if applicable, and shall be disposed of in accordance with the requirements of Chapter 62 and the rules of the Commission, except as follows:
    - (i) Within 14 days after the date the petition is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition is filed.
    - (ii) No later than 135 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance.
  - (b) A financing order issued under this Rule by the Commission to a public utility shall include all of the following elements:
    - (i) Except for changes made pursuant to the formula-based mechanism authorized under this Rule, the amount of coal plant retirement costs to be financed using coal plant retirement bonds. The Commission shall describe and estimate the amount of financing costs that may be recovered through coal plant retirement charges and specify the period over which coal plant retirement costs and financing costs may be recovered.
    - (ii) A finding that the proposed issuance of coal plant retirement bonds and the imposition and collection of a coal plant retirement charge are expected to provide quantifiable benefits to customers as compared to the costs that would

have been incurred absent the issuance of coal plant retirement bonds.

- (iii) A finding that the structuring and pricing of the coal plant retirement bonds are reasonably expected to result in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds are priced and the terms set forth in such financing order.
- (iv) A requirement that, for so long as the coal plant retirement bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of coal plant retirement charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.
- (vi) A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal plant retirement charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of coal plant retirement bonds and financing costs and other required amounts and charges payable in connection with the coal plant retirement bonds.
- (vii) The coal plant retirement property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure coal plant retirement bonds and all financing costs.
- (viii) The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the coal plant retirement bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.
- (ix) How coal plant retirement charges will be allocated among customer classes.
- (x) A requirement that, after the final terms of an issuance of coal plant retirement bonds have been established and before the issuance of coal plant retirement bonds, the public utility determines the resulting initial coal plant retirement charge in accordance with the financing order and that such initial coal plant retirement charge be final and effective upon the issuance of such coal plant retirement bonds without further

Commission action so long as the coal plant retirement charge is consistent with the financing order.

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

property or to cause coal plant retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.

- (f) A financing order issued under this Rule by the Commission to a public utility may include 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 plant retirement bonds.
  - (ii) The public utility, the Commission, and the Public Staff may 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 plant 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.
  - (iv) The public utility shall have the sole right to select all counsel and advisors for the public utility, the underwriters, and any issuing entity.
  - (v) The public utility shall retain all decision-making authority with respect to the structuring, marketing, and pricing of the coal plant retirement bonds.
- (4) At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding coal plant retirement bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in this Rule for a financing order. Effective upon retirement of the refunded coal plant retirement bonds and the issuance of new coal plant retirement bonds, the Commission shall adjust the related coal plant retirement charges accordingly.



- (5) Within 60 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina. Review on appeal shall be based solely on the record before the Commission and briefs to the Court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and State and federal law and is within the authority of the Commission under House Bill 951.
- (6) Duration of financing order. –
  - (a) A financing order remains in effect and coal plant retirement property under the financing order continues to exist until coal plant retirement bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such coal plant retirement bonds have been recovered in full.
  - (b) A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its successors or assignees.
- (d) Exceptions to Commission Jurisdiction. –
  - (1) The Commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this Chapter, consider the coal plant retirement bonds issued pursuant to a financing order to be the debt of the public utility other than for federal income tax purposes, consider the coal plant retirement charges paid under the financing order to be the revenue of the public utility for any purpose, or consider the coal plant retirement costs or financing costs specified in the financing order to be the costs of the public utility, nor may the Commission determine any action taken by a public utility which is consistent with the financing order to be unjust or unreasonable.
  - (2) The Commission may not order or otherwise directly or indirectly require a public utility to use coal plant retirement bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. After the issuance of a financing order, the public utility retains sole discretion regarding whether to cause the coal plant retirement bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Nothing shall prevent the public utility from abandoning the issuance of coal plant retirement bonds under the financing order by filing with the Commission a statement of abandonment and the reasons therefor. The Commission may not refuse to allow a public utility to recover coal plant retirement costs in an otherwise permissible fashion, or refuse or condition authorization or approval of the issuance and sale by a public utility of securities or the assumption by the public utility of

liabilities or obligations, solely because of the potential availability of coal plant retirement bond financing.

(e) **Public Utility Duties.** – The electric bills of a public utility that has obtained a financing order and caused coal plant retirement bonds to be issued must comply with the provisions of this Rule; however, the failure of a public utility to comply with this Rule does not invalidate, impair, or affect any financing order, coal plant retirement property, coal plant retirement charge, or coal plant retirement bonds. The public utility must do the following:

- (1) Explicitly reflect that a portion of the charges on such bill represents coal plant retirement charges approved in a financing order issued to the public utility and, if the coal plant retirement property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to coal plant retirement charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the coal plant retirement charge and the ownership of the charge.
- (2) Include the coal plant retirement charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

(f) **Coal plant retirement Property.** –

(1) **Provisions applicable to coal plant retirement property.** –

- (a) All coal plant retirement property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of coal plant retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal plant retirement charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.
- (b) Coal plant retirement property specified in a financing order exists until coal plant retirement bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such coal plant retirement bonds have been recovered in full.
- (c) All or any portion of coal plant retirement property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the public utility and created for the limited purpose of acquiring, owning, or administering coal plant

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

- (d) If a public utility defaults on any required payment of charges arising from coal plant retirement property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the coal plant retirement property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.
  - (e) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in coal plant retirement property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity.
  - (f) Any successor to a public utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the coal plant retirement property. Nothing in this sub-subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.
  - (g) Coal plant retirement bonds shall be nonrecourse to the credit or any assets of the public utility other than the coal plant retirement property as specified in the financing order and any rights under any ancillary agreement.
- (2) Provisions applicable to security interests. –
- (a) The creation, perfection, and enforcement of any security interest in coal plant retirement property to secure the repayment of the

principal and interest and other amounts payable in respect of coal plant retirement bonds; amounts payable under any ancillary agreement and other financing costs are governed by this Rule and not by the provisions of the Code.

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

- (g) If a default or termination occurs under the coal plant retirement bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any coal plant 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 plant 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 plant retirement charges.
- (3) Provisions applicable to the sale, assignment, or transfer of coal plant retirement property. –
  - (a) Any sale, assignment, or other transfer of coal plant 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 plant 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 plant 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 plant retirement property may be created only when all of the following have occurred: (i) the financing order creating the coal plant retirement property has become effective, (ii) the documents evidencing the transfer of coal plant retirement property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the coal plant retirement property. After such a transaction, the coal plant 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 plant retirement property perfected in accordance with subsection (f)(2) of 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 plant retirement charges with other amounts.
    - (ii) The retention by the seller of (a) a partial or residual interest, including an equity interest, in the coal plant retirement property, whether direct or indirect, or whether subordinate or otherwise, or (b) the right to recover costs associated with

- taxes, franchise fees, or license fees imposed on the collection of coal plant 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 plant retirement charges on behalf of an assignee.
  - (vi) The transferor acting as the servicer of the coal plant retirement charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in coal plant retirement property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the coal plant retirement charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.
  - (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 plant retirement property or credit enhancement by the public utility or its affiliates with respect to such coal plant 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 plant 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 plant retirement property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such coal plant retirement property or the power to transfer rights in such coal plant retirement property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of coal plant retirement bonds, and (iv) the receipt of value for the coal plant retirement property. An enforceable transfer of an interest in coal plant retirement property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with subsection (f)(2)(c) of this Rule. The transfer is perfected against third parties as of the date of filing.
- (d) The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of coal plant retirement

property under Rule R8-74(f) in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of coal plant retirement property.

- (e) The priority of a transfer perfected under this Rule is not impaired by any later modification of the financing order or coal plant retirement property or by the commingling of funds arising from coal plant retirement property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under subsection (f)(2) of this Rule, is terminated when they are transferred to a segregated account for the assignee or a financing party. If coal plant retirement property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.
- (f) The priority of the conflicting interests of assignees in the same interest or rights in any coal plant retirement property is determined as follows:
  - (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 subsection (f)(2)(c) of 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.

(g) **Description or Indication of Property.** – The description of coal plant retirement property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the coal plant retirement property and states that the agreement or financing statement covers all or part of the property described in the financing order. This Rule applies to all purported transfers of, and all purported grants or liens or security interests in, coal plant retirement property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.

(h) **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.

(i) **Choice of Law.** – The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or

right or the pledge or creation of a security interest in any coal plant retirement property shall be the laws of this State.

(j) Coal plant retirement Bonds Not Public Debt. – Neither the State nor its political subdivisions are liable on any coal plant retirement bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of coal plant retirement bonds does not, directly, indirectly, or contingently, obligate the State or any agency, political subdivision, or instrumentality of the State to levy any tax or make any appropriation for payment of the coal plant retirement bonds, other than in their capacity as consumers of electricity. All coal plant retirement bonds must contain on the face thereof a statement to the following effect: “Neither the full faith and credit nor the taxing power of the State of North Carolina is pledged to the payment of the principal of, or interest on, this bond.”

(k) Legal Investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in coal plant retirement bonds:

- (1) Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.
- (2) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.
- (3) Personal representatives, guardians, trustees, and other fiduciaries.
- (4) All other persons authorized to invest in bonds or other obligations of a similar nature.

(l) Obligation of Nonimpairment. –

- (1) The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the coal plant retirement property, and other financing parties that the State and its agencies will not take any action listed in this subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the coal plant retirement charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:
  - (a) Alter the 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 plant retirement property, and make the coal plant retirement charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
  - (b) Take or permit any action that impairs or would impair the value of coal plant retirement property or the security for the coal plant



- retirement bonds or revises the coal plant retirement costs for which recovery is authorized.
- (c) In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
  - (d) Except for changes made pursuant to the formula-based adjustment mechanism authorized under this Rule, reduce, alter, or impair coal plant retirement charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related coal plant retirement bonds have been paid and performed in full.
- (2) Any person or entity that issues coal plant retirement bonds may include the language specified in this subsection (l) in the coal plant retirement bonds and related documentation.
- (m) Not a Public Utility. – 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.
- (n) Conflicts. – If there is a conflict between this Rule and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in coal plant retirement property, this Rule shall govern.
- (o) Consultation. – In making determinations under this Rule, the Commission or Public Staff or both may engage an outside consultant and counsel.
- (p) Effect of Invalidity. – If any provision of this Rule is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this Rule which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all coal plant retirement bonds issued or authorized in a financing order issued under this Rule before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.