

Regular Session, 2007

ACT No. 55

HOUSE BILL NO. 577

BY REPRESENTATIVE PINAC AND SENATOR HOLLIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact R.S. 12:202.1(F), R.S. 44:4.1(B)(36), and Part VIII of Chapter 9 of Title 45 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 45:1311 through 1328,
4 relative to financing utility storm repairs and strengthening and stabilizing utilities;
5 to provide for an exception to the limitation on formation of nonprofit corporations;
6 to provide for an exception from the public records law; to provide for legislative
7 intent and definitions; to authorize the creation of the Louisiana Utilities Restoration
8 Corporation as a nonprofit public corporation; to provide for a board of directors; to
9 provide for certain immunity; to provide for corporate powers; to place the nonprofit
10 corporation under the regulatory jurisdiction of the Public Service Commission; to
11 establish a mechanism by which the Public Service Commission or the council of the
12 city of New Orleans may authorize and certify a financing order and the issuance of
13 system restoration bonds that promote the public good of minimizing rates charged
14 by utilities by providing low-cost capital; to provide for the contents of financing
15 orders; to provide that the financing orders shall require the electric or gas utility as
16 collection agent to collect a system restoration charge from its retail customers
17 sufficient to pay the debt service and related costs on any bonds issued pursuant to
18 the financing order; to provide for appeals of financing orders; to provide for security
19 interests in system restoration property; to provide for the sale or pledge of system
20 restoration property; to provide that system restoration bonds are not public debt; to
21 provide a state pledge of non-impairment of system restoration bonds; to prohibit the
22 corporation from filing bankruptcy; to provide that the jurisdiction of the
23 commission is not impaired; and to provide for related matters.

24 Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 12:202.1(F) is hereby enacted to read as follows:

§202.1 Limitation on formation; exceptions

* * *

F. The provisions of this Section shall not apply to the Louisiana Utilities Restoration Corporation which was created and is governed by Part VIII of Chapter 9 of Title 45 of the Louisiana Revised Statutes of 1950.

Section 2. R.S. 44:4.1(B)(36) is hereby enacted to read as follows:

§4.1. Exceptions

* * *

B. The legislature further recognizes that there exist exceptions, exemptions, and limitations to the laws pertaining to public records throughout the revised statutes and codes of this state. Therefore, the following exceptions, exemptions, and limitations are hereby continued in effect by incorporation into this Chapter by citation:

* * *

(36) R.S. 45:1313(C).

* * *

Section 3. Part VIII of Chapter 9 of Title 45 of the Louisiana Revised Statutes of 1950, comprised of R.S. 45:1311 through 1328, is hereby enacted to read as follows:

PART VIII. LOUISIANA UTILITIES RESTORATION CORPORATION

§1311. Short title; purpose

A. This Part shall be known and may be cited as the "Louisiana Utilities Restoration Corporation Act".

B. It is hereby declared by the Louisiana Legislature that the restoration and rebuilding of utility systems after natural disasters using low-cost capital, thereby minimizing the cost to ratepayers, is a valid public purpose. Supporting the financial strength and stability of utility companies that already have restored and rebuilt, partially or completely, their utility systems after natural disasters is a valid public purpose in the best interests of the citizens of the state. The provision of utility services is necessary to the economic welfare of the state and a crucial element in the

1 continued prosperity of Louisiana's citizens. The swift restoration of utility services
2 by utility companies following disasters such as tropical storms, hurricanes, floods,
3 or other natural disasters and terrorist attacks can minimize the devastating effects
4 of such disasters. Financially sound and stable utility companies will be able to
5 restore and rebuild their utility systems promptly without having to incur the expense
6 of providing assurance to contractors, vendors, and creditors that their charges to the
7 utility will be paid and without having to wait to obtain future loans or complete
8 future rate-making proceedings. The legislature finds and declares it to be prudent
9 and in the best interests of the state of Louisiana to consider and make available
10 alternate financing techniques to support the financial strength and stability of utility
11 companies that have undertaken past, and will undertake future, utility system
12 restoration. Therefore, the Louisiana Utilities Restoration Corporation, a nonprofit
13 corporation, may be created, for the purpose of providing an alternate financing
14 mechanism available to the Public Service Commission and the council of the city
15 of New Orleans, as applicable, to attract low-cost capital to finance utility system
16 restoration and capital contributions to financially strengthen and stabilize utilities.
17 The corporation's exercise of powers conferred by this Part is the performance of an
18 essential governmental function, and the corporation shall be a special purpose
19 public corporation and a political instrumentality of the state.

20 C. The purpose of this Part is to minimize costs charged to ratepayers for
21 system restoration costs. The alternate financing structure contemplated by this Part
22 will enable the corporation to finance, directly or indirectly, system restoration costs
23 with low-cost capital. Financing of system restoration costs pursuant to this Part is
24 hereby recognized to be a valid public purpose. The commission may authorize the
25 issuance of system restoration bonds if the commission finds that the proposed
26 structuring, expected pricing, and anticipated financing costs of the system
27 restoration bonds are reasonably expected to result in lower overall costs to
28 ratepayers as compared to conventional methods of financing or recovering utility
29 system restoration costs. Securitization financings under this Part, if authorized by
30 the commission in its sole discretion, will include a commitment by the utility

1 receiving proceeds therefrom that such proceeds shall be in lieu of recovery of
2 system restoration costs through the regular rate-making process to the extent those
3 costs are financed by such securitization financing proceeds.

4 D.(1) The system restoration bonds will be solely the obligation of the issuer
5 and will not be a debt of or a pledge of the faith and credit of the state or any political
6 or governmental unit thereof.

7 (2) The system restoration bonds shall be nonrecourse to the credit or any
8 assets of the state and the commission.

9 E. System restoration charges, if authorized by the commission in its sole
10 discretion, will be charges imposed by the corporation, and not by a utility.

11 F. This Part does not in any way limit or impair the commission's plenary
12 jurisdiction over the rates charged and services rendered by the public utilities in this
13 state.

14 G. This Part does not impose fees or system restoration charges, but instead
15 only authorizes the commission to approve system restoration charges in its
16 discretion.

17 H. A utility receiving the proceeds of a securitization financing pursuant to
18 this Part shall not be required to provide utility services to the corporation or the state
19 as a result of receiving such proceeds.

20 §1312. Definitions

21 As used in this Part:

22 (1) "Ancillary agreement" means any bond, insurance policy, letter of credit,
23 reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or
24 credit support arrangement, or other financial arrangement entered into in connection
25 with the issuance or payment of system restoration bonds.

26 (2) "Commission" means the Public Service Commission or, solely with
27 respect to an electric or gas utility furnishing electric or natural gas service within
28 the city of New Orleans, the council of the city of New Orleans, as applicable. Each
29 such commission may issue financing orders under this Part pertaining to those

1 utilities subject to that commission's powers of regulation and supervision. The
2 corporation, however, is regulated as provided in R.S. 45:1317.

3 (3) "Corporation" means the Louisiana Utilities Restoration Corporation.

4 (4) "Electric utility" means an "electric public utility" as defined in R.S.
5 45:121 and in addition means any person furnishing electric service within the city
6 of New Orleans.

7 (5) "Financing costs" means any of the following:

8 (a) Interest and acquisition, defeasance, or redemption premiums that are
9 payable on system restoration bonds.

10 (b) Any payment required under an ancillary agreement and any amount
11 required to fund or replenish reserve or other accounts established under the terms
12 of any indenture, ancillary agreement, or other financing documents pertaining to
13 system restoration bonds.

14 (c) Issuance costs, and any ongoing costs related to supporting, repaying,
15 servicing, and refunding system restoration bonds, including but not limited to
16 servicing fees, accounting and auditing fees, trustee fees, legal fees and expenses,
17 consulting fees, administrative fees, printing and edgarizing fees, financial advisor
18 fees and expenses, SEC registration fees, issuer fees, placement and underwriting
19 fees, capitalized interest, overcollateralization funding requirements, rating agency
20 fees, stock exchange listing and compliance fees, and filing fees.

21 (d) Costs of establishing, maintaining, and operating the corporation.

22 (6) "Financing order" means an order of the commission, if granted by the
23 commission in its sole discretion, which allows for all of the following:

24 (a) The assessment, imposition, and periodic adjustment of system
25 restoration charges by the corporation and the collection thereof by a utility as an
26 agent on behalf of the corporation.

27 (b) The creation of system restoration property in favor of the corporation
28 and the corporation's transfer thereof.

29 (c) The issuance of system restoration bonds and the transfer to the
30 corporation of the net proceeds thereof.

1 (d) The disposition of the proceeds of system restoration bonds.

2 (7) "Financing party" means any holder of system restoration bonds, any
3 party to or beneficiary of an ancillary agreement, and any trustee, collateral agent,
4 or other person acting for the benefit of any of the foregoing.

5 (8) "Gas utility" means a local distributing system selling natural gas to retail
6 customers.

7 (9) "Governing board" means that board of directors of the corporation
8 which is established under R.S. 45:1314 and, where appropriate, any designee of the
9 governing board.

10 (10) "Issuance costs" means any of the following:

11 (a) Any initial payment made on issuance of, and any amount required to
12 fund any system restoration sinking fund, reserve or overcollateralization fund, or
13 other fund or account required by the documents pertaining to, system restoration
14 bonds authorized by a financing order.

15 (b) Any other costs related to issuance of system restoration bonds, including
16 but not limited to trustees fees, legal fees, consulting fees, administrative fees,
17 printing and edgarizing fees, financial advisor fees and expenses, SEC registration
18 fees, issuer fees, placement and underwriter fees, capitalized interest, rating agency
19 fees, stock exchange listing and compliance fees, and filing fees, including costs
20 related to obtaining the financing order. Issuance costs may be, without limitation,
21 costs of the corporation, the issuer, the utility, or the commission.

22 (11) "Issuer" means any Louisiana public corporation, public trust, or other
23 entity that issues system restoration bonds approved by a financing order.

24 (12) "Lien creditor" means any of the following:

25 (a) A creditor that has acquired a lien on the property involved by
26 attachment, sequestration, seizure, levy, or the like.

27 (b) An assignee for benefit of creditors from the time of assignment.

28 (c) A trustee in bankruptcy from the date of the filing of the petition.

29 (d) A receiver in equity from the time of appointment.

30 (13) "State" means the state of Louisiana.

1 (14) "Storm" means a named tropical storm or hurricane, ice or snow storm,
2 flood, or other significant weather or natural disaster that occurred during calendar
3 year 2005 or that occurs thereafter.

4 (15) "Storm damage reserve" means a utility's storm reserve or such other
5 similar reserve established pursuant to order or rule of the commission.

6 (16) "System restoration activity" means any activity or activities by or on
7 behalf of a utility in connection with the restoration of service associated with utility
8 outages affecting customers of a utility as the result of a storm or storms, including
9 but not limited to mobilization, staging, and construction, reconstruction,
10 replacement, or repair of generation, transmission, distribution, or general plant
11 facilities.

12 (17) "System restoration bonds" means bonds, notes, certificates of
13 participation, or other evidences of indebtedness that are issued pursuant to this Part
14 by an issuer at the request of the corporation and a utility, and authorized by a
15 financing order, the net proceeds of which are transferred to the corporation and used
16 as provided in this Part, and which are secured by and payable from system
17 restoration property.

18 (18) "System restoration charge" means the nonbypassable charges, if
19 determined appropriate by the commission and provided for in a financing order, to
20 be assessed by the corporation on, and collected by the utility or other collection
21 agent from, all existing and future customers of a utility, and periodically adjusted,
22 in an amount sufficient at all times to pay the principal of and interest on particular
23 system restoration bonds as the same shall become due and payable, all other
24 financing costs, and any other costs as necessary to otherwise ensure the timely
25 payment of such system restoration bonds, all as the commission may authorize in
26 a financing order.

27 (19) "System restoration costs" means, if requested by the utility, and as may
28 be approved by the commission, those prudent incremental costs incurred or to be
29 incurred by a utility in undertaking a system restoration activity, including associated
30 carrying costs. If the commission deems appropriate, system restoration costs may

1 include the costs to fund and finance any storm damage reserves. Further, if the
2 commission determines it to be appropriate, system restoration costs may include
3 carrying costs from the date on which the system restoration activity costs were
4 incurred until the date that system restoration bonds are issued.

5 (20) "System restoration property" means all of the following:

6 (a) All rights and interests of the corporation arising out of this Part,
7 including the right to receive system restoration charges billed and collected by the
8 utility on the behalf of the corporation as authorized in the financing order, the right
9 to enforce the obligations of the utility to collect and service the system restoration
10 charges, and the right to obtain periodic adjustments to such charges as provided in
11 the financing order and this Part.

12 (b) All collections, claims, rights to payments, payments, money, or proceeds
13 arising from the rights and interests specified in Subparagraph (a) of this Paragraph,
14 regardless of whether such collections, claims, rights to payments, payments, money,
15 or proceeds are imposed, billed, received, collected, or maintained together with or
16 commingled with other collections, rights to payments, payments, money, or
17 proceeds. System restoration property shall not be an asset of the utility.

18 (21) "Utility" means an electric utility or a gas utility.

19 §1313. Creation of the Louisiana Utilities Restoration Corporation

20 A. There is hereby authorized the formation and incorporation of a nonprofit
21 corporation to be known as the "Louisiana Utilities Restoration Corporation", which
22 shall operate to perform the essential governmental function of financing utility
23 system restoration costs in accordance with this Part. The corporation shall perform
24 only those functions consistent with this Part and shall exercise its powers through
25 its governing board established under R.S. 45:1314 and subject to regulation as
26 provided in R.S. 45:1317. The corporation shall be a public corporation and
27 instrumentality of the state as provided in R.S. 45:1325. The corporation,
28 nevertheless, shall be subject to the Public Records Law, R.S. 44:1 et seq.; the Open
29 Meetings Law, R.S. 42:4.1 et seq.; the Bond Validation Procedures Law, R.S.
30 13:5121 et seq.; and the Code of Governmental Ethics, R.S. 42:1101 et seq., except

1 ~~as otherwise provided for in this Section. The corporation shall have a legal~~
2 ~~existence as a public corporate body separate and distinct from the state of Louisiana.~~

3 B.(1) Assets of the corporation shall not be considered part of the general
4 fund of the state or any other fund in the state treasury. The state shall not budget
5 for or provide general fund appropriations to the corporation, and the debts, claims,
6 obligations, and liabilities of the corporation shall not be considered to be a debt of
7 the state or a pledge of its credit. The corporation shall be self-funded. Prior to the
8 imposition of system restoration charges, the corporation may accept and expend for
9 its operating expenses, in accordance with the provisions of this Part, such monies
10 as may be received from any source, including financing agreements with the state,
11 a commercial bank, or a utility to finance the corporation's operations until the
12 corporation receives sufficient system restoration property to cover its operating
13 expenses as financing costs, and to repay any short-term borrowing under any such
14 financing agreement.

15 (2) The corporation shall be prohibited from making charitable contributions
16 or contributions to any political party, political organization, public official, or
17 candidate for public office, whether federal, state, or local in nature.

18 (3) All compensated employees of the corporation, if any, shall be subject
19 to the provisions of Article X, Section 9 of the Constitution of Louisiana, as if they
20 were employees of the state, except members of the governing board of the
21 corporation.

22 C.(1) Except as provided in Paragraph (2) of this Subsection, the corporation
23 shall be subject to R.S. 42:4.1 through 13 and to R.S. 44:1 through 41, and may be
24 considered as if it were a public body for the purpose of those provisions.

25 (2) The corporation may hold an executive session pursuant to R.S. 42:6 for
26 discussion of one or more of the following, and R.S. 44:1 through 41 shall not apply
27 to any documentary materials as enumerated in R.S. 44:1(A)(2) which relate to any
28 of the following:

29 (a) Records obtained or generated by an internal auditor pursuant to a routine
30 audit, until the audit is completed or, if the audit is conducted as part of an

1 investigation, until the investigation is closed or ceases to be active. An
2 investigation is considered "active" while the investigation is being conducted with
3 a reasonable, good faith belief that it could lead to the filing of administrative, civil,
4 or criminal proceedings.

5 (b) Matters reasonably encompassed in privileged attorney-client
6 communications.

7 (c) Information relating to negotiations for financing or contractual services
8 or transactions, until the conclusion of the negotiations, including without limitation
9 information concerning the potential pricing and marketing of system restoration
10 bonds.

11 (d) Residential and other utility customer information. The corporation shall
12 fully protect the confidentiality of any customer information provided to it by a
13 utility.

14 D. The corporation shall be subject to examination by the legislative auditor.

15 E. The corporation shall be domiciled in the parish of East Baton Rouge.

16 F. The corporation, as an instrumentality of the state, shall be exempt from
17 Louisiana corporate income taxes and corporation franchise taxes.

18 G. The corporation shall have the powers, rights, and privileges provided for
19 a corporation organized under the Nonprofit Corporation Law, R.S. 12:201 et seq.,
20 subject to the express exceptions and limitations set forth in this Part.

21 H. An incorporator selected by the secretary of the Public Service
22 Commission shall prepare the articles of incorporation of the corporation under the
23 Nonprofit Corporation Law, R.S. 12:201 et seq., which articles shall be consistent
24 with the provisions of this Part. Notwithstanding any provisions of the Nonprofit
25 Corporation Law, R.S. 12:201 et seq., to the contrary, the articles shall not be
26 required to set forth the names, addresses, and terms of office of the initial directors.
27 The failure to include the initial directors shall not invalidate nor cause the secretary
28 of state to reject the articles.

29 I. The staff of the Public Service Commission may serve as staff to the
30 corporation under the supervision of the secretary of the Public Service Commission.

1 J. State officers, departments, and agencies are authorized to render support
2 and services to the corporation within their respective functions, as may be requested
3 by the corporation.

4 K. The corporation may retain such professionals, financial advisors, and
5 accountants as it may deem necessary to carry out its duties under this Part and may
6 determine their duties and compensation, subject to the approval of the Public
7 Service Commission.

8 §1314. Board of directors of the corporation

9 A. The governing body of the corporation shall be a board of directors that
10 shall consist of the following seven members, who shall be representative of the
11 state's diverse population as near as practicable:

12 (1) Two representatives, appointed by the governor, who shall have a
13 background and significant experience in financial affairs.

14 (2) The state treasurer, or an employee of the Department of the Treasury as
15 his designee.

16 (3) The chairperson of the House Committee on Commerce, or a member of
17 that committee designated by the chairperson.

18 (4) The chairperson of the Senate Committee on Commerce, Consumer
19 Protection and International Affairs, or a member of that committee designated by
20 the chairperson.

21 (5) The secretary of the Public Service Commission, or an employee of the
22 Public Service Commission as his designee.

23 (6) The president of the council of the city of New Orleans, a member of the
24 council designated by the president, or a designee of the president who shall have a
25 background and significant experience in financial affairs.

26 B. The members of the board appointed by the governor shall serve at the
27 pleasure of the governor. If any person shall cease to serve in any one of the offices
28 specified in Paragraph (2), (3), (4), (5), or (6) of Subsection A of this Section, that
29 person shall thereby cease to be a member of the board of the corporation, and that
30 person's successor in office shall automatically, and without the necessity of further

1 ~~action by anyone, become a member of the board of the corporation.~~
2 ~~Notwithstanding R.S. 12:224(B) to the contrary, no board member shall be limited~~
3 ~~as to the amount of years he may serve on the board.~~

4 C. The quorum necessary for transaction of business is hereby established
5 as four members of the board in attendance. All official action of the governing
6 body shall require the favorable vote of a majority of the board members present and
7 voting at any meeting.

8 D. The members of the board, including those who are officers of the
9 corporation, shall receive no salary, but each member shall be reimbursed for
10 necessary travel and other expenses actually incurred while in attendance at the
11 meetings of the board or on business for the board in accordance with state travel
12 regulations.

13 E. Except for elected officials who serve on the board, the members of the
14 board shall be confirmed by the Senate. Should any elected official designate a
15 member who is not an elected official, that designee shall be confirmed by the
16 Senate. Members appointed when the Senate is not in session shall serve only until
17 the end of the next regular session, unless confirmed by the Senate. Should the
18 Senate refuse to confirm a member appointed in the interim, then such person shall
19 forfeit the office as of the date on which the Senate refuses to confirm that person.

20 F. The governing body shall elect from its members annually a chairman,
21 who shall serve as president of the corporation, and a secretary-treasurer of the
22 corporation and may elect one or more vice presidents from its members. The
23 governing body may delegate its powers to the chairman, the secretary-treasurer, or
24 committees of the board, with such standards for the exercise of delegated powers
25 as the governing body may specify and may, to the extent consistent with the rights
26 of financing parties, revoke any such delegation.

1 §1315. Law applicable to board

2 Members of the board and persons acting on the corporation's behalf, while
3 acting within the scope of their duties or employment, shall not be subject to any
4 personal liability resulting from carrying out the powers and duties conferred on
5 them by this Part and shall have the indemnification rights and shall be deemed
6 covered individuals, as provided in R.S. 13:5108.1, with respect to such actions.

7 §1316. Powers and duties of the corporation

8 A. The corporation shall, in each instance subject to the prior authorization
9 of the commission, participate in the financial transactions contemplated by this Part.
10 The corporation shall engage in no other business activities except those activities
11 provided for in this Part and those ancillary and incidental thereto. The corporation
12 shall not apply any proceeds of system restoration bonds or system restoration
13 charges to any purpose not specified in a commission order, or to any purpose in
14 excess of the amount allowed for such purpose in the order, or to any purpose in
15 contravention of the order. The corporation shall be required by the terms of any
16 financing order that provides for the assessment of system restoration charges to
17 either (1) sell such specified system restoration property to an issuer in exchange for
18 the net proceeds of the issuance of system restoration bonds or (2) borrow from an
19 issuer the net proceeds from the issuance of system restoration bonds and pledge
20 such specified system restoration property to the issuer and use the collected system
21 restoration charges to pay the corporation's obligation to the issuer and financing
22 costs. The corporation shall further be required by the terms of any financing order
23 to provide such bond proceeds as a non-shareholder contribution to capital for the
24 public good to the utility collecting such system restoration charges, subject to the
25 conditions and requirements set forth in the financing order, including those
26 described in R.S. 45:1318(C)(5).

27 B. The governing board of the corporation shall, pursuant to the provisions
28 of this Part, have the power to employ or retain such persons as are necessary to
29 perform the duties of the corporation.

30 C. The corporation may:

1 (1) Acquire, sell, pledge, and transfer system restoration property as
2 necessary to effect the purposes of this Part. In connection therewith, the corporation
3 may agree to such terms and conditions as it deems necessary and proper. The
4 corporation may pledge to an issuer specified system restoration property of the
5 corporation pursuant to a financing order to secure the corporation's repayment
6 obligation to the issuer, and the issuer may in turn pledge the corporation's
7 promissory note, and the system restoration property and any other collateral
8 securing such note, together with any other collateral of the issuer provided in the
9 bond documents to secure the payment of system restoration bonds and related
10 financing costs. Alternatively, the corporation may sell to an issuer specified system
11 restoration property of the corporation pursuant to a financing order, which the issuer
12 may in turn pledge, together with other collateral provided in the bond documents,
13 to secure payment of system restoration bonds and related financing costs.

14 (2) Borrow monies from an issuer of system restoration bonds to effect the
15 purposes of this Part and use the monies from the collection of the pertinent system
16 restoration charges to repay such loans and the related financing costs. In connection
17 therewith, the corporation may agree to such terms and conditions as it deems
18 necessary and proper. The corporation shall not itself have the authority to issue
19 system restoration bonds. The corporation may issue promissory notes to issuers.
20 The corporation further may borrow funds for initial operating expenses as specified
21 in R.S. 45:1313(B).

22 (3) Sue or be sued in its corporate name. The power to sue includes the
23 power and right to intervene as a party before the commission or any court in this
24 state in any matter involving the corporation's powers and duties.

25 (4) Negotiate and become a party to such contracts as are necessary,
26 convenient, or desirable to carry out the purposes of this Part.

27 (5) Engage in corporate actions or undertakings that are permitted for
28 nonprofit corporations in this state and that are not prohibited by, or contrary to, the
29 provisions of this Part.

1 (6) Perform such other acts as are necessary, convenient, or desirable to
2 effectuate the purposes of this Part.

3 D. The corporation shall maintain separate accounts and records relating to
4 each utility that is collecting system restoration charges for all charges, revenues,
5 assets, liabilities, and expenses relating to that utility's financing transaction.

6 E. The governing board of the corporation shall be prohibited from
7 authorizing any rehabilitation, liquidation, or dissolution of the corporation, and no
8 such rehabilitation, liquidation, or dissolution of the corporation shall take effect as
9 long as any system restoration bonds are outstanding unless adequate protection and
10 provision has been made for the payment of the bonds pursuant to the documents
11 authorizing the issuance of the bonds. In the event of any rehabilitation, liquidation,
12 or dissolution, the assets of the corporation shall be applied first to pay all debts,
13 liabilities, and obligations of the corporation, including the establishment of
14 reasonable reserves for any contingent liabilities or obligations, and all remaining
15 funds of the corporation shall be applied and distributed as provided by an order of
16 the commission.

17 F. The corporation shall prepare an operating budget annually that shall be
18 submitted for approval to the Public Service Commission. If requested by the Public
19 Service Commission, the corporation shall prepare and submit an annual report
20 containing, among other appropriate matters, the annual operating and financial
21 statements of the corporation.

22 §1317. Regulation by the Public Service Commission

23 A. The Public Service Commission shall regulate the corporation as provided
24 for in this Part with the same plenary regulatory authority as provided under the
25 Constitution of Louisiana with respect to public utilities. Such regulation shall be
26 concomitant with the Public Service Commission's regulation of public utilities.
27 Notwithstanding such regulation, as provided in R.S. 45:1327, the corporation is not
28 a public utility. Although the organization and operations of the corporation shall
29 be regulated exclusively by the Public Service Commission, any financing order
30 pertaining to a utility furnishing utility service within the city of New Orleans shall

1 be issued by the council of the city of New Orleans and be binding on such utility
2 and the corporation.

3 B. To the extent that R.S. 45:1180 through 1182 permit the commission to
4 recover expenses of examination, such expenses of examination will be charged only
5 to the utility or utilities acting as collection agent for the corporation and on whose
6 bills the charges of the corporation appear. Such expenses of examination will be
7 considered to be legitimate operating expenses of the utility and therefore recovered
8 by the utility from its customers.

9 §1318. Financing orders

10 A. A utility may petition the commission for a financing order. The
11 application of the utility shall specify the following:

12 (1) Set forth any known previously incurred system restoration costs and set
13 forth any storm damage reserve that is proposed to be established or replenished.

14 (2) Indicate the amount of the costs set forth pursuant to Paragraph (1) of this
15 Subsection that is proposed to be financed using system restoration bonds under this
16 Part.

17 (3) Estimate to the extent practicable the financing costs related to such
18 system restoration bonds.

19 (4) Describe and estimate the system restoration charges necessary to pay
20 such system restoration bonds, including any financing costs, and the time period for
21 recovery of such system restoration charges.

22 B. The commission may grant an application under Subsection A in whole
23 or in part by a financing order, and with such modifications thereto and upon such
24 terms and conditions as the commission prescribes. The corporation shall be a party
25 to the commission's proceedings along with the pertinent utility. The utility shall
26 participate, subject to the commission's procedures, in the design of the proposed
27 system restoration charges.

28 C. If the commission in its discretion determines that the criteria specified
29 in R.S. 45:1311(C) are met and elects to issue any financing order under this Part,

1 ~~then, in order for a financing order to create system restoration property under this~~
2 ~~Part, the commission in such financing order shall:~~

3 (1) Specify the amount of system restoration costs prudently incurred by a
4 utility and any level of storm damage reserves appropriate for such utility, all
5 whether approved by the commission therein or in a prior order, taking into
6 consideration, to the extent the commission deems appropriate, any other methods
7 used to recover these costs and any insurance proceeds or governmental grants
8 received by the utility or other offsets or credits to those costs, and provide with
9 respect to the estimated amount of financing costs that may be recovered through
10 system restoration charges. The financing order shall require that the utility commit
11 to reduce the system restoration costs eligible for securitization by the amount of any
12 insurance proceeds, federal government grants, or similar source of permanent
13 reimbursement received by the utility before the issuance of the financing order.

14 (2) Authorize the corporation to impose system restoration charges on the
15 customers of a utility that has such system restoration costs, storm damage reserve,
16 and financing costs approved by the commission in an order, and specify the time
17 period over which such charges may be imposed. This time period may be until the
18 system restoration bonds and financing costs are paid in full. System restoration
19 charges paid under any financing order shall not be considered the revenue of the
20 utility for any purpose, but instead shall be created, assessed, and collected as the
21 property of the corporation pursuant to a state regulatory program, subject to
22 subsequent transfer as authorized by this Part.

23 (3) Require the corporation to either (a) sell such specified system
24 restoration property to an issuer in exchange for the net proceeds from the issuance
25 of system restoration bonds or (b) pledge such specified system restoration property
26 to the issuer of system restoration bonds as security for repayment of a loan to the
27 corporation by the issuer of the net proceeds from the issuance of such bonds, and
28 use the collections of that system restoration property to repay such loan.

29 (4) Authorize and require the utility identified in Paragraph (2) of this
30 Subsection to serve as collection agent to collect the system restoration charges and

1 ~~transfer those collected charges to the corporation, the issuer, or a financing party,~~
2 ~~as appropriate.~~

3 (5)(a) ~~Require the corporation to transfer the proceeds of the system~~
4 ~~restoration bonds received under Paragraph (3) of this Subsection to the utility that~~
5 ~~is collecting the applicable system restoration charges, for the public good as a non-~~
6 ~~shareholder contribution to capital, subject to the express conditions and~~
7 ~~requirements set forth in the financing order that, upon receipt of the contribution by~~
8 ~~the utility, such utility shall do all of the following:~~

9 (i) ~~Set aside in a restricted escrow account, in an amount and manner~~
10 ~~required by the commission, any monies or investments used to fund the utility's~~
11 ~~storm damage reserve, and otherwise spend the contributed proceeds solely to~~
12 ~~purchase securities that shall become a permanent part of the utility's working~~
13 ~~capital, pending use for other authorized corporate purposes.~~

14 (ii) ~~Not seek to recover the system restoration costs approved by that~~
15 ~~applicable financing order, to the extent of such contribution, from any of its~~
16 ~~commission-jurisdictional customers.~~

17 (iii) ~~Flow through to the benefit of its customers in a manner determined by~~
18 ~~the commission the amount of any insurance proceeds, federal government grants,~~
19 ~~or similar source of permanent reimbursement received by the utility after the~~
20 ~~issuance of the financing order relating to that same system restoration activity and~~
21 ~~those same system restoration costs.~~

22 (b) ~~The financing order shall require that, upon receipt of the contribution~~
23 ~~by the utility, such utility fully release any claim that the utility has to recover, in any~~
24 ~~manner, from its commission-jurisdictional customers any of the system restoration~~
25 ~~costs covered by the financing order to the extent of the amount of such contribution.~~

26 (6) ~~Specify and create certain system restoration property of the corporation,~~
27 ~~which shall be used to pay and secure, either directly after a sale to the issuer or~~
28 ~~indirectly as security for the loan to the corporation, the system restoration bonds and~~
29 ~~any associated financing costs as they shall become due.~~

1 (7) Provide that the system restoration charges shall be sufficient at all times
2 to pay the scheduled principal of and interest on the system restoration bonds as the
3 same shall become due and payable and all other financing costs and, if determined
4 appropriate by the commission, establish a formulaic true-up mechanism requiring
5 that the system restoration charges be reviewed and adjusted at least annually, in
6 order to correct any overcollection or undercollection during the period after the
7 issuance or preceding adjustment and to ensure the projected recovery of amounts
8 sufficient to provide timely payment of the scheduled principal of and interest on the
9 pertinent system restoration bonds and all other financing costs.

10 (8) Provide and pledge that after the issuance of system restoration bonds
11 authorized thereby, a financing order is irrevocable until the indefeasible payment
12 in full of the system restoration bonds and the financing costs. The financing order
13 shall provide that, except as provided in Subsection F of this Section or to implement
14 any true-up mechanism adopted by the commission as described in Paragraph (7) of
15 this Subsection, the commission may not amend, modify, or terminate the financing
16 order by any subsequent action or reduce, impair, postpone, terminate, or otherwise
17 adjust system restoration charges approved in the financing order.

18 (9) Provide that the financing order shall remain in effect and unabated,
19 notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, or
20 merger or sale, of the applicable utility or its successors or assignees.

21 (10) Provide that any successor to a utility, whether pursuant to any
22 reorganization, bankruptcy, or other insolvency proceeding, or whether pursuant to
23 any merger or acquisition, sale or other business combination, or transfer by
24 operation of law, as a result of utility restructuring or otherwise, shall perform and
25 satisfy all obligations of the utility under any related commission order in the same
26 manner and to the same extent as the utility, including collecting and paying to the
27 person entitled to receive the revenues, collections, payments, or proceeds of the
28 system restoration property. Nothing in this Section is intended to limit or impair
29 any authority of the commission concerning the transfer or succession of interests
30 of utilities.

1 (11) Include terms satisfactory to the commission in its discretion ensuring
2 that the imposition and collection of system restoration charges authorized in the
3 financing order shall be nonbypassable to the fullest extent consistent with the
4 Constitution of Louisiana and the commission's jurisdiction. If determined
5 appropriate by the commission and provided for in a financing order, such
6 nonbypassable charges shall be imposed by the corporation on, and be a part of, all
7 customer bills and be collected by a utility or its successors or assignees, or other
8 collection agent, on behalf of the corporation through a charge which may be
9 collected in the same manner as the utility's base rates or in any other manner
10 deemed appropriate by the commission, for the time period specified in the financing
11 order, paid by existing and future customers, including as to an electric utility all
12 customers for and with regard to all electric load directly or indirectly connected to
13 electric facilities of the electric utility or its successors or assignees under rate
14 schedules or special contracts authorized or approved by the commission. The
15 commission may provide for payment of such nonbypassable charges even if the
16 customer elects to purchase electricity or gas from an alternative supplier, including
17 as a result of a fundamental change in the manner of regulation of public utilities in
18 this state.

19 D. The commission may include any other conditions and provisions in a
20 financing order that the commission considers appropriate and that are not
21 inconsistent with this Part, with respect to any matters pertaining to and within the
22 Public Service Commission's constitutional jurisdiction over utilities and plenary
23 power to regulate utilities or such other jurisdiction as may be conferred on the
24 commission by law or, in the case of the council of the city of New Orleans,
25 otherwise provide with respect to any matters pertaining to and within its home rule
26 charter or other lawful regulatory jurisdiction and authority over utilities providing
27 service within the city of New Orleans. Such conditions and provisions may include
28 how amounts collected from a customer shall be allocated between the corporation's
29 system restoration charges and other charges by the utility on the customer's bill, and

1 whether the system restoration charges are to be shown as a separate line item on
2 individual customer bills.

3 E. After the issuance of a financing order, the corporation shall arrange for
4 the issuance of system restoration bonds as specified in the financing order by an
5 issuer selected by the corporation and approved by the commission. The corporation
6 shall enter into a sale or loan transaction with the issuer and then transfer the net
7 proceeds of such system restoration bonds received by the corporation to the
8 pertinent utility as a non-shareholder contribution to capital as provided in R.S.
9 45:1322.

10 F. The commission may commence a proceeding and issue a subsequent
11 financing order that provides for the refinancing, retiring, or refunding of system
12 restoration bonds issued pursuant to the original financing order, to the extent
13 consistent with the original financing order and the terms of the authorized system
14 restoration bonds issued thereunder, or that provides with respect to any excess
15 collections, to the extent consistent with Paragraph (C)(7) of this Section. Effective
16 on retirement of the refunded system restoration bonds and the issuance of new
17 system restoration bonds, the commission may adjust the related system restoration
18 charges of the corporation accordingly or establish substitute system restoration
19 charges.

20 G. System restoration bonds issued pursuant to a financing order shall not
21 be the debt of the utility. System restoration charges paid and collected under any
22 financing order shall not be considered the revenue or property of the utility for any
23 purpose. The utility shall not have any beneficial interest or claim of right in such
24 system restoration charges or in any system restoration property.

25 H. A financing order may grant the corporation limited discretion, subject
26 to a deadline and other limitations and conditions as determined by the commission,
27 such as that no system restoration charges be collected from customers until system
28 restoration bonds are issued, regarding when to request the issuer to cause the system
29 restoration bonds to be issued. If changed circumstances warrant, the corporation
30 also may request authority from the commission to be granted the right upon request

1 of the utility to have the issuer postpone or cancel the proposed issuance of the
2 system restoration bonds.

3 I. All financing orders by the commission shall be operative and in full force
4 and effect from the time fixed for them to become effective by the commission.

5 J. An aggrieved party or intervenor may as its sole remedy, within fifteen
6 days after the financing order or a supplemental order made by the commission
7 becomes effective, file in the district court of the domicile of the commission, a
8 petition setting forth the particular cause of objection to the order complained of.
9 When a timely application for a rehearing has been made at the commission, the
10 fifteen-day time period for such appeal does not commence until the effective date
11 of the commission order disposing of the rehearing application. Inasmuch as delay
12 in the determination of the appeal of a financing order may delay the issuance of
13 system restoration bonds, thereby diminishing savings to customers which might be
14 achieved if such bonds were issued as contemplated by a financing order, all such
15 cases shall be given precedence over all other civil cases in the court and shall be
16 heard and determined as speedily as possible. No appeal to the supreme court shall
17 be allowed unless the petition therefor is filed within fifteen days from the date on
18 which the judgment of the district court is entered and only if the party taking the
19 appeal has the record certified to the supreme court and his brief filed therein within
20 twenty days from the date on which the judgment of the district court is entered.
21 Review on appeal from the Public Service Commission otherwise shall be in
22 accordance with R.S. 45:1193 through 1195. However, the immediately preceding
23 two sentences of this Subsection shall have no application to appeals of any order of
24 the council of the city of New Orleans, which shall proceed in the manner provided
25 therefor by applicable law.

26 §1319. System restoration property

27 A. All system restoration property that is specified in a financing order shall
28 constitute an existing, present property right of the corporation, constituting an
29 individualized, separate, incorporeal movable susceptible of ownership, sale,
30 assignment, transfer, pledge, and security interest, including without limitation for

1 purposes of contracts concerning sale of property and pledges of and security
2 interests in property, notwithstanding that the value of such property and the
3 imposition and collection of system restoration charges depend on future acts such
4 as the utility performing its collection agent functions relating to the collection of
5 system restoration charges and on future electricity or gas consumption. Such
6 property shall exist whether or not the revenues or proceeds arising from the property
7 have been billed, have accrued, or have been collected and notwithstanding the fact
8 that the value or amount of such property is or may be dependent on the future
9 provision of service to customers by the utility or its successors or assignees and the
10 future consumption by customers of electricity or gas. System restoration property
11 created by a financing order shall be a vested contract right, and such financing order
12 shall create a contractual obligation of irrevocability by the commission in favor of
13 the corporation and its transferees, including an issuer and financing parties.

14 B. System restoration property specified in a financing order shall continue
15 to exist until the system restoration bonds issued pursuant to the financing order are
16 paid in full and all financing costs of the bonds have been recovered in full.

17 C. The system restoration property specified in a financing order may be sold
18 to an issuer by the corporation, or may be pledged to an issuer by the corporation to
19 secure the corporation's payment to the issuer of monies sufficient to pay the system
20 restoration bonds issued as contemplated by the financing order and financing costs.
21 Each such sale or pledge by the corporation is considered to be a transaction in the
22 ordinary course of business.

23 D. The utility shall have no ownership or beneficial interest in nor any claim
24 of right in the system restoration property, other than the obligation to collect the
25 system restoration charges as agent of the corporation, issuer, or financing party, as
26 applicable, and transfer those charges to the corporation, issuer, or financing party
27 entitled to receive those charges, all as directed in any financing order.

28 E. To the extent provided in a financing order, the interest of the corporation
29 or a transferee in system restoration property specified in the financing order is not
30 subject to setoff, counterclaim, surcharge, or defense by the utility or by any

1 customer of the utility, or in connection with a bankruptcy of the utility or any other
2 person.

3 F. The description of system restoration property being sold or assigned in
4 any sale agreement, purchase agreement, or other transfer agreement, or being
5 pledged or encumbered in any security agreement, pledge agreement, or other
6 security document, is sufficient only if such description refers to the specific
7 financing order that created the system restoration property and states that such
8 agreement covers all or part of such system restoration property described in such
9 financing order. This Subsection applies to all purported sales, assignments, or
10 transfers of, and all purported liens or security interests in, system restoration
11 property, regardless of whether the related sale agreement, purchase agreement, other
12 transfer agreement, security agreement, pledge agreement, or other security
13 document was entered into, or any financing statement was filed, before or after the
14 effective date of this Part.

15 G. System restoration property shall be an individualized, separate,
16 incorporeal movable susceptible of ownership, sale, assignment, transfer, pledge, and
17 security interest encumbrance, notwithstanding any of the following:

18 (1) That notice is not given to utility customers that the system restoration
19 property is owned by the corporation or a transferee and that the utility or another
20 entity if applicable is acting as a collection agent for the corporation, issuer, or
21 financing party.

22 (2) That the system restoration charges are not shown as a separate line item
23 on individual utility bills.

24 (3) That funds arising from the collection of system restoration charges by
25 the utility as collection agent are commingled with other monies of the utility prior
26 to the utility's transfer as collection agent of such funds to the corporation, issuer, or
27 financing party.

28 H. If there is a default on system restoration bonds, upon application by an
29 interested party, and without limiting any other remedies available to the applying
30 party, a court shall order the sequestration and payment of the monies arising from

1 the system restoration property to the person entitled to receive such monies. Any
2 such order shall remain in full force and effect notwithstanding any reorganization,
3 bankruptcy, or other insolvency proceedings with respect to the utility or its
4 successors or assignees.

5 §1320. Sale of property

6 The sale and assignment of system restoration property is governed by this
7 Section. All of the following shall apply to a sale and assignment under this Section:

8 (1) The sale of system restoration property by the corporation to an issuer
9 that the parties have in the governing contract expressly stated to be a sale is an
10 absolute transfer and true sale of, and not a security interest in, the transferor's right,
11 title, and interest in, to, and under the system restoration property. For all purposes,
12 the parties' characterization of a transaction as a sale of an interest in system
13 restoration property shall be conclusive that the transaction is a true sale and that
14 ownership has passed to the issuer characterized as the purchaser, regardless of
15 whether the issuer has possession of any documents evidencing or pertaining to the
16 interest. After such a transaction, such system restoration property is not subject to
17 any claims of the corporation or the corporation's creditors, other than creditors
18 holding a prior security interest in that system restoration property perfected in
19 accordance with this Part.

20 (2) The characterization of the sale and assignment as a true sale or other
21 absolute transfer under Paragraph (1) of this Section and the corresponding
22 characterization of the issuer's property interest shall be determinative and
23 conclusive irrespective of, and is not affected or impaired by, the existence of any
24 of the following circumstances:

25 (a) Commingling of amounts arising with respect to the system restoration
26 property with other amounts.

27 (b) The retention by the corporation of an entitlement to any surplus in the
28 system restoration property.

29 (c) The utility acting as the collector of the system restoration charges.

1 ~~(d) The contrary or other treatment of the sale and assignment, for tax,~~
2 ~~financial reporting, or other purposes.~~

3 ~~(e) The granting or providing to holders of the system restoration bonds of~~
4 ~~a preferred right to the system restoration property, or credit enhancement with~~
5 ~~respect to the system restoration bonds.~~

6 ~~(3) The ownership of an interest in system restoration property is voluntarily~~
7 ~~transferred by a contract between the owner and the assignee that purports to transfer~~
8 ~~the ownership of that interest. Unless otherwise provided, the transfer of ownership~~
9 ~~takes place between the parties as soon as there is written agreement on the interest,~~
10 ~~the purchase price is fixed, and the financing order has been issued. Such transfer~~
11 ~~shall be perfected and take effect against all third parties, including without~~
12 ~~limitation subsequent lien creditors when the transfer has become effective between~~
13 ~~the parties and when the pertinent utility collecting the system restoration charge has~~
14 ~~been given notice of the sale or assignment. Delivery of such an interest in system~~
15 ~~restoration property shall take place by operation of law upon such notice.~~

16 ~~(4) The giving of notice to the pertinent utility shall be the only method of~~
17 ~~perfecting a sale or assignment of system restoration property. The sale or~~
18 ~~assignment of an interest in system restoration property perfected by such notice is~~
19 ~~effective against the customers owing payment of the system restoration charges,~~
20 ~~creditors of the transferor, subsequent transferees, and all other third persons,~~
21 ~~notwithstanding the absence of actual knowledge of or notice to the customers of the~~
22 ~~utility of the sale or assignment.~~

23 ~~(5) The priority of the conflicting ownership interests of assignees in the~~
24 ~~same interest or rights in any system restoration property is determined as follows:~~

25 ~~(a) Conflicting perfected interests or rights of assignees rank according to~~
26 ~~priority in time of perfection by notice.~~

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

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

1 (6) The priority of a sale or assignment perfected under this Section is not
2 impaired by any later modification of the financing order or system restoration
3 property or by the commingling of funds arising from system restoration property
4 with other funds. Any other security interest that may apply to those commingled
5 funds shall be terminated when those funds are transferred to a segregated account
6 for the assignee or a financing party. If system restoration property has been
7 transferred to an assignee or financing party, the utility or other person serving as
8 collection agent shall hold any proceeds of that property as a mandatary and
9 fiduciary and deliver such proceeds to the assignee or financing party.

10 (7) No customer of a utility owing payment of a system restoration charge
11 may, by agreement with the utility or otherwise, prohibit, restrict, or require the
12 consent of such customer to the assignment, pledge, or transfer of the system
13 restoration charge.

14 §1321. Bonds

15 A. A utility desiring the issuance of system restoration bonds pursuant to a
16 financing order shall make an application therefor to the commission under R.S.
17 45:1318. The proceeds of such system restoration bonds shall be disbursed solely
18 as provided in this Part. The proceeds of the system restoration bonds issued under
19 this Part shall be used solely for the purposes provided for in this Part, including
20 financing costs of such bonds.

21 B. System restoration bonds issued pursuant to a financing order under this
22 Part shall not be the debt of the utility. System restoration charges paid and collected
23 under any financing order shall not constitute the revenue or property of the utility.
24 System restoration bonds shall be nonrecourse to the credit or any assets of the
25 utility, other than the utility's obligation as collection agent to collect and remit the
26 system restoration charges as specified in the pertinent financing order.

27 C. The corporation shall either sell the system restoration charges and other
28 system restoration property available to the corporation to the issuer, for the issuer
29 to use as the source of revenue for payment of the system restoration bonds, or
30 pledge the system restoration property to the issuer as security for the corporation's

1 loan payment obligation and use the collections on the system restoration charges as
2 the source of revenue for such loan repayment.

3 D. The issuer shall pledge to the financing parties either the system
4 restoration property purchased by the issuer, or the loan payment obligation owing
5 by the corporation to the issuer together with all rights of the corporation pledged to
6 the issuer in the system restoration charges and other system restoration property
7 available to the corporation, as the source of revenue for payment of and to secure
8 system restoration bonds and related financing costs. The issuer shall make such
9 pledge pursuant to the procedures of Chapter 13 of Title 39 of the Louisiana Revised
10 Statutes of 1950, and shall use such revenue to pay any current or other obligations
11 on system restoration bonds issued by the issuer even if no event of default has
12 occurred under the bonds.

13 E. For purposes of this Part, the corporation is deemed to be a public entity
14 and subject to the provisions of R.S. 10:9-109(c)(2) and R.S. 39:1421(2) and 1430.1.

15 F. For purposes of R.S. 39:1430.1, system restoration property, including
16 without limitation rights under a financing order and proceeds from collections of
17 system restoration charges, shall be deemed to be revenues and contract rights under
18 that statute and be subject to the provisions of that statute. The pledge and security
19 interest granted by the issuer or the corporation in system restoration property
20 pursuant to this Part shall be valid, perfected, and enforceable against the owner of
21 the system restoration property and all third parties from the time when the pledge
22 is made, without any notice or filing of any kind. This pledge and security interest
23 shall secure all obligations, then existing or thereafter arising, provided in the pledge.

24 A perfected pledge and security interest in system restoration property is a
25 continuously perfected privilege and security interest in all revenues and proceeds
26 arising with respect thereto, whether or not the revenues or proceeds have accrued.
27 Conflicting pledges, if allowed, shall rank according to priority in time of perfection.

28 G. All bonds under this Section shall be approved by the State Bond
29 Commission.

1 H. System restoration bonds may be issued in accordance with the statutes
2 and constitutional provisions applicable to an issuer, but in no event shall any system
3 restoration bonds constitute a debt or a general obligation of the state or any of its
4 political subdivisions or agencies or a charge on their full faith and credit. An issue
5 of system restoration bonds does not, directly or indirectly or contingently, obligate
6 the state or any agency or political subdivision to levy any tax or make any
7 appropriation for payment of the bonds, other than for paying system restoration
8 charges in their capacity as consumers of electricity or gas. Under no circumstances
9 shall it be construed that the full faith and credit of the state of Louisiana, or the city
10 of New Orleans, as applicable, be used to secure the bonds issued under this Section.
11 Any offering documents associated with any debts under this Section shall clearly
12 state that the bonds are not secured by the full faith and credit nor the taxing power
13 of the state or the city of New Orleans, as applicable.

14 I. System restoration bonds shall be legal investments for all governmental
15 units, financial institutions, insurance companies, fiduciaries, and other persons that
16 require statutory authority regarding legal investment.

17 J. System restoration bonds may be structured and issued using both an
18 expected maturity and a legal, final maturity.

19 K. The public purpose of system restoration bonds is to finance, directly or
20 indirectly, the acquisition or replacement of capital assets or permanent working
21 capital of a utility in order to support its financial strength and stability as part of a
22 regulatory program intended to minimize the rates charged by utilities.

23 §1322. Corporation funds

24 A. The corporation's monies shall be maintained by the corporation as a
25 separate and special fund, separate and apart from the general fund of the state.
26 Unexpended amounts remaining in the corporation's fund at the end of a fiscal year
27 shall not lapse into the state general fund, and any interest earned or investment
28 earnings on amounts in the corporation's fund shall be deposited into such fund, to
29 the credit of the appropriate account.

1 B. The expenditure of money by the corporation shall be under the direction
2 of the governing board and the regulation of the commission, and such monies shall
3 be paid by the corporation only in accordance with R.S. 45:1316(A) and as approved
4 by the commission pursuant to procedures established by commission regulations or
5 orders, as applicable.

6 C. There shall be created separate accounts by the corporation for each utility
7 that is collecting system restoration charges on behalf of the corporation. The net
8 proceeds of system restoration bonds issued pursuant to a financing order transferred
9 to the corporation shall be allocated to the account of the utility collecting such
10 system restoration charges pursuant to a financing order, as requested by the utility
11 and approved by the commission.

12 D. Immediately upon the deposit to the corporation's fund of the proceeds
13 of the system restoration bonds transferred to the corporation, a utility shall be
14 entitled to request disbursements by the corporation from the appropriate account of
15 the fund in the amount of system restoration costs that have been approved by the
16 commission, and the corporation shall grant such request consistent with the terms
17 of the commission's order and R.S. 45:1316(A).

18 E. The primary purpose of this Part being to serve the public good and to
19 benefit the public as a whole as part of a regulatory program intended to minimize
20 the rates charged by utilities and to strengthen the financial position of utilities that
21 have restored and rebuilt their systems, any disbursements by the corporation
22 pursuant to this Section to a utility are intended to be non-shareholder contributions
23 to the capital of the utility that promote the general welfare of the citizens of the
24 state. Such disbursements are not payments for any service provided by the utility
25 to the corporation or the utility's customers. Further, such disbursements are not
26 payments in the nature of insurance or otherwise as direct compensation for losses
27 by the utility from storms. Instead, such disbursements shall be made only in
28 exchange for the utility's commitment contained in the financing order as described
29 in R.S. 45:1318(C)(5).

1 §1323. State pledge; corporation pledge

2 A. For purposes of this Section, the term "bondholder" means a person who
3 holds a system restoration bond, including in book entry form.

4 B. The state and the Louisiana Legislature each pledge and agree with the
5 corporation, the bondholders, and other financing parties that, until the system
6 restoration bonds and any ancillary agreements have been paid and performed in full,
7 the state and the Louisiana Legislature shall not do any of the following:

8 (1) Alter the provisions of this Part which authorize the commission to create
9 an irrevocable contract right by the issuance of a financing order, to create system
10 restoration property, and to make the system restoration charges imposed by a
11 financing order irrevocable, binding, and nonbypassable charges.

12 (2) Take or permit any action that impairs or would impair the value of
13 system restoration property.

14 (3) In any way impair the rights and remedies of the corporation, an issuer,
15 such bondholders, or financing parties, or the security for such bonds or ancillary
16 agreements.

17 (4) Except for adjustments under any true-up mechanism established by the
18 commission, reduce, alter, or impair system restoration charges that are to be
19 imposed, collected, and remitted for the benefit of the corporation, an issuer, the
20 bondholders, and other financing parties, as applicable, until any and all principal,
21 interest, premium, financing costs and other fees, expenses, or charges incurred, and
22 any contracts to be performed, in connection with the related system restoration
23 bonds have been fully paid and discharged.

24 C. The corporation shall pledge to and agree with the issuer, for the benefit
25 of the issuer, the bondholders, and other financing parties, that until the system
26 restoration bonds and any ancillary agreements have been paid and performed in full,
27 the corporation shall not do any of the following:

28 (1) Take or permit any action that impairs or would impair the value of
29 system restoration property.

1 (2) In any way impair the rights and remedies of the issuer, such
2 bondholders, or financing parties, or the security for such bonds or ancillary
3 agreements.

4 (3) Except for adjustments under any true-up mechanism established by the
5 commission, reduce, alter, or impair system restoration charges that are to be
6 imposed, collected, and remitted for the benefit of the issuer, the bondholders, and
7 other financing parties, as applicable, until any and all principal, interest, premium,
8 financing costs and other fees, expenses, or charges incurred, and any contracts to
9 be performed, in connection with the related system restoration bonds have been
10 fully paid and discharged.

11 D. The provisions of R.S. 12:202.1 shall not apply to the corporation.

12 E. Any issuer that issues system restoration bonds may include the pledge
13 specified in Subsections B and C of this Section and in R.S. 45:1318(C)(8) in the
14 bonds and related documentation.

15 §1324. Limitation on bankruptcy

16 A. Prior to the date that is two years and one day after which the corporation
17 no longer has any payment obligation to any issuer of any system restoration bonds
18 outstanding, the corporation is prohibited from filing and shall have no authority to
19 file a voluntary petition under the Federal Bankruptcy Code, as it may, from time to
20 time, be in effect, and neither any public official nor any organization, entity, or
21 other person shall authorize the corporation to be or to become a debtor under the
22 Federal Bankruptcy Code during such period. The provisions of this Section shall
23 be part of any contractual obligation owed to the holders of system restoration bonds
24 issued under this Part. Any such contractual obligation shall not subsequently be
25 modified by state law during the period of the contractual obligation, and the state
26 of Louisiana and the Louisiana Legislature hereby covenant with the holders that the
27 state and any public instrumentality thereof and the Louisiana Legislature shall not
28 limit or alter the denial of authority under this Section during the period referred to
29 in this Subsection.

1 B. The corporation is a public corporation and an instrumentality of the state
2 and is subject to the provisions of R.S. 13:4741 and R.S. 39:619 through 622.

3 §1325. Corporation status; tax exempt

4 A. The corporation shall be a public corporation and an instrumentality of
5 the state. The corporation's purpose and function is an integral part of the state. The
6 corporation shall be exempt from any state corporate income tax and corporate
7 franchise tax. The system restoration charges, their collection, their sale and
8 transfer, and the income therefrom shall at all times be free from taxation of every
9 kind by the state and any political subdivision or other instrumentality thereof.
10 However, the corporation is not and shall not be deemed a department, unit, agency,
11 board, or commission of the state nor a political subdivision. All debts, claims,
12 obligations, and liabilities of the corporation, whenever and however incurred, shall
13 be the debts, claims, obligations, and liabilities of the corporation only, and not of
14 the state, its agencies, officers, or employees. System restoration charges authorized
15 by the commission shall be regulatory fees designed to implement a regulatory
16 program for the public good and shall not be considered taxes intended to raise
17 revenue for the maintenance of government or governmental services. Corporation
18 funds shall not be considered part of the general fund of the state, and the state shall
19 not budget for or provide general fund appropriations to the corporation.

20 B. Any system restoration bonds issued under the provisions of this Part by
21 the issuer on behalf of the corporation, their transfer, and the income therefrom,
22 including any profit made on the sale thereof, shall at all times be free from taxation
23 of every kind by the state and any political subdivision or other instrumentality
24 thereof.

25 C. Because it is essential for the corporation to have the maximum financial
26 resources to provide contributions as described in this Part following catastrophic
27 natural disasters, it is the intent of the legislature that the corporation, as an
28 instrumentality of the state, be exempt from federal income taxation.

1 §1326. Full authority

2 A. The provisions of this Part shall be deemed to be complete, additional,
3 and alternative authority and to provide the full method for the exercise of the
4 powers herein granted and accomplishment of the things authorized hereby and shall
5 be regarded as supplemental and additional to powers conferred by other laws. This
6 Part and all powers granted hereby shall be liberally construed to effectuate its and
7 their purposes. All rights and powers herein granted by this Part shall be cumulative
8 with those derived from other sources and shall not, except as expressly stated
9 herein, be construed in limitation thereof. In issuing system restoration bonds, an
10 issuer may avail itself of the provisions of the statutes and the Constitution of
11 Louisiana applicable to that issuer. This Part establishes a supplemental method of
12 financing and does not limit the right of a utility to finance or otherwise recover
13 system restoration costs by other methods as may be approved pursuant to the
14 commission's legal authority instead of a financing order issued under this Part.

15 B. To the extent that the commission has made a determination of eligible
16 system restoration costs of a utility before the effective date of this Part, that
17 determination may provide the basis for the utility's application for a financing order
18 pursuant to this Part. Further, to the extent that a utility has made application for a
19 determination of eligible system restoration costs before the effective date of this
20 Part, that application may provide the basis in part for the commission's financing
21 order pursuant to this Part.

22 §1327. Status of corporation

23 The corporation, any issuer, and any financing party shall not be considered
24 a utility or person providing electric service or natural gas service by virtue of
25 engaging in the transactions described in this Part. The corporation is not an agent
26 of any utility.

27 §1328. Commission jurisdiction

28 Nothing in this Part is intended to be nor shall be construed to constitute any
29 limitation, derogation, or diminution of the jurisdiction or authority of the
30 commission provided by law, including that provided in or exercised by the Public

1 Service Commission pursuant to the Constitution of Louisiana or the council of the
2 city of New Orleans pursuant to its home rule charter.

3 Section 4. This Act shall become effective upon signature by the governor, or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____