CRITICAL INFRASTRUCTURE PROTECTION PROGRAM

February 2008 Cumulative Update – Critical Electric Power Infrastructure Recovery and Reconstruction: *New Policy Initiatives in Four Gulf Coast States After 2005's Catastrophic Hurricanes*

Report and Analysis Submitted to the US Department of Energy,
Office of Electricity Delivery and Energy Reliability,
by the Critical Infrastructure Protection Program,
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DOE GRANT DE-FG26-04NT42250
ENERGY AND MEASURES FOR RISK MITIGATION AND TRANSFER

GEORGE MASON UNIVERSITY | School of Law

CRITICAL INFRASTRUCTURE PROTECTION PROGRAM

28 February 2008

Ms. Alice Lippert
Analysis Directorate, ISER
Office of Electricity Delivery & Energy Reliability
U. S. Department of Energy
1000 Independence Av, SW
Washington, DC 20585

Re: Principal Investigator's formal letter of transmittal of research deliverables conducted pursuant to DOE GRANT DE-FG26-04NT42250 entitled *Paying for the Costs of Catastrophes: An Examination of Electric Power Infrastructure in the Gulf Coast After Katrina, Rita & Wilma* (Final Cumulative Update, February 2008).

Dear Ms. Lippert:

I am pleased to provide you with the electronic and printed documents associated with the above referenced research and evaluation project that the Critical Infrastructure Protection Program ("CIP Program") has performed. These documents comprise a major cumulative update to the original research report of 29 September 2006 and the PowerPoint slide show originally presented to you and other OE officials on 31 October 2006.

Completing the cumulative update captures the most important energy infrastructure cost recovery and storm infrastructure hardening activities undertaken by officials in the states of Florida, Louisiana, Mississippi and Texas and electric utilities in their jurisdictions. It includes activities as recent as the Florida Public Service Commission's approval in December 2007 of hardening plans for that state's five investor-owned utilities (IOUs), and Louisiana IOU Cleco's storm bond ratings development that have occurred as recently as 26 February 2008.

Per our discussions with you, Joe Paladino and Rob Gross last November, the cumulative update incorporates new information into the original research document through the use of "text boxes." Our staff also placed electronic bookmarks in this paper so that the reader easily can locate revisions. The appendices include the original quarterly updates that you received in March and July of 2007 and other relevant materials.

And, consistent with our agreement, our staff has focused on updating the slide show. New slides have been developed, some of which are from a presentation Dr. Christine Pommerening made last October to the Commonwealth of Virginia Energy and Sustainability conference. Other new slides distill the larger "take-home" themes that capture what our staff, in consultation with state commission staff and others, believe are the most important issues and experience gained in recovering from the catastrophes of 2005. For your convenience, CIP Program staff have placed annotations on certain slides using PowerPoint's notes tool that may serve as a presentation guide and amplification of technical issues.

Two (2) spiral bound color copies of the cumulative update are being sent to you via Federal Express, along with two (2) data DVDs that contain Adobe Acrobat compilations of the entire report and selected files in Microsoft Word and PowerPoint formats. Also included on the data disc is a document mapping file – a table that lists all filenames and provides brief descriptions for the contents of these files.

I trust you will find that the cumulative update and slide show provides you and your colleagues at OE with the materials you need for the important work you perform at DOE's Office of Electricity Delivery & Energy Reliability. If you have any questions or comments, please do not hesitate to call me or the principal research associate who led the project, Michael Ebert.

These deliverables are the final work products that the Critical Infrastructure Protection Program at George Mason University's School of Law will provide to OE under the existing grant which expires tomorrow, but we trust that it will not be the last. Last Tuesday, I had the pleasure of meeting with our alumnus, Under Secretary Bud Albright. In the course of our meeting, we discussed the eagerness of those of us at the CIP Program and the School of Law to continue and even expand our relationship with DOE. In conversations with you and your colleagues, we have identified a number of important new research initiatives that are needed by the Department, including motorfuel/emergency evacuation routes mapping; policy and programmatic analyses in support of DOE's Sector Specific Plan – National Infrastructure Protection Plan metrics; and other topics such as assessing risk components. We look forward to continuing our relationship with and the U.S. Department of Energy in the near future.

Thank you for your support of the Critical Infrastructure Protection Program at the George Mason University School of Law.

Sincerely,

Daniel D. Polsby
Principal Investigator, Dean and Professor of Law

Cc: Robert Gross
Joseph Paladino
Brian Copeland
Denise Riggi
Michael Ebert

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Introduction

Pursuant to a mutual and informal agreement between the grant sponsor, the U.S. Department of Energy (DOE), and the Critical Infrastructure Protection Program (CIP Program, which conducted this research), the original research paper was delivered to DOE's Office of Electricity Delivery and Energy Reliability (OE) on 29 September 2006. This date was chosen for two reasons. First, it was the end of the federal government's fiscal year and at the time a deliverable date was chosen it was unclear that the grant would be extended into the next fiscal year. Second, typical storm cost recovery processes are usually concluded by state agencies (often public service commissions, "PSCs," or their equivalent) in a matter of months after the precipitating event. However, the serial and catastrophic hurricanes and tropical storms that struck the Gulf Coast states in 2005 were not typical, and neither were energy utility storm cost recovery responses by state governments and, as it turned out, the federal government. By the end of September 2006, none of the major energy utility cost recovery dockets in Florida, Louisiana, Mississippi or Texas had been concluded.

Thus, the original research report could not tell the full story of how these states would allow energy utilities to recover huge sums associated with rebuilding their infrastructures. Typically, storm costs deemed "reasonable and prudent" by a state PSC are not borne by a utility's owners or investors; these costs are assigned to ratepayers – the utility's customers. Due to a concern that having putting the cost on ratepayers *using conventional cost recovery methods* would overwhelm some customers and retard the economic recovery of others and the affected regions, state lawmakers passed legislation that provided PSCs and utilities with new tools. The most common tool given to PSCs *and other state entities* was the authority to use long-term "storm bonds" for which the backing – the promise to repay the bonds – was a secured revenue stream added to ratepayers' utility bills. The literature and this paper referred to that process as "securitization." However, the states passed authorizing legislation that differed substantially among them, which explains in part why a state took considerably longer to conclude 2005 storm dockets than a neighboring state. States also differed greatly on how much federal funding they received in the form of Community Development Block Grants (CDBGs), and how much *if any* of these grants (not loans to be repaid) would be allocated to energy infrastructure cost recovery.

The grant was extended into the federal government's next fiscal year. OE's interest in cost recovery in the Gulf Coast continued, and so too did the research project. The CIP Program research team presented interim and updated findings to OE officials, staff and invited guests on 31 October 2006. With all of the dockets still unresolved, CIP Program researchers provided OE with informal updates, usually in the form of emails, press releases and reports from the affected region, and short memos. At the end of calendar year 2006, CIP Program researchers formalized the update process by utilizing the same basic research methods

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developed for the original report and compiling larger, state-by-state memoranda. In May 2007, OE asked the CIP Program to engage in a new research task and to discontinue research into the still unresolved dockets. When the new task original deliverables were provided to OE in mid-September, OE asked if we could provide a comprehensive update that melded the original research paper (29 September 2006), the "slide show" presentation (31 October 2006) and the informal and formal updates, the last of which was delivered to OE in July 2007. We agreed to do so, subject to availability of funds, staff and one last no-cost extension of the grant's period of performance to 29 February 2008.

Given severe resource and time constraints, OE and the CIP Program agreed that a complete revision of the original research paper was not feasible. OE and the CIP Program agreed to use "text boxes" inserted into the original document as appropriate to produce an updated set of deliverables:

- One "text box" has been developed and inserted at the beginning of the research paper's overview. It has been appended to the end of the executive summary of the larger paper.
- Seven (7) additional "text boxes" have been developed and are inserted at the end of each state's individual section that describes the political and policy decisions, storm recovery methods, dockets, funding sources, and outcomes to-date.
- The thrust of all text boxes is to provide the reader with the condensed essentials – the "take home" messages. What exactly did state (and federal) officials, energy utilities and other stakeholders do? What was the critical reasoning behind policy decisions? What have been the results? What are these states attempting in the area of "infrastructure hardening?" Where "securitization" has been chosen, how exactly did the process work and what have been the outcomes in the bond markets? Have more recent jitters in financial markets and within risk-rating entities had an impact? What have been other surprises, positive and negative – unexpected challenges or outcomes?
- The original document's appendices have not been updated.
- In the place of the original appendices, the updated research paper provides the formal and selected informal updates (covering state and federal activities from November 2006 through the middle of June 2007) in a single appendix compiled in chronological order (oldest first), the two pieces of securitization legislation passed by the Louisiana Legislature, and press releases issued by the Florida Public Service Commission on infrastructure hardening.
- The original slide show presented to OE staff on 31 October 2006 has been updated to include the essential "take homes" as developed in the text boxes. Comments have been added to selected slides to provide a presenter with guidance. Certain original slides have been deleted.

In the Atlantic hurricane seasons of 2004 and 2005, significant parts of the states of Alabama, Florida, Louisiana, Mississippi, and Texas were hard hit by a series of named hurricanes and tropical storms.

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These storms caused catastrophic damages, including severe destruction of critical electric power infrastructure. During the 2004 hurricane season, catastrophic destruction was confined mostly to the State of Florida, where three named hurricanes and one tropical storm crisscrossed much of the same electric utility service territories multiple times in a span of less than two months. Florida's large investor-owned utilities (IOUs) each had tens of millions of dollars in storm reserve funds going into the 2004 hurricane season; at the end of it, most of these storm reserve funds were tens to hundreds of millions of dollars in negative balance. The notorious hurricane season of 2005 provided no respite for Floridians and the State's critical energy infrastructure, and Hurricanes Katrina, Rita, and Wilma spread destruction on an unprecedented scale beyond Florida to its neighboring Gulf states of Alabama, Louisiana, Mississippi, and Texas. In recent times, no Gulf Coast state had experienced the frequency and destructiveness of storms as had Florida. As a result, storm reserve accounts in those jurisdictions were typically not as well-funded as compared to Florida' IOUs, and public service commissions had yet to address storm cost recovery on such a massive and wide scale.

As a practical matter, commercial insurance for most transmission and distribution (T&D) assets ceased to exist, or the premiums became cost-prohibitive after Hurricane Andrew in 1992. For example, prior to 1993, Florida Power & Light (FPL) paid a $3.5 million annual premium for T&D insurance that provided up to $350 million of coverage per occurrence in each year the policy was in force. After Hurricane Andrew, FPL was offered a $100 million aggregate loss limit T&D policy – not per occurrence – for a minimum annual premium of $23 million.[1] In an attempt to develop a regional insurance pool to reduce premiums post-Hurricane Andrew, Florida initiated discussions with its neighboring states to create a regional self-insurance pool to cover otherwise uninsurable losses to critical infrastructure from hurricanes, tropical storms, and other large-scale natural disasters. [2] Seemingly, other states and IOUs in the region believed that such a plan transferred an inordinate amount of risk away from Florida and onto other states and IOUs in the region. As a result, the regional self-insurance pool never materialized.

In response to the inability to form a regional pool coupled with the inability to purchase adequate and reasonably priced T&D insurance, the Florida Public Service Commission (PSC) approved the establishment of individual utility self-insurance funds in 1993. The purpose of these "storm reserves" was to pay for uninsured losses[3] with funds allocated to a reserve account on an accrual basis under a formula in an IOU's base rates for each customer class. Periodic adjustments were made to the accounts by the Florida PSC based on the total amount accrued in the storm reserve and the amount of cost recovery expensed by the IOU following a particular storm. Importantly, the IOU's customers, not its shareholders, pay the

[1] Florida, "Petition to Implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power and Light Company," *Public Service Commission Orders*, 93-0918 (June 17, 1993), 1.
[2] Source: CIPP researchers' conversations with staff of the Florida Public Service Commission (June-September 2006).
[3] Florida, 93-0918 (June 17, 1993), 1.

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"reasonable and prudently incurred costs" of restoring electricity after a storm. The states of Louisiana, Mississippi, and Texas also utilized storm reserve accounts, but, as a general rule, these states did not allow as large of an accrual as the State of Florida.

This pay-as-you-go accrual method of financing storm recovery, which this report refers to as the "traditional" method, worked reasonably well for approximately one decade. During this time, the occurrence of major hurricanes was infrequent enough that storm reserves proved adequate without the need for large and periodic increases in rates or surcharges to replenish expenses from the account. Whenever such surcharges are added to customers' monthly bills, concern over the potential for "rate shock" exists, especially regarding low and/or moderate income residential consumers. Both consumers and utility regulators are typically are reluctant to support "pre-payments" to a reserve account to reimburse the IOU for some unquantifiable future storm-related cost. On the other hand, IOUs and consumers benefit from adequately-funded storm reserve accounts for a number of reasons. First, accounts funded to a level to cover storms producing above average recovery costs minimize the IOU's borrowing costs associated with carrying such cost-recovery expenses from non-storm reserve fund accounts. Second, accounts adequate to cover recovery costs without resulting in a negative account balance improve market and investor confidence in the IOU post-recovery. Third, adequately funded accounts reduce rate volatility post-storm, which benefits customers by reducing rate shock. In the final determination, public service commissions have more often than not allowed under-funded storm reserve accounts – a solution that has not worked over the past two years.

To highlight this concern, a recent Edison Electric Institute (EEI) publication[4] highlighted the difficult financial and regulatory concerns over paying for storm recovery costs in Florida and the Gulf Coast states following the 2004 and 2005 storm seasons. The report provides important insight into the use of reserve funds or *ex post* approval of accounting treatments as a self-insurance mechanism. According to the report, few investor-owned utilities maintain reserve funds, and, in certain cases, the funds provided no cash to pay for recovery. Regarding the significant losses in Florida during 2004, the reserve funds in place were inadequate to cover the entire operation and maintenance (O&M) recovery costs.[5]

Driven by unique needs in the wake of the 2004 hurricane season, Florida generally leads Louisiana, Mississippi, and Texas in storm cost recovery processes described in this report. At the start of the 2005 hurricane season – *i.e.*, June 1, 2005 – the Florida Legislature enacted legislation that allowed utilities the *option* of petitioning the Florida PSC for a financing order which includes the *option* of utilizing securitization for

[4] B. W. Johnson, After *the Disaster: Utility Restoration Cost Recovery,* (Edison Electric Institute/ACN Energy Ventures, LLC, February 2005).

[5] See *Expanding the Role of Commercial Insurance in the Electricity Sector to Promote Improved Bulk-Electric System Reliability*, (Arlington, VA: Critical Infrastructure Protection Program/George Mason University School of Law, February 2006), Available at http://cipp.gmu.edu/archive/Final_Paper.pdf.

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allowable storm damages in addition to the traditional form of cost recovery utilizing storm reserve accounts. In response to the mega storms of 2005 – Hurricanes Katrina, Rita, and Wilma – Louisiana, Mississippi, and Texas each passed securitization laws in 2006. With the exception of Mississippi, the basics of the securitization laws are the same or similar for the other three states assessed in this report – Florida, Louisiana, and Texas.

Subject to final Florida PSC approval on bond structure and pricing, the first storm recovery bonds for the State's largest IOU, FPL, are expected to be issued in late 2006 The Mississippi PSC has issued two securitization orders for Mississippi Power (MPCO, a Southern Company) and Entergy Mississippi (EMSI), but has delayed issuing a final securitization order pending an assessment of the amount of federal Community Development Block Grant (CDBG) funds the utilities may receive from the Mississippi Development Authority (MDA).

Due to the far-reaching policy, regulatory, and financial implications of the future implementation of such new cost recovery methods, the Critical Infrastructure Protection Program (CIPP) at George Mason University School of Law has reviewed recent changes to the cost recovery landscape in the states of Florida, Louisiana, Mississippi, and Texas. This report provides reporting and analysis of how state legislatures, state service (utility) commissions, consumers, and IOUs in these states are responding to the recent and unprecedented destruction of critical electric power infrastructure.

Traditional Storm Cost Recovery Approaches

Florida

Traditional Accounting Methodology

Florida statutes permit cost recovery through an accumulated provision account. These accounts cover losses through accident, fire, flood, nuclear accidents, storms, or similar events which are not covered by insurance.[6] Accounts can be separately established for injury, property damage, and miscellaneous expenses caused by a disaster.[7] IOUs must seek approval to establish the rate at which IOU funds accrue into the account and must also justify their withdrawals with supporting records of the expenses.[8] The accrual method used post-Hurricane Andrew was sufficient until 2004.

[6] Florida, *Administrative Code Annotated*, 6.0143.
[7] Ibid.
[8] Ibid.

The Florida PSC authorized utilities to operate these accounts in 1993, after Hurricane Andrew devastated South Florida in 1992 and changed the insurance industry.[9] IOUs were no longer able to obtain sufficient insurance coverage at a reasonable price. As CIPP research conducted in 2005 found,

> *[A]dequate commercial insurance capacity and products are not currently available in the electric sector. … [C]oncerns over adverse selection and the inability to adequately spread the risk of threats to the electric system were perceived as major obstacles to the development of new insurance capacity or products.*[10]

Thus, the Florida PSC allowed IOUs to create storm reserve accounts as a self insurance mechanism.[11] These accounts, which can be either funded or unfunded, allow IOUs to accrue funds to pay for storm damages on a monthly basis.[12] Traditionally, IOUs funded their accounts through their base rates. However, the resultant recovery costs associated with storm damage during 2004 and 2005 were greater than the reserve fund accounts all four of the main IOUs in Florida. The storm reserve deficits following damage restoration ranged from $28 million for Tampa Electric Company's (TECO) up to $533 million for Florida Power & Light (FPL).[13]

The Florida Administrative Code broadly sets forth how the reserve account, formally called Account No. 228.1 Accumulated Provision for Property Insurance, will function. An accrual rate for the account is specified at rate proceedings, although IOUs can also petition for a change in the level of accrual outside of a rate proceeding.[14] This regulation requires that "[i]f a utility elects to use any of the above listed accumulated provision accounts, each and every loss or cost which is covered by the account shall be charged to that account and shall not be charged directly to expenses."[15] Charges shall be made to accumulated provision accounts regardless of the balance in those accounts."

2004 Storm Season Orders

Florida IOUs, with the exception of Florida Public Utilities Company, petitioned the Florida PSC for permission to recover their prudently incurred storm recovery costs from ratepayers following the 2004 and 2005 storm seasons. The petitions following the 2004 storm season were "traditional" requests, where the approved amount is recovered through a surcharge on customers' bills. With the exception of TECO's

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[9] Florida, 93-0918 (June 17, 1993), 1.
[10] "Expanding the Role of Commercial Insurance in the Electricity Sector to Promote Improved Bulk-Electric System Reliability," (Arlington, VA: Critical Infrastructure Protection Program, February 2006), 26.
[11] Florida, *Administrative Code Annotated*, 6.0143.
[12] Ibid.
[13] Ibid.
[14] Florida, *Administrative Code Annotated*, 6.0143(1)(a)-(b).
[15] Florida, *Administrative Code Annotated*, 6.0143(4)(b).

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hearing, the Florida PSC approved surcharges which allowed IOUs to recover storm costs and replenish their storm reserve accounts. Only one IOU entered the 2005 storm season with a positive reserve balance. Under Florida's statutes and administrative code, IOUs must book storm damage recovery costs to its damage reserve account. However, commissions may allow IOUs to expense these costs for tax purposes.[16] Once an amount is approved for recovery and amortization, it is considered a regulatory asset. The amount is placed in a sub-account of the company's reserve account to allow for tracking and review of the amounts included and their subsequent amortization.[17]

Tampa Electric Company

Three storms struck TECO's service area in 2004: Hurricanes Charley, Frances, and Jeanne. As a result of these storms, the company experienced the "worst outage situation in the Company's history".[18] Like all other IOUs in the State, TECO maintained a reserve fund to cover costs associated with storm damage. Prior to the 2004 storm season, this account had accrued $42.33 million.[19] However, TECO's recovery costs associated with the 2004 storms totaled approximately $73.4 million. Charging the entire amount to the storm reserve would have created a negative balance of approximately $30 million. In response, the Florida PSC approved a settlement and stipulation agreement between TECO, the Florida Office of Public Counsel (OPC), and other interveners that allowed TECO to capitalize $38.88 million of its storm costs. The Florida PSC rationalized capitalizing this amount in the following way:

> *The $38.877 million to be capitalized includes approximately $14.1 million that could be considered "normal" costs if the activities had not been undertaken for restoration purposes related to the hurricanes. The difference of approximately $24.8 million is the "excess capital cost" which is a direct result of the rapid restoration of service. <u>We would normally take exception with the capitalization of this "excess capital cost." However, in this case, we find that capitalizing this amount does not harm the customer. The result of leaving this amount in the storm reserve account or capitalizing it as electric plant in service has no current effect on rate base. The effect of not capitalizing the amount would result in a negative instead of a positive storm reserve going into the 2005 hurricane season</u>. We therefore do not take exception to the capitalization of this amount in this case.*[20]

[16] See Florida, "Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.," *Public Service Commission Orders*, 05-0748 (July 14, 2005), 23; Florida, *Administrative Code Annotated*, 6.0143(4)(b).
[17] See 05-0748 (July 14, 2005), 23.
[18] Florida, "Joint petition of Office of Public Counsel, Florida Industrial Power Users Group, and Tampa Electric Company for approval of stipulation and settlement as full and complete resolution of any and all matters and issues which might be addressed in connection with matters regarding effects of Hurricanes Charley, Frances, and Jeanne on Tampa Electric Company's Accumulated Provision for Property Insurance, Account No. 228.1" *Public Service Commission Orders,* 05-0675 (June 20, 2005), 3.
[19] Florida, 05-0675 (June 20, 2005), 2.
[20] Ibid., 6. [Emphasis added].

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As a result, TECO's reserve account reflected a positive balance of $7.86 million.[21] Per the stipulation agreement, TECO agreed to continue to accrue $4 million annually to its storm reserve and not to request a surcharge to cover costs of the 2004 storm season. In deciding to approve the settlement agreement, the Florida PSC noted that the agreement balanced the interests of ratepayers and the utility and that it would not result in a rate increase.[22]

Gulf Power

In 2004, Hurricane Ivan disrupted electricity service to 90 percent of Gulf Power's (Gulf) customers,[23] resulting in approximately $141.5 million in recovery costs.[24] After insurance reimbursements, Gulf was left with $124.3 million in recovery costs that it sought to recover through a surcharge; charging this amount to the storm reserve would have created a negative balance of approximately $96.5 million. Through the stipulation and settlement agreement, this amount was significantly reduced to $51.39 million.[25]

The Florida PSC's order reduced Gulf's charges to the reserve account through several techniques. First, because Gulf exceeded its authorized return on equity for 2004, Gulf made an additional accrual of $14 million to the account that resulted in a rate of return to the middle of the authorized range.[26] Additionally, Gulf was allowed to "exclude from recovery through the proposed surcharge that portion of the capital expenditures and cost of removal related to recovery from Hurricane Ivan equal to the normal amount that would be charged to capital accounts under normal conditions."[27] The Florida PSC authorized a two-year surcharge to recover the remaining $51.39 million, resulting in a $2.78 charge per month for a typical residential customer or a total of $66.72 over the two-year amortization period.[28]

Florida Power & Light

Hurricanes Charley, Frances, and Jeanne also impacted FPL's service area in 2004. FPL originally claimed $890 million to its storm reserve.[29] However, the Florida PSC reduced this amount to $794.31 million; the disallowances included insurance reimbursements, capital costs, and other costs that could not be appropriately charged to the reserve fund.[30] Given that FPL had a storm reserve of approximately $354

[21] Ibid., 2.
[22] Ibid., 9-10.
[23] Florida, "Petition for approval of stipulation and settlement for special accounting treatment and recovery of costs associated with Hurricane Ivan's impact on Gulf Power Company," *Public Service Commission Orders*, 05-0250 (March 4, 2005), 2.
[24] Ibid.
[25] Ibid.
[26] Ibid., 7.
[27] Ibid., 5.
[28] Ibid., 8
[29] Florida, "Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company," *Public Service Commission Orders*, 05-0937 (September 21, 2005), 23.
[30] Ibid., 22.

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million at the time of the hearing, booking the adjusted amount to the storm reserve would have resulted in a deficit of $365 million.[31] Therefore, a total of $441.99 million was ordered to be recovered from customers over a three-year period resulting in a $1.65 charge per month for a typical residential customer or $59.40 over the three-year amortization.[32] As a result, the storm reserve had a negative balance going into the 2005 season, and would remain so through February 2008 assuming it incurred no other storm expenses during the three-year surcharge period.

Progress Energy

Prior to 2004, Progress Energy (Progress) collected "$6 million annually in base rates for transmission and distribution property damage" in a reserve storm damage account.[33] When the first 2004 hurricane struck, Progress' reserve fund was valued at $46.9 million.[34] Progress incurred two million customer outages and $366 million in storm related costs[35] as a result of Hurricanes Charley, Frances, Jeanne, and Ivan.[36]

Progress' initial request was for a storm recovery clause that would have allowed the company to recover $251.9 million over two years. Rather than permit a storm recovery clause, the Florida PSC ordered a surcharge to be collected over two years to recover $231.84 million in storm-related costs.[37] As was the case with other IOUs, the Florida PSC excluded amounts that could be appropriately capitalized and disallowed other charges to the reserve account, such as certain classes of employee overtime.

Louisiana

The Louisiana Public Service Commission's Constitutionally-Derived Powers

The Louisiana PSC's general authorities originate not in statute as is the case in the other states, but in the Louisiana Constitution, which explicitly creates an elected public service commission with the authority to regulate all public utilities and common carriers and to manage their rates.[38] The applicable statutes further elaborate and create an elected body with the power to exercise all necessary regulations over anything

[31] Ibid., 2.
[32] Ibid., 39.
[33] Florida, "Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.," *Public Service Commission Orders*, 05-0748 (July 14, 2005), 20.
[34] Ibid.
[35] Ibid., 19.
[36] Ibid., 1.
[37] Ibid., 4.
[38] Louisiana, *Louisiana Statutes Annotated – Constitution of the State of Louisiana of 1974*, 4 §21 (Westlaw, 2006).

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connected to public utilities, except for the parish of Orleans.[39] New Orleans is served by a specific power company, Entergy New Orleans (ENOI), and a separate New Orleans Public Service Commission, which jurisdictionally is under the control of the New Orleans City Council. Furthermore, the PSC's powers do not apply to electric cooperatives unless they have explicitly submitted to the Commission's authority via a general vote of their membership.[40] Any decision of the Commission is subject to judicial review in an ordinary court within the district where the appellant resides, with the standard of review being the same as ordinary civil cases.[41]

The PSC has a special economics and rate analysis division dedicated to evaluating matters relating to service ands rates.[42] The Commission can require public utilities to extend their services and facilities if the revenues from the extension will pay for the new infrastructure.[43] To ensure that these rules are followed, the Commission can investigate the reasonableness of the utilities' rates and the authenticity of their declared operating expenses.[44] These investigations can lead to significant changes in a utility's proposed rate schedule. For example, in order U-17282-L, issued February 10, 1993, the Louisiana PSC found that Gulf States Utilities Company improperly classified some of its costs, which led the Commission to deny their recovery through rates until the costs were properly classified.[45] The Commission required that hourly customers with high loads pay lower incremental charges and that the utility offer more "no interruption" service plans to its industrial customers.[46] In a compromise with Gulf States, the Commission required in the same order that industrial customers pay more than they did in the utility's original rate plan, but not as much as the Commission staff recommended out of concern for the utility's ability to market to its industrial customers.[47]

To pay for its operating costs, the Louisiana PSC has created special funds operated with fees collected from the regulated utilities, such as an inspection and supervision fund or an economics and rate analysis fund.[48] The Commission also requires the utilities under examination to pay for the reasonable certified costs of the attorneys and consultants retained by the Commission during an investigation.[49] To ease this burden on the utilities, the Commission does allow utilities to recapture any fees or payments collected by a regulatory body

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[39] Louisiana, *Louisiana Statutes Annotated*; 45:1161.1, 45:1163, & 45:1164.
[40] Louisiana, *Louisiana Statutes Annotated*, 45:1163.
[41] Louisiana, *Louisiana Statutes Annotated*, 45: 1192.
[42] Louisiana, *Louisiana Statutes Annotated*, 45:1163.3.
[43] Louisiana, *Louisiana Statutes Annotated*, 45:122.
[44] Louisiana, *Louisiana Statutes Annotated*, 45:1176.
[45] Louisiana, "Proposed Revision of its Electric Rates & Charges Within the State of Louisiana," *Public Service Commission Orders*, U-17282-L (February 10, 1993), 1.
[46] Ibid., 1-2.
[47] Ibid., 2.
[48] Louisiana, *Louisiana Statutes Annotated*, 45:1177 & 45:1177.1.
[49] Louisiana, *Louisiana Statutes Annotated*, 45:1181.

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as part of the utilities' average rates.[50] In addition, the Commission retains the exclusive right to govern the issuance of securities or obligations by the utilities.[51] Such securities can only be created if they serve a necessary purpose for the utility and they must strictly follow the Commission's orders at all times.[52] The Commission reaffirmed this power in its order "Commission Approval of Security Issues and Assumptions of Liability", issued June 5, 1996, where it reiterated that no regulated utility could assume any liability or obligation without the Commission's express approval.[53]

The City of New Orleans: Outside the Normal Jurisdiction of the Public Service Commission

New Orleans' public utilities are governed separately from the rest of the State's regulators. Since 1921, the City has operated under a separate Home Rule Charter.[54] The New Orleans City Council has complete power of supervision and regulation over utilities within the boundaries of the Louisiana State Constitution.[55] The council may set rates, allocate awards or funds distributed for the benefit of a utility under the council's supervision, assess regulatory fees, audit corporate records, and investigate utility operations.[56] To help carry out this authority, the Council has established a Department of Utilities (DOU).[57] This body recommends rate changes, analyzes the terms of the franchises granted by the City Council, recommends legal enforcement proceedings when necessary, and makes public reports.[58] The Department is also authorized to investigate any utility facility or record.[59]

New Orleans' electric and natural gas utilities (two entities) are wholly-owned subsidiaries of Entergy DE. Entergy New Orleans (ENOI) is the electric power utility; it is the only IOU in the Gulf states to have declared bankruptcy, doing so just a few weeks after Hurricane Katrina made landfall. The fact that New Orleans utilities are not under the general jurisdiction of the Louisiana PSC has created tensions between the PSC and the City Council-DOU. CIPP Researchers note that these historic tensions appear to have increased post-Katrina. ENOI has aggressively pursued immediate cost recovery before City Council, which as of September 2006 it has not received. The Louisiana PSC has taken the unusual step of retaining special outside counsel to advice the Commission and staff on ENOI's bankruptcy activities and with the City Council. ENOI is seeking to recover lost revenues as part of its storm restoration and bankruptcy strategies. Normally, state commissions do not allow lost revenues and both the City Council-DOU and the Louisiana

[50] Louisiana, *Louisiana Statutes Annotated*, 33:4510.
[51] Louisiana, *Louisiana Statutes Annotated*, 45:1168.
[52] Louisiana, *Louisiana Statutes Annotated*, 45:1171 & 45:1172.
[53] Louisiana, "Commission Approval of Security Issues and Assumptions of Liability," *Public Service Commission Orders*, No number in original (June 5, 1996), 1.
[54] New Orleans, *Home Rule Charter*, Preamble & 1-101.
[55] New Orleans, *Home Rule Charter*, 3-130.
[56] Ibid.
[57] New Orleans, *Home Rule Charter*, 4-102 & 4-108.
[58] New Orleans, *Home Rule Charter*, 4-1601.
[59] New Orleans, *Home Rule Charter*, 4-1602.

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PSC are no exceptions. ENOI also has aggressively pursued CDBGs, and has factored the possible receipt of federal money in both its bankruptcy reorganization plan pending in federal court and efforts to sell the company to the city – something which is commonly referred to in ENOI's statements and the trade press as "municipalization". Ironically, the City actively tried to purchase ENOI from the parent holding company in the late 1980s and early 1990s, but Entergy DE refused the City's offers. Now, it is the City Council that is balking at a purchase. Based upon information available as of late September 2006, ENOI's three initiatives – storm cost recovery, bankruptcy reorganization, and municipalization – are unlikely to play out until January 2007 at the earliest.

Other State Agencies

Out of the other important regulatory agencies in Louisiana that manage electric utilities, two bear mentioning. One is the Louisiana Emergency Preparedness Association (LEPA) and another is the Southern States Energy Board (SSEB). For further information on these bodies, please consult the electronic appendix.

Mississippi

Storm cost recovery prior to 2005 was achieved through the reserve fund/surcharge accounting methodology generally used by IOUs after affordable T&D insurance became unavailable.[60] The most notable order of the Mississippi PSC exemplifying the traditional regulatory approach to cost recovery is associated with the State's February 1994 severe ice storm. The ice storm decimated northern Mississippi, leaving 85,000 of Mississippi Power & Light's (MP&L)[61] customers without service.[62] As a result, MP&L added $33.6 million in new plant and equipment and incurred an operation and maintenance (O&M) expense of $10.7 million during recovery. After accounting for the tax savings associated with the incremental O&M expenses, the total incremental costs associated with the storm totaled $40.25 million. [63]

On April 15, 1994, MP&L filed a notice of intent to change its rates after the severe ice storm of 1994. MP&L proposed a rate rider which would reflect its incurred storm costs through May 31, 1994 and

[60] Source: CIPP researchers' confidential conversation with an electric power official (Early July 2006). [The official indicated that IOUs in Mississippi would have paid a $5 million annual premium for $50 million in insurance coverage.]
[61] The current successor to Mississippi Power & Light is Mississippi Power, a Southern Company.
[62] Mississippi, "Notice of Mississippi Power & Light Company of Its Intent to Change Rates by Implementing Storm Damage Rider Schedule SD to Recover Company Ice Storm Expenditures," *Public Service Commission Orders*, 94-UN-228 (September 13, 1994), 1.
[63] Ibid., 6-7.

would last until March 15, 1995.[64] At that point, rate adjustments reflecting the total ice storm recover costs would be put into place, though they would be restricted to a five-year period and an annual adjustment of no more than two percent of MP&L's annual revenues or $14.5 million, whichever was less.[65] On August 4, 1994, MP&L and the Mississippi Public Utilities Staff (MPUS)[66] agreed to a joint stipulation allowing MP&L to recover $10.04 million in storm recovery costs incurred through April 30, 1994.[67] It also set the five-year annual revenue requirement for the recovery of all storm costs to be $7.99 million, set to go into effect for bills rendered after September 29, 1994.[68] The rate rider was allocated by customer class and increased electrical bills between $0.00071 and $0.00147 per kWh.[69] On July 19, 1995, MP&L and MPUS agreed to a second joint stipulation. This stipulation set the ice storm recovery costs at $14.2 million and set a five-year annual rate requirement at $2.54 million to be allocated among customer classes.[70] This would result in additional charges of between $0.00020 and $0.00045 per kWh, depending on the customer class. On September 13, 1995, the Mississippi PSC issued a second order approving the second joint stipulation.[71]

Texas

As a retail-competition, or deregulated, state, Texas statutes, regulations, and commission activities address the issue of utility cost recovery from a slightly different perspective than non-retail choice states such as Florida, Louisiana, and Mississippi. Self-insurance is still an option for any potential liability or catastrophic property loss which can not be reasonably anticipated and included in the utility's base rates.[72] The Texas Public Utility Commission (PUC) must approve any self-insurance plan, and will do so only if it is determined to be in the public interest, is a lower cost alternative to commercial insurance, and the ratepayers will receive the benefit of the savings.[73] The Texas PUC judges the proposal on the basis of information available at the time and has the power to add a shortage or subtract a surplus in the insurance fund by adjusting base rates.[74] Of note, this option is not available to nuclear facilities.[75] An exemplary Texas PUC docket on self-insurance is docket number 22350, issued October 3, 2001. In this docket, TXU Electric Company wanted to recover

[64] Mississippi, 94-UN-228 (April 15, 1994), 4.
[65] Ibid.
[66] MPUS operates independently of the Commission. It serves two primary purposes: (1) provide the Commission with expert research and advice, and (2) represent consumer interests before the Commission.
[67] Mississippi, 94-UN-228 (August 4, 1994), 3.
[68] Ibid., 5-6.
[69] Ibid., 11.
[70] Mississippi, 94-UN-228 (July 19, 1995), 7-8.
[71] Mississippi, 94-UN-228 (September 13, 1995).
[72] Texas, *Vernon's Code of Texas Annotated*, Utilities: 36.064.
[73] Ibid.
[74] Ibid.
[75] Ibid.

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$13.5 million in rates to replenish its self-insurance reserve, which was operating at a deficit of $27.2 million.[76] Only $6.8 million was to be dedicated to expected losses, while $4.9 million would go towards amortizing the under-recovered deficit and only $1.8 million would go to building up the self-insurance fund to the target of $7.3 million within four years.[77] The Texas PUC found that TXU was improperly counting 2002 self-insurance accruals in its 1999 calculations and disallowed the $6.8 million.[78]

Entergy Gulf States

On November 16, 2005, Entergy Gulf States (EGSI) filed its first set of responses to the Texas PUC's set of questions regarding Hurricane Rita costs.[79] EGSI estimated its Hurricane Rita costs between $230 million to $305 million for its facilities in Texas. Estimated insurance proceeds were between $50 million to $100 million.[80] EGSI predicted that a final estimate of its costs would be available by March 31, 2006.[81]

Entergy noted that it had maintained its high credit ratings despite the storm, but its outlook had been downgraded.[82] This was partially due to the fact that, while EGSI was allowed a $1.7 million annual accrual to its catastrophe reserve, previous storms had left the fund with a $12.8 million negative balance.[83] Furthermore, EGSI explained that it was statutorily barred from commencing a base rate proceeding until June 30, 2007, and those rates would be effective no earlier than June 30, 2008.[84] EGSI argued that this left it with the serious risk of harm to its financial stability and credit rating, especially considering "it is fair to say that no one contemplated the occurrence of an event of the magnitude of Hurricane Rita during the development and passage of this legislation."[85] EGSI stated that a special rate rider was one possible solution, as other companies in other states such as Florida had been granted the right to collect their storm costs through special rate riders.[86] EGSI also recommended that the Commission lobby for securitization legislation because, "if EGSI could securitize its storm damage costs in the manner currently allowed for

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76 Texas, Application of TXU Electric Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 & Public Utility Commission Substantive Rule § 25.344," *Public Utility Commission Dockets*, 22350 (October 3, 2001), 76.
77 Ibid.
78 Ibid., 80.
79 Texas, "Responses of Entergy Gulf States Inc. to the Commission's Questions Concerning Hurricane Rita Costs," *Public Utility Commission Dockets*, 32003 (November 16, 2005), 1.
80 Ibid., 2.
81 Ibid., 4.
82 Ibid., 3.
83 Ibid., 5.
84 Ibid., 6.
85 Ibid., [The legislation referenced is HB 1567, which froze new rate cases until June 30, 2008. The same restriction is repeated in HB 163, the State's securitization bill (Texas State Legislature, *Called Session 2006*, HB 163).]
86 Ibid., 7.

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stranded costs and regulatory assets, those financing cost benefits, and lower costs, could be passed on to ratepayers."[87]

New Storm Cost Recovery Approaches

Due to the extreme magnitude and geographic span of the damage to electric infrastructure in Florida during the 2004 storm cycle, the recurrence of another such destructive storm season in 2005 should have had an extremely low probability. However, the 2005 hurricane season proved disastrous not only in Florida, but especially in Louisiana and Mississippi where IOU storm reserve funds have historically been much lower than in Florida. As a result, the devastation of Hurricanes Katrina, Rita, and Wilma overwhelmed these reserves and forced the Gulf Coast states to reexamine their cost-recovery approaches.

Florida

Prior to the 2005 storm season, the Florida legislature began examining alternative methods to fund storm recovery costs, and in 2005 passed a securitization law as an alternative methodology to finance storm recovery costs. Briefly, securitization allows special bonds to be issued that both quickly infuse utilities with cash and simultaneously reduce overall costs to customers. A full explanation of this cost recovery tool is provided in the section on securitization. In 2006, the Florida PSC issued a landmark order that incorporated securitization as a major cost recovery tool. This order represents a dramatic change in the traditional approach to cost recovery in Florida.

Florida Power & Light Orders: General Findings

The Florida PSC issued two orders during 2005 and 2006 related to IOUs' petitions for financing bonds. In 2005, Florida Power & Light (FPL) entered into a stipulation and settlement agreement with various other parties in Order Florida PSC-05-0902-S-EI, issued September 14, 2005. *Inter alia*, as part of the settlement agreement, FPL agreed to stop accruals to its storm reserve on January 1, 2006. The Florida PSC ordered that a target level for FPL's reserve would be set in a separate proceeding, using either a separate surcharge or Florida's securitization law. The Commission incorporated the previous year's surcharge into its 2006 securitization order. The 2004 storm season surcharge remains in effect as of September 2006, but will go away once bonds are issued.

[87] Ibid., 8.

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FPL's initial petition, filed January 13, 2006, requested storm recovery bonds in the amount of up to $1.05 billion pursuant to Florida's securitization law.[88] This requested amount would allow FPL to (1) recover the unrecovered balance of its 2004 storm recovery costs; (2) recover prudently incurred 2005 storm recovery costs; (3) replenish its storm recovery reserve; and (4) recover issuance costs associated with the storm-recovery bonds.[89] Based on this filing, the request would have allowed FPL to remove the $1.65 surcharge for the 2004 storms from residential customers' bills, thereby reducing the total monthly bill to a currently estimated $1.10 per month.[90] However, the average industrial consumer would have a monthly increase of $359.38, or less than 0.1 percent of the consumer's total bill.

Although FPL initially requested a financing bond totaling more than $1 billion, the Florida PSC found that storm bonds in the amount of up to $708 million would fully reimburse FPL for its "reasonable and prudently incurred storm-recovery costs associated with the destructive back-to-back 2004 and 2005 storm seasons" and "cover the other costs associated with the bond."[91] Importantly, the Florida PSC only allowed FPL to fund its storm reserve to $200 million, in contrast with FPL's initial request to fund the reserve to $650 million.[92] Furthermore, the Florida PSC found that:

> *[C]ustomers represented in this proceeding have made clear that they would rather pay to fund the reserve to a lower level now and <u>risk future rate volatility</u> than pay to fund the reserve to a higher level before future storm restoration costs have been incurred."*[93]

During the hearing, the Florida Industrial Power Users Group argued that the reserve should be replenished to a lower level:

> *While it is not entirely clear that FPL needs a positive storm reserve at all, if the Commission decides to grant FPL such a reserve then, as discussed in the testimony of [Office of Public Utility Counsel of Texas]/AARP witness Stephen A. Stewart, an appropriate level for FPL's storm reserve is $150 million. In fact, a storm reserve level of only $60 million would have been sufficient to handle 13 of the last 16 storm seasons. By comparison, FPL requests a storm reserve level almost 11 times that amount, yet its request would add only a small additional measure of security: FPL's proposed $650 million storm reserve would have been sufficient to handle 14 of the last 16 storm seasons. Given that a $60 million reserve would have been sufficient to cover most but not all of the last 16 storm seasons, it seems conservative that a reserve 2 ½ times that amount would be sufficient to satisfy the needs of FPL and its customers.*[94]

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[88] Florida, "Petition for issuance of a storm recovery financing order, by Florida Power & Light Company," *Public Service Commission Orders*, 06-0464 (May 30, 2006), 3.
[89] Ibid., 3.
[90] Source: CIPP researchers' conversation with Florida Public Service Commission staff (September 12, 2006). [Actual storm bond surcharge amounts will not be known until bonds are sold.]
[91] Florida, 06-0464 (May 30, 2006), 14.
[92] Ibid., 25.
[93] Ibid.
[94] Florida, 06-0464 (May 2, 2006), 8-9.

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Consist
ent with standard regulatory accounting practices, the Florida PSC disallowed or reduced many items that FPL sought to recover. The Florida PSC used an incremental cost approach to determine which costs may be included in a customer surcharge by removing items that are recoverable through base rates from the surcharge, thereby preventing a "double recovery".[95] For example, the Florida PSC found that $15.36 million of ordinary payroll expenses included in FPL's petition were included in base rates and thus were not allowed in storm recovery costs.[96]

The Florida PSC also disallowed items that were not part of FPL's base rates, but were inappropriate for other reasons. For example, in its findings of fact, the Florida PSC noted that FPL included tree-trimming expenses in its storm-recovery costs. The Florida PSC found that, "FPL's actual tree trimming expenditures were $1.1 million less than the amount budgeted for 2005." Consistent with the incremental cost approach, FPL's 2005 storm-recovery costs were adjusted by removing $1.1 million related to tree trimming expenses.[97]

The
Florida PSC reduced the amount that FPL sought to recover to compensate for recovery costs that FPL could have avoided. The Florida PSC ruled that many of the pole failures that occurred as a result of the 2005 storms were due to inadequate vegetation management and pole maintenance. When determining whether storm-recovery costs are reasonable and prudent, the Florida PSC must make an appropriate determination "with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service."[98] To that end, the Florida PSC found that some of FPL's poles failed due to deterioration, the replacement costs of which were $2.2 million. The Florida PSC removed $550 million from the rate base and required that FPL reduce the charges to its reserve by the remaining $1.65 million.[99] Similarly, the Florida PSC found that $3.4 million in storm recovery costs were due to a reduction by FPL in its level of vegetation management around its poles and poles owned by other entities. The Florida PSC held that "FPL's responsibility to provide reliable service extends to the consequences associated with managing vegetation around third-party poles supporting FPL facilities as much as it applies to its own poles." Of the $3.4 million, the Florida PSC ruled that $850,000 should be removed from the rate base and that the remaining amount $2.55 million should be subtracted from FPL's charges to its reserve fund.[100]

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[95] Florida, 06-0464 (May 30, 2006), 17.
[96] Ibid., 18.
[97] Ibid.
[98] Ibid., 22.
[99] Ibid., 23.
[100] Ibid.

Securitization-Specific Issues

Section 366.8260 of the Florida statute is broad in that it does not specify how the storm bonds must be structured. However, the actual order is quite specific. The Florida PSC describes the storm-recovery bonds as "unlike any debt or equity securities previously approved by the FL PSC" and involves "an extraordinary relinquishment of future regulatory authority and a shifting of all economic burdens on connection with storm-recovery bonds from FPL to its customers."[101] As a result, the Florida PSC established clear standards for how the bonds would be structured and issued to safeguard customers. These standards were established pursuant to Section 366.8260(2)(b)(2)(j), which states that the Florida PSC may "include any other conditions that the Florida PSC considers appropriate and that are not otherwise inconsistent with this section."

The Florida PSC was clear that FPL's bonds should have an AAA rating from at least two nationally recognized rating agencies.[102] To this end, the bond is to be administered by a SPE rather than FPL itself. The Special Purpose Entity (SPE) will be a Delaware Limited Liability Company (LLC). The SPE is required to, "as long as storm recovery bonds remain outstanding … have at least one independent manager, that is, with no organizational affiliation with FPL or its affiliates."[103] The SPE is not allowed to institute bankruptcy or any similar proceedings without the consent of this manager. The Florida PSC indicated that it "must forego future regulatory oversight in order to create a financing instrument of superior quality and a completely separate credit from the sponsoring utility."[104]

In the financing order, the Florida PSC ruled that a representative of the Florida PSC must be a member of the Bond Review Team leading up to bond issuance.[105] Florida's Bond Review Team, which first met in July 2006, is comprised of representatives from FPL, the Office of Public Counsel (OPC), the Office of the Attorney General, Florida Retail Federation, Florida Industrial Power Users Group, AARP, Federal Agencies, and other interested parties. The Bond Review Team is charged with establishing "the structuring, marketing and pricing of storm-recovery bonds."[106] Even after the structure and pricing of the bond is determined, the Florida PSC retains discretion to stop the transaction if "the transaction fails to comply with applicable law or this Financing Order, or if FPL, the book running underwriters(s), or this FL PSC's financial advisor is unable

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[101] Ibid., 6.
[102] Ibid., 36.
[103] Ibid., 45.
[104] Ibid., 35.
[105] Ibid., 41.
[106] David Cruthirds, "Special Report Louisiana PSC – September 13 B&E Meeting," (*The Cruthirds Report*: September 15, 2006), Available at http://www.thecruthirdsreport.com/showreport.asp [Accessed September 20, 2006].

or unwilling to deliver the required certifications in a form acceptable to the FL PSC."[107] The Florida PSC issued a clarifying order on July 21, stating that the Florida PSC would stop the transaction if it does not meet with these requirements.[108] Once bond issuance occurs, the Florida PSC's oversight will be limited to approving mathematical errors in a periodic true-up mechanism.

As of September 2006, the Florida PSC and FPL are moving forward with the bond issuance process. According to the Florida PSC staff, the bonds are anticipated to be issued in November 2006, and will be high-quality/low-interest bonds issued in four tranches with staggered maturities including two, five, seven, and 10 years. The predicted interest rate is 5.06 percent, but the actual rate will depend on market conditions and the structure of the bond at the time of issuance. Based on the final parameters associated with the issuance, the monthly bond charges could be in the range of $1.05 to $1.10 for a typical residential customer, which is lower than the previously estimated monthly charge.[109] To further expound on this information, an appendix to this report analyses net present value.

Gulf Power

Gulf Power experienced three major storms during the 2004 and 2005 storm seasons. In 2004, Hurricane Ivan impacted Gulf's service area and, in 2005, Gulf suffered damage resulting from Hurricanes Dennis and Katrina. Following Hurricane Ivan, Gulf's recovery costs totaled approximately $137.7 million.[110] This amount was initially scheduled through recovery through a surcharge instituted in 2005 and ending in 2007.[111] Hurricanes Katrina and Dennis resulted in a total of $63.6 million, with insurance covering approximately $900,000 of this amount. Gulf "further reduced this amount by voluntary exclusions of $9.4 million to a net jurisdictional balance of $53.3 million of unrecovered storm restoration costs."[112] In addition, Gulf requested to recover $70 million to place in its storm reserve account.

On June 20, 2006, the Florida PSC ruled on Gulf Power's petition for a financing bond. Gulf's original petition sought a financing bond that would cover the balance of the utility's Hurricane Ivan storm-recovery costs, the storm recovery-costs associated with Hurricanes Dennis and Katrina, and the addition of $70 million to Gulf's storm reserve account. However, Gulf instead sought a traditional surcharge that would recover the

[107] Florida, 06-0464 (May 30, 2006), 43.
[108] Ibid., 4. [This clarifying Order amended Order 06-0464 and reaffirmed Order 06-0464 in all other aspects].
[109] Source: CIPP researchers' conversation with Florida Public Service Commission staff (September 12, 2006).
[110] Florida, "Petition for issuance of storm recovery financing order pursuant to Section 366.8260, F.S. (2005), by Gulf Power Company," *Public Service Commission Orders*, 06-0601 (February 22, 2006), 7.
[111] Ibid.
[112] Ibid., 132.

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Dennis and Katrina costs and replenish the company's storm reserve. These charges would be in addition to the Hurricane Ivan surcharge that remained in effect at the time of Gulf's request.

The June 20, 2006 order also approved a stipulation agreement between Gulf, the OPC, and other interested parties. As a result of the stipulation agreement, the Florida PSC ordered Gulf to "extend the current storm cost recovery surcharge for and additional 27 months from April 2007 through June 2009. For a typical residential customer using 1,000 kWh, the current charge is $2.57."[113] In addition, Gulf will, *inter alia*, continue to accrue money to its storm reserve, but only through base rates, and not as an additional surcharge.[114] It is believed that the traditional reserve approach was preferred by Gulf due to the size of the bond issuance and/or concern over securing an acceptable bond rating based on the utility's damage and storm recovery fund replenishment estimates."[115]

Florida Update

In conversations with Florida PSC staff, three overall themes stood out as most important to them: the importance of infrastructure hardening, attempts to increase the economic incentives to underground power lines, and the availability of securitization as a method to recover from future catastrophes. The PSC has seen several dockets and proceedings on infrastructure hardening, encompassing everything from pole inspections to vegetation cycles. Some effort has been specifically focused on creating economic incentives to underground power lines. The securitization process sped up significantly after the outside consultant left and PSC staff moved from a negotiated to an auction-based bidding process. Given the experience gained with this form of securities, PSC staff expect that the next time a catastrophe strikes they can perform the same process in less time.

As of late June 2007, FPL had filed a petition for approval of its 2007 storm infrastructure hardening plan. The plan was broken up into basic tasks. First, FPL will apply the NESC's extreme wind loading design criteria to electric facilities that serve critical infrastructure such as hospitals or water treatment plants. The next step will be to bring certain main transmission lines – or "feeders" – up to a higher National Electrical Safety Code (NESC) standard, which may include extreme wind loading in some cases. FPL will also be using line construction or major repair operations as an occasion to slowly replace its poles with a stronger design and shorter span length. FPL has already commenced two previously approved hardening projects: replacing its wood single poles and its ceramic insulators on concrete poles, as these structures were identified with a high number of transmission line failures. FPL is planning to have hardened seventy-two circuits in 2007, though the wider pole and insulator replacement projects are expected to take ten to fifteen

[113] Florida, 06-0601 (July 10, 2006), 2.
[114] Ibid., 3.
[115] Source: CIPP researchers' interview with staff of the Florida Public Service Commission (Early August 2006).

years. The circuits to be hardened in 2007 include those that serve twenty-eight acute care facilities, forty-three highway crossings, and the three counties in Florida with the highest population density. The goal is to improve the most critical circuits first. FPL is also attempting to initiate an inspection cycle of eight years for distribution and six years for transmission poles as well as implementing a six-year tree trimming cycle where circuits serving critical customers will be trimmed before every storm season. FPL had not yet finalized plans to harden infrastructure in 2008 and 2009.

In May 2007, FPL sold its first of four tranches of storm recovery bonds through an auction process developed with assistance from another state agency. The bonds had received over fifteen bids and approximately $652 million in bonds were sold, with an "AAA" or equivalent rating from Moody's, Standard & Poor's, and FitchRatings. As a result of the successful sale, the Florida PSC ordered FPL to eliminate the temporary surcharge it had been charging while it waited for the bonds to be issued. Wachovia Capital Markets LLC turned out to be the final bidder, with an all-in cost of 5.23 percent.

By December 2007, the PSC had approved the infrastructure hardening plans of four out of the five major utilities, with Florida Public Utilities Company's plan waiting for approval until its rate increase was reviewed in 2008. (Information on these plans is contained in the appendices.) This accomplishment was made in the face of sustained opposition from affected third parties, who were concerned about the costs of the hardening process. PSC staff explained that closure was made on the issue by "wearing down" outside opposition. The FPL plan would still require the gradual application of extreme wind loading standards to its infrastructure, <u>starting with critical facilities</u>. Then commercial facilities with important disaster recovery roles would be incrementally hardened. FPL would build its infrastructure to one of three levels: 105 MPH, 130 MPH, and 145 MPH, depending on the geographic area. FPL would also continue to expand on its previous undergrounding activities and maintain a policy of placing poles where they can be easily reached for replacement. <u>All upgrades to infrastructure serving critical customers is expected to be completed by the end of 2009</u>. <u>FPL defines critical infrastructure facilities (CIF) as facilities serving critical customers such as hospitals, 911 centers, special needs shelters, water treatment plants, police and fire stations</u>. FPL's Plan implementation costs for 2007 range from $48.5 million to $61.5 million and 25% of its costs will be reimbursed. Projected costs for 2008 and 2009 are between $75 million and $125 million and $100 million to $150 million, respectively. The estimated benefits from FPL's Plan are: reduced damage to electrical infrastructure from hurricanes, less restoration time, and lower restoration costs. The PSC noted that the full extent of the benefits is impossible to estimate. FPL will need to file another plan within three years.

Louisiana

<u>Statutory Cost Recovery Innovations</u>

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Recent changes in the Louisiana statutes reflect the high priority that the Louisiana legislature places on quickly recovering from natural disasters. As indicated in 45:859, which was passed as SB 8 during the legislature's First Extraordinary Session and approved on November 18, 2005:

> *The swift restoration of electric and gas utilities following natural disasters such as tropical storms, hurricanes, and floods can minimize the devastating effects of such disasters. Therefore, the restoration and rebuilding of electric and gas utilities as a result of a natural disaster is hereby recognized to be a valid public purpose in the best interests of the citizens and businesses of the state.*

On May 22, 2006, the Louisiana Electric Utility Storm Recovery Securitization Act was signed into law, authorizing electric utilities to securitize their storm recovery costs.[116] Based on this act, an IOU may petition the Louisiana PSC for a financing order to recover its storm recovery costs. The Louisiana PSC will then determine what costs may be securitized,[117] and the funds granted by the bond issuance may be used for purposes expressly approved in the financing order.[118] The Louisiana PSC must judge the bond issuance on the basis of whether the proposed structure of the financing order would result in lower overall costs or would mitigate the impact of the storm recovery costs on ratepayers.[119] Once bonds are issued, the storm recovery charge is included in the base rate on customers' bills instead of being separated out as a line item.[120] This means that consumers will not know how much of their bills are going to finance the storm recovery bonds. In contrast to Florida, where securitization of recovery costs represents a new authority of the Florida PSC, the Louisiana securitization bill merely confirms that such an option was already available pursuant to the Louisiana PSC's enabling authority under the State Constitution.[121]

The Louisiana PSC financing order must specify which costs are recoverable, including increases in storm reserves minus any insurance or federal aid the utility collects.[122] The order must also specify the storm recovery property, provide that the revenue stream is sufficient to pay the principal plus interest on the bonds, and specify how amounts are to be collected between storm recovery charges and other charges.[123] Storm recovery property, meaning the revenue stream that is created to fund the bond issuance, is understood to be a "present contract" right to the revenue.[124] The financing order is irrevocable until full payment has been made, even if the applicable electric utility becomes insolvent, is sold by its parent

[116] Louisiana State Legislature, *Regular Session 2006*, HB 887 (Act 64), 2.
[117] Ibid., 8.
[118] Ibid., 9.
[119] Ibid., 9.
[120] Ibid., 15.
[121] Louisiana, *Louisiana Statutes Annotated – Constitution of the State of Louisiana of 1974*, 4 §21 (Westlaw, 2006).
[122] Louisiana State Legislature, *Regular Session 2006*, HB 887, 7 & 9.
[123] Ibid., 10-11.
[124] Ibid., 13.

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company, or merges with another electrical utility.[125] The IOU retains discretion to sell or transfer the storm recovery property and may also petition the Louisiana PSC to refinance the bond issuance with a later financing order.[126] The statute specifies that these bonds are not to be considered public debt or an obligation of any State agency,[127] and the issuance of a financing order should not be construed to indicate that the full faith and credit of the State of Louisiana is behind the bonds.[128] However, the State does pledge not to take any regulatory action which would impair the value of the storm recovery property.[129]

Entergy Gulf States and Entergy Louisiana

On December 2, 2005, Entergy Gulf States (EGSI) and Entergy Louisiana (ELAI)[130] filed a joint application for interim and permanent recovery of their storm recovery costs related to Hurricanes Katrina and Rita.[131] Hurricane Katrina caused approximately 148,000 outages in EGSI's service area, while over 450,000 outages were reported in ELAI's service area; Rita left both IOUs with a combined total of over 800,000 customers without power.[132] The IOUs cited storm recovery cost estimates ranging from $141 million to $193 million for EGSI and from $355 million to $542 million for ELAI and argued that recovery of these costs would be necessary to maintain their continued financial stability and to ensure reasonable rates.[133] Both IOUs noted that their requests for relief were based on the low end of their current cost estimates, or $140.6 million for EGSI and $355 million for ELAI.[134] These costs would be recovered over 10 years and in proportion to each customer class' contribution to base revenues,[135] or an annual revenue requirement of $18.7 million for EGSI and $45.1 million for ELAI.[136] While the typical residential customer of EGSI would see an increase of about $1.63 a month, or a 1.3 percent increase, a typical residential customer of ELAI would see an increase of about $2.37 a month, or a 1.9 percent increase.[137] Both IOUs submitted an amended application in the fourth quarter of 2006, following tabulation of their final storm recovery costs.[138]

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[125] Ibid., 10-11.
[126] Ibid., 12.
[127] Ibid., 24.
[128] Ibid.
[129] Louisiana State Legislature, *Regular Session 2006*, HB 887, 25.
[130] Entergy Louisiana may also be referred to as "ELI". For this report, the acronym "ELAI" is used.
[131] Louisiana, "Joint Application of Entergy Gulf States Inc. & Entergy Louisiana Inc. for Interim & Permanent Recovery in Rates of Costs Related to Service Restoration," *Public Service Commission Orders*, U-29203 (December 2, 2005), 1.
[132] Ibid., 6.
[133] Ibid., 3 & 16.
[134] Ibid., 12.
[135] Ibid., 2.
[136] Ibid., 16.
[137] Ibid., 2-3.
[138] Ibid., 3.

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To justify their requests, both IOUs pointed to significant under-recoveries of their fuel and purchased power costs which led to lower deferred fuel balances.[139] They also cited their lowered credit ratings, with EGSI's Standard & Poor's (S&P) rating moving from "Stable" to "Outlook Negative" and ELAI's S&P rating moving from "Stable" to "Watch Negative".[140] Moreover, they specifically quoted S&P as stating that the listing, "reflects the potential that Entergy's underlying business may have been irreparably harmed by the devastation wrought by Hurricane Katrina" and that resolution depends on many things, including "the level of responsiveness from state authorities, including regulators, and the timeline for Entergy to recover its storm costs."[141] The companies argued that recovery of storm costs was in the public interest as it would assure the financial community of Entergy's continued stability and ability to purchase goods.[142] The two IOUs promised to more fully consider securitization as a cost recovery option during the second phase of the Commission's three-phase process[143] and pursue securitization if the Louisiana PSC found it to be an appropriate vehicle.[144] They also cited their respective formula rate plans' *force majeure* clause, which allows the companies to recover these extraordinary costs outside of normal rate processes.[145]

On February 22, 2006, an outside consultant hired by the Louisiana PSC staff, William Barta of Henderson Ridge Consulting, testified on his recommendations regarding EGSI and ELAI's application for joint interim storm cost relief.[146] Mr. Barta noted that the Louisiana PSC had previously commented favorably on Entergy's emergency operations plan and had specifically indicated its support for the recovery efforts from Hurricanes Katrina and Rita in a special resolution issued on October 19, 2005.[147] However, while the consultant stated that EGSI and ELAI's storm recovery costs appeared to be in accord with the emergency operations plan and general storm recovery accounting guidelines, he recommended that the costs be more closely analyzed in phase two of the recovery process.[148] Mr. Barta also stated that a high percentage of the companies' costs were reasonable and prudent.[149]

Mr. Barta recommended reducing the IOUs' capital costs by 10 percent because, "it is presumed that a certain amount of the capital costs included as part of the Companies' storm restoration request represents

139 Ibid., 12.
140 Ibid., 13.
141 Ibid.
142 Ibid., 15.
143 The Commission handles applications for securitization in three phases. Phase one is the IOU's application for relief of its storm recovery costs, which are accounted for in the application. Phase two is the review of the IOU's expenses, usually by an outside consultant, to reduce the recoverable amount as much as possible by deducting tax benefits and imprudent IOU expenditures. Phase three is the issuance of a financing order with the allowed amount, the creation and monitoring of the SPE, and the issuance of the bonds. This breakdown is based on the transcript of a Louisiana PSC meeting (July 12, 2006).
144 Louisiana, U-29203 (December 2, 2005), 15.
145 Ibid., 18-19.
146 Louisiana, U-29203 (February 6, 2006), 3.
147 Ibid., 4.
148 Ibid., 9 & 13.
149 Ibid., 14.

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'normal' construction project activity."[150] This represented an $8.1 million reduction in EGSI's request and a $23.5 million reduction in ELAI's request.[151] He also recommended removing the IOUs' business continuity costs, or those costs incurred to keep normal operations going during the storm, because those costs were not extraordinary.[152] This would reduce EGSI's request by another $3.3 million and ELAI's request by another $5.6 million.[153] Mr. Barta further recommended reducing the total request by the amount of Entergy's insurance coverage, or $400 million.[154] Cumulatively, these changes reduced EGSI's storm recovery revenue requirement from $124.4 million to $68 million and ELAI's revenue requirement from $307.6 million to $158 million over a 10-year period.[155] Correspondingly, EGSI's monthly revenue requirement was lowered from $1.5 million to $835,000 and ELAI's monthly requirement was lowered from $3.9 million to $2 million.[156] Mr. Barta also explained that he considered securitization a preferable option to normal cost recovery.[157] With securitization, EGSI's monthly revenue requirement would be further reduced from $835,000 to $698,000, [158] while ELAI's monthly requirement would be reduced from $2 million to $1.7 million.[159]

On March 3, 2006, the Louisiana PSC approved an interim order regarding EGSI and ELAI's request for interim relief, or phase one of their request for complete storm recovery relief.[160] The Louisiana PSC allowed EGSI to recover no more than $6 million and ELAI to recover no more than $14 million cumulatively between March and September 2006.[161] These recovery amounts were classified as an extraordinary cost charge which would end when the full amount was collected.[162] After the Louisiana PSC is finished investigating the IOUs' permanent costs and subtracting any insurance proceeds, federal assistance, or tax relief, it will develop a revenue requirement for permanent storm recovery.[163] The Louisiana PSC also directed EGSI and ELAI to develop a securitization proposal no more than three months following approval of the final revenue requirement.[164] Until that plan is approved, the IOUs would continue to collect their interim recovery amounts.[165]

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150 Ibid., 15.
151 Ibid.
152 Ibid., 15-16.
153 Ibid., 16.
154 Ibid.
155 Ibid., 18.
156 Ibid.
157 Ibid., 19.
158 Ibid.
159 Ibid.
160 Louisiana, U-29203 (March 3, 2006), 1 & 4.
161 Ibid., 5.
162 Ibid., 6.
163 Ibid.
164 Ibid.
165 Ibid., 7.

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Pursuant to a May Request for Proposals (RFP), the Louisiana PSC met on July 12, 2006 to discuss the hiring of an outside consultant to audit Entergy's expenses and determine if they were reasonable and prudently incurred.[166] The consultant would also be responsible for overseeing the bond issuance and ensuring that it would provide the most possible benefit to ratepayers.[167] On a three-to-two vote, the Commission decided to re-cast the original RFP so that it captured the intricacies of securitization that were brought out in direct testimony. On September 12, 2006, the Commission voted to retain outside counsel, selected accounting experts and chose a financial advisor to assist with securitization. The Louisiana PSC's decision to hire experts was crucial because the financing order is irrevocable once issued, and Entergy's customers will be responsible for the debt.[168]

On July 31, 2006, EGSI and ELAI filed an estimate of their hurricane recovery costs for phase two of their cost recovery application.[169] Through May 31, 2006, EGSI declared $200.3 million and ELAI declared $466.8 million.[170] The companies provided calculations for three different cost recovery allocation methods: (1) by customer class in proportion to the class's contribution to revenues; (2) by usage; and (3) by customer class but excluding transmission voltage.[171] For a typical EGSI customer, this would result in a surcharge of $2.21 a month (2.2% increase), $1.51 a month (1.5 percent increase), and $2.63 a month (2.6 percent increase) utilizing each method, respectively.[172] For a comparable ELAI residential customer, this would result in a surcharge of $2.78 a month (3% increase), $2.10 a month (2.2 percent increase), and $3.15 a month (3.4 percent increase) utilizing each method, respectively.[173] The companies noted that they anticipated filing a second, amended application with a sample financing order as part of a petition for securitization under Louisiana's new securitization statute.[174]

Louisiana Update

Louisiana represents the most complicated storm cost recovery experience so far. Some IOUs relied on securitization while one received a large federal grant. In addition, the state passed a new securitization law in 2007 which changed the process established by the state legislature in 2006 by creating a new agency to handle utility securitization. This law created some concerns about a lack of transparency and between those concerns and the problems with the securities market over the past six months, the state has found it difficult

[166] Louisiana, U-29203 (July 12, 2006), 19.
[167] Ibid., 20.
[168] Ibid., 23-24.
[169] Louisiana, U-29203 (July 31, 2006), 1.
[170] Ibid.
[171] Ibid., 3.
[172] Ibid.
[173] Ibid.
[174] Ibid., 3-4.

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to release bonds on the terms it desired. In short, nearly two and a half years after these storms, cost recovery has still not been accomplished. Between the delays from the new securitization law, the uncertainty over the amount of federal funding to be received, and the instability in the financial markets resulting from the subprime crisis, the process has been set back repeatedly. In addition, the contrast between the amount of federal funds received by Louisiana and Mississippi shows the importance of federal-state relations in cost recovery. There is some speculation that the new, "reform-oriented" administration in Louisiana will be able to change that.

By mid-March 2007, the Louisiana PSC staff had reached a partial settlement with Cleco on the revenue amount which could be collected. Cleco was allowed to recover all direct storm damage costs except $155,000 in uncollectible damages. Cleco also reduced its base rates by $2.2 million per year. The settlement directed the terms of the revenue requirement and some of the terms of the actual bond issuance, but the terms of the securitization process were left to future discussions. PSC staff were still reviewing a joint settlement offer from EGSI and ELI. The New Orleans City Council approved all but $400,000 of Entergy New Orleans' storm recovery costs, bringing the recoverable amount to $209.9 million. This allowed the company to formally apply for the $200 million set aside in CDBG funds by the Louisiana Recovery Authority. Entergy New Orleans had been operating in bankruptcy since September 2005.

The Louisiana Legislature also passed a bill in 2007, House Bill 577 (Act 55), concerning the securitization of storm recovery costs, which reset the securitization process and caused the state to miss a window of relative financial calm in the markets. The statute declares that restoring utility service with a minimum cost to ratepayers is a valid public purpose and allows the creation of the Louisiana Utilities Restoration Corporation (LURC) towards that end. The LURC will authorize the issuance of storm recovery bonds if it determines that they would lower the overall cost of recovery to the ratepayers. The issuance will include a commitment by the utility of a certain portion of its proceeds and will not constitute a guarantee by the state of Louisiana or any of its subdivisions. The charges supporting the bonds will be from the corporation, not the utility, and creditors of the bonds will not have recourse to the state's assets.

The statute creates the LURC as a non-profit, governed by a board, which has the function of financing utility system restoration costs and is considered an instrumentality of the state. However, the assets of the LURC are not to be considered part of the state's assets and the LURC will be self-funded through a portion of the system restoration costs it receives through the securitization process. <u>This system does not pledge the full faith and credit of the state behind the bonds, but it does require the PSC not to interfere with the bond charges</u> (a "regulatory pledge"). The LURC will also be exempt from Louisiana corporate taxes and will have all of the rights and privileges of a corporation. The staff of the PSC may serve as staff to the LURC under the supervision of the Secretary of the PSC. The governing board must be confirmed by the Louisiana Senate and serves at the pleasure of the Governor. The LURC will receive

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oversight from the PSC. In all other respects, the proceeding to securitize storm recovery costs are the same as they were before. Should the PSC issue a financing order, the LURC will carry it out. In January of 2008, the PSC solicited applications for independent counsel to represent the LURC in upcoming securitization proceedings for Entergy.

Cleco secured approval for recovery of its storm costs and its securitization order in October 2007. The total cost of Hurricanes Katrina and Rita was determined to be $159 million. After subtracting costs recovered in the interim, the amount became $132 million. Adding securitization costs and a storm reserve raised the total amount to be securitized to $187 million. This translated to an annual revenue requirement of approximately $20.3 million. The PSC determined this settlement was in the best interests of ratepayers and taxpayers, estimating the savings from securitization to be approximately $75 million, and noted that any future state or federal grant proceeds would be used to reduce the storm cost payments made by Cleco ratepayers. The interim storm cost recovery charge of $4.58 a month for the average residential customer was expected to be reduced to approximately $1.63 a month for twelve years, which would represent a sixty-four percent monthly reduction. Cleco also agreed to forego the retention of excess earnings while the securitization surcharge was in place. The financing order guaranteed that the storm recovery charges would be non-bypassable and apply to both existing and future Cleco customers. In return, the state of Louisiana agreed to refrain from changing the terms of the Securitization Act or interfering with the value of any cost recovery property. Storm recovery charges will be adjusted, or "trued-up," every six months. The financing order contemplated the possibility that these bonds may be refinanced at some point, though no authority or desire to do so had yet been expressed.

Both Cleco and Entergy experienced delays in actual bond issuances in part because of the markets, which prompted extensions in their interim cost recovery authorities. Entergy's operations in Louisiana, comprising a joint application from Entergy Gulf States and Entergy Louisiana, saw the release of a financing order by February of 2008, allowing the recovery of approximately $561 million in recovery costs, including the creation of a $152 million storm reserve. Though some interim costs had been recovered, the previously existing storm reserve had been depleted to a negative balance, which needed to be paid back. The amount was also reduced by the $12.5 million of insurance proceeds paid to Entergy. Just as in the Cleco case, the PSC cited the benefits to ratepayers in a lower-cost recovery proceeding as its primary motivation in authorizing securitization, though this assumed the weighted interest rate on all tranches of bonds would remain below seven point seventy-five percent. The financing order authorized the PSC's financial advisor, Pathfinder Capital Advisers, and PSC staff to review and comment on the securitization process. Final approval of the pricing and structure of the cost recovery bonds would be performed by the PSC's designee, Mr. Lawrence "Tubby" St. Blanc, who also serves in a senior capacity at the PSC. The financing order indicates that the SPE will be managed in such a way to make it bankruptcy-remote.

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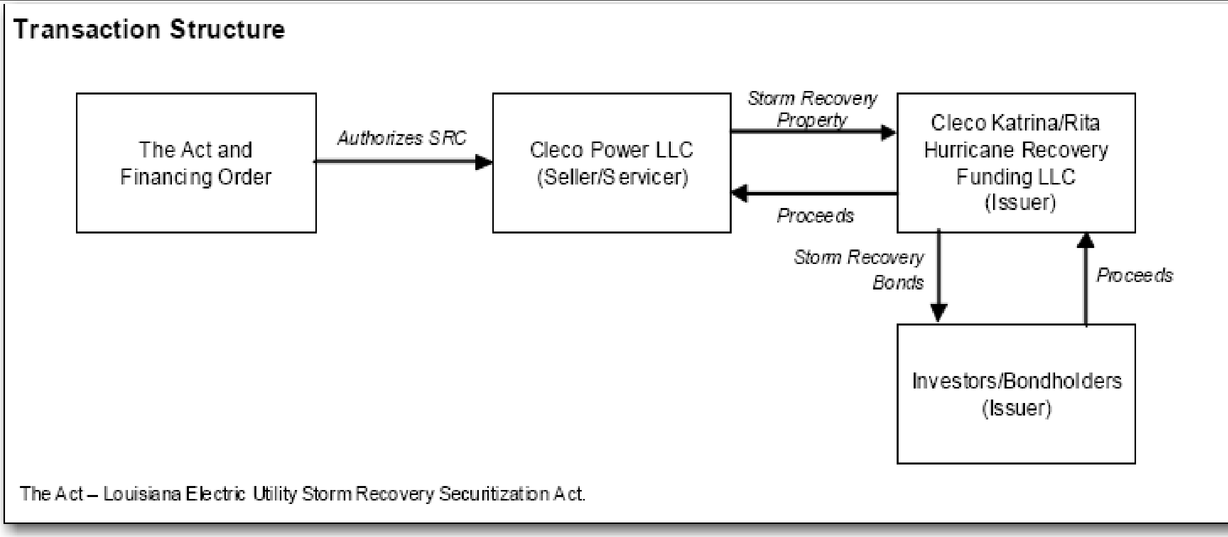
Cleco Bonds Transaction Structure. Source: FitchRatings.com



Mississippi

Securitization Efforts

On March 6 2006, Mississippi enacted the Hurricane Katrina Electric Utility Customer Relief and Electric Utility System Restoration Act (Securitization Act). This act establishes:

> *[A] mechanism by which the MS PSC may authorize and certify an electric utility financing order and the State may issue system restoration bonds pursuant to that financing order, the proceeds from which shall be used to securitize the system restoration costs and storm damage reserve levels of those electric utilities affected by Hurricane Katrina, thereby providing electric utility customers relief from traditional methods of recovering system restoration costs.*[175]

It is important to note that the Securitization Act applies to Hurricane Katrina only, and IOUs were allowed 120 days from the effective date of the Act (March 6, 2006) to petition the Mississippi PSC for a financing order authorizing the State Bond Commission to issue "system restoration bonds".[176] As the bonds are issued by the State Bond Commission, the statute permits multiple financing orders to be incorporated into a single bond issue.[177] Within the 120-day window, the Mississippi PSC was required to either issue a financing order or reject the petition. Finally, upon issuance of the financing order, the IOU has 60 days to request that the State Bond Commission issue a financing bond.[178] The order may be appealed through a direct appeal to the Mississippi Supreme Court.[179] The legislation requires that the State

[175] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-903.
[176] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-907.
[177] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-907(3)(b).
[178] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-907.
[179] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-909

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create separate funds, the Hurricane Katrina Electric Utility Customer Relief and Electric Utility System Restoration Fund and System Restoration Bond Sinking Fund to manage the bond.[180]

Like Florida, specific storm recovery property, a rate-payer charge, is created through the financing order. However, in contrast to Florida, the State of Mississippi is the owner of the property interest,[181] and the full faith and credit of the State backs the bonds. [182] As a result, the State, and not an IOU or SPE, issues and administers the bonds. The Securitization Act requires the State to pledge not to "alter the provisions of this Act which make the system restoration charge imposed by a financing order irrevocable" or alter the payments that bondholders will receive until the bond is paid off fully.[183]

Mississippi Power

The 2005 hurricane season was the most expensive storm season experienced by both Mississippi Power (MPCO) and Entergy Mississippi, the two IOUs in the State. The response to cost recovery implemented by the State involved combination approach, employing both federal CDBG funds and securitization.

MPCO restored power to its customers within the two weeks following Hurricane Katrina's landfall.[184] On October 21, 2005, the Mississippi PSC issued an interim order allowing MPCO to create a regulatory asset to accrue storm recovery costs.[185] MPCO had initially sought to recover storm costs through securitization, and the Mississippi PSC addressed this request in an order issued on June 28, 2006. The MPUS and MPCO agreed to reduce the amount requested by approximately $7.7 million.[186] Without offsetting the costs by using funds from the property damage reserve, MPCO's recovery costs were slightly over $267.9 million.[187] The Mississippi PSC found that this amount was just, reasonable, and prudently incurred and thus certified the entire amount for recovery.[188] Further, the Mississippi PSC found that approximately $34.5 million in repair costs not completed at the time of the order could be included in the recovery, bringing the recoverable amount to over $302.4 million.[189] Of this amount, approximately $292.8 million was allocated to the retail jurisdiction and the remaining $9.6 million to the wholesale jurisdiction. The wholesale allocation included the

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[180] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-917.
[181] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-915.
[182] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-931.
[183] Mississippi, *Mississippi Code Annotated*, 1972: 77-5-955
[184] Mississippi, "Application of Mississippi Power Company for accounting order establishing regulatory asset for Hurricane Katrina electrical system restoration expenses," *Public Service Commission Orders*, 2005-UA-0555 (June 28, 2006), 6.
[185] Mississippi, 94-UN-228 (August 4, 1994), 4.
[186] Mississippi, 2005-UA-0555 (June 28, 2006), 6-7.
[187] Ibid., 7.
[188] Ibid.
[189] Ibid., 8.

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amount of recovery costs attributable to the Electric Power Associations (EPAs) as a part of the company's cost of providing service.[190]

The Mississippi PSC noted that MPCO's $3.3 million storm reserve was insufficient to fund the recovery activities associated with a severe storm. Therefore, the stipulation agreement between the Mississippi PSC and MPCO included a provision to fund the reserve through securitization.[191] According to the Mississippi PSC, "the funding of the reserve through Securitization Legislation will afford the Company and its customers a unique opportunity to better recover from future storm events with proportionately less impact to MPCO's customers."[192]

Ultimately, the Mississippi PSC authorized the entire prudently incurred amount for securitization, in addition to an amount necessary to adequately fund the storm reserve.[193] The Mississippi PSC ordered MPCO to file an application with the MDA to "obtain the Company's allocation of CDBG funds as soon as possible."[194] On July 3, 2006, MPCO filed for recovery of its system recovery costs and to fund the property damage reserve pursuant to the Hurricane Katrina Electric Utility Customer Relief and Electric Utility System Restoration Act.[195] In Docket 2006-UA-352, MPCO requested $423 million, plus issuance costs and also requested the Mississippi PSC to enable additional funding of MPCO's reserve fund by lifting the current $23 million cap.[196] The order is scheduled for completion on October 3, 2006.

Entergy Mississippi

Entergy Mississippi filed a request similar to MPCO's for recovery with the State's PSC to recover costs associated with the 2005 storms through securitization. Following agreement between Entergy Mississippi and the MPUS on June 6, 2006, the Commission adopted the joint stipulation and issued an order on June 28, 2006 certifying that approximately $89.1 million in recovery costs were prudently incurred and eligible for recovery either through securitization or through CDBG funds.[197] This amount was reduced by $6.8 million to account for insurance proceeds and preparation costs that were not eligible for recovery.[198] The order also directed Entergy Mississippi to apply to the MDA for CDBG funds before the Commission made a determination as to what funds may be securitized. The Commission has anticipated that Entergy

190 Ibid.
191 Ibid., 9.
192 Ibid.
193 Ibid., 11.
194 Ibid., 11.
195 Cruthirds, *The Cruthirds Report*.
196 Ibid.
197 Mississippi, "Application of Entergy Mississippi, Inc., for an accounting order for storm restoration costs as a result of Hurricanes Katrina and Rita Identified subsequent to November 30, 2005," *Mississippi Public Service Commission Orders*, 2006-UA-82 (June 28, 2006), 12-14.
198 Ibid., 12.

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Mississippi will apply for securitization to recover costs after the CDBG process is complete; the docket is on hold until that time. The Commission will also determine the appropriate funding level for the storm reserve at this future time.[199]

Community Development Block Grant Issues Result in Regulatory Delays

The potential availability of CDBG funds to mitigate investor-owned utilities' catastrophic storm recovery costs in the Gulf Coast states has delayed a final hearing and securitization financing orders from the Mississippi PSC with regard to dockets for Entergy Mississippi (EMSI) and Mississippi Power (MPCO). The two IOUs expected that these federal grant funds would be available when Hurricane Katrina cost recovery proceedings were initiated by the PSC. When the PSC made its determinations of allowable costs that could be recovered by the utilities, the Commission essentially directed the IOUs to work with the Mississippi Development Authority (MDA), the agency designated by the Governor to allocate the State's share of CDBGs appropriated by Congress and administered by HUD. The MDA and HUD reached general agreement that the State's IOUs would receive an allocation of $360 million when HUD approved the "Ratepayer and Wind Pool Mitigation Programs, Amendment 3" on July 27, 2006. However, sources at MPUS and MDA informed CIPP researchers that, as of the third week of September 2006, no money had been approved by HUD for actual release to the MDA and the utilities due to continued "word-smithing" of the required LMI waivers and notifications to the House and Senate Appropriations Committees.

Initially, it appeared that the PSC believed that the CDBG allocation, the exact amount of which was unknown at the time allowable costs were approved, would be divided between the two IOUs in sums proportional to the Commission's determinations. If this assumption had been correct and assuming $360 million would actually be allocated, MPCO would still have a shortfall of approximately $24 million and EMSI would have a shortfall of approximately $7 million [(total allowed storm costs) – (proportional allocation of $360 million)]. However, a senior official at the MDA informed CIPP researchers that the Authority has decided that the State's two natural gas investor-owned utilities are eligible for an allocation of the $360 million as well. The exact distributions to the four utilities have not been publicly released as of September 22, 2006.

The net effect of this situation means that the amounts the PSC will approve for securitization by the State Bond Commission (SBC) will be significantly greater than the aggregate shortfall of $31 million estimated three months earlier. The PSC had scheduled final hearings on the two electric IOU storm securitization dockets

[199] Ibid., 14.

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at its regular business meetings for the months of August and September 2006, but has postponed the hearings until the next business meeting on October 3, 2006. Uncertainty on when and how much CDBG funds will be released and allocated is delaying closure on these two dockets. Previously, MPUS had indicated that securitization amounts would be approved and sent to the SBC no later than October 27, 2006. That date, however, may now be too optimistic.

Refer to this report's section on "Federal Disaster Recovery Assistance: Community Development Block Grants" and appendices on MDA's Recovery Action Plan amendments for more information on the interplay between Mississippi's securitization process and HUD's CDBG program.

Mississippi Update

Mississippi's overall electric utility storm cost recovery experience can be described as heavily influenced by federal action. Mississippi utilities have initiated some relatively small-scale securitization projects, but the state received more federal monies than any of the other three included in this study. As a consequence, the cost recovery process proceeded somewhat differently. There was still some electric utility securitization which took place, but nothing on the scale of the other states studied here. The strong coordination between the state government and federal government through the CDBG program led to a much different outcome than that in Louisiana.

In mid-March 2007, the Mississippi PSC was still considering additional costs the utilities were seeking to recover; encompassing costs incurred after the last set of costs were approved. The Mississippi State Bond Commission was still reviewing the proposed bond issuance. The state's electric and gas utilities, as a whole, received over $361 million in CDBG funds to offset costs before the PSC issued a securitization order. This was out of a total of almost $400 million in costs which had been identified by the time the funds were disbursed. In short, federal grants mitigated all but approximately $140 million for energy utilities, a huge "savings" for all classes of Mississippi ratepayers.

By late June 2007, the PSC approved a stipulation agreement to implement a rider schedule for storm damage costs. EMI requested permission to change its rates pending the MS PSC's approval of its handling of its CDBG funds, including the creation of an escrow account with the funds. The order approved the creation of a $30 million escrow account restricted to use for recovering storm costs. In order to access the account, an officer for EMI must submitted a notarized certificate with documentation stating: the storm or weather-related disaster for which recovery will be sought, a business record showing that at least 5,000 EMI customers lost their power during a severe storm, and the officer's certification that they have reason to believe that the service restoration costs related to that storm exceed $15 million. Then, within ninety days, EMI must file with the PSC to determine if the expenditure was reasonable, prudent, and properly

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recoverable. The stipulation also approved EMI's use of over $81 million of CDBG funds paying most of the $89 million in Hurricane Katrina costs that the PSC had previously found to be properly accrued.

MPC filed a report showing its compliance with the financing order approved by the MS PSC, including rate schedules. The financing order approved over $121 million in Hurricane Katrina recovery costs, including the costs of a controversial new storm operations facility and a storm reserve. The State Bond Commission and the Mississippi Development Authority approved the bond issuance. The bonds were to be secured by, among other things, these Storm Recovery Charges, which will be assessed at the beginning of every month and will be remitted to the Bond Sinking Fund on the 20th of every month. The charges are designed to recover 110% of the annual debt service for the bonds and will be reviewed annually. The first year's worth of charges were approved by the PSC. They began to be charged to customers in June, at a rate of an additional $0.0437 per kilowatt hour for residential customers.

Texas

Cost Recovery Statutory Innovations

On May 12, 2006, the Texas legislature passed new legislation allowing the use of securitization for storm cost recovery modeled on the mechanisms used to recover stranded costs. To prevent any further negative impacts to ratepayers, the act froze all rate cases until June 30, 2007, with new rates becoming effective no earlier than June 30, 2008.[200] Rates cannot be modified in the State of Texas until next year – barring certain specific adjustments.[201] The rate freeze does not apply to utilities that have not implemented customer choice.[202]

Under the new law, the Texas PUC will determine what hurricane reconstruction costs are recoverable and will securitize such costs with the same procedures used to securitize stranded costs.[203] "Hurricane reconstruction costs" are defined as those costs which are "reasonable and necessary," including capitalized costs, carrying costs, costs incurred after the filing of the request but before the next rate proceeding, and costs charged to a storm reserve.[204] Cost recovery is limited to recovery associated with Hurricane Rita, and any costs must be

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200 Texas State Legislature, *Called Session 2006*, HB 163, 1.
201 Ibid.
202 Ibid., 2.
203 Ibid., 3.
204 Ibid., 3 & 7. [The term "reasonable and necessary" is not defined, nor is it distinguished from the term "reasonable and prudent" or "prudently incurred" which is used to limit recoverable utility expenditures in other states. Using the common meanings of the terms, some difference is apparent. "Reasonable" simply means being in accord with reason and not being excessive (Source: http://www.m-w.com/dictionary/reasonable). "Prudent" means showing the qualities of skill and good judgment in the management of resources, while "necessary" is less demanding and merely requires that something is absolutely needed (Source:

reduced by the amount of governmental grants, insurance proceeds, or any other source of funding which compensates the utility for hurricane recovery.[205] However, a formal rate proceeding is not required to determine the amount of recoverable hurricane-related costs.[206] If the timing of other funding prevents the Texas PUC from reducing the securitized amount, the difference will be taken out of the utility's base rates at the next rate proceeding.[207] It remains the Commission's responsibility to ensure that greater tangible benefits result from securitization than would have been achieved without the issuance of bonds.[208].

The Texas PUC has 150 days to certify the applying utility's costs as reasonable or unreasonable,[209] and a financing order must be issued within 90 days following certification detailing the costs to be recovered, the bonds to be issued, and the time period for bond recovery, which may not exceed 15 years.[210] The financing order is irrevocable once issued and, if the Texas PUC determines that it is in the public's best interest, a bond issuance can be refinanced later by a new securitization financing order.[211] Charges are reviewed at least once a year to ensure that the revenue stream backing the bonds is being neither under-collected nor over-collected.[212] One difference between stranded cost securitization and hurricane cost securitization is that that qualifying hurricane-related costs are allocated to customers in the same manner that the corresponding facilities are allocated in the utility's base rates.[213] To provide the state regulatory pledge required by law, the Texas PUC must declare the surcharge non-bypassable.[214]

If the Texas PUC determines that recovery of an electric utility's reconstruction costs using securitization is not beneficial to ratepayers and securitization proceedings have not begun, the Texas PUC is required to allow the utility to recover its costs through an appropriate customer surcharge mechanism.[215] The surcharge will automatically expire when new rates are implemented at the next rate base proceeding.[216] This is also a new option, as before this legislation a utility would need to go through a rate proceeding in order to attach a storm-related surcharge to customer bills.[217]

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http://www.m-w.com/dictionary/prudence). An expenditure can be required by the circumstances and yet not be the best possible alternative among all of the available options. While these are the same considerations usually made when determining prudence, the standard appears slightly lower. The term "reasonable and necessary" mirrors the language used in the stranded costs recovery statutes (Texas, *Vernon's Code of Texas Annotated*, Utilities: 39.409.), as do the procedures used for the issuance of hurricane cost financing orders (Texas, *Vernon's Code of Texas Annotated*, Utilities: 39.460.).]

205 Texas State Legislature, *Called Session 2006*, HB 163, 4.
206 Ibid., 8.
207 Ibid., 4.
208 Ibid., 3.
209 Ibid., 8.
210 Texas, *Vernon's Code of Texas Annotated*, Utilities: 39.303.
211 Ibid.
212 Texas, *Vernon's Code of Texas Annotated*, Utilities: 39.307.
213 Texas State Legislature, *Called Session 2006*, HB 163, 6.
214 Ibid., 7.
215 Ibid., 6-7.
216 Ibid., 7.
217 The legislation referenced is HB 163 (Texas State Legislature, *Called Session 2006*, HB 163).

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Entergy Gulf States

On January 17, 2006, Entergy Gulf States (EGSI) updated its responses to the Commission's initial questions.[218] First, EGSI raised its estimate of its Hurricane Rita costs to $369 million.[219] Second, EGSI included CDBG funds among its possible sources of external funding,[220] and stated its intention to pursue as much of the CDBG funds allocated to Texas by HUD as possible to finance its storm recovery costs.[221]

On March 15, 2006, EGSI again updated its responses to the Texas PUC's questions about Hurricane Rita.[222] EGSI's estimate of Hurricane Rita costs stayed level at $369 million, though it did state that it had lost an additional $1.9 million to customer write-offs.[223] EGSI stated that its expenses were eligible for the CDBG program, but also noted that only $74.5 million had been allocated to Texas.[224] EGSI's insurance coverage was now estimated to amount to $64 million.[225] EGSI also indicated that its credit rating outlook had been upgraded due to analysts' belief that regulators would allow for substantial storm recovery, and that it would be able to provide a final estimate of its costs during May 2006.[226]

EGSI filed a third set of supplementary responses to the Texas PUC on May 15, 2006.[227] EGSI offered a new estimate of $415 million for its Hurricane Rita recovery costs.[228] The utility indicated that it was actively seeking a portion of CDBG funds for Texas.[229] EGSI also indicated that it would try to take advantage of the new Texas securitization bill as soon as possible.[230]

On July 5, 2006, EGSI applied for certification of its Texas-jurisdictional Hurricane Rita costs.[231] The purpose of this determination was to decide which costs were eligible for recovery or securitization, to authorize carrying costs, and to approve the manner in which the costs were functionalized among the different customer classes.[232] EGSI applied to have over $393 million in Hurricane Rita costs certified.[233] EGSI explained that it had testimony to support both its estimate of its costs and how it derived that figure

218 Texas, 32003 (January 17, 2006), 1.
219 Ibid., 2.
220 Ibid., 3.
221 Ibid.
222 Texas, 32003 (March 15, 2006), 1.
223 Ibid., 2.
224 Ibid., 5.
225 Ibid.
226 Ibid., 6.
227 Texas, 32003 (May 15, 2006), 1.
228 Ibid., 2.
229 Ibid., 3.
230 Ibid., 4.
231 Texas, "Application of Entergy Gulf States Inc. for Determination of Hurricane Reconstruction Costs," *Public Utility Commission Dockets*, 32907 (July 5, 2006), 1.
232 Ibid.
233 Ibid.

out of the larger amount of total Hurricane Rita-related damages – $561 million – across its service territory.[234] EGSI also explained that it had testimony to demonstrate why Rita was so destructive and what actions and plans the utility implemented before the storm to reduce the damage.[235]

On August 28, 2006, EGSI notified the Texas PUC that HUD would be distributing $428 million in disaster funding to Texas for Hurricanes Katrina and Rita costs. A later determination will be made regarding what portion of the CDBG funds will be allocated to EGSI. The next hearing in this matter is scheduled for early November 2006.[236]

Texas Update

The take-home message from Texas is slightly different than the other three states covered in this study due to the lower damage from the 2005 hurricanes on Texas. Given the state's size and the hurricanes' trajectories, the cost of recovery was lower. Securitization has been pursued with vigor and success and the process has been used for transition-to-competition costs. Texas is the only retail choice state in this study and the securitization of storm costs proceeded more smoothly here because utilities and regulating officials already had experience with utility tariff bonds. Like Florida, Texas is using this disaster as an opportunity to consider new rules on infrastructure hardening and prevent as much damage next time. The biggest difference between the two states is the scope of the hardening initiative, since the entire electrical grid in Florida is regularly exposed to the possibility of storm damage. As of late June 2007, the Texas PUC had issued a financing order for EGSI's Hurricane Rita costs. Due to jurisdictional issues, EGSI had to split its costs between Louisiana and Texas and recover each separately. The order authorized Entergy Gulf States to issue over $352 million in bonds, as part of one issuance or several, including carrying costs. The PUC had also commenced preparation for a rulemaking on infrastructure hardening. FitchRatings gave the EGSI bond issuance a AAA rating, though the EGSI corporation itself is only rated at a BB+. That means that the there is a higher likelihood of default or other credit risk.

By February 2008, the PUC had released an infrastructure hardening study performed by Entergy. The study focused on upgrading existing infrastructure as it was replaced by hardier materials and materials with higher wind speed load ratings. The possibility of undergrounding certain portions of electric infrastructure was also discussed. To keep costs down, upgrades were recommended to be targeted on coastal regions and to be performed when existing infrastructure was already scheduled to be replaced, unless the area was determined to be "high-risk." The study noted that the purely economic benefits of hardening

[234] Ibid., 3.
[235] Ibid., 7.
[236] Cruthirds, *The Cruthirds Report.*,

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have been estimated to be anywhere from $30 billion to $150 billion and argued that a targeted approach would maximize benefits to ratepayers at a lower overall cost.

Summation

All of the states examined for this research project resorted to securitization, enabled by quite specific new state statutes, to provide Commissions with a new tool that could mitigate the monthly costs utility customers otherwise would bear under "traditional" methods. In three of the states – Florida, Louisiana, and Texas – a private sector entity that is at arm's length from the utility will issue the bonds. That Special Purpose Entity is "bankruptcy-remote", allowing the bonds to achieve an AAA rating that is more or less required by new laws and regulations. These three states provide a regulatory pledge that each state will undertake no action or activity which interferes with the bonds. Mississippi chose a different approach: the State will issue bonds that are authorized by its securitization statute and will provide a "full faith and credit" pledge. It is expected that these bonds will have the same rating as the State, currently Aa3, which may make the costs to customers higher in Mississippi than in the other states that chose a "private sector" approach. At least two states are aggressively pursuing the use of Community Development Block Grants, which could significantly mitigate costs to customers by shifting the burden to all federal taxpayers. Yet there is reluctance, even in Florida, for policymakers and ratepayers to deal with future disasters that they know will occur in a more forward-looking manner, an example of which can be found in the testimony regarding the size of storm reserves in the FPL securitization matter.

In the time since this report was written, all four states have pursued securitization of varying amounts. Some states, such as Mississippi, recovered large amounts of federal funding as well, reducing the amount needed to be securitized and greatly mitigating additional monthly charges to ratepayers of all classes. All of the states experienced substantial delays compared to their original expectations, with Louisiana leading the pack in this regard. There were also several interesting developments which were not expected when the process began. Several states, such as Louisiana, have passed new laws governing the securitization process which not only delayed the process but also changed its approach to be more like that used in Mississippi, albeit without any state "full faith and credit" pledge. Another new development is that some states pursued infrastructure hardening as a method for reducing the damage costs and restoration times from future storms. Experiences and lessons learned as a result of the 2005 megastorms with cost recovery and infrastructure hardening may mean different outcomes the next time severe storms strike.

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A New Approach to Cost Recovery: Securitization

State policymakers, commissions, and rate regulated electric utilities have turned to "securitization" – that is, the issuance of bonds with legal maturities generally within seven to 15 years – to hold down the rate of increase in customers' monthly bills. Instead of anticipating and paying for future costs through accrual-type "rainy-day funds" or paying for costs after they have been incurred through accounting techniques and/or "temporary" surcharges, securitization provides a utility with a more immediate influx of cash, the repayment of which is spread over a comparatively long period of time. Customers invariably pay the full, allowable costs of both predictable charges, such as stranded cost recovery in response to a regulatory change, and unforeseen costs such as hurricanes, other large natural disasters, and sabotage and terrorism. When such charges are sufficiently high, it is difficult both politically and practically to recover costs over a short period of time. For example, in the case of temporary storm recovery surcharges cash infusion to the utility trickles in over the life of the surcharge and often results in higher total transactional costs to the utility and, ultimately, its customers. Securitization may provide other benefits that reduce the total costs for customers and utilities, an example of which is more favorable tax treatment.

Starting in the mid-1990s, state officials and utilities turned to a relatively new financing mechanism generically called "Asset-Based Securities". The first securitization issues occurred in the State of Washington to pay for costs associated with demand-side management implementation in June 1995 and 1997. Beginning in late 1997, issuances occurred in California, Connecticut, Illinois, Massachusetts, Michigan, Montana, New Jersey, New Hampshire, Pennsylvania, and Texas for the purposes of rate reduction and stranded cost recoveries associated with "deregulation". Starting in 2004, securitization was used for new purposes, such as paying for deferred balances (Rockland Electric, New Jersey) and to refinance a regulatory asset [Pacific Gas and Electric (PG&E), California]. In 2006, securitization issues are pending to pay for environmental controls (Allegheny Power, West Virginia, and Wisconsin Electric Power, Wisconsin), stranded costs (American Electric Power, Texas), deferred balances (Jersey Central Power & Light, New Jersey), and storm recovery – the topic of this report (Florida, Mississippi, Louisiana, and Texas). From 1997 through 2005, state officials have authorized 36 securitization issues for electric utilities with the total value of all issues over $36.3 billion.[237] Even where the utility has gone bankrupt after bonds were issued, as was the case of PG&E, bonds continued to receive an AAA rating, and thus "least cost" financing, the non-bypassable requirement was achieved, and investors' expectations were fully protected. Still, ratings agencies caution that securitization is not a panacea for every major utility cost recovery issue and should not be overdone.[238]

[237] Joseph S. Fichera, *Utility Securitization: A Brief History with New Uses to Lower Ratepayer Costs* (Washington, DC: Saber Partners LLC, February 2006).
[238] Ellen Lapson, *Utility Tariff Bonds: Credit Perspectives*. (Washington, DC: Fitch Ratings, February 2006).

Technical literature on securitization often refers to a general class of securities for which storm recovery bonds is a subset of both Utility Tariff Bonds (UTBs) and, more broadly, Asset-Backed Securities (ABS).[239] According to direct testimony of Jay Kim, Managing Director in the Asset Securitization Group, Barclays Capital Inc., the investment banking division of Barclays Bank PLC, when appearing earlier this year before the Florida Public Service Commission on the Gulf Power securitization docket (#060154-E1), "ABS and corporate bonds differ substantially in their legal form, credit profile and other investment characteristics including secondary market liquidity and their respective new issue markets."[240] A close analogue to storm recovery bonds in the electric power sector are rate reduction bonds that have been used repeatedly over the past decade to finance stranded cost recovery. The most important distinction from other corporate bonds in the case of storm recovery bonds is that specific revenue streams from various customer classes that the Commission has authorized the utility to collect on a monthly basis are being securitized. As stipulated by most state laws, the utility is the original owner of these revenue streams and, as required by state law and the Commission's final financing order, the utility must sell the entire rights to these revenues to a bankruptcy-remote Special Purpose Entity (SPE). The SPE issues the AAA-quality bonds and uses the proceeds to pay principal, interest, and other closely-defined servicing fees and administrative expenses associated with the bonds.[241] The bonds are expected to achieve, and in reality do achieve, an AAA rating signifying the very low risk associated with the bonds because investors look solely at the assets of the SPE for the payment of principal and interest; the integrity of the assets is backed by a state regulatory pledge not to take any action which could interfere with the SPE's assets – *i.e.*, the storm recovery fees collected monthly by the utility from its customers and simultaneously transferred to the SPE.[242] The regulatory pledge assures uninterruptible revenue flows due to the non-bypassable nature of continued collection from ratepayers. In contrast, when typical corporate bonds are issued it is the tangible assets of the issuer, not a bankruptcy-remote, legally distinct special purpose entity, which are being securitized absent any state regulatory pledge.

Key Provisions: Federal Requirements

In general, to achieve "lowest cost" financing, storm cost securitization starts with a specific statutory grant from a state legislature. That statute almost always includes (1) a state pledge of non-impairment; (2)

[239] Some experts, such as Joseph S. Fichera, CEO of Saber Partners LLC, argue that the type of public utility securitization being discussed in this report is *not* within the conventional definition of ABS because public utility securitization has "no pool of receivables, financial assets or other complexities." This report will use the term ABS interchangeably with "Utility Tariff Bonds" (UTB) which appears to be emerging as a new term of art to describe the kind of bond transaction being discussed here.
[240] Florida, 06-0601 (February 22, 2006), 9.
[241] This generalization of state laws on storm recovery securitization bonds does not apply in the case of Mississippi, whose securitization processes will be discussed separately from the other three states.
[242] It is important to note that most state securitization laws provide a state regulatory pledge which is *not* the same as a full faith and credit guarantee. What differentiates Mississippi's securitization law from those of Florida, Louisiana and Texas (and most other states) is that the state of Mississippi does provide a full faith and credit pledge and an instrumentality of the state, not a private-sector SPE, issues the bonds.

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stipulates that any resulting Commission financing order must be final and irrevocable; (3) provides for automatic adjustments (formulary true up/down) on at least a semi-annual basis; and (4) requires certain actions from the Commission, including "least cost alternative" considerations and an unusual degree of involvement and oversight *after* the final order, up to and including actual storm bond offerings. Further, the statute (5) creates a new, intangible property right for the utility derived from charges on customers that is then (6) required to be sold or transferred to the SPE. That charge is (7) "non-bypassable", meaning that, irrespective of future changes in the regulatory environment or the business organization of the utility including but not limited to mergers, acquisitions, and bankruptcy reorganization, the charge must be continue to be collected from customers by the utility and/or its successor entity(-ies).

To obtain tax-free status and other benefits, securitization regimes must meet the new six-part test found in Federal Internal Revenue Service (IRS) Revenue Procedure 2005-62, 2005-37 IRB 507 – collectively, the "Revenue Procedure" – issued September 12, 2005. Prior to this Revenue Procedure, only securitization bonds limited solely to stranded cost recovery clearly were eligible for federal tax-free status.[243] IRS rulemaking has the effect of opening up securitization to storm cost recovery and a range of other rate-reduction purposes:

> *Under the Revenue Procedure, the public utility will not recognize gross income upon receipt of a financing order that creates the intangible property right, of upon the receipt of cash or other consideration for the transfer of that property right to the [SPE], or upon the receipt of cash or other consideration issued in exchange for the debt instruments issued by the [SPE].*
> *With the issuance of the Revenue Procedure, public utilities will not need to obtain private letter rulings [from the IRS] in advance of issuing their bonds secured by future tariffs but may proceed directly to the market if they have received the necessary financing order pursuant to the State legislation. However, care must be taken to assure that the State legislation meets all of the requirements of the Revenue Procedure . . . and that the intangible property rights created by State legislation are not subject to the lien in any of the utility's pre-existing secured debt instruments.*
> *The Revenue Procedure significantly expands the options available to utilities for financing current costs that are recoverable through rates. For example, public utility companies in the Gulf states area hit by Hurricanes Katrina and Rita would be able to take advantage of the Revenue Procedure to recover hurricane related costs if applicable State legislatures take appropriate action. In addition, other utility tariffs that could support a securitization could include fuel surcharges, construction of transmission facilities, generation facilities and/or pollution control facilities and any other separately identifiable recoverable costs.*[244]

As the June 2005 Florida storm securitization law and the September 2005 Revenue Procedure are congruent, this assures that any storm bonds that might be issued will receive tax-free treatment because the Florida statute has specific requirements mirroring each of the IRS' six-part test. However, prior to IRS

[243] Robert A. N. Cudd, "Expanded Scope for Securitization by Public Utilities," *LeBoeuf, Lamb, Green & MacRae LLP Client Alert* (October 5, 2005).
[244] Cudd, *Client Altert*, 2. [Emphasis added.]

rulemaking that had the effect of liberalizing the use of securitization, on December 22, 2004 the US Securities and Exchange Commission (SEC) issued final rules for "Regulation AB", which affects "all public asset-back issuances commencing after 31 December 2005."[245] At the time, major federal securities laws were written as part of President Franklin D. Roosevelt's New Deal; the ABS market did not exist. As the ABS market was created in the late 1980s and expanded significantly thereafter, Congress and the SEC revised the registration requirements piecemeal. Regulation AB was seen as a consolidation and an updating by the SEC to meet the reality of the modern ABS markets; it also may be viewed as a modest restraint against the expanding uses of ABS and ABS-derived instruments, such as UTBs which provide investors and markets with better information and greater transparency and require issuers to adhere to new accountability requirements.

Regulation AB imposes three key changes for issuers of regulatory jurisdictionable ABS: (1) changes were made to disclosure requirements and far greater disclosure now is required via new SEC Form S-3; (2) existing SEC 10-K reporting requirements were changed and a new monthly report, Form 10-D, was created that must be filed as early as January 2006; and (3) a new annual servicing assertion and a certified public accountant's attestation report were created. Implementation of Regulation AB may be of value to public service commissions and investors because it consolidated hitherto fragmentary ABS reporting and required monthly, rather than annual, filings. Regulation AB will also provide commissions and investors with a more neutral source of information and reduce their reliance on educational and marketing materials prepared for them by financial advisors and outside consultants.

Securitization Processes

The utility that is specifically authorized to collect identified sums of money from its customers is the original owner and initial servicer of the special property right and interest. It then sells or transfers that right to the SPE, which for technical reasons usually is organized as a Delaware Limited Liability Company (LLC) or Delaware statutory business trust. In the case of LLC organization, the utility company is the sole member of the SPE, but at least one manager of the SPE must be independent of the utility. The SPE is considered to be transactionally arm's length from the utility and is "bankruptcy-remote" from it. Nonetheless, typically it is the utility, using a separate set of books and records-keeping, that administers the continued collection of storm bond charges from customers after the property and interest is held by the SPE. The utility also provides other bond servicing functions for a fee determined by the Commission in its final order. In its role as issuer, the SPE finances the purchase of the utility's special property by selling storm recovery bonds in

[245] Mike Seelig, David Lukach, Thomas Know, *Understanding Regulation AB*, NY-PD-05-1070A (PriceWaterhouseCoopers, December 2005). [Most ABSs that were issued prior to the effective date are grandfathered into pre-AB regimes, and privately-issued securitizations are not subject to Regulation AB.]

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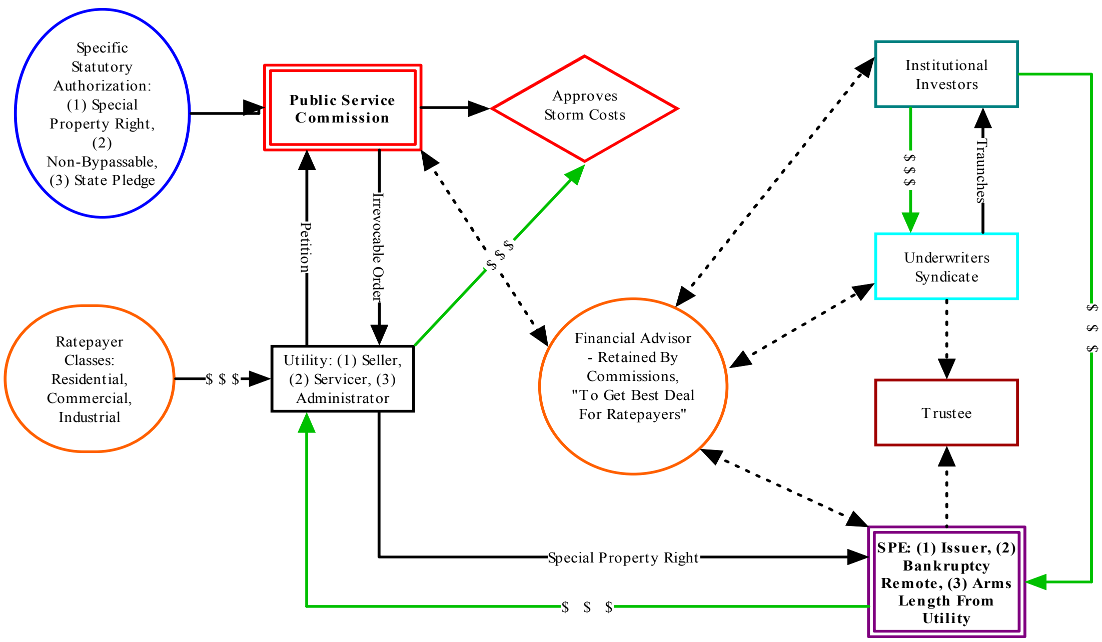
amounts and under terms approved by the Commission. Even the most expertly-staffed commissions often lack the experience and specialized skills to structure and execute a successful bond offering that meets both the letter and spirit of securitization statutes and a commission's order. Accordingly, a commission usually retains the services of at least one financial advisor. The financial advisor typically facilitates technical matters among a commission, SPE, and underwriters. The diagram below illustrates process stages and financial flows in a storm securitization bond issue. The solid lines reference process, property, or monetary flows whereas the segmented lines refer to flows communication, information, or data.



Typical Characteristics of Storm Recovery Bonds

Having already described the differences between ABS and other corporate bonds, storm recovery bonds also have other distinct characteristics. Typical bonds have a single payment of principal on the specified date of maturity. Storm bonds and other specialized UTBs usually are structured to make principal and interest payments on a monthly or quarterly basis. As such, these are amortizing securities in which principal is retired during the life of the transaction or "payment window". UTBs, generally, and storm recovery bonds, specifically, are almost always offered to and are purchased by institutional, not "retail", investors. Typical institutional investors for these bonds vary by the bonds' term of maturity or "tenor", which varies according to the technical structure of each "tranche", meaning related securities offered at the same time that typically have different reward, risk, and maturity characteristics.[246] CIPP researchers'

[246] Money Market funds and insurance companies are by far the largest purchasers of ABS bonds where tenor is between three and nine years.

conversations with Florida Commission staff indicate that this will be the case when FPL storm recovery bonds are issued in late October or November of 2006. FPL's storm bonds are expected to be issued in three or four tranches with expected maturities of two, five, seven, and 10 years – each well within the 12-year legal lifespan for all bonds.[247]

According to Joseph Fichera, CEO of Saber Partners, LCC, a New York City financial advisory firm which has been retained by the Florida and Texas Commissions:

> *A defining and common feature of these securitization transactions is that they all have been made possible by specific enabling state legislation that has established a legal framework for the creation of a new type of intangible property right under law. This new intangible property will, in general, initially be owned by the utility. Like any other property owned by the utility, this new property right can be pledged as collateral in a financing. In this case, the property right created is the right to bill, charge and collect a specific charge on some or all of its retail consumers in a given electricity transmission and distribution service territory. Securitization creates a separate and independent credit based on the risk associated with the cash flows from the pledged property that supports the payment of principal and interest to investors. As a result, securitized debt instruments do not burden the assets or revenues of the sponsoring utility and instead are payable solely from the pledged property* [that is transferred to the SPE]. *This means ratepayers are solely responsible for payment. Consequently, the financing is unlike any of the utility's other obligations. The economic burden of repaying these securitized bonds falls squarely on the ratepayers in the service territory; hence, they are aptly referred to as "ratepayer-backed" bonds. It is effectively off-balance-sheet and non-recourse to the utility. The utility is fully protected. This means that the utility can finance the asset or expense in question with nearly 100 percent debt rather than its normal capital mix of about 50 percent debt and 50 percent equity without any impairment of its credit structure. By separating the operating utility from the [SPE] and isolating the cash flow, the credit associated with ratepayer-backed bonds will be evaluated by investors as independent of the sponsoring utility and [its traditional debt]. Conventional utility debt has numerous risks associated with its repayment. Those risks will not be present in connection with ratepayer-backed bonds.*[248]

<u>Use of Utility Tariff Bonds to Finance Ratepayer Cost Reduction: Key Issues</u>

At the beginning of this section, several potential benefits of securitization using UTBs were described, including:

- Providing "immediate" cash as opposed to almost all other forms of cost recovery, with the exception of robustly-funded storm reserves that exceed *and can be expected to continue to exceed* all allowable costs.
- Providing "least cost" financing compared with other forms of utility borrowing. Markets, not regulators, determine the real price of money; private investors acting from market signals, not ratepayers initially, provide capital.

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[247] Source: CIPP researchers' conversation with senior Florida Public Service Commission staff (September 12, 2006).

[248] Direct testimony of Joseph S. Fichera, Appearing on Behalf of Staff, Before the Florida Public Service Commission. Docket No. 060038. (March 31, 2006), 9-11. [Saber Partners also has performed "engagements" for the states of New Jersey, Vermont, California, West Virginia, Wisconsin, the US Securities and Exchange Commission (SEC) and Exxon-Mobil Corporation. Further information about Saber can be obtained on its website, http://www.saberpartners.com/index.html.]

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- Specific statutory authority that removes uncertainty about an intangible asset and reduces regulatory uncertainty in PSC securitization processes.[249]
- Relatively lower cost to the utility's customers when compared to other forms of utility cost recovery measures; reduces the "rate shock" of temporary surcharges.
- True-Ups/True-Downs regulatory costs are reduced to simple mathematical calculations.
- If the utility would otherwise not earn a profit on the regulatory asset being securitized, the bonds eliminate a non-earning asset.[250]

Experts suggest that there also may be some downsides to securitization. For example, Ellen Lapson, Managing Director of Fitch Ratings, suggests that one of securitization's benefits is that it can be used to eliminate a non-earning asset. Conversely, Ms. Lapson cautions against using UTBs to finance an earning asset. She also cautions that if a large charge is being securitized, doing so may have the undesired consequence of "reduc[-ing] future pricing flexibility and subordinates unsecured bondholders, so don't overdo it."[251]

There is general consensus that properly structured UTBs are acceptable alternatives to "traditional" cost recovery approaches for such issues as stranded costs and environmental remediation. Moreover, independent bond rating firms have commented favorably on the use of securitization for storm cost recovery. Rating firms have commented with some skepticism, however, on the use of securitization to deal with fuel costs, or "deferred energy costs", and using UTBs to finance a "permanent layer of utility capital structure" – both of which are the kinds of potential uses advocated by Robert Cudd of LeBouef Lamb.[252] CIPP research suggests that the market for utility securitization offerings might be limited. For example, Florida commission staff seek to time the issuance of FPL bonds of $708 million *after* American Electric Power's pending $1.3 billion stranded cost offering, but hopefully *before* pending environmental control offerings from Wisconsin Electric Power totaling $450 million and Allegheny Power costs of at least $381 million, presently being revised upward. Florida Commission staff suggest that the market's pricing of FPL's bonds could be adversely affected if the bonds are issued after the pending environmental issues.

Ms. Lapson stated that Fitch cautions that care should be taken to "limit the size of the total special tariff component" – in other words, the aggregate amounts securitized as a portion of the customer's total bill:

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[249] Lapson, *Utility Tariff Bonds*, 6.
[250] Ibid.
[251] Ibid.
[252] Ibid., 7. [Emphasis added.]

> *In 58 percent of [all] "AAA" transactions, the total special tariff building component amounted to 8 percent or less of total customer cost. Fitch expects that the special tariffs in "AAA" transactions will aggregate well below 20 percent of the total customer utility cost.*[253]

However, securitization advocate Joseph Fichera of Saber Partners notes that the "Idaho legislature authorize[d] securitization for *any* utility purpose up to 40 percent of balance sheet."[254]

The anticipated next phase of CIPP research will examine actual market results for the novel uses of securitization for storm costs and environmental costs for which bond issues are pending at this time. Most utility securitization issues occurred the context of "one-time affairs", such as stranded cost recoveries in 1997 ($6.1 billion), 1998 ($4.3 billion), 1999 ($7.8 billion), and 2001 ($8.4 billion). As a direct result of the finalization of state "deregulation" activities, the dollar volume of utility securitizations fell off dramatically from peak activity years during 2002, 2003, and 2004 ($1.6 billion, $0.7 billion, and $0.8 billion respectively). Saber Partners' estimate for 2006 utility securitizations – which does not include possible issuances in Louisiana, Mississippi, and Texas for non-stranded cost purposes – is $3.6 billion, most of which is slated for storm and environmental cost recoveries. Unlike using securitization to pay for stranded costs or the costs of installing scrubbers, storms are not "one-time affairs" nor are other novel uses of securitization to pay for increases in the price of fuels. If, for example, securitization is used repeatedly to pay for storm costs that are recurring in nature, at what point does Fitch Ratings' *caveat* about limiting the size of the special tariff component to less than 20 percent come into play and how will bond markets respond? How, too, will customers respond if, as might be expected, multiple UTB charges begin to accumulate on their bills? Is there a point at which pushing recoveries for past and current costs 10 or more years into the future does not make for good economics and public policy?

Securitization in Mississippi

Unlike the other three states examined in this report, the legislature in Mississippi took a different approach to securitization in its authorizing statute. First and foremost, if storm recovery bonds are issued in Mississippi – and indications are that bonds will be issued in late 2006 or early 2007 – they will be offered for sale to investors by the State Bond Commission (SBC) and will be backed by a full faith and credit pledge of the State.

On July 31, 2006, Moody's Investors Service reaffirmed Mississippi's Aa3 General Obligation Bond Rating and stated that it expected the State's credit outlook to be stable.[255] This rating is two gradients below the AAA rating which

[253] Ibid., 5.
[254] Fichera, *Utility Securitization*, 23.

will be achieved by bonds issued pursuant to commission financing orders in the State of Florida. Unless the ratings agencies revise Mississippi's bond rating to AAA before the State issues storm recovery bonds, the storm recovery bonds issued by the State will cost Mississippi's ratepayers comparatively more, dollar-for-dollar, than storm bonds issued by a private-sector special purpose entity which achieve an AAA rating.[256]

Second, the Mississippi securitization law is sunsetted; it applies only to storm recovery costs that the PSC has found to be reasonably and prudently incurred as the result of Hurricane Katrina. The statute cannot be used for other 2005 storms or any future storms. This assures that Mississippi utilities will not be able to issue UTBs for other purposes unless specifically authorized by future legislation.

Third, based upon information provided to CIPP researchers by MPUS and other experts, the State Bond Commission will not have separate issuances for Mississippi Power and Entergy Mississippi, but rather will aggregate the Commission-approved recovery amounts for both utilities into one issue.

Reflections On Securitization

Two and one-half years after Katrina, Rita and Wilma ravaged the Gulf Coast states we chose to examine for this research project – and approximately one and one-half years after we delivered our initial report to DOE – storm cost recovery processes still have not been finalized, particularly in Louisiana. Since the annotated PowerPoint slide show accompanying this update goes into considerable detail on the status of electric utility storm cost recovery orders in the four states, for economy of text we will not replicate all the information presented there. In Mississippi, where the state was in control of virtually all aspects of storm bonds, from the utilities claimed storm costs to issuance of bonds by an agency of the state experienced in such matters, the process was smoother and more expedient. That Mississippi's PSC has used a "formulary approach" to utilities' cost issues on an annualized basis since the late 1980s also was a factor in efficiently moving 2005 storm dockets through the PSC. Texas, the only state of the four to previously had gone down the path of retail competition, also appears to have achieved good securitization outcomes probably at least in part with Utility Tariff Bond experience gained from stranded cost recovery proceedings. The Florida statute specifically authorizing securitization *as an option* for utility storm damages placed sole responsibility for the process in the hands of the PSC, which had no prior experience with this particular form of bond. As a result, the PSC retained the services of a financial advisor and other experts. For reasons not particularly clear to us,

[255] Moody's is one of the three large independent ratings agencies which engages in research and the provision of financial analysis and information on global capital markets. The other two ratings agencies are Fitch's and Standard & Poor's. While the ratings nomenclature varies slightly among the three firms, the actual ratings and outlooks are generally very consistent among the ratings agencies.

[256] While Mississippi's bond rating did not slip post-Katrina, Moody's did place the state on its negative watch list, which typically is a ratings firm's first step in degrading the State's bond rating. Had Mississippi not adjusted its fiscal policies after Katrina, the State likely would have had its rating diminished, which is what occurred in Louisiana and the City of New Orleans.

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the consultant and the utility could not reach agreement on a number of issues, and finalization of the process experienced unanticipated delays . . . and costs. The consultant also was planning to sell FPL's storm bonds through a negotiated approach, which typically requires more time than an auction. (But negotiated sales also may produce lower overall weighted interest rates, which represents a savings to ratepayers.) In the early months of 2007, the impasse apparently reached a point where the PSC chose not to continue its relationship with its consultant. PSC staff worked with another state agency which had experience with bond issues, and by May 2007, final approval was given to FPL's arms-length limited liability company to sell storm bonds using an auction approach. PSC staff stated that the auction, conducted via facsimile, attracted 15 or so bidders. Ratings organizations had pre-sale assessed the bonds as AAA or equivalent; all four tranches were sold to a single bidder. Staff admit that the process took at least six months longer than anyone had expected, but also stated that they would use securitization for future storm damages again when appropriate. Louisiana has had the least desirable results – or lack thereof – in using long-term bonds to recover storm costs. Much of this has been due to self-inflicted delays, such as the state legislature passing one flavor of securitization legislation in May 2006 and another quite different flavor in May 2007. Louisiana also suffered from bad timing, and finalization of storm bonds has been further delayed by severe turbulence in the financial markets, risk ratings and insurance. Finally, the LA PSC staff is smaller than those in other states; its PSC also has had to rely heavily on outside counsel and financial consultants, and the initial RFP for these services was withdrawn and reissued.

One issue not fully examined is the total costs of securitization. The services of outside experts, for example, can range into hundreds of thousands of dollars. Time is money possibly lost, and it is not clear that these costs are included in bond issues or are absorbed by the state's taxpayers in other ways. Where storm damages are very large and the economic impact of recovering energy utility restoration and rebuilding costs on remaining customers in a short period of time would be an unreasonable burden, securitizing storm costs over a long period of time (10+ years) probably is appropriate. But it should not be used excessively and for other purposes where short term repayment or pay-as-you-go rate adjustments are less burdensome.

Federal Disaster Recovery Assistance: Community Development Block Grants

The Community Development Block Grant (CDBG) program was created by an act of Congress and is authorized under Title I of the Housing and Community Development Act of 1973 (P.L. 93-383). CDBGs are administered by the US Department of Housing and Urban Development (HUD), and funded by annual appropriations to the program from Congress. In addition to CDBG Entitlement Community Grants that

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are focused on larger cities, other HUD programs include the State Administered CDBG, also known as the Small Cities CDBG, and CDBGs for the Insular Areas and the *Colonias*; these too are funded by annual appropriations.[257] The main components of CDBG deal with a wide range of development needs which are addressed in the form of annual formulary grants delivered to 1,180 units of local governments and the States and generally must meet Low- and Moderate-Income (LMI) means-testing.

This section of the report focuses on HUD's Disaster Recovery Assistance CDBG program, which "provides flexible grants to help cities, counties, and States recover from presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations."[258] Congress has chosen to use the CDBG vehicle to bridge the gap between emergency and temporary assistance provided by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, commonly referred to as the Stafford Act, and federal assistance that is intended to be used for longer term, post-emergency reconstruction and recovery. In at least two states examined in this report, state officials plan to use a portion of CDBG funds received from HUD to provide assistance to Investor-Owned Utilities (IOUs).

Past use of CDBGs to provide federal grant money to IOUs has been exceptionally limited. CIPP researchers have found only two past instances where Congress has made supplemental appropriations to the CDBG program in order to provide assistance to for-profit critical infrastructure. Both have been controversial, with expectations of Congressional sponsors, utilities, and ratepayers unmet. An appendix to this report, CDBG Utility Precedence, describes in detail these two instances. Issues of law, economics, and policy raised as a result of the two previous uses of these grants remain salient.

In two FY 2006 emergency supplemental appropriations acts, P.L. 109-148 (December 30, 2006) and P. L. 109-234 (June 15, 2006), Congress appropriated $11.5 billion and $5.2 billion respectively to the CDBG program for use on recovery projects in geographic areas corresponding to presidential emergency declarations for Hurricanes Katrina, Rita, and Wilma. The table below provides a state-by-state breakout of CDBG allocations made by HUD for both supplementals.

State	PL 109-148 (first emergency supplemental)	PL 109-234 (second emergency supplemental)	CDBG Total, PL 109-148 and PL 109-234	Action Plan Approved? (Y/N)	IOU Infrastructure Set-Aside? (Y/N)
Alabama*	$74,388,000	$21,225,574	$95,613,574	Y; 1 May 2006	N/A to this report

[257] Community Development Block Grant Program, *US Department of Housing and Urban Development*, Available at: http://www.hud.gov/offices/cpd/communitydevelopment/programs/index.cfm [Accessed September 27, 2006].
[258] Ibid.

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Florida	$82,904,000	$100,066,518	$184,970,518	Y; 26 July 2006	Uncertain
Louisiana	$6,210,000,000	$4,200,000,000	$10,410,000,000	Y; 18 Sept 2006	Y; ~ $200 million[259]
Mississippi	$5,058,185,000	$423,036,059	$5,481,221,059	Y; 27 July 2006	Y; $360 million[260]
Texas	$74,523,000	$428,671,849	$503,194,849	Y; 22 May 2006	Uncertain
TOTALS	$11,500,000	$5,173,000,000	$16,675,000,000	N/A	N/A

* Included for reference purposes only

According to Brian Sullivan, a senior HUD public affairs official who specializes in information requests for hurricane-related CDBGs, the overall focus of the first supplemental is on "concentrated areas of distress", whereas the focus of the second is "unmet housing needs". This suggests that critical infrastructure requests may receive a lower weighting in the second tranche of federal CDBG funds than the first. Whether a state "action plan" has been approved or not can be misleading; in reality, there likely will be more than one, *if not several*, state action plans submitted to HUD by each eligible state. In interpreting the data in the above table, Mr. Sullivan cautions that states are in fact submitting piecemeal plans, some of which are broad with regard to critical infrastructure while others are more specific. Gulf Coast states have not, as of late September 2006, submitted action plans and/or received HUD approval for such plans which, when summed, are equal to the amount the Congress appropriated. At this time, the only state with an action plan in which CDBG funds have been specifically approved for IOU infrastructure is Mississippi, for a total of $360 million in the context of its Ratepayer Mitigation Program. However, HUD has not yet disbursed CDBG funds associated with the Ratepayer Mitigation Plan due to sensitive matters regarding waivers.[261]

It is not just in Mississippi that CDBGs have been enthusiastically embraced as a means to pay for IOU infrastructure damaged by the 2005 hurricanes. For example, during its September 13, 2006 meeting, the Louisiana PSC adopted a motion urging Governor Blanco and the Louisiana Recovery Authority (LRA) to dedicate a portion of Louisiana's CDBG funds to electric and gas utilities:

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259 Mark Ballard, "Utilities to get some cash for recovery," *Capitol News Bureau* (September 19, 2006), Available at: http://www.2theadvocate.com/news/business/3957551.html. [State commission staff view this article as accurate with regard to a ballpark figure for IOU assistance.]

260 "Ratepayer & Wind Pool Mitigation Programs: Recovery Action Plan Amendment 3, *Mississippi Development Authority* (July 27, 2006) [Please refer to this report's section on "New Storm Cost Recovery Approaches" for a discussion of the interplay between PSC storm recovery activities and block grants.]

261 Sources: Conversations with attorneys and staff at the Mississippi Public Service Commission, the Mississippi Development Authority, and federal officials in the US Department of Housing and Urban Development's General Counsel and Public Affairs Offices (September 19-22, 2006).

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> *The Commission voted unanimously to adopt a resolution asking Governor Kathleen Blanco and the LRA to allocate CDBG funds to electric and natural gas utilities to compensate them for their extraordinary storm restoration costs and to mitigate the rate impact to consumers. Commissioner Sittig spoke forcefully in support of the motion, contending a significant allocation of CDBG funds to the utilities would benefit everyone in Louisiana. He said he couldn't "put it any stronger" and asked anyone who knows anyone to pick up the phone and lobby to explain the seriousness of the situation to the Governor and the LRA.*[262]

It is not possible to conclude at this time that HUD and governors in the other Gulf Coast states will not use some CDBG funds for IOU infrastructure storm cost recovery. During the extension of the grant which sponsored this research, CIPP intends to assess actual amounts and uses of CDBG funds that may be provided to IOUs and/or their retail or wholesale customers.

Community Development Block Grant Eligible Activities

In the past, controversies have arisen as to whether CDBG funds appropriated by Congress may lawfully be used by IOUs and other for-profit entities. Title 24 United States Code, Chapter V, Part 570, Subpart C "Eligible Activities" provides guidance on this question. Quoting directly from Title 24, Volume 3 (last revised April 1, 2004):

> *§ 570.201 Basic Eligible Activities, subparagraph (2). In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer [typically, the governor] of the recipient [typically, a State] determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for . . . (l) Privately owned utilities. – CDBG funds may be used to acquire, construct, reconstruct, rehabilitate or install the distribution lines and facilities of privately-owned utilities, including the placing underground of new or existing distribution facilities and lines.*[263]

Subparagraph (l) makes clear that the distribution infrastructure of IOUs is eligible for CDBG funds. However, problems and controversies arise from the politics of emergency supplemental appropriations and from attempting to conform fundamental CDBG requirements to the intended use. As the senior attorney at HUD's Office of General Counsel noted, "utilities do not need a waiver regarding eligibility but LMI [low-

262 David Cruthirds, *The Cruthirds Report* (September 15, 2006). [Used with permission.]

263 Available at: http://a.akamaitech.net/7/257/2422/12feb20041500/edocket.access.gpo.gov [Accessed September 21, 2006]. [CIPP researchers contacted HUD's Office of General Counsel seeking information on the regulatory development and history of subparagraph(l), specifically when this eligibility criteria was incorporated into basic eligible activities and if (3)(l) might be the result of statutory or report language from Congress. Mr. Bob Kenison of the GC's office stated that the generic term "utilities" was included in Section 105(a)(2) in the original 1974 Act. Specific regulatory focus occurred during the Carter Administration and regulations pertaining to utilities were "modified slightly." In 1983 reauthorization activities, the Congress dropped explicit mention of "utilities" from the statutory language but regulations authorizing utilities among Subpart C Eligible Activities continued even though the specific use of the word "utilities" was out of the statute.]

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moderate income] waivers are needed."[264] His recollection of the flawed implementation of CDBG funds to pay storm costs associated with the early 1998 ice storms was that the LMI test was impossible to meet; "[o]ne household might fit the requirement and the neighbor next door could be rich . . . we could not tell. Too tough."[265] Some officials believe that "word-smithing" is responsible for delaying the release of CDBG funds to Mississippi.

FY 2006 Supplemental Appropriations Acts: Waivers, Restrictions, and Other Requirements

The two FY 2006 emergency supplemental appropriations acts, which together provide $16.7 billion in CDBG funds to be allocated among the states of Alabama, Florida, Louisiana, Mississippi, and Texas, provide the Secretary of HUD with broad waiver authorities, including waiving the centerpiece LMI test. However, Congress did impose some terms and conditions on the waivers and the use of CDBG funds that apply to the Secretary and the states, including:

1. The Secretary may waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation of CDBG funds, including the LMI requirement, *if*
2. The Secretary publishes in the *Federal Register* such waiver of any provision or statute five days before the effective date of the waiver.
3. The Secretary must notify the Committees on Appropriations of any proposed allocation of any funds and related waivers made pursuant to the provisions of the emergency appropriations acts at least five days prior to making such determinations.[266]
4. Each state must report quarterly to the Committees on Appropriations on all awards and uses of CDBG funds made available under P.L. 109-148 and P.L. 109-234.
5. In making CDBG allocations pursuant to P.L. 109-148, the Secretary may not allocate more than 54 percent of the funds to any one state.
6. In making CDBG allocations pursuant to P.L. 109-234, the Secretary may not allocate more than $4.2 billion to any one state.

The following diagram (see next page) illustrates the processes involved in allocating CDBG funds to an eligible utility in Mississippi, starting with passage of the emergency supplementals by Congress. The diagram shows the interaction of CDBG funding processes with securitization processes in the Mississippi context, with federal agencies such as HUD, the governor, State agencies such as the Mississippi

[264] Source: CIPP researchers' conversation with U.S. Department of Housing and Urban Development Office of General Counsel staff (September 22, 2006).
[265] Ibid.
[266] No language exists in PL 109-148 or PL 109-234 which provides the Congress with any authority to block, modify, or delay the Secretary's determinations.

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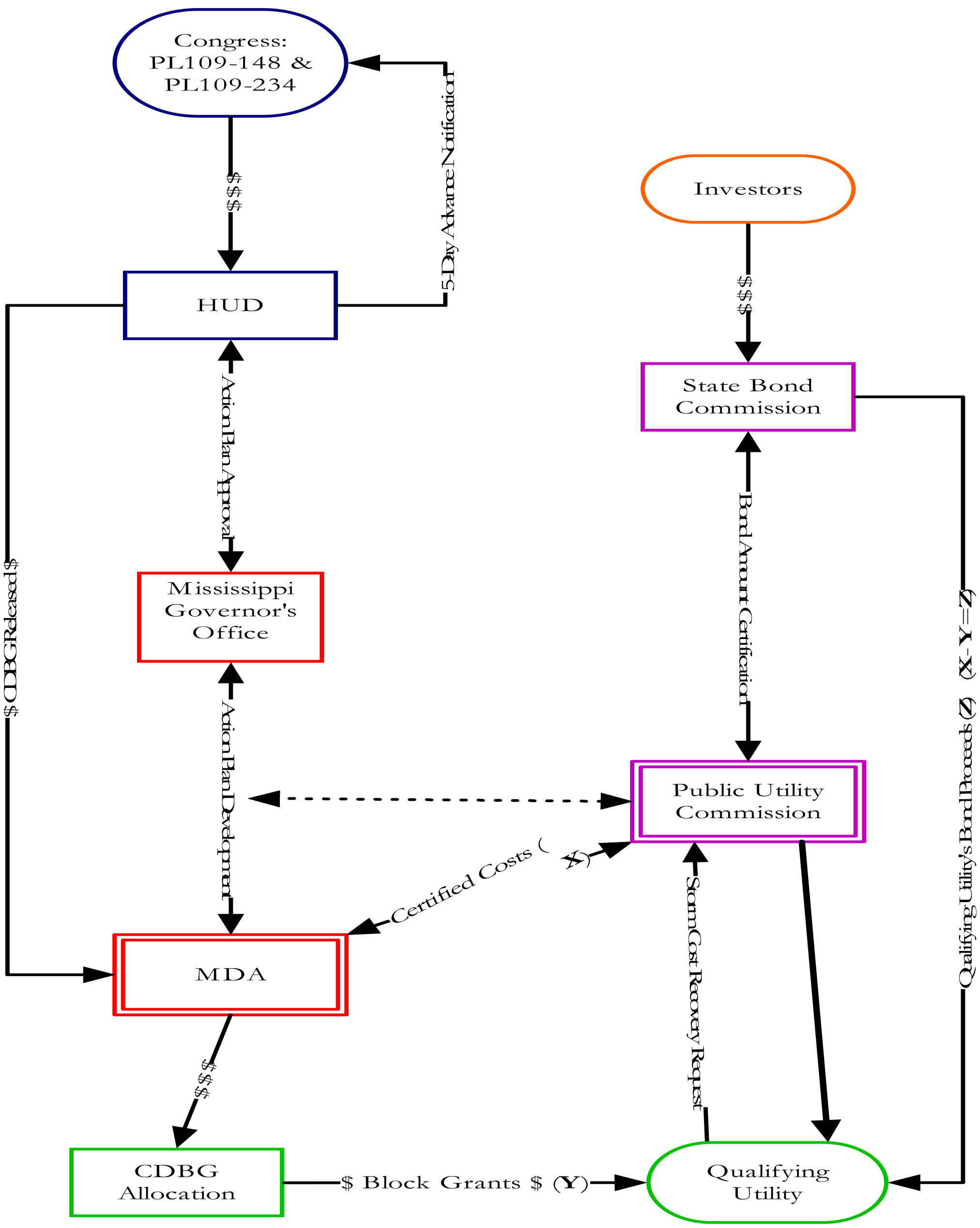
Development Commission (MDA), the Public Service Commission (PSC), and the State Bond Commission (SBC) each having a voice and role in determining exactly how the State's two IOUs will recover Hurricane Katrina costs.

Interplay of Securitization and CDBG in Mississippi



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Interplay of Securitization and CDBG in Mississippi: Nine Steps

1. Congress appropriates CDBG funds via supplementals, which are signed into law.
2. HUD allocates the funds among the States according to statutory limitations imposed by Congress in the supplementals, other statutes, and CDBG regulations.
3. The governor designates agencies which will develop and administer the State Action Plans. In the case of Mississippi, the governor designated the Mississippi Development Authority (MDA) to develop the State's plan. State Action Plans are negotiated with HUD, with the state PSC advising the MDA on matters specific to its jurisdictional entities that may be eligible for CDBG money.
4. HUD approves a state action plan, *e.g.*, Mississippi's Ratepayer Mitigation Plan (RMP).
5. HUD provides statutorily required notices to the Committees on Appropriation and in the *Federal Register* at least 5 days before funds can be released.
6. HUD releases CDBG funds to the MDA in accordance with the approved Action Plan.
7. The MDA releases CDBG funds to eligible entities and in accordance with state laws and regulatory activities.
8. The utility returns to the PSC after receiving CDBG money.
9. The PSC may (or *may not*) direct the State Bond Commission to issue bundled storm recovery bonds if there is a shortfall in the amount of CDBG money received and Commission approved storm cost recoveries. Alternatively, the PSC might adopt other solutions to remedy the expected shortfalls, such as non-securitized surcharges and/or accounting treatments.

According to sources at the MDA and the Commission staff, the CDBG process in Mississippi with regard to the Ratepayer Mitigation Plan (RMP) is presently between steps 4 and 5 of the steps listed in the "Interplay of Securitization and CDBG: Nine Steps". The PSC has scheduled a hearing for October 3, 2006 and on the agenda are the Mississippi Power and Entergy Mississippi securitization dockets. Both MDA and Commission staff consider the release of CDBG funds to be foregone conclusion, with only the date the funds are released unclear. However, CIPP researchers discovered that an unresolved controversy may exist on how the funds are allocated to utilities, especially whether Mississippi's two natural gas IOUs will receive allocations or whether the $360 million is to be used solely by the State's two electric IOUs.[267]

Other issues may arise when implementing the RMP as approved by HUD. To explain these, the following excerpt from Mississippi's HUD-approved RMP is provided:

[267] Source: CIPP researchers' conversation with staff of the Mississippi Development Authority (September 22, 2006).

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1). Ratepayer Mitigation

Hurricane Katrina inflicted widespread destruction upon the energy utility infrastructure, resulting in extensive disruptions in service to business and residential communities throughout Mississippi. The utility companies responded rapidly in the aftermath of the disaster to restore services to all impacted customers. The costs to deliver emergency and temporary services and to rebuild damaged infrastructure for permanent service delivery have been considerable. At present, these costs are being carried by the affected utility companies to the extent not covered by their insurance providers. Ultimately, as required by Mississippi law, the prudently incurred costs to deliver emergency and temporary services and to rebuild damaged infrastructure for permanent services, in excess of insurance proceeds, after being approved by the Mississippi Public Service Commission for jurisdictional utility companies, will be passed through to the jurisdictional ratepayers.

Mississippians throughout the State and particularly in the Gulf Coast Region have experienced significant losses as a result of the impact of Hurricane Katrina, including financial losses. To defray passing all the costs of preparing for and performing utility repairs and restoration related to Hurricane Katrina on to its citizens who have already suffered significant loss, the State seeks to mitigate those costs and the ultimate charge to the ratepayers.

The objective of the Ratepayer Mitigation Plan is to protect business and residential customers from bearing the entire cost of the utility infrastructure restoration and rebuilding. $360 million in funds will be allocated through this program and will offset emergency response, restoration and rebuilding costs incurred by the utility companies that would otherwise be passed through to the ratepayers. Such costs are those prudently incurred by the utility companies after they have diligently and aggressively pursued all insurance recoveries within the terms and conditions of the applicable insurance policies covering their losses and after these costs are certified as provided for herein. By State law, costs which are reimbursed under the Ratepayer Mitigation Plan, cannot also be included in a rate increase to consumers.

Program Eligibility

Eligible applicants for this program are limited to electric and gas utility companies certificated by the Mississippi Public Service Commission and with service territory in the affected area in the State that incurred costs resulting from Hurricane Katrina. Prudently incurred costs, as required by Mississippi law, and as approved by the Public Service Commission for jurisdictional utility companies, will be passed through to the jurisdictional ratepayers. Such costs include those charges allocated to wholesale customers (including Electric Power Associations ("EPA") of Mississippi Power Company ("MPC") as their share of the eligible costs of restoration. These wholesale customers are eligible for an allocation of funds to defray their share of these costs in an amount not to exceed $10 million in total. The allocation of the cost of restoration determined by MDA for this purpose will be included in the total allocation of CDBG funds to MPC for credit against charges allocated to the respective wholesale customers. The CDBG funds may only be used for restoration and recovery, not foregone revenues.

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Eligible Costs

Eligible utility companies may submit a request for reimbursement of eligible costs which include costs for: (1) preparing for and providing emergency and temporary service response and permanent restoration of utility service to Mississippi businesses and residents who experienced outages as a result of Hurricane Katrina and (2) service interference and the rebuilding and improvements of utility infrastructure in the wake of Hurricane Katrina. Lost revenues and business interruption losses are not eligible costs under this plan. Additionally, costs that would have been incurred as part of normal operations are not eligible.

With respect to claims for costs of damages sustained as a result of Hurricane Katrina, the reimbursement of costs covered under any applicable insurance policy shall be primary to any consideration for receipt of funding through this Partial Action Plan. As such, coverage under all applicable insurance policies shall pay first, or be subrogated back to the State, in the event that coverage was in place. Any un-reimbursed eligible costs that remain after receipt of all applicable insurance recoveries may be submitted for consideration under this Plan.

In the event that eligible costs exceed the allocated funds of $360 million, or additional amounts as may be allocated, there will be a proportional allocation to the applicants based upon their certified costs.

Review and Approval of Eligible Costs

The Mississippi Public Service Commission is the state agency that analyzes, certifies, and approves all jurisdictional utility company costs and rates. Under this program, costs for which a utility company is seeking ratepayer mitigation must be submitted to the Commission and the Mississippi Public Utilities Staff, who will follow their normal processes and methodologies for analyzing, auditing, validating, and certifying costs to determine eligibility under the Ratepayer Mitigation Plan. Utility companies are required under Mississippi statutory law to allow the Mississippi Public Utilities Staff access to the financial books and records of the company as needed, in order to ensure confirmation of expenditures claimed for ratepayer mitigation. Such access must also be extended to federal officials in accordance with administration of the federal funds for this program. Utility companies seeking reimbursement must disclose all related insurance coverage and the status of pending and settled claims. The Mississippi Public Utilities Staff, after analyzing and auditing the pertinent records, will submit a recommendation to the Mississippi Public Service Commission, which will then provide to MDA an Order determining and certifying the total un-reimbursed costs eligible for ratepayer mitigation. Based on this Order and information, MDA will determine the amount of ratepayer mitigation for each applicant as provided hereinabove.[268]

As noted previously, federal CDBG eligibility guidelines specifically refer to "privately owned utilities," but confined to "distribution lines and facilities". The PSC's order for MPCO and EMSI include items that arguably are outside distribution, and the RMP makes no distinction between distribution, generation, and transmission. Further, the RMP specifically states that utilities must provide the same level of

[268] "Ratepayer & Wind Pool Mitigation Programs: Recovery Action Plan Amendment 3. [Emphasis added.]

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access to its financial books and records "to federal officials in accordance with administration of the federal funds" for RMP.[269] Who will these federal officials be? Will they have experience and expertise in accounting, corporate finance, and the electric power industry? What happens in the event of a disagreement between state regulators and federal officials on cost recovery using CDBGs? Will federal officials be in the position of second-guessing commissions and other state officials? What issues arise with regard to data sharing and security protocols when federal officials have access to utilities' financial books and records? Will such information be protected against public disclosure? Will such data and information be available to federal officials outside HUD, including officials at agencies with regulatory authority over these utilities?

CIPP researchers have assessed Congressional Research Service (CRS), Government Accountability Office (GAO), and Office of Management and Budget (OMB) reports, testimony, and audits of HUD's CDBG program. Notwithstanding the quite different missions, staffing, and cultures at these three government entities, all three have similar criticisms of HUD's CDBG program. CIPP's July 2006 internal working paper, *Community Development Block Grants: Funding the Restoration and Reconstruction of Critical Infrastructure*, provides several references critical of past CDBG disaster-related infrastructure efforts, notably from the CRS, the Public Utility Law Project of New York, and research by an economics professor at California State University-Fullerton.[270] On OMB's ExpectMore.gov website, the agency's assessment of the CDBG program reports it is "not performing/ineffective".[271]

On August 28, 2006, the GAO publicly released *Community Development Block Grants: Program Offers Recipients Flexibility but Oversight Can Be Improved*.[272] CIPP researchers interviewed several members of the GAO team who conducted the investigation and authored the report, and confirmed that this GAO report is not an analysis of the hurricane emergency FY 2006 supplemental appropriations acts that provided an additional $16.7 billion in CDBG funds. Rather, the GAO report investigates and analyzes the "normal" annual CDBG process. The report is very useful to this research project, however, because it points to a number of issues that, under the processes of the supplementals, will provide even less transparency and accountability. Some key findings of this report, extracted almost verbatim, are:

- CDBG recipients spend the largest percentage of grants on public improvements such as municipal water lines and streets. However, GAO staff note, this does not necessarily provide HUD with critical energy infrastructure expertise or experience.

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269 "Ratepayer & Wind Pool Mitigation Programs: Recovery Action Plan Amendment 3.
270 See Appendix. [This document briefly explains issues regarding the appropriateness, accountability, overall coordination, and effectiveness of federal disaster and emergency assistance provided via Community Development Block Grants and the Stafford Act to state and local governments, the private sector, and other entities for the restoration and reconstruction of critical infrastructure. The early winter 1998 New England ice storms and 2001 terrorist attacks on the World Trade Center are referenced.]
271 Available at: http://www.whitehouse.gov/omb/expectmore/summary.10001161.2005.html [Accessed September 26, 2006].
272 *GAO-06-732*. [The report was issued in July 2006 to subcommittees of the House Financial Services Committee, the House Government Reform Committee, and the Senate Committee on Homeland Security and Governmental Affairs.]

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- HUD does not centrally maintain the data needed to determine CDBG program compliance. The data system HUD has, known as the Integrated Disbursement and Information System or IDIS, is neither integrated nor user-friendly; HUD workers in the Department's 42 field offices do not use the system or use it improperly. A contractor has been hired to re-vamp IDIS but completion dates are repeatedly extended and the project is HUD-Headquarters driven; those in the field offices are not being directly consulted on changes to the system.
- GAO staff believe that the emergency supplementals may not be tracked by IDIS. GAO staff have heard, mostly through "anecdotal reports in the trade press", that HUD may be trying to set up a system separate from IDIS.
- Of HUD's 42 field offices, 13 offices – nearly one out of every three field offices – do not have a financial specialist on staff to evaluate how CDBG funds are being used. Thirty-nine percent of CDBG monitoring staff will be eligible to retire over the next three years, but this graying workforce issue is not being addressed. (GAO staff declined to identify the 13 offices and would not comment on field offices in the Gulf Coast states.)
- Even in the normal CDBG appropriations and entitlement grant processes, HUD has not developed consistent policy and clear guidance. The result, GAO found, is very inconsistent accountability and imposition of sanctions.

CIPP researchers and GAO staff discussed other issues not specifically in the GAO's August 28, 2006 report, including the nexus of Stafford Act authorities and funding under CDBG authorities. A unit within GAO is involved in forensic investigations to uncover fraud, primarily from duplication of payments since current IDIS data is poor and there lacks a simple way to cross-tab disbursements and expenditures among Stafford Act (primarily US Department of Homeland Security/Federal Emergency Management Agency), HUD, and Small Business Administration sources.

Given past and current problems with the CDBG program with regard to IOU infrastructure reconstruction, it is reasonable to question whether community block grants administered by HUD are an appropriate and effective policy instrument in providing infrastructure assistance for purposes other than HUD's traditional housing and community development charter. The amount of CDBG funding is uneven among the states because of "supplemental politics", an issue that caused the 1998 ice storm funding to unravel, inconsistent state approaches to the use funds – with states such as Florida apparently foregoing any provision of block grants to IOUs, and the protracted matter of actual disbursement of money. The introduction of CDBGs has – in at least two states – delayed PSC closure on utility cost recovery dockets. There is very little federal-state coordination, and what does occur is on a state-by-state basis although infrastructure being recovered may span a multi-state region. In one case, the availability of CDBG funds has

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even become an issue in a utility filing a reorganization plan in federal bankruptcy court. This section concludes with a recitation of some of the questions raised during CIPP researcher discussions of CDBGs:

- Is the Community Development Block Grant program an appropriate and effective means of providing federal support for *long-term* disaster recovery and resilience? If it is, how should funding allocation decisions be made? If not, what other policy options to CDBGs exist?
- Who should make decisions regarding CDBGs in a major disaster spanning multiple jurisdictions: individual communities, states, or multi-state regional entities? Is a more involved federal coordinating role suggested?
- Who will make infrastructure decisions for the use of CDBG funds? Will they have sufficient knowledge of critical energy infrastructure? In particular, what are the possible ramifications of providing federal officials with full access to utilities' financial books and records as is required in Mississippi?
- How should the Stafford Act and block grant responses be integrated with the National Response Plan and, in particular, its Long-Term Community Recovery and Mitigation Annex? How should they be integrated with the Emergency Support Functions of various federal agencies?
- What additional accountability and compliance measures should Congress consider from those who administer and receive CDBG disaster and emergency funds?

Conclusions and Issues for Further Consideration

All four Gulf Coast states examined for this report have made securitization one of the options that can be used to pay for unprecedented infrastructure costs that have overwhelmed traditional mechanisms and reserve funds. At least two of these states also intend to use what appears to be a very small percentage of their overall allocations of CDBG funds to pay some of the IOUs' infrastructure recovery costs. Proponents of each of these policy instruments have made a number of arguments in their favor, several of which are summarized below. Less visible in the current environment are concerns about widespread use of securitization by state commissions and electric utilities, and precedents that may be established by a provision of CDBG funds to IOUs that may impose daunting demands on federal taxpayers in the aftermath of future catastrophes; several such concerns also are represented below.

The most frequently mentioned benefits of securitization are that utilities receive a more immediate infusion of cash to pay for storm restoration costs and that the "rate shock" to customers is minimized when compared to "traditional" methods. Securitization insulates the utility from the issuance of debt for which its customers

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are the debtors; this preserves the utility's credit position. AAA-rated bonds provide investors with security and ratepayers with "least cost" financing, thus lowering the amount each customer class will pay. Given the data and information currently available, these benefits seem to be true. On the other hand, independent ratings agencies and other experts caution that securitization can be overdone – it is not a panacea for each and every utility cost recovery docket. Ellen Lapson of Fitch Ratings, for example, suggests that any given securitized bond issue should be less than 20 percent of the total utility bill and preferably much less. She and other experts advise against using securitization to pay for fuel costs, retiring profit-earning assets, or to finance a "permanent layer of utility capital structure".[273]

Speaking at the National Association of Regulatory Utility Commissioners' (NARUC) 2006 Winter Committee Meetings, former Michigan Commissioner and NARUC President David Svanda offered an old story with a contemporary securitization analogy illustrating how the use of UTBs can be helpful or harmful depending on the circumstances. Mr. Svanda begins by recounting a young reporter's attempt during the days of Prohibition to pin down a sage politician by asking his views on consumption of alcohol, to which the voice of political experience, if not expedience, replied that he could be all for it or dead set against it; whether alcohol is the "spirit that liberates our souls" or "that vile substance" all depends on perception, implementation, and outcome. To paraphrase Mr. Svanda's analogy as to whether securitization can be seen as a "good" or "bad" policy tool – or somewhere in between, the three tests of perception, implementation, and outcome can be applied. Securitization probably will withstand the test of time when it reduces regulatory uncertainty, when it encourages badly-needed investments in electric power infrastructure to improve reliability or to harden systems, when it is used to pay for high-cost environmental remediation projects or reconstruction caused by catastrophic events, *and* when it provides market-based "least cost" debt financing that protects investors.

Over the longer term, securitization may fail if it is repeatedly used for the kinds of costs incurred today that reasonably could *and should* be paid for today, such as fuel costs, if it mortgages ratepayers for generations, is used to pay for profit-making assets, thus removing them from the earnings ledger, or if the cumulative total costs of securitizations exceed what independent ratings firms will tolerate to provide the AAA rating. CIPP researchers often posed hypothetical "*what ifs"* to commission staff, such as "the financing order pays for the costs of year 2005 hurricanes over 12 years. What if securitization continues to be used for the next year's storms, the next, and the next?" The likelihood that the Gulf Coast states will escape one *if not several* costly disasters over the proposed life of today's storm recovery bonds seems remote.

Use of CDBGs for IOUs' storm recovery costs raises the some of the same kind of paradoxes, for which there is no "right" answer at this time. For example, when a regional catastrophe overwhelms the

[273] Lapson, *Utility Tariff Bonds*, 7.

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abilities of state emergency officials and IOUs to quickly and comprehensibly restore electricity without further sending ratepayers into a tailspin and thus retarding economic recovery and growth, then a *limited* use of CDBG money may be a "good thing". If, however, commissions, utilities, *and* customers develop a dependency on federal grants to avoid making tough but necessary decisions about continued development in harm's way, and to avoid planning *and paying for* future needs of a hardened, more resilient electric power infrastructure, then the use of CDBG funds may come to be viewed as something "bad". The determination of "good" or "bad" all depends on how federal money actually is delivered, used, *and* is accounted for. Implementation, accountability, and outcomes do matter, and not just presently in the Gulf Coast states.

When, in FY 1998, Congress made the first emergency supplemental appropriation that permitted impacted states to tap CDBG funds for IOU recovery costs, a caution was raised by House and Senate managers that warrants repeating today:

> T*he Conferees have serious misgivings about providing CDBG funds for disaster mitigation [which differs from restoration], particularly given the waiver authority and the possibility that the majority of funds will be spent to cover the repair costs of investor-owned utility companies*.[274]

In 2002, Congress again appropriated CDBG funds to pay for Con Edison's recovery costs as the result of the 9/11 attacks. However, the Public Utility Law Project of New York recently stated that "[t]he question of who will pay for the utility recovery costs of the 2001 World Trade Center attack remains unresolved in 2006."[275] Robert J. Michaels, a professor of economics at California State University-Fullerton points to a knowledge void in which CIPP concurs: "[t]here is a near total lack of research on how regulators should monitor utilities' disaster recoveries and the proper scope of this [CDBG] activity."[276]

CIPP research to-date suggests that a legal twilight zone exists between Stafford Act emergency response authorities and long-term restoration after the lights are on again, which at this time seem to be addressed *ad hoc*. From the limited record, it is not clear that CDBGs, funded in the emotional and political contexts of national disasters and emergency supplementals, are the appropriate instrument to fill current statutory and administrative voids. This is an area that is ripe for future research and analysis.

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274 See *Congressional Record – House*, p. H2644 (April 30, 1998). The conferees appropriated $130 million for CDBG funding activities for *all* presidentially-declared natural disasters occurring during the entire fiscal year of 1998, which at the time the supplemental was enacted into law had not yet ended. Much of the debate over this 1998 precedent occurred in the Senate, where Senators Stevens (R-Alaska, then Chairman of the Appropriations Committee), Bond (R-Missouri, then Chairman of the subcommittee with jurisdiction over FEMA), Nickles (R-Oklahoma, considered by many to be a "fiscal hawk") and Mikulski (D-Maryland) engaged in a lively debate on March 25, 1998. See *Congressional Record – Senate*, pp. S2535 – S2541 (March 25, 1998).

275 Gerald A. Norlander, *Regulatory Treatment of Con Edison's World Trade Center Attack Related Restoration Costs.* (Baton Rouge, LA: Conference on Rebuilding Utility Infrastructure, LSU Center for Energy Studies, February 21, 2006), 1.

276 Robert J. Michaels, PhD, *Utilities and Disaster: the Regulatory Compact Meets the Social Contract.* (Baton Rouge, LA: Conference on Rebuilding Utility Infrastructure, LSU Center for Energy Studies, February 21, 2006).

The experiences of the four states studied in this report in the past fifteen months bear out the initial conclusions and speculations we offered in the original report (September 2006) and presentation to DOE (October 2006), although we too did not expect closure in the form of final orders and storm assessments to take so long. We are encouraged that two states – Florida and Texas – are taking concrete actions to design and build electric infrastructures to higher standards. This will make "the grid" more reliable under normal conditions and more resilient when under stress. Recovery and restoration times and costs should be less. The combination of securitization and "storm hardening" is certainly preferable to rebuilding to the *status quo ante* and pushing the costs of disaster recovery far into the future.

First, the problems and delays experience by the four Gulf Coast states show that while securitization can be a powerful policy tool, it has its downsides as well. Florida ended up with the most positive outcome, where PSC staff stated that they would likely use securitization again if they needed it. Yet Florida also experience six months of delays, determined opposition from certain quarters, and the PSC was lucky enough to time their bond issuance to miss the subsequent market instability. It is worthwhile to note that the other utility in the state eligible for securitization chose not to use it, but only after witnessing FPL's experience.

Nor is the use of CDBG funds without its drawbacks. The grant process is complicated and depends on equitable and fair judgments by Congress, the President, agencies with very little expertise in energy infrastructure – and the taxpayers. It is not clear that the general public will always support using taxes to subsidize particular high-risk regions. Moreover, the process is inherently political and therefore it is difficult to obtain outcomes proportionate to actual need. Time will tell how policy decisions made after the serial megastorms have, overall, been sound should there be another series of severe storms in the Gulf Coast region.

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TO: Alice Lippert, OE

Cc: Rob Gross, OE/NETL – Morgantown

From: Michael Ebert, Principal Research Associate, CIP Program, GMU School of Law
Joseph M. Maltby, Law School Intern (GMU Law Class of 2008)

Date: Friday, 23 March 2007

RE: Update on Catastrophic Storm Cost Recovery Activities for Energy Utilities in the Gulf Coast States of Florida, Louisiana, Mississippi and Texas.

Florida (updated 20 March 2007)[1]

The storm cost recovery bonds that the Florida Public Service Commission ("FL PSC") in May 2006 initially authorized Florida Power and Light ("FPL") to issue, subject to Commission oversight, still have not been brought to market. Staff state that the process has not been as expeditious as most parties expected when FPL sought and the Commission conditionally approved securitization as the storm cost recovery mechanism. At this time, the storm bond process is about five months behind expectations CIP Program researchers reported to DOE in their initial report (29 September 2006) and staff briefing at OE (31 October 2006). In addition to the "newness" of securitization in the context of storm cost recovery, staff report that the Bond Team established by the Commission to structure the Limited Liability Company ("LLC," which will issue the bonds), and terms and conditions associated with the marketing and sale of the bonds has been engaged in "lots of debate about wording." Other sources outside the Commission have indicated to CIP Program researchers that major disputes had arisen on the Bond Team, primarily between Saber Partners (a NYC-based firm which had been retained by the Commission to serve as its financial advisor) and FPL. Commission staff state that Saber Partners no longer is retained by or is advising the Bond Team or the Commission (at least on this FPL docket). The exit of Saber Partners seems to have moved the process forward: on 16 March 2007, the LLC filed a prospectus with the US Securities and Exchange Commission ("SEC") as is required by Regulation AB.[2] Regulation AB provides for a 30-day review period by the agency after a prospectus is submitted for review. If the SEC approves the prospectus within the normal regulatory timeframe, the prospectus would receive approval by mid-April. The Bond Team and the LLC then would implement the prospectus, as we noted in our previous reports, the Commission has may halt the securitization process at any time prior a public offering for the bonds.

At this time, other material changes have occurred since our initial report and briefing to OE:

- With the assistance of another state agency, the FL PSC's Bond Team has decided to use a competitive, Internet-based "market bid auction" when FPL's storm bonds finally are sold. This

[1] Sources of information for this update include a Florida commissioner; two senior staff members of the Florida PSC; the FL PSC's website; and conversations with other persons not now affiliated with the FL PSC who have expert knowledge of on-going efforts by FPL and the Commission to issue storm cost recovery bonds.

[2] We made reference to SEC Regulation AB in our report of 29 September 2006. See pp. 33 – 35.

decision may have diminished the need for outside utility bond marketing expertise that Saber Partners was to have provided.

- Interest rates for this kind of "triple A" rated securities have dropped slightly since October – November 2006 when the bonds were to have been issued. This may result in additional cost savings over the life of the bonds.

- The current expected value of the FPL storm bond issue, in four tranches, is $652 million. Last year, the Commission had approved $708 million for storm bonds. This is a reduction of $56 million in less than six months and primarily is due continued temporary monthly surcharge collections that the Commission has authorized FPL to make from its ratepayers during the additional time it has taken to bring the bonds to market.

- The current expectation is that FPL's storm bonds <u>for the 2005 and 2006 hurricanes and tropical storms</u> will be issued early in May 2007.

<u>Commentary</u>. – One of the major arguments made by proponents of using securitization – that is, this special kind of utility tariff bond – for storm cost recovery is that when compared to more traditional methods of cost recovery such as monthly surcharges this method provides the utility with a quicker influx of cash which it then uses to pay off more costly short term debt it incurred when rebuilding electric power infrastructure after large and costly catastrophes. However, there have been unanticipated delays in Florida that provide a real-world tempering of that claimed attribute. Another argument made by securitization advocates is that it provides not just "least cost" benefits to ratepayers but also mitigates "rate shock" to customers that may come with temporary surcharges typically spread out over 24 to 36 months. Yet, to the extent there has been a "rate shock" from surcharges associated with these 2005 – 2006 storms, customers have borne the rate increase since approximately February 2006.

If the storm bonds are issued early in May, FPL's customers will pay for the costs of electric power infrastructure rebuilding over the next ten years – that is, sometime in May 2017 the final FPL storm bonds for the 2005 – 2006 storms will have been retired. Looking another way at the $56 million reduction in total bonds to be issued that has occurred in approximately the last six months, monthly surcharges have accounted for about eight percent (8%) of the total amount of Commission-authorized recoverable costs. No other utility was authorized to use securitization for storm cost recovery by the FL PSC.

<u>"Infrastructure Hardening" in Florida</u>

This issue was initially not within the research statement of work but in consultation with the sponsor CIP Program researchers have monitored and reported on utility infrastructure hardening initiatives in Florida and the three other Gulf Coast states we are studying. We see infrastructure hardening as having the potential to reduce future costs to ratepayers for future storms, while at the same time providing greater electricity reliability and grid resiliency. Hardening also represents a change in thinking: instead of paying for past catastrophes after they have occurred and rebuilding to the status-quo, hardening represents making investments now to provide for a better and less costly future. But infrastructure hardening, even in storm-prone Florida, has not been an easy sell – and among the most contentious issues have been cost recovery for making the investments. As was the case with securitization, here again most experts did not foresee the amount of time it would take to move infrastructure hardening from concept to reality.

- In Florida, infrastructure hardening for electric power has three major components:

    - Building to higher engineering standards, such as poles and towers that are designed to survive windspeeds higher than used in the past.
    - Undergrounding of utility infrastructure where this is an appropriate solution.
    - More rigid maintenance standards, such as more vegetation management.

- The FL PSC and its staff had successfully achieved consensus on infrastructure hardening among munis, coops and IOUs during the final months of 2006.

- However, more process intervention occurred than had been anticipated. Particularly, third party attachers (such as cable television and telcos) engaged in "process intervention" without much prior telegraphing of intent and at a point which some would consider the "eleventh hour." This has delayed the process to the point where there is considerable skepticism Commission-approved infrastructure hardening can be in place before the start of the 2007 hurricane season.

- Utilities have made one filing on the hardening docket on 1 March 2007. Hardening plans are not due until 7 May 2007. Commissioners, staff and utilities still are trying to "sort through" some of the details on undergrounding (mostly cost-related).

- It is not clear what the reaction of third-party attachers will be to the plans that will be filed on 7 May. It is possible that infrastructure hardening again could be pushed back by process intervention the likes of which recently occurred. CIP Program researchers have scheduled interviews with FL PSC staff after the plans have been filed.

- Regulated utilities are being invited to discuss the state of their hurricane season readiness with the FL PSC.

Commentary. – In our initial paper and our presentation last Fall, CIP Program researchers expressed some philosophical reservations about excessive use of securitization for cost recovery associated with unpredictable events such as natural disasters. It is almost unfathomable, for example, that the four states we are studying will avoid major storms that will cause significant damage to energy infrastructure over the life of bonds that have been issued in Mississippi and which are slated to be issued in Florida, Louisiana and to a lesser extent Texas. Critical infrastructure hardening is a long-term process and will be costly. Unfortunately, the storm cost recovery securitization laws which were passed by the legislatures of Florida, Louisiana, Mississippi and Texas do not provide authorities to state commissions (or other state entities) to use utility tariff bonds to pay the costs of hardening. CIP Program researchers specifically asked if long-term bonds were being discussed as a means to finance infrastructure hardening and the answer at this time is "no." In all Gulf Coast states we are studying, new statutory authorities would be required to provide public service commissions with a securitization option.

Louisiana (updated 14 March 2007)[3]

The cost recovery process in Louisiana is proceeding approximately one to two months behind the schedule that was estimated. In the Cleco Power proceeding, the PSC staff has reached a partial settlement with on the revenue amount which may be collected. Cleco will be allowed to recover all direct storm damage costs except $155,000 in uncollectible damages. Cleco will also reduce its base rates by $2.2 million per year. The settlement directs the terms of the revenue requirement and some of the terms of the actual bond issuance to come. There have been no objections from any intervenors, so the process will proceed to the securitization phase. If the companies and the staff don't reach an agreement with Cleco on the securitization process, a hearing is scheduled in mid-July. Staff filings start in mid-April, so a settlement may be reached at about that time.

In the joint Entergy Proceedings – Entergy Gulf States and Entergy Louisiana -- the PSC staff has made a settlement offer, but the company is still reviewing it. Intervenors in that docket have not yet made their voices heard on the settlement offer, so the staff may be close to a settlement on the revenue requirement, but it is difficult to say at this point. The Louisiana PSC's policy is to decide the revenue requirement first and then hammer out the details of the bond issuance. Therefore, Entergy is approximately a month or so behind Cleco in the cost recovery process.

Other material changes at this time:

- Possible legislation to change the securitization process to include a tax-write off on the money the Entergy companies are schedule to receive from their customers in the surcharge which backs storm recovery bonds. Early estimates of the amount the companies would save all range above $100 million. The legislation will be sponsored by the chairman of the House Commerce Committee when the Legislature reconvenes in May. The legislation should not affect the PSC's jurisdiction, which still has to approve the change. The legislation is not expected to alter the Cleco proceeding, but delays in finalizing storm cost recovery dockets in Louisiana could run into the moving crosshairs of a proposed major change to Louisiana's current storm securitization statute. Based on industry trade press reports on the proposed legislation and telephone interviews with a staff attorneys, state Rep. Gil Pinac's (D-Crowley) draft appears to provide tax benefits not available in current law.

[3] Sources of information for this update include a senior staff member for the Louisiana PSC and an article by the New Orleans Advocate, and an article by the New Orleans Times-Picayune.

- In New Orleans, the New Orleans City Council approved all but $400,000 of Entergy New Orleans' storm recovery costs, bringing the recoverable amount to $209.9 million. This will allow the company to formally apply for the $200 million set aside in CDBG funds by the Louisiana Recovery Authority. The company has been operating in bankruptcy since September 2005 and hopes to be out of bankruptcy by June of this year.

Mississippi (updated 12 March 2007)[4]

Mississippi is also a month or two behind the schedule estimated last year for its securitization process. The Mississippi PSC is still considering additional costs the utilities are seeking to recover, encompassing costs incurred after the last set of costs were approved. This approval process should be completed by the end of May 2007.

The Mississippi State Bond Commission is still reviewing the proposed bond issuance. Their General Counsel is currently drafting an opinion. Without the certainty of an approved process, the current estimate of issuance ranges between $100 - $175 million.

Texas (updated 12 March 2007)[5]

There have been no major changes in the storm cost recovery process in Texas in the past three months.

Commentary. – In both Louisiana and Mississippi – particularly the former – the provision of CDBG funds and their availability to utilities continues to add time required to bring an average storm cost recovery regulatory process to a conclusion. As we stated in our October 2006 briefing at OE, one of the major reasons for delay in getting Congressionally-appropriated funds to eligible recipients declared disaster emergency areas is that CDBG authorities are not well-suited to the task of providing federal aid to utilities. A significant amount of time appears to be spent on terms, conditions and *language* that provides the Secretary of HUD with enough comfort to sign legal waivers – particularly the "low to moderate income" (LMI) test that must be waived. It also is worth noting that the CDBG money that has been or soon will be provided to certain Mississippi and Louisiana energy utilities is from the first of two emergency supplementals – the one which became law at the end of 2005. June 2006 emergency supplemental money still could be made available to utilities.

Getting CDBG money into the hands of those who are eligible for it and have a need has been difficult and protracted beyond the energy utility sector. This has prompted new legislation from the Congress. On 21 March 2007, the House passed HR 1227, the "Gulf Coast Hurricane Housing Recovery Act," on a 302

[4] Sources of information for this update include a senior staff member for the Mississippi Public Utility Staff, an entity separate from the PSC that provides economic, legal and technical support in addition to representing consumer interests.

[5] Sources of information for this update include a senior staff member for the Texas PUC.

– 125 vote. [A short summary of the legislation is available at http://www.house.gov/apps/list/press/financialsvcs_dem/press032107.shtml.] We examined the bill and the House Financial Services Committee report on it; the legislation in its current form does not make any changes to the LMI test. It is possible that such a change might be attempted in the Senate, since it is this house which, from the New England ice storms of 1998 through post-Katrina emergency supplementals has initiated CDBG funds which the legislative history shows were intended for utilities.

The next planned update will be provided around the end of May 2007.

CRITICAL INFRASTRUCTURE PROTECTION PROGRAM

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TO: Alice Lippert, Rob Gross & Brian Copeland, OE

FROM: Michael Ebert, Principal Research Associate
Joseph Maltby, Legal Research Assistant
Critical Infrastructure Protection Program,
GMU School of Law

DATE: Friday, 6 July 2007

RE: Gulf Coast Energy Utility Cost Recovery Study
Final Periodic Update

This memorandum represents the final periodic update for the above-referenced study. This research project began in the second quarter of 2006. The initial goals of the study were to perform an examination of how four US states in the Gulf Coast Region had used existing and new authorities to allow electric power utilities to recover restoration and reconstruction costs associated with the catastrophic hurricanes and tropical storms of August – September 2005. In consultation with OE, the states of Florida, Louisiana, Mississippi and Texas were selected, and in the case of Florida OE and CIP Program staff agreed that the study would examine year 2004 cost recovery issues *vis-à-vis* the state of Florida.

Initially, was anticipated the cost recovery processes in these four states would be completed in time for a "final" report to be issued at the end of calendar year 2006. As we discovered during the initial discovery phase of the research during the summer of 2006, however, all four states had enacted new statutes providing public service commissions and other state entities with non-traditional options to pursue cost recovery. We also discovered that the Congress had appropriated significant sums of money through the Community Development Block Grant (CDBG) program administered by the US Department of Housing & Urban Development (HUD), and that the Congress, the Bush Administration and governors of three of the four states intended to make a portion of the CBDG funds available to investor-owned or privately-owned energy utilities. The combination of novelty of new state authorities and the availability of federal grant money seems to have significantly increased the amount of time state commissions would expend to work cost recovery dockets through to completion. In fact, it has only been during the second quarter of calendar year 2007 that commissions in three of the four states have finalized cost recovery dockets that were initiated in the

Fall of 2005. In the fourth state, Louisiana, concluding Hurricane Katrina era dockets is not expected until September 2007 at the earliest.

A state-by-state summary of activities that have occurred since the most recent periodic update was provided to OE – *i.e.*, since mid-March 2007 – is provided below. However, we end the introduction of this final update with a few observations and comments which summarize what we discovered during the research:

- Most energy utilities in each of the states we studied experienced unprecedented levels of infrastructure destruction and damage in 2005. These utilities, of course, were not alone in suffering such devastation. Accordingly, state and federal lawmakers responded with new means to recover costs and mitigate utility bill increases that, traditionally, have been paid for by all customer classes served by a utility.

- A policy innovation pursued by each state we studied was "securitization" – the use of long term "storm recovery bonds" to spread out the costs associated with the 2005 storms over 10 – 12+ years. While storm recovery bonds are a flavor of utility tariff bonds (UTBs) that had been used since *ca*. 1997 to finance other large and unanticipated costs (typically associated with restructuring – stranded costs and environmental charges), only one of the four states studied (Texas) had any significant experience with UTBs. Accordingly, state commissions appear to have approached the securitization *option* gingerly and selectively, resulting in process delays. One state's legislature (Louisiana) amended its storm recovery securitization authorities before the first dockets could be processed by the PSC. In all jurisdictions studied, commissions retained and relied significantly on the expertise of outside consultants and financial advisors when securitization was the approved cost recovery method. This seems to have added appreciably to the time required to conclude dockets – and to the cost/complexity of prosecuting storm recovery dockets.

- It is unclear how securitization of storm recovery costs will fare long-term. In 2006, tropical storm/hurricane landfalls were well below averages or predictions in the Atlantic and Gulf of Mexico, and no new storm recovery dockets were initiated. It is likely, however, that over the life of the bonds recently issued or pending to be issued – at least out to 2017 – storms and/or other forms of natural or man-made disasters will occur. The cumulative impacts of serial disasters and serial issues of cost recovery bonds is unknown.

- While not completely without precedent, the amount of money provided to certain energy utilities in the states of Louisiana and Mississippi was extraordinary. Chief executives and/or lawmakers in both states have designated state entities *other than* public service commissions to be significantly involved in cost recovery decisions and money allocations. This seems to have bypassed the expertise and experience of utility commissions and associated staff.

- Most likely, it will take several years before any determinations grounded in hard numbers can be made on the efficacy of these new state authorities and the substantial availability of federal grant money to for-profit utilities.

Florida (updated 22 June 2007)

On May 7, 2007, Florida Power & Light (FPL) filed a petition for approval of its 2007 storm infrastructure hardening plan. The plan can be broken up into basic tasks. First, FPL will apply the NESC's extreme wind loading design criteria to electric facilities that serve critical infrastructure such as hospitals or water treatment plants.[1] The next step will be to bring certain main transmission lines – or "feeders" – up to a higher National Electrical Safety Code (NESC) standard, which may include extreme wind loading in some cases.[2] FPL will also be using line construction or major repair operations as an occasion to slowly replace its poles with a stronger design and shorter span length.[3] FPL has already commenced two previously approved hardening projects: replacing its wood single poles and its ceramic insulators on concrete poles, as these structures were identified with a high number of transmission line failures.[4]

FPL is planning to have hardened seventy-two circuits in 2007, though the wider pole and insulator replacement projects are expected to take ten to fifteen years.[5] The circuits to be hardened in 2007 include those that serve twenty-eight acute care facilities, forty-three highway crossings, and the three counties in Florida with the highest population density.[6] FPL is also attempting to initiate an inspection cycle of eight years for distribution and six years for transmission poles as well as implementing a six-year tree trimming cycle where circuits serving critical customers will be trimmed before every storm season.[7] FPL has not finalized plans to harden infrastructure in 2008 and 2009 as of yet.[8]

On May 15, 2007, FPL sold its first tranche of storm recovery bonds. Approximately $652 million in bonds were sold, with an "AAA" rating from Moody's, Standard & Poor's, and Fitch Ratings.[9] As a result of the successful sale, the FL Public Service Commission (PSC) ordered FPL to eliminate a temporary surcharge it had been charging while it waited for the bonds to be approved, reducing the monthly storm surcharge for customers from $1.10 to $1.02 per one thousand kilowatt hours.[10] Wachovia Capital Markets LLC turned out to be the final bidder, with an all-in cost of 5.23 percent.[11]

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1 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 4.
2 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 4.
3 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 4-5.
4 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 5.
5 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 5.
6 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 6.
7 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 11.
8 Florida, "Petition of Florida Power & Light Company for Approval of Storm Hardening Plan," (07 May 2007), 12.
9 Florida, "Florida Public Service Commission Announces Successful Sale of Storm Recovery Bonds & Directs Florida Power & Light to Reduce Storm Surcharge," (22 May 2007), available at http://www.psc.state.fl.us/home/news/index.aspx?id=270.
10 Florida, "Florida Public Service Commission Announces Successful Sale of Storm Recovery Bonds & Directs Florida Power & Light to Reduce Storm Surcharge," (22 May 2007), available at http://www.psc.state.fl.us/home/news/index.aspx?id=270.
11 Florida, "Florida Public Service Commission Announces Successful Sale of Storm Recovery Bonds & Directs Florida Power & Light to Reduce Storm Surcharge," (22 May 2007), available at http://www.psc.state.fl.us/home/news/index.aspx?id=270.

Louisiana (updated 21 June 2007)[12]

Louisiana has seen very little in the way of formal PSC action over the last three months. The LA PSC staff and Entergy Louisiana (ELI) agreed to stipulation regarding the rate requirement for a bond issuance, but the Commission has not yet voted on it. Proceedings have been delayed by an ongoing controversy over the allocation of the rate requirement among ELI's various customer classes. Representatives of ELI's industrial customers have argued that since they take power at the transmission level, it would be unfair of them to pay for repairs to the distribution infrastructure, which is where most of the storm damage occurred. This industrial group has offered to pay fifty percent of their normal contribution, if it was determined by every customer class's contribution to ELI's overall base rates. AARP, meanwhile, representing a sizeable interest group of residential customers, has argued that the rate recovery should be allocated among the customer classes by kilowatt hour, which would put the industrial class, which is few in number but consumes great quantities of power, at a disadvantage. Neither proposal has meet with agreement from the LA PSC staff, which has delayed the overall cost recovery process. Testimony from both sides was filed in mid-June. The Commission has hired outside bond counsel from the Louisiana firm of Crawford & Lewis. Given the likely schedule of the Commission, a vote on the entire ELI issuance or at least the rate requirement and cost allocation portions of it is not expected until September, which would be two full years after Hurricane Katrina.

LA PSC staff expect that all of Louisiana's $200 million in Community Development Block Grants (CDBG) funds will go to Entergy New Orleans (ENOI). Some additional federal funding may be available through the "Road Home" program, but it has become apparent that the program may have underestimated how much funding it would need to complete its mission. No hardening initiatives are currently being considered.

The governor of Louisiana signed a bill into law on June 18 concerning the securitization of storm recovery costs. The statute declares that restoring utility service with a minimum cost to ratepayers is a valid public purpose and allows the creation of the Louisiana Utilities Restoration Corporation (LURC) towards that end.[13] The LURC will authorize the issuance of storm recovery bonds if it determines that they would lower the overall cost of recovery to the ratepayers.[14] The issuance will include a commitment by the utility of a certain portion of its proceeds and will not constitute a guarantee by the state of Louisiana or any of its subdivisions.[15] The charges supporting the bonds will be from the corporation, not the utility, and creditors of the bonds will not have recourse to the state's assets.[16] The statute specifically states that it should not be read as limiting any of the powers of the PSC.[17]

The statute creates the LURC as a non-profit, governed by a board, which has the function of financing utility system restoration costs and is considered an instrumentality of the state.[18] However, the assets of the LURC are not to be considered part of the state's assets and the LURC will be self-funded through a portion of the system restoration costs it receives through the

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12 Sources include a staff member at the Louisiana Public Service Commission.
13 Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 2-3.
14 Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 3.
15 Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 3-4.
16 Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 4.
17 Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 4.
18 Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 8.

securitization process.[19] The LURC will also be exempt from Louisiana corporate taxes and will have all of the rights and privileges of a corporation.[20] The staff of the LA PSC may serve as staff to the LURC under the supervision of the Secretary of the LA PSC.[21] The governing board must be confirmed by the Louisiana Senate and serves at the pleasure of the Governor.[22] The LURC will be receive oversight from the LA PSC.[23] In all other respects, the proceeding to securitize storm recovery costs are the same as they were before.[24] Should the LA PSC issue a financing order, the LURC will carry it out.[25]

Mississippi (updated 23 June 2007)

On May 4, 2007, the MS PSC approved a stipulation agreement to implement a rider schedule for storm damage costs. Entergy Mississippi (EMI) had requested permission to change its rates pending the MS PSC's approval of its handling of its CDBG funds, including the creation of an escrow account with the funds.[26] The order approves the creation of a $30 million escrow account restricted to use for recovering storm costs.[27] In order to access the account, an officer for EMI must submitted a notarized certificate with documentation stating: the storm or weather-related disaster for which recovery will be sought, a business record showing that at least 5,000 EMI customers lost their power during this storm, and the officer's certification that they have reason to believe that the service restoration costs related to that storm exceed $15 million.[28] Within ninety days, EMI must file with the MS PSC to determine if the expenditure was reasonable, prudent, and properly recoverable.[29] The stipulation also stated that EMI had accounted for over $81 million of CDBG funds by disbursing them against the over $89 million in Hurricane Katrina costs the MS PSC had found to be properly accrued.[30]

On May 22, 2007, Mississippi Power Company (MPC) filed a report showing its compliance with the financing order approved by the MS PSC, including rate schedules.[31] The financing order had approved over $121 million in Hurricane Katrina recovery costs, including the costs of a storm operations facility and a new storm reserve.[32] The State Bond Commission and the Mississippi Development Bank have already approved the bond issuance.[33] The bonds will be secured by, among other things, these Storm Recovery Charges, which will be charged at the beginning of every

[19] Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 9.
[20] Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 10.
[21]Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 10.
[22] Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 11-12.
[23] Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 15.
[24] Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 17-23.
[25] Louisiana, "House Bill 577," *State Legislature*, (18 June 2007), 16.
[26] Mississippi, "Order Approving Joint Stipulation Between Mississippi Public Utilities Staff & Entergy Mississippi Inc.," *2005-UN-721*, (04 May 2007), 6.
[27] Mississippi, "Order Approving Joint Stipulation Between Mississippi Public Utilities Staff & Entergy Mississippi Inc.," *2005-UN-721*, (04 May 2007), 6.
[28] Mississippi, "Order Approving Joint Stipulation Between Mississippi Public Utilities Staff & Entergy Mississippi Inc.," *2005-UN-721*, (04 May 2007), 7.
[29] Mississippi, "Order Approving Joint Stipulation Between Mississippi Public Utilities Staff & Entergy Mississippi Inc.," *2005-UN-721*, (04 May 2007), 8.
[30] Mississippi, "Order Approving Joint Stipulation Between Mississippi Public Utilities Staff & Entergy Mississippi Inc.," *2005-UN-721*, (04 May 2007), 4 & 9.
[31] Mississippi, "System Restoration Charge Order," *2006-UA-352*, (22 May 2007), 1.
[32] Mississippi, "System Restoration Charge Order," *2006-UA-352*, (22 May 2007), 2.
[33] Mississippi, "System Restoration Charge Order," *2006-UA-352*, (22 May 2007), 2.

month and will be remitted to the Bond Sinking Fund on the 20th of every month.[34] The charges are designed to recover 110% of the annual debt service for the bonds and will be reviewed annually.[35] The first year worth of charges has been approved by the MS PSC.[36] They began to be charged to customers in June, at a rate of $0.0437 for residential customers per kilowatt hour.[37]

Texas (updated 29 June 2007)[38]

The TX Public Utilities Commission (PUC) issued a financing order for Entergy Gulf States' (EGSI) Hurricane Rita costs on April 4, 2007. The order authorized Entergy Gulf States to issue over $352 million in bonds, as part of one issuance or several, including carrying costs.[39] The TX PUC found that the structure of the bond issuance would result in EGSI collecting fewer revenues for cost recovery than with conventional methods, that this securitization would provide greater tangible benefits to ratepayers, and that the form of the bond issuance would not take in more revenues over the lifetime of the asset than the total cost of the allowed recovery.[40] The TX PUC calculated these benefits with a scenario where the bonds bear a five percent interest rate and in a scenario where the bonds earned an eight percent interest rate.[41] In the worst-case scenario, ratepayers still saved $32 million and in the best-case, they saved $111 million compared to traditional methods of cost recovery.[42]

The TX PUC has also commenced preparation for a rulemaking on infrastructure hardening, though the actual rule is far off at this point. Fitch Ratings gave the EGSI bond issuance a AAA rating, though the EGSI corporation itself is only rated at a BB+. According to the Fitch Ratings website, the difference between the two is that AA is listed as "investment grade" while BB+ is not an "investment grade" security. That means that the there is a higher likelihood of default or other credit risk.[43]

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34 Mississippi, "System Restoration Charge Order," *2006-UA-352*, (22 May 2007), 2-3.
35 Mississippi, "System Restoration Charge Order," *2006-UA-352*, (22 May 2007), 3.
36 Mississippi, "System Restoration Charge Order," *2006-UA-352*, (22 May 2007), 4.
37 Mississippi, "System Restoration Charge Order," *2006-UA-352*, (22 May 2007), 7, 179.
38 Sources for this section include a member of the Texas Public Utilities Commission staff.
39 Texas, "Application of Entergy Gulf States Inc. for a Financing Order," *33586*, (04 April 2007), 1-2, 5.
40 Texas, "Application of Entergy Gulf States Inc. for a Financing Order," *33586*, (04 April 2007), 3.
41 Texas, "Application of Entergy Gulf States Inc. for a Financing Order," *33586*, (04 April 2007), 3.
42 Texas, "Application of Entergy Gulf States Inc. for a Financing Order," *33586*, (04 April 2007), 4.
43 http://www.fitchratings.com/corporate/fitchResources.cfm?detail=1&rd_file=intro

U-29203 : Entergy Gulf States, Inc. and Entergy Louisiana, Inc., ex parte. In re: Joint Application of Entergy Gulf States, Inc. and Entergy Louisiana, Inc. for Interim and Permanent Recovery in Rates of Costs Related to Hurricanes Katrina and Rita.
8/3/2007: **Louisiana PSC approves Entergy's final storm damage costs and securitization orders** – The Louisiana PSC approved final storm damage restoration costs for Entergy Louisiana and Entergy Gulf States-LA at its August 1, 2007 B&E meeting. The final costs from Hurricanes Katrina and Rita are:

- Entergy Louisiana – final storm costs of $545 million
- Entergy Louisiana – storm reserve of $152 million
- Entergy Gulf States-LA – final storm costs of $187 million
- Entergy Gulf States-LA – storm reserve of $152 million

The vote was 4-1, with Commissioner Foster Campbell casting the lone "no" vote. Commissioner Campbell participated in the discussion but did not say why he voted against the compromise motion. He previously stated that Entergy's shareholders should be responsible for a larger share of the costs.

The Commission also approved final securitization orders for both companies. The approvals pave the way for Entergy to issue the bonds and receive the proceeds.

The total costs to be recovered had been stipulated but parties had been unable to agree on a rate design and allocation methodology. After discussion and oral argument, the Commission adopted a compromise motion made by Commissioner Jimmy Field that reduced the storm cost responsibility for industrial customers taking service at transmission-level voltages by 50% but required those industrials to pay their full share of the storm reserve costs.

The Gory Details – Special Counsel Paul Zimmering appeared on behalf of Staff but said others with Stone Pigman, Pathfinder and Commission Staff also worked on the case and are available to answer the Commission's questions. Commissioner Field quickly began to offer a motion, but Commissioner Foster Campbell interrupted noting there are differences of opinion among the people - especially on rate design. After a brief discussion, Chairman Blossman said he would like to hear Zimmering provide an overview of the case and the parties' positions.

Brief overview - Zimmering began by noting the Commission granted interim rate relief for Entergy Louisiana and Entergy Gulf States-LA and collected the money on a per kW hour basis through the fuel clause. Zimmering explained that both companies' fuel costs were declining so the Commission kept the fuel recovery charge the same but applied the over-collection toward the interim storm costs. That process collected about $20 million in only 2-3 months. After the first $20 million was recovered, the interim recovery continued but was done through base rates instead of through the fuel clause.

The Parties - Zimmering said the Louisiana Energy Users Group (LEUG), Valero, Occidental Chemical, AARP and Marathon Oil were active participants. He said everyone but LEUG, AARP and Oxy Chem executed the stipulation.

Disallowances – Zimmering said Staff identified about $50 million in disallowances and about $23 million in credits related to tax benefits for a total of $73.5 million in combined savings and credits. He said Entergy agreed to most of that but they litigated on the remaining issues. He said the ALJ found in favor of Staff on the disputed issues. Zimmering said there may be additional future savings from loss carry forward and they should see benefits from securitization due to getting lower interest rates. He said the securitization process should save "hundreds of basis points" over traditional regulatory collection methodologies, estimating the savings could be in the range of $200-300 million.

Strom reserve – Zimmering said the stipulations would also establish reserves for future storms for both companies. He noted Entergy Louisiana's storm reserve already had a deficit balance before Hurricane Katrina hit and Hurricane Rita quickly wiped out Entergy Gulf States' storm reserve.

Zimmering said a decision today would enable Entergy to go to the capital markets and sell the bonds in September or possibly October. He said everyone agrees that issuing the bonds ASAP would benefit all stakeholders because of tightening credit markets and interest rate volatility.

Zimmering noted LEUG, Oxy Chem and Valero did not agree to the amount of the storm costs but did not object to the stipulation. Commissioner Field said allocating and recovering $700 million is never easy, but said ratepayers have an obligation to reimburse utilities for the cost of restoring service. Commissioner Field said granting full cost recovery to Entergy effectively removes much of Entergy's risk which is something the Commission should review when setting Entergy's future ROE, but said that issue won't be addressed today.

Commissioner Field again tried to make his motion but Commissioner Campbell asked Zimmering to outline the positions of the various parties. Chairman Blossman said that was reasonable and allowed Zimmering to continue.

The Positions - Zimmering said there were three basic proposals, with Staff wanting to allocate storm costs to all customer classes and loads based on their base revenue contributions. Zimmering said that has been the Commission's preferred methodology for the past 20-25 years, whether for revenue increases or decreases. Zimmering said some loads aren't paying for storm costs, citing industrials with interruptible and site specific contracts but Staff thinks all loads should pay. He said AARP wants to allocate the costs across the board on a straight kilowatt basis similar to the way the initial interim collections were handled.

He said LEUG and Valero support the base revenue allocation methodology for all customers, but contend that industrials taking service at transmission levels should not pay for the cost of restoring Entergy's distribution system.

He said Marathon's initial recommendation was identical to Staff's except that a material expansion of an existing plant should be exempt from paying for the storm costs. He said Marathon contends expansion loads didn't exist when the storms hit and shouldn't be required to pay those costs.   Marathon said that exempting expansion loads from cost responsibility would help stimulate economic development.

Chairman Blossman noted all of the parties asked for oral argument and asked his fellow commissioners if they had any motions. Commissioner Field said he had a motion he hoped would resolve the rate design and allocation issues. He began by contending the hurricanes were the country's greatest natural disaster that affected everyone and caused enormous damage to the utilities' infrastructure. He said service was disrupted to more than one million customers after Rita hit. He said the utilities did a remarkable job of restoring service. He noted the original request was for $800 million for storm costs and $230 million for storm reserves.

He said 80% of the restoration costs for Entergy Louisiana and 75% for EGSI-LA were for the distribution system. He noted collecting the interim costs through the fuel clause hit the large industrials hard but that some industrials didn't paying anything for the interim recovery. He said all customers should pay some portion of the costs.

The Motion – Commissioner Field read a lengthy motion into the record. (Note – I captured the motion as best I could but interested parties should review the motion and the Commission's final order for specific details.)

1. Affirm the ALJ's final recommendation, except for the following changes.

2. Allocate storm costs based on customers' contributions to base rate revenues. All loads should pay, including interruptible, curtailable and special contracts.
3. Transmission voltage-level customers should pay 50% of the distribution system restoration costs they would have paid under the base revenue method.
4. Transmission voltage-level customers shall bear their full share of establishing storm damage reserves;
5. Large industrial customers can't bypass the assessments by migrating to cogeneration and self-generation. The Motion included a detailed description of this provision that requires industrials to have made "a clear, substantial and irrevocable financial commitment prior to August 1, 2007 to proceed with installing self-generation" in order to avoid the cost recovery assessment.
6. The interim costs shall be removed from rates upon the sale of bonds and securitization.
7. The tax carry forward and related credits shall be credited to customer loads in the same manner as costs.
8. Remove the current storm reserve assessments from existing rates.
9. Conduct a full rate case with a new cost of service study (including industrial customers under special contracts to make sure they are paying their fair share of capacity costs) "in the first year following the last year" of each company's Formula Rate Plan. Review the proper level of each company's ROEs in light of the reduced risk due to the recovery of storm costs and securitization. The proper level for ROEs would be reviewed in each company's FRP case if the FRPs are continued.
10. Credit customers with any future CDBG or insurance proceeds that might be paid to the companies. CDBG funds should be refunded to customers with no company sharing through the FRP;
11. If Entergy seeks an alternative form of securitization they shall file their proposal with the Commission in this case.

Commissioner Field said this is the first time the LPSC has authorized securitization. He stressed his proposal provides for contributions from all customers, noting that transmission-level industrial customers in Texas, Alabama and Florida did not make any contribution to distribution system restoration costs in those states. He said Louisiana can't just rely on the Mississippi River for economic development – saying that was demonstrated when ThyssenKrupp chose to locate its new steel mill in Alabama. He said he knows industrials in Louisiana will pay more than in Texas and Alabama, but asserted it is fair to ask them to do so. (Note - Commissioner Field's motion was seconded at some point but it was not clear who did so.)

Chairman Blossman said he had a question about the timing of the cost of service study being done "in the first year following the last year" of each company's FRP, saying he doesn't want to be hemmed in on when to conduct those reviews. Zimmering noted EGSI-LA made its last FRP filing this year and Entergy Louisiana has one more FRP filing in 2008. Blossman said he wants the Commission to be able to conduct the cost of service studies during the last year of the FRPs.

Zimmering agreed and suggested adding a statement that the Commission retains discretion to order cost of service studies at any time. Blossman said the Commission might want to start reviewing EGSI in November 2007 and doesn't want to be held back. Zimmering said that is a good idea because cost of service studies take a long time. Commissioner Field said he had no problem with Blossman's suggestion.

Oral argument by AARP - AARP was allowed to discuss its concerns first and the "older and grayer Mike Twomey from Florida" (his words) appeared on behalf of AARP. (**Note** – <u>Entergy's lead LPSC regulatory counsel is also named "Mike Twomey." Entergy's Mike Twomey did not speak during the oral argument so all references below are to the "older and grayer Mike Twomey from Florida.")</u>

Twomey began by commending Staff for the $73.5 million in disallowances and credits, but noted consumers must still pay $971 million over 10 years. Twomey said AARP supports securitization but disagrees with Staff and the ALJ on the rate allocation issue. Twomey said this case is unique because it exceeds the damage and collections from any other set of hurricanes. He said AARP supports the base revenue allocation methodology in rate cases and FRPs – saying it is a very good approach and is better than what they do in Florida. He contended, however, that this is an extraordinary situation.

Twomey conceded transmission-level customers don't use the distribution system but contended the industrial customers needed residential customers' contributions to the storm recovery effort. He asserted the industrials couldn't have been served without fixing the distribution system. Twomey acknowledged that some parties are arguing that AARP members just want to pay less other customers. Twomey said that isn't the case – he just wants AARP members to pay the same as the industrials. Twomey then went through some numbers to demonstrate the financial impact of AARP's proposal versus Staff's.

Twomey acknowledged he is trying to get a better deal for AARP customers, especially low and fixed-income members. He said the LPSC is a constitutional body that doesn't have to follow precedent or use previously established methodologies.

Interest rate environment - Chairman Blossman said he had a question for Pathfinder. Terry Friddle with Pathfinder approached. Blossman asked Friddle about the current outlook for interest rates for the securitization bonds. Friddle said the bonds would attract interest rates in the range of 5.6-5.9% if they were issued now. Friddle added that interest rates aren't locked in until the bonds are actually sold and issued. Chairman Blossman expressed concern about the financial impact of delay if anyone appeals the Commission's decision. He said it could cost consumers if the case drags out and bonds aren't issued soon.

Friddle discussed credit spreads and their impact on bonds, saying some money in credit and capital markets is drying up. He said financial markets face an uncertain rate environment with the potential for interest rate increases. Chairman Blossman observed that someone who might appeal the order could end up hurting themselves even if they "win" the appeal if interest rates go up, saying an appeal would be "risky business."

Zimmering pointed out an appeal would result in the interim rates continuing to be collected using Entergy's approved ROE which would also increase the cost of delaying. Zimmering explained that interest on the interim collections is accruing at Entergy's approved ROE rather than at the lower securitization interest rate. Chairman Blossman said the complexity shows there is more to this case than just pushing for your issues. Chairman Blossman encouraged the parties to concentrate on the ramifications of the case, asserting a delay could cost everyone a lot of money.

Commissioner Boissiere also expressed concern about the cost of delay, acknowledging there are many competing interests – but saying he wants to finish the case today and avoid appeals. Commissioner Boissiere asked whether the AAA rating might be jeopardized by an appeal. Friddle said the whole point of the securitization process is to get the lowest rate possible. Friddle said the process won't go forward until a final order is issued and rating agencies won't even rate the bonds until the case is final. Friddle expressed concerns about the current rate environment today, saying credit spreads have widened over the past three weeks. He stopped short of saying a delay would increase the interest rate for the bonds – but did say a delay would add an element of the unknown.

Commissioner Sittig asked Twomey whether residential customers in Louisiana would be better off than residential customers in Florida. Twomey said Louisiana's residentials would be better off because Florida functionalized all of the costs while Commissioner Fields' motion would have industrials pay a portion of the distribution system costs. Commissioner Field noted Louisiana customers would also be better off than in Texas because industrials didn't pay any distribution costs in Texas.

The Vote – Chairman Blossman called the vote. Voting "yes" were Commissioners Sittig, Boissiere, Field and Blossman. Chairman Foster Campbell voted "no" and the motion passed by 4-1 vote.

Financing Orders - Zimmering said the Commission's vote established the storm costs, the allocations, and the storm reserve levels - but said the Commission needs to adopt a financing order for each company. Commissioner Field said he had a motion for Entergy Louisiana's securitization order, saying it was a long motion so he asked LPSC General Counsel Eve Gonzalez to read it.

Zimmering agreed to read the motion - acknowledging the lawyers are responsible for its length. (Note – The motion was indeed long and should be referred to by those who are interested in the details.) The motion moved to adopt a securitization/financing order for Entergy Louisiana based on the draft order submitted by one of Entergy's witnesses. The securitized amount for ELL is $545 million for storm costs and $152 million for storm reserves.

Commissioner Sittig seconded. No opposition was voiced and the motion carried by a 4-0 vote. Commissioner Campbell had stepped out of the room before the vote.

Zimmering presented the motion for EGSI-LA. Zimmering was able to short-cut the reading by incorporating the terms of the ELL motion. The costs to be securitized for EGSI-LA are $187 million for storm costs and $87 million for storm reserves. Commissioner Sittig took the initiative by adopting the motion as his own. Commissioner Field seconded. There was no opposition and the motion carried by a 4-0 vote. The vote was taken before Commissioner Campbell returned.

ENROLLED

Regular Session, 2006

ACT No. 64

HOUSE BILL NO. 887

BY REPRESENTATIVES PINAC, BRUCE, BURRELL, CROWE, DOERGE, RITCHIE, GARY SMITH, STRAIN, THOMPSON, TRAHAN, WHITE, AND WINSTON AND SENATOR NEVERS

AN ACT

To enact R.S. 10:9-109(c)(6) and Part V-B of Chapter 9 of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 45:1230 through 1240, relative to electric utilities; to provide for legislative intent and definitions; to provide with respect to issuance of financing orders; to provide for appeals of financing orders; to provide relative to a utility's interest in a financing order; to provide with respect to storm recovery property; to provide for the sale of storm recovery property; to provide for the perfection and true sale status of a sale of storm recovery property; to provide with respect to subsidiaries of electric utilities; to provide for conflicts of laws; to provide for the creation, perfection, and priority of security interests in storm recovery property; to provide a state pledge of non-impairment of storm recovery bonds; to provide that storm recovery bonds are not public debt; to provide an exclusion from secured transactions provisions of the uniform commercial laws; to provide that the jurisdiction of the commission is not impaired; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 10:9-109(c)(6) is hereby enacted to read as follows:

§9-109. Scope

* * *

(c) Extent to which Chapter does not apply. This Chapter does not apply to the extent that:

* * *

<u>(6) R.S. 45:1230 through 1240, the Louisiana Electric Utility Storm Recovery Securitization Act, expressly governs the creation, perfection, priority, or</u>

CODING: Words in ~~struck through~~ type are deletions from existing law; words <u>underscored</u> are additions.

enforcement of a security interest in storm recovery property as defined therein or any interest or right in any storm recovery property, but except to the extent contrary to express provisions in said Act.

(A) Part 5 of this Chapter applies with respect to financing statements pertaining to storm recovery property.

(B) This Chapter applies to perfection, the effect of perfection or nonperfection, and the priority of a security interest held by a secured party having control of a deposit account or securities account as original collateral.

(C) This Chapter applies to the enforcement of security interests in storm recovery property.

Section 2. Part V-B of Chapter 9 of Title 45 of the Louisiana Revised Statutes of 1950, comprised of R.S. 45:1230 through 1240, is hereby enacted to read as follows:

PART V-B. LOUISIANA ELECTRIC UTILITY STORM RECOVERY SECURITIZATION ACT

§1230. Short title; purpose

A. This Part shall be known and may be cited as the "Louisiana Electric Utility Storm Recovery Securitization Act".

B. The purpose of this Part is to enable Louisiana electric utilities, if authorized by a financing order issued by the commission, to use securitization financing for storm recovery costs, because this type of debt may lower the financing costs or mitigate the impact on rates in comparison with conventional utility financing methods or alternative methods of recovery, thereby benefitting rate payers. The storm recovery bonds will not be public debt. The proceeds of the storm recovery bonds shall be used for the purposes of recovering storm recovery costs, solely as determined by the commission, to encourage and facilitate the rebuilding of utility infrastructure damaged by storms. Securitization financings for storm recovery costs are hereby recognized to be a valid public purpose. Federal tax laws and revenue procedures expressly require that special state legislation be enacted in order for such transactions to receive certain tax benefits. The legislature finds a need to promote such securitization financings, if authorized by the commission, by providing clear and exclusive methods to create, transfer, and encumber interests in storm recovery property as defined in this Part. This need can be met by providing in this Part for such methods and by establishing that any conflict between the rules governing sales, assignments, or transfers of, or security interests, privileges, or other encumbrances of any nature upon, incorporeal movable property under other Louisiana laws and the methods provided in this Part, including without limitation with regard to creation, perfection, priority, or enforcement, shall be resolved in favor of the rules and methods established in this Part with regard to storm recovery property.

C. The intent of this Part is to provide benefits to Louisiana rate payers by allowing a Louisiana electric utility, if authorized by a financing order, to achieve certain tax and credit benefits of financing storm recovery costs, on a similar basis with utilities in other states. This Part does not in any way limit, impair, or impact the commission's plenary jurisdiction over the rates charged and services rendered by the public utilities in this state. Instead, this Part addresses certain property, security interests, and other matters to ensure that the financial and federal income tax benefits of financing storm recovery costs through securitization are available in Louisiana. The beneficial income tax and credit characteristics that may be achieved include the following:

(1) Treating the storm recovery bonds as debt of the electric utility for income tax purposes.

(2) Treating the storm recovery charges as gross income to the electric utility recognized under the utility's usual method of accounting for federal and state income taxes, rather than recognizing gross income upon the receipt of the financing order or of cash in exchange for the sale of the storm recovery property or the issuance of the storm recovery bonds.

(3) Avoiding the recognition of debt on the electric utility's balance sheet for certain credit and regulatory purposes by reason of the storm recovery bonds.

(4) Treating the sale, assignment, or transfer of the storm recovery property by the electric utility as a true sale for state law and bankruptcy purposes.

(5) Avoiding any adverse impact of the financing on the electric utility's credit rating.

§1231. Definitions

As used in this Part:

(1) "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with the issuance of storm recovery bonds.

(2) "Assignee" means any legal or commercial entity, including but not limited to a corporation, limited liability company, partnership, limited partnership, or other legally recognized entity to which an electric utility sells, assigns, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property. The term also includes any legal or commercial entity to which an assignee sells, assigns, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property.

(3) "Commission" means the Public Service Commission or, solely with respect to an electric utility furnishing electric service within the city of New Orleans, the council of the city of New Orleans. Each such commission will issue orders under this Part pertaining to those electric utilities subject to that commission's powers of regulation and supervision.

(4) "Electric utility" or "utility" has the same meaning as that provided in R.S. 45:121 and in addition includes any person furnishing electric service within the city of New Orleans.

(5) "Financing costs" means:

(a) Interest and acquisition, defeasance, or redemption premiums that are payable on storm recovery bonds;

(b) Any payment required under an ancillary agreement and any amount required to fund or replenish reserve or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to storm recovery bonds;

(c) Any other cost related to issuing, supporting, repaying, and servicing storm recovery bonds, including but not limited to servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, and filing fees, including costs related to obtaining the financing order;

(d) Any income taxes and license fees imposed on the revenues generated from the collection of storm recovery charges or otherwise resulting from the collection of storm recovery charges, in any such case whether paid, payable, or accrued; or

(e) Any state and local taxes, franchise, gross receipts, and other taxes or similar charges including but not limited to regulatory assessment fees, in any such case whether paid, payable, or accrued.

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

(a) The issuance of storm recovery bonds.

(b) The imposition, collection, and periodic adjustments of storm recovery charges.

(c) The creation of storm recovery property.

(d) The sale, assignment, or transfer of storm recovery property to an assignee.

(7) "Financing party" means any holder of storm recovery bonds and any trustee, collateral agent, or other person acting for the benefit of holders of storm recovery bonds.

(8) "Financing statement" has the same meaning as that provided in the Uniform Commercial Code—Secured Transactions (Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950). All financing statements referenced in this Part shall be filed in accordance with Part 5 of Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950 and shall be filed in this state.

(9) "Lien creditor" has the same meaning as that provided in the Uniform Commercial Code—Secured Transactions (Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950).

(10) "Secured party" means a financing party in favor of which an electric utility or its successors or assignees creates a security interest in all or any portion of its interest in or right to storm recovery property. A secured party may be granted a security interest in storm recovery property under this Part and a security interest in other collateral subject to the Uniform Commercial Code – Secured Transactions in one security agreement.

(11) "Security interest" means a pledge, hypothecation, or other encumbrance of or other right over any portion of storm recovery property created by contract to secure the payment or performance of an obligation.

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

(13) "Storm recovery activity" means any activity or activities by or on behalf of an electric utility in connection with the restoration of service associated with electric power outages affecting customers of an electric utility as the result of a storm or storms, including but not limited to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, or distribution facilities.

(14) "Storm recovery bonds" means bonds, debentures, notes, certificates of participation, certificates of ownership, or other evidences of indebtedness or ownership that are issued pursuant to an indenture, contract, or other agreement of an electric utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to provide, recover, finance, or refinance commission-approved storm recovery costs, financing costs, and costs to replenish or fund a storm recovery reserve to such level as the commission may authorize in a financing order, and which are secured by or payable from storm recovery property. If certificates of participation or ownership are issued, references in this

Part to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates. Storm recovery bonds shall be nonrecourse to the credit or any assets of the electric utility other than the storm recovery property as specified in the financing order and any rights under any ancillary agreement. Storm recovery bonds shall be legal investments for all governmental units, financial institutions, insurance companies, fiduciaries, and other persons that require statutory authority regarding legal investment.

(15) "Storm recovery charge" means the amounts authorized by the commission to recover, finance, or refinance storm recovery costs, financing costs, and costs to replenish or fund a storm recovery reserve to such level as the commission may authorize in a financing order. If determined appropriate by the commission and provided for in a financing order, such amounts are to be imposed on customer bills and collected by an electric utility or its successors or assignees, or a collection agent, in full through a charge, which may be collected as part of the electric utility's base rates or in any other manner deemed appropriate by the commission, for the time period specified in the financing order, paid by existing and future customers receiving transmission or distribution service, or both, from the electric utility or its successors or assignees under rate schedules or special contracts approved by the commission. The commission may provide for payment of such charges even if the customer elects to purchase electricity from an alternative electricity supplier including as the result of a fundamental change in the manner of regulation of public utilities in this state.

(16) "Storm recovery costs" means, if requested by the electric utility, and as may be approved by the commission, costs incurred or to be incurred by an electric utility in undertaking a storm recovery activity. Such costs, as may be approved by the commission, may be net of applicable insurance proceeds, tax benefits, and any other amounts intended to reimburse the electric utility for storm recovery activities such as governmental grants or aid of any kind and, where determined appropriate by the commission, may include adjustments for normal capital replacement and operating costs, or other potential offsetting adjustments.

If the commission deems appropriate, storm recovery costs may include the costs to fund and finance any storm recovery reserves and costs of repurchasing equity or retiring any existing indebtedness relating to storm recovery activities.

(17) "Storm recovery property" means the contract right constituting incorporeal movable property newly created pursuant to this Part which may consist of any of the following:

(a) All rights and interests of an electric utility or successor or assignee of the electric utility under a financing order, including the right to impose, bill, charge, collect, and receive storm recovery charges authorized in the financing order and to obtain periodic adjustments to such charges as may be 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 Subparagraph (a) of this Paragraph, 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.

(18) "Storm recovery reserve" means an electric utility's storm reserve or such other similar reserve established pursuant to order or rule of the commission.

(19) "Uniform Commercial Code—Secured Transactions" means Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950.

§1232. Financing orders

A. An electric utility may petition the commission for a financing order. Application by an electric utility for authority for the electric utility or its affiliate or other assignee to issue storm recovery bonds shall be made in such form as the commission prescribes. Every application shall be made under oath and shall be signed and filed on behalf of the electric utility by its president or by a vice president, treasurer, or other executive officer having knowledge of the matters set forth. No electric utility or affiliate or other assignee shall issue any storm recovery bonds until it has been specifically authorized to do so by order of the commission.

No electric utility shall, without the consent of the commission granted in a commission order, apply any proceeds of storm recovery bonds to any purpose not specified in the commission's order or supplemental order, or to any purpose in excess of the amount allowed for such purpose in the order or supplemental order, or to any purpose in contravention of the order or supplemental order.

B. The commission may grant an application under Subsection A of this Section in whole or in part by a financing order, and with such modifications thereto and upon such terms and conditions as the commission prescribes, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it finds necessary or appropriate, subject, if the commission so provides, to Paragraph (C)(5) of this Section. If the commission issues a financing order approving any issue of storm recovery bonds under this Part, the commission may consider whether the proposed structuring, expected pricing, and financing costs of the storm recovery bonds are reasonably expected to result in lower overall costs or would avoid or mitigate rate impacts to customers as compared with traditional methods of financing or recovering storm recovery costs. The commission may determine what degree of flexibility to afford to the electric utility in establishing the terms and conditions of the storm recovery bonds, including but not limited to repayment schedules, interest rates, and other financing costs. A copy of any financing order made and entered by the commission under this Part duly certified by the secretary or clerk, as applicable, of the commission shall be sufficient evidence for all purposes of whole and complete compliance by the electric utility with all procedural and other matters required precedent to the entry of the order.

C. For a financing order issued to an electric utility by the commission to create storm recovery property, the financing order shall:

(1) Specify the amount of storm recovery costs and any level of storm recovery reserves, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs and any offsets or credits to those costs, and provide with respect to the amount of financing costs which may

<u>be recovered through storm recovery charges and specify the time period over which all such costs may be recovered.</u>

<u>(2) Specify and create the storm recovery property of an electric utility or its successors or assignees that shall be used to pay or secure storm recovery bonds and financing costs.</u>

<u>(3) Provide that such storm recovery property shall be sold, assigned, or transferred by the electric utility to a subsidiary which is wholly owned, directly or indirectly, by the electric utility and which will be the issuer of the storm recovery bonds.</u>

<u>(4) Provide that the storm recovery charges shall be sufficient at all times to pay the principal of and interest on the storm recovery bonds as the same shall become due and payable and all other financing costs and, if determined appropriate by the commission, establish a true-up mechanism requiring that the storm recovery charges be reviewed and adjusted at least annually to correct any overcollection or undercollection during the period since the issuance or preceding adjustment and to ensure the projected recovery of amounts sufficient to provide timely payment of all financing costs.</u>

<u>(5) Provide and pledge that after the earlier of the transfer of storm recovery property to an assignee or the issuance of storm recovery bonds authorized thereby, a financing order is irrevocable until the indefeasible payment in full of the storm recovery bonds and the financing costs and, provide that, except as provided in Subsection F of this Section or to implement any true-up mechanism adopted by the commission as described in Paragraph (C)(4) of this Section, the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust storm recovery charges approved in the financing order, provided nothing shall preclude limitation or alteration if and when full compensation is made for the full protection of the storm recovery charges collected pursuant to a financing order and the full protection of the holders of storm recovery bonds and any assignee or financing party.</u>

(6) Specify how amounts collected from a customer shall be allocated between storm recovery charges and other charges.

(7) Provide that a financing order remains in effect until the storm recovery bonds issued pursuant to the order have been indefeasibly paid in full and the financing costs of such bonds have been recovered in full.

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

(9) Authorize and require the electric utility, to the extent that any interest in storm recovery 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 storm recovery 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, including pursuant to a sequestration order authorized by this Part.

D. In a financing order issued to an electric utility, the commission may:

(1) Prescribe any limitations on potential assignees of storm recovery property.

(2) Authorize an assignee organized under the laws of this state which is a subsidiary of an electric utility and which issues storm recovery bonds to provide and establish in its articles of incorporation, partnership agreement, or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition on behalf of that assignee, the prior unanimous consent of the directors, partners, or managers, as applicable, shall be required. If so authorized in a financing order:

(a) Any such provision set forth in the articles of incorporation, partnership agreement, or operating agreement of such an assignee shall constitute a legal, valid, and binding agreement of the shareholder(s), partners, or member(s), as applicable, of such assignee and is enforceable against such shareholder(s), partners, or member(s).

(b) A person shall have authority under the laws of this state to file a voluntary bankruptcy petition on behalf of such assignee only after compliance with any such provision and prerequisite.

(3) Provide that the creation of the electric utility's storm recovery property pursuant to Paragraph (C)(2) of this Section is conditioned upon, and shall be simultaneous with, the sale, assignment, or other transfer of the storm recovery property to an assignee and the security interest created in the storm recovery property to secure storm recovery bonds.

(4) Otherwise provide with respect to any matters pertaining to and within the Public Service Commission's constitutional jurisdiction over electric utilities and plenary power to regulate electric utilities or such other jurisdiction as may be conferred on the commission by law, or in the case of the council of the City of New Orleans otherwise provide with respect to any matters pertaining to and within its Home Rule Charter jurisdiction and authority over electric utilities providing service within the city of New Orleans.

E. After the issuance of a financing order, and within such time and subject to any other limitations set forth in the financing order, the electric utility retains discretion regarding whether to sell, assign, or otherwise transfer storm recovery property or to cause the storm recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance, provided that nothing herein shall limit in any manner the commission's authority to review any such decision for rate-making purposes.

F. At the request of an electric utility or on its own motion or the motion of any party affected by the financing order, the commission may commence a proceeding and issue a subsequent financing order that provides for the refinancing, retiring, or refunding of storm recovery bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in Subsection B of this Section or that provides for an accounting, refunding, or crediting to rate payers of the proceeds of any true-up mechanism adopted by the commission consistent with Paragraph (C)(4) of this

Section. Effective on retirement of the refunded storm recovery bonds and the issuance of new storm recovery bonds, the commission may adjust the related storm recovery charges accordingly or establish substitute storm recovery charges.

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

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

§1233. Storm recovery property

A. All storm recovery property that is specified in a financing order shall constitute an existing, present contract right constituting an individualized, separate incorporeal movable susceptible of ownership, sale, assignment, transfer, and security interest, including without limitation for purposes of contracts concerning the sale of property and security interests in property, notwithstanding that the value of the property and the imposition and collection of storm recovery charges depends on future acts such as the electric utility to which the order is issued performing its servicing functions relating to the collection of storm recovery charges and on future electricity consumption. Such property shall exist whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the property is or may be dependent on the future provision of service to customers by the electric utility or its successors or assignees and the future consumption by customers of electricity.

B. Storm recovery property specified in a financing order shall continue to exist until the storm recovery bonds issued pursuant to the financing order are paid in full and all financing costs of the bonds have been recovered in full.

C. All or any portion of storm recovery property specified in a financing order issued to an electric utility may be sold, assigned, or transferred to a successor or an assignee, including an affiliate or affiliates of the electric utility created for the limited purpose of acquiring, owning, or administering storm recovery property or issuing storm recovery bonds under the financing order. All or any portion of storm recovery property may be encumbered by a security interest to secure storm recovery bonds issued pursuant to the order and other financing costs. Each such sale, assignment, transfer, or security interest granted by an electric utility or affiliate of an electric utility or assignee is considered to be a transaction in the ordinary course of business.

D. The description of storm recovery property being sold, assigned, or transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, being encumbered to a secured party 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 specific financing order that created the storm recovery property and states that such agreement or financing statement covers all or part of such storm recovery property described in such financing order. A description of storm recovery property in a financing statement shall be sufficient if it refers to the financing order creating the storm recovery property. This Subsection applies to all purported sales, assignments, or transfers of, and all purported liens or security interests in, storm recovery 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, before or after the effective date of this Part.

E.(1) Storm recovery property shall be an individualized, separate incorporeal movable susceptible of ownership, sale, assignment, transfer, and security interest encumbrance notwithstanding that:

(a) The storm recovery charges may be authorized by the commission and included as part of the electric utility's base rate and are not shown as a separate line item on individual electric bills.

(b) Notice is not given to customers that the storm recovery property has been transferred to an assignee and that such assignee is the owner of the rights to the storm recovery charges.

(c) Notice is not given to customers that the electric utility or another entity, if applicable, is acting as a collection agent or servicer or in a similar capacity for an assignee.

(2) A description of storm recovery property, and a sale, assignment, or transfer thereof or grant of security interest therein, shall not be denied legal effect or enforceability because the foregoing factors apply in whole or in part to such storm recovery property.

F. If an electric utility defaults on any required payment of charges arising from storm recovery property specified in a financing order, the court specified in R.S. 45:1235(I), 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 storm recovery property to the financing parties or their representatives. Any such order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assignees.

G. To the extent provided in a financing order, the interest of an assignee or secured party in storm recovery property specified in a financing order is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any other entity.

H. To the extent provided in a financing order, any successor to an electric 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 electric utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as the electric utility under the financing order in the same manner and to the same extent as the electric utility, including collecting and paying to the person entitled to receive them, the revenues, collections, payments, or proceeds of the storm recovery property. Nothing in this Section is intended to limit or impair any authority of the commission concerning the transfer or succession of interests of electric utilities.

§1234. Sale

The sale, assignment, or transfer of storm recovery property is governed by this Section. All of the following apply to a sale, assignment, or transfer under this Section:

(1) The sale, assignment, or other transfer of storm recovery property by an electric utility to an assignee that the parties have in the governing contract expressly stated to be a sale or other absolute transfer is an absolute transfer and true sale of, and not a security interest in, the transferor's right, title, and interest in, to, and under the storm recovery property, other than for federal and state income tax purposes. For all purposes other than federal and state income tax and state franchise tax purposes, the parties' characterization of a transaction as a sale of an interest in storm

recovery 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. After such a transaction, the storm recovery 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 storm recovery property perfected under R.S. 45:1235.

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

(a) Commingling of amounts arising with respect to the storm recovery property with other amounts.

(b) The retention by the transferor of a partial or residual interest, including an equity interest or entitlement to any surplus, in the storm recovery property, whether direct or indirect, or whether subordinate or otherwise.

(c) Any recourse that the assignee may have against the transferor, except that any such recourse shall not be created, contingent upon, or otherwise occurring or resulting from the inability or failure of one or more of the transferor's customers to timely pay all or a portion of the storm recovery charge.

(d) Any indemnifications, obligations, or repurchase rights made or provided by the transferor, except that such indemnity or repurchase rights shall not be based solely upon the inability or failure of a transferor's customers to timely pay all or a portion of the storm recovery charge.

(e) The transferor acting as the collector of the storm recovery charges or the existence of any contract described in R.S. 45:1232(C)(9).

(f) The contrary or other treatment of the sale, assignment, or other transfer for tax, financial reporting, or other purposes.

(g) The granting or providing to holders of the storm recovery bonds of a preferred right to the storm recovery property or credit enhancement by the electric utility or its affiliates with respect to the storm recovery bonds.

(h) The status of the assignee as a direct or indirect wholly owned subsidiary or other affiliate of the electric utility. The separate juridical personality of any assignee of storm recovery property which is a subsidiary or affiliate of the electric utility shall not be disregarded due to the fact that the assignee and the electric utility share any one or more incidents of control, including common managers, officers, directors, members, accounting or administrative systems, consolidated tax returns, or office space, that the assignee may be a disregarded entity for tax purposes, that the utility caused the formation of the assignee, that a contract by the utility and the assignee described in R.S. 45:1232(C)(9) exists, that the assignee has no other business other than pertaining to the storm recovery property, that the capitalization of the assignee is limited to amounts required for compliance with certain applicable federal income tax laws and revenue procedures, or that other factors used in applying a single business enterprise test to juridical persons are present.

(i) The matters described in R.S. 45:1233(E).

(j) Any other term of the contract under Paragraph (1) of this Section.

(3) Any right that an electric utility has in the storm recovery property prior to its sale, assignment, or transfer is incorporeal movable property in the form of a vested contract right notwithstanding any contrary treatment thereof for accounting or tax purposes. The ownership of an interest in storm recovery property is voluntarily transferred by a contract between the owner and the assignee that purports to transfer the ownership of that interest. Unless otherwise provided, the transfer of ownership takes place as between the parties as soon as there is written agreement on the interest, the purchase price is fixed, and the financing order has been issued. Such transfer shall be perfected and take effect against all third parties including without limitation subsequent lien creditors when the transfer has become effective between the parties and when a financing statement giving notice of the sale, assignment, or transfer is filed in accordance with Paragraph (4) of this Section.

Delivery of such an interest in storm recovery property shall take place by operation of law upon the filing of the financing statement.

(4) Financing statements required to be filed under this Section shall be filed, indexed, maintained, and continued in the same manner and in the same system of records maintained for the filing of financing statements under the Uniform Commercial Code—Secured Transactions. The filing of such a financing statement shall be the only method of perfecting a sale, assignment, or transfer of storm recovery property. The sale, assignment, or transfer of an interest in storm recovery property perfected by filing a financing statement is effective against the customers owing payment of the storm recovery charges, creditors of the transferor, subsequent transferees, and all other third persons notwithstanding the absence of actual knowledge of or notice to the customers of the sale, assignment, or transfer.

(5) The priority of the conflicting ownership interests of assignees in the same interest or rights in any storm recovery property is determined as follows:

(a) Conflicting perfected interests or rights of assignees rank according to priority in time of perfection.

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

(c) 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.

(6) The priority of a sale, assignment, or transfer perfected under this Section is not impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under R.S. 45:1235, shall be terminated when those funds are transferred to a segregated account for the assignee or a financing party. If storm recovery property has been transferred to an assignee or financing party, any proceeds of that property shall be held for and delivered to the assignee or financing party by any collector under any contract described in R.S. 45:1232(C)(9) as a mandatary and fiduciary.

§1235. Security interests

A. The Uniform Commercial Code—Secured Transactions does not apply to storm recovery property or any right, title, or interest of a utility or assignee therein, whether before or after the issuance of the financing order, except to the extent specified in R.S. 45:1236(A). In addition, such right, title, or interest pertaining to a financing order including but not limited to the associated storm recovery property including any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from storm recovery charges pursuant to such order, shall not be deemed proceeds of any right or interest other than of the financing order and the storm recovery property arising from the financing order. All revenues and collections resulting from storm recovery property shall constitute proceeds only of the storm recovery property arising from the financing order.

B. Except to the extent provided in this Part with respect to filings of financing statements or control of deposit accounts or investment property as original collateral, the creation, attachment, granting, perfection, and priority of security interests in storm recovery property to secure storm recovery bonds is governed solely by this Part and not by the Uniform Commercial Code—Secured Transactions.

C.(1) A security interest in storm recovery property is valid and enforceable against the electric utility and its successor or an assignee and third parties and attaches to storm recovery property only after all of the following conditions are met:

(a) The issuance of a financing order.

(b) The execution and delivery of a security agreement with a financing party in connection with the issuance of storm recovery bonds.

(c) The receipt of value for the storm recovery bonds.

(2) A security interest attaches to storm recovery property when all of the foregoing conditions have been met, unless the security agreement expressly postpones the time of attachment.

D. A security interest in storm recovery property is perfected only if it has attached and a financing statement indicating the storm recovery property collateral covered thereby has been filed. A financing statement must be filed to perfect all security interests and liens in storm recovery property. A security interest in storm recovery property is perfected when it has attached and when the applicable financing statement has been filed. The interest of a secured party is not perfected unless a financing statement sufficient under this Part and otherwise in accordance with the Uniform Commercial Code – Secured Transactions is filed, and after perfection the secured party's interest continues in the storm recovery property and all proceeds of such storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced. A security interest in proceeds of storm recovery property is a perfected security interest if the security interest in the storm recovery property was perfected under this Part. Financing statements required to be filed pursuant to this Section shall be filed, indexed, maintained, and continued in the same manner and in the same system of records maintained for the filing of financing statements under the Uniform Commercial Code – Secured Transactions. The filing of such a financing statement shall be the only method of perfecting a lien or security interest on storm recovery property. The financing statement shall be filed as if the debtor named therein were located in this state.

E. The priority of the conflicting security interests of secured parties in the same interest or rights in any storm recovery property is determined as follows:

(1) Conflicting perfected security interests of secured parties rank according to priority in time of perfection.

(2) A perfected security interest of a secured party has priority over a conflicting unperfected security interest of a secured party.

(3) A perfected security interest of a secured party has priority over a person who becomes a lien creditor after the perfection of such secured party's security interest.

F. A perfected security interest in storm recovery property and all proceeds of such storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced, shall have priority over a conflicting lien or privilege of any nature in the same collateral property, except a security interest is subordinate to the rights of a person that becomes a lien creditor before the perfection of such security interest. A security interest in storm recovery property which qualifies for priority over a conflicting security interest, lien, or privilege also has priority over the conflicting security interest, lien, or privilege in proceeds of the storm recovery property. The relative priority of a perfected security interest of a secured party is not adversely affected by any lien, privilege, or security interest in a deposit account of the electric utility that is a collector as described in R.S. 45:1232(C)(9) and into which the revenues are deposited. The priority of a security interest perfected under this Section is not defeated or impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest that may apply to those funds shall be terminated as to all funds transferred to a segregated account for the benefit of an assignee or a financing party or to an assignee or financing party directly. The perfection by control, the effect of perfection by control, and the priority of a security interest granted by the issuer of and securing storm recovery bonds held by a secured party having control of a segregated deposit account or securities account as original collateral into which revenues, collections, or proceeds of storm recovery property are deposited or credited shall be governed by the Uniform Commercial Code—Secured Transactions including the choice of law rules in Part 3 thereof.

G. If a default occurs under the terms of the storm recovery bonds, the secured party may foreclose on or otherwise enforce the security interest in any storm recovery property as if it was a secured party under the Uniform Commercial Code—Secured Transactions. A secured party holding a security interest in storm recovery property shall be entitled to exercise all of the same rights and remedies as are available to a secured party under the Uniform Commercial Code—Secured Transactions, to the same extent as if those rights and remedies were set forth in this Part. A court may order that amounts arising from storm recovery property be transferred to a separate account of the secured party for the financing parties' benefit, to which their security interest shall apply. On application by or on behalf of a secured party to the court of this state specified in Subsection I of this Section, such court shall order the sequestration and payment to the financing parties of revenues arising from the storm recovery property.

H. A security interest created under this Part may provide for a security interest in after-acquired collateral. A security interest granted under this Part is not invalid or fraudulent against creditors solely because the grantor or the electric utility as collector or servicer has the right or ability to commingle the collateral or proceeds, or collect, compromise, enforce, and otherwise deal with collateral.

I. Any action arising under the provisions of this Part to enforce a security interest in any storm recovery property, or which otherwise asserts an interest in, or a right in, to or against any storm recovery property, wherever located or deemed located, or any security interest governed by this Part, shall be brought in the district court of the domicile of the commission. Such suits shall be governed by the provisions of the Code of Civil Procedure and other law applicable to executory proceedings, including provisional remedies, but only to the extent such laws are consistent with the language and purposes of this Part. Nothing in this Subsection shall be construed to deny to the Public Service Commission any jurisdiction conferred upon it by law or the Constitution of Louisiana or to the council of the City of New Orleans any jurisdiction conferred upon it by its Home Rule Charter or the Constitution of Louisiana.

§1236. Choice of law; conflicts

A. The law governing the validity, enforceability, attachment, perfection, priority, exercise of remedies, and venue with respect to the sale, assignment, or transfer of an interest or right or the creation of a security interest in any storm recovery property shall be exclusively the laws of this state, without applying this state's law on conflicts of laws and notwithstanding any contrary contractual provision, except as provided in the last sentence of R.S. 45:1235(F). The validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the sale, assignment, or transfer of an interest or right or the creation of a security interest in any storm recovery property shall be governed by this Part, and solely to the extent not addressed by this Part, by the Uniform Commercial Code-Secured Transactions and other laws of this state. Without limiting the preceding sentence, this Part provides that the Uniform Commercial Code-Secured Transactions applies to the filings of financing statements referenced in this Part, to perfection, the effect of perfection or nonperfection, and the priority of security interests held by a secured party having control of deposit accounts or securities accounts as original collateral securing storm recovery bonds, notwithstanding that proceeds of storm recovery charges are deposited therein, and to the enforcement of security interests in storm recovery property, in each case subject to Subsection B of this Section.

B. In the event of conflict between this Part and any other law regarding the attachment, creation, perfection, the effect of perfection, or priority of, and sale, assignment, or transfer of, or security interest in, storm recovery property, or the exercise of remedies with respect thereto, this Part shall govern to the extent of the conflict.

C. This Section shall not be interpreted to conflict with or modify R.S. 45:1235(B).

§1237. Storm recovery bonds not public debt

Storm recovery bonds are not a debt or a general obligation of the state or any of its political subdivisions, agencies, or instrumentalities and are not a charge on their full faith and credit. An issue of storm recovery bonds does not, directly or 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 bonds, other than for paying storm recovery charges in their capacity as consumers of electricity. All storm recovery bonds authorized by a financing order by the Public Service Commission 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 Louisiana is pledged to the payment of the principal of, or interest on, this bond." All storm recovery bonds authorized by a financing order by the council of the City of New Orleans 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 Louisiana or the City of New Orleans is pledged to the payment of the principal of, or interest on, this bond."

§1238. State pledge

A. For purposes of this Section, the term "bondholder" means a person who holds a storm recovery bond, including in book entry form.

B. The state pledges to and agrees with bondholders, the owners of the storm recovery property, and other financing parties that the state will not:

(1) Alter the provisions of this Part which authorize the commission to create a contract right by the issuance of a financing order, to create storm recovery property, and to make the storm recovery charges imposed by a financing order irrevocable, binding, and nonbypassable charges;

(2) Take or permit any action that impairs or would impair the value of storm recovery property; or

(3) Except as allowed under this Section and except for adjustments under any true-up mechanism established by the commission, reduce, alter, or impair storm recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and 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 storm recovery bonds have been paid and performed in full. Nothing in this Paragraph shall preclude limitation or alteration if and when full compensation is made by law for the full protection of the storm recovery charges collected pursuant to a financing order and full protection of the holders of storm recovery bonds and any assignee or financing party.

C. Any person or entity that issues storm recovery bonds may include the pledge specified in Subsection B of this Section and in R.S. 45:1232(C)(5) in the bonds and related documentation.

§1239. Not an electric utility

An assignee or financing party shall not be considered an electric utility or person providing electric service by virtue of engaging in the transactions described in this Part.

§1240. No impairment of commission jurisdiction

Nothing in this Part is intended to be nor shall be construed to constitute any limitation, derogation, or diminution of the jurisdiction or authority of the commission provided by law, including that provided in or exercised by the Public Service Commission pursuant to the Constitution of Louisiana or the council of the City of New Orleans pursuant to its Home Rule Charter.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ____________________

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.

AN ACT

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 Louisiana Revised Statutes of 1950, to be comprised of R.S. 45:1311 through 1328, relative to financing utility storm repairs and strengthening and stabilizing utilities; to provide for an exception to the limitation on formation of nonprofit corporations; to provide for an exception from the public records law; to provide for legislative intent and definitions; to authorize the creation of the Louisiana Utilities Restoration Corporation as a nonprofit public corporation; to provide for a board of directors; to provide for certain immunity; to provide for corporate powers; to place the nonprofit corporation under the regulatory jurisdiction of the Public Service Commission; to establish a mechanism by which the Public Service Commission or the council of the city of New Orleans may authorize and certify a financing order and the issuance of system restoration bonds that promote the public good of minimizing rates charged by utilities by providing low-cost capital; to provide for the contents of financing orders; to provide that the financing orders shall require the electric or gas utility as collection agent to collect a system restoration charge from its retail customers sufficient to pay the debt service and related costs on any bonds issued pursuant to the financing order; to provide for appeals of financing orders; to provide for security interests in system restoration property; to provide for the sale or pledge of system restoration property; to provide that system restoration bonds are not public debt; to provide a state pledge of non-impairment of system restoration bonds; to prohibit the corporation from filing bankruptcy; to provide that the jurisdiction of the commission is not impaired; and to provide for related matters.

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

C. The purpose of this Part is to minimize costs charged to ratepayers for system restoration costs. The alternate financing structure contemplated by this Part will enable the corporation to finance, directly or indirectly, system restoration costs with low-cost capital. Financing of system restoration costs pursuant to this Part is hereby recognized to be a valid public purpose. The commission may authorize the issuance of system restoration bonds if the commission finds that the proposed structuring, expected pricing, and anticipated financing costs of the system restoration bonds are reasonably expected to result in lower overall costs to ratepayers as compared to conventional methods of financing or recovering utility system restoration costs. Securitization financings under this Part, if authorized by the commission in its sole discretion, will include a commitment by the utility receiving proceeds therefrom that such proceeds shall be in lieu of recovery of system restoration costs through the regular rate-making process to the extent those costs are financed by such securitization financing proceeds.

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

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

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

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

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

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

§1312. Definitions

As used in this Part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§1313. Creation of the Louisiana Utilities Restoration Corporation

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

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

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

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

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

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

(a) Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed or, if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

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

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

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

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

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

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

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

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

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

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

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

§1314. Board of directors of the corporation

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

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

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

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

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

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

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

B. The members of the board appointed by the governor shall serve at the pleasure of the governor. If any person shall cease to serve in any one of the offices specified in Paragraph (2), (3), (4), (5), or (6) of Subsection A of this Section, that person shall thereby cease to be a member of the board of the corporation, and that person's successor in office shall automatically, and without the necessity of further action by anyone, become a member of the board of the corporation. Notwithstanding R.S. 12:224(B) to the contrary, no board member shall be limited as to the amount of years he may serve on the board.

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

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

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

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

§1315. Law applicable to board

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

§1316. Powers and duties of the corporation

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

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

C. The corporation may:

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

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

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

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

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

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

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

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

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

§1317. Regulation by the Public Service Commission

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

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

§1318. Financing orders

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

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

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

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

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

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

C. If the commission in its discretion determines that the criteria specified in R.S. 45:1311(C) are met and elects to issue any financing order under this Part, then, in order for a financing order to create system restoration property under this Part, the commission in such financing order shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Provide that any successor to a 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 utility restructuring or otherwise, shall perform and satisfy all obligations of the utility under any related commission order in the same manner and to the same extent as the utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the system restoration property. Nothing in this Section is intended to limit or impair any authority of the commission concerning the transfer or succession of interests of utilities.

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

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

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

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

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

H. A financing order may grant the corporation limited discretion, subject to a deadline and other limitations and conditions as determined by the commission, such as that no system restoration charges be collected from customers until system restoration bonds are issued, regarding when to request the issuer to cause the system restoration bonds to be issued. If changed circumstances warrant, the corporation also may request authority from the commission to be granted the right upon request of the utility to have the issuer postpone or cancel the proposed issuance of the system restoration bonds.

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

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

§1319. System restoration property

A. All system restoration property that is specified in a financing order shall constitute an existing, present property right of the corporation, constituting an individualized, separate, incorporeal movable susceptible of ownership, sale, assignment, transfer, pledge, and security interest, including without limitation for purposes of contracts concerning sale of property and pledges of and security interests in property, notwithstanding that the value of such property and the imposition and collection of system restoration charges depend on future acts such as the utility performing its collection agent functions relating to the collection of system restoration charges and on future electricity or gas consumption. Such property shall exist whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of such property is or may be dependent on the future provision of service to customers by the utility or its successors or assignees and the future consumption by customers of electricity or gas. System restoration property created by a financing order shall be a vested contract right, and such financing order shall create a contractual obligation of irrevocability by the commission in favor of the corporation and its transferees, including an issuer and financing parties.

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

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

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

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

<u>customer of the utility, or in connection with a bankruptcy of the utility or any other person.</u>

<u>F. The description of system restoration property being sold or assigned in any sale agreement, purchase agreement, or other transfer agreement, or being pledged or encumbered in any security agreement, pledge agreement, or other security document, is sufficient only if such description refers to the specific financing order that created the system restoration property and states that such agreement covers all or part of such system restoration property described in such financing order. This Subsection applies to all purported sales, assignments, or transfers of, and all purported liens or security interests in, system restoration 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, before or after the effective date of this Part.</u>

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

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

<u>(2) That the system restoration charges are not shown as a separate line item on individual utility bills.</u>

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

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

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

§1320. Sale of property

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) 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.

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

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

§1321. Bonds

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

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

C. The corporation shall either sell the system restoration charges and other system restoration property available to the corporation to the issuer, for the issuer to use as the source of revenue for payment of the system restoration bonds, or pledge the system restoration property to the issuer as security for the corporation's loan payment obligation and use the collections on the system restoration charges as the source of revenue for such loan repayment.

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

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

F. For purposes of R.S. 39:1430.1, system restoration property, including without limitation rights under a financing order and proceeds from collections of system restoration charges, shall be deemed to be revenues and contract rights under that statute and be subject to the provisions of that statute. The pledge and security interest granted by the issuer or the corporation in system restoration property pursuant to this Part shall be valid, perfected, and enforceable against the owner of the system restoration property and all third parties from the time when the pledge is made, without any notice or filing of any kind. This pledge and security interest shall secure all obligations, then existing or thereafter arising, provided in the pledge. A perfected pledge and security interest in system restoration property is a continuously perfected privilege and security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting pledges, if allowed, shall rank according to priority in time of perfection.

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

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

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

<u>J. System restoration bonds may be structured and issued using both an expected maturity and a legal, final maturity.</u>

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

<u>§1322. Corporation funds</u>

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

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

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

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

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

<u>§1323. State pledge; corporation pledge</u>

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

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

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

<u>(2) Take or permit any action that impairs or would impair the value of system restoration property.</u>

<u>(3) In any way impair the rights and remedies of the corporation, an issuer, such bondholders, or financing parties, or the security for such bonds or ancillary agreements.</u>

<u>(4) Except for adjustments under any true-up mechanism established by the commission, reduce, alter, or impair system restoration charges that are to be imposed, collected, and remitted for the benefit of the corporation, an issuer, the bondholders, and other financing parties, as applicable, 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 system restoration bonds have been fully paid and discharged.</u>

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

<u>(1) Take or permit any action that impairs or would impair the value of system restoration property.</u>

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

(3) Except for adjustments under any true-up mechanism established by the commission, reduce, alter, or impair system restoration charges that are to be imposed, collected, and remitted for the benefit of the issuer, the bondholders, and other financing parties, as applicable, 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 system restoration bonds have been fully paid and discharged.

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

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

§1324. Limitation on bankruptcy

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

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

§1325. Corporation status; tax exempt

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

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

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

§1326. Full authority

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

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

§1327. Status of corporation

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

§1328. Commission jurisdiction

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ____________________

State of Florida

NEWS RELEASE

6/20/2006 **Contact: 850-413-6482**

Commission Moves to Strengthen State's Electric System

TALLAHASSEE — The Florida Public Service Commission moved to strengthen rules governing electric utility construction and maintenance Tuesday as part of a comprehensive effort to reduce the state's vulnerability to hurricanes and tropical storms.

"We need to have standards in place that reflect the realities of today's storm cycles and their effect on our economy," Commission Chairman Lisa Edgar said. "We are committed to developing a more resilient electric system, and this is one more step in that process."

Changes approved by the Commission on Tuesday include:

- Directing the state's electric utilities to establish guidelines and procedures for adopting more stringent construction standards for overhead and underground electric transmission and distribution lines within six months.

- Requiring utilities to consider installation and long-term operating costs of underground and overhead lines to allow consumers to make informed choices about which approach is most cost-effective.

- Allowing for sharing of project-specific costs associated with placing lines underground when benefits accrue to ratepayers other than those directly affected by the conversion.

The Commission reaffirmed its commitment for further improvements to the state's electric infrastructure. The Commission authorized its staff to pursue ways to encourage placing electric distribution facilities in accessible locations to speed restoration of service in the wake of outages. In addition, the Commission directed investor-owned electric utilities to develop safety and reliability standards for companies that want to place wires or other attachments on power poles.

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State of Florida

NEWS RELEASE

12/4/2007 | **Contact: 850-413-6482**

Florida Public Service Commission Approves Plans to Strengthen Florida's Electrical System

TALLAHASSEE — The Florida Public Service Commission (PSC) has approved plans by four of the five state investor-owned utilities (IOUs) to make the state’s electric infrastructure more resistant to future storm damage.

The storm-hardening plans incorporate all previous PSC directives for the IOUs to make the grid more storm resilient, including increased pole inspections. Ten other initiatives ordered by the PSC are also part of the plan, and include requirements for increased vegetation management, strengthening of critical electric infrastructure, and enhanced disaster recovery activities.

“These plans reflect the lessons learned from the devastating hurricanes of 2004 and 2005,” said Chairman Lisa Polak Edgar. “We’ve required utilities to strengthen their systems to expedite response time and minimize electrical outages to customers when storms do occur.”

Plans approved by the Commission include those for Florida Power and Light Company, Tampa Electric Company, Progress Energy Florida, and Gulf Power Company. The PSC will evaluate Florida Public Utilities Company’s plan in early 2008 as part of their request for a rate increase.

The PSC is committed to making sure that Florida's consumers receive electric, natural gas, telephone, water, and wastewater services in a safe, affordable, and reliable manner. The PSC exercises regulatory authority over utilities in the areas of rate base/economic regulation; competitive market oversight; and monitors safety, reliability, and service.

For additional information, visit http://www.floridapsc.com/.

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State of Florida

NEWS RELEASE

7/2/2007 **Contact: 850-413-6482**

FLORIDA PUBLIC SERVICE COMMISSION REPORT ADVOCATES MONITORING OF ELECTRIC UTILITIES TO ENHANCE RELIABILITY DURING EXTREME WEATHER

TALLAHASSEE — The Florida Public Service Commission (PSC) submitted a report to the Governor and Legislature today, analyzing additional actions necessary to enhance the reliability of Florida's transmission and distribution facilities during extreme weather. The report recommends ongoing hardening of the utilities' electric infrastructure to better withstand the impacts of severe weather and to reduce associated power outages.

Since the destructive 2004 and 2005 hurricane seasons, the PSC has initiated a multi-faceted approach to strengthen the state's electric infrastructure. The PSC has ordered the utilities to conduct more frequent pole inspections, increase vegetation management, and implement additional storm-hardening initiatives. The PSC has also been careful to balance the need to strengthen Florida’s electric infrastructure to minimize storm damage, reduce outages, and reduce restoration time while mitigating excessive cost increases to electric customers.

“Storm hardening is a successful part of the Commission’s ongoing initiative to further develop a culture of preparedness in Florida,” said PSC Chairman Lisa Polak Edgar. “The Commission will continue to actively monitor the progress of the state’s utilities to ensure electric reliability for all consumers.”

In addition to guiding the utilities' storm hardening activities, the PSC is promoting more collaborative research into finding specific solutions for making Florida's transmission and distribution grid more resistant to extreme weather. Specifically, one research project includes the development and testing of a methodology to identify and evaluate the costs and benefits of undergrounding specific facilities in Florida.

The PSC is committed to making sure that Florida's consumers receive their electric, natural gas, telephone, water, and wastewater services in a safe, affordable, and reliable manner. The PSC exercises regulatory authority over utilities in the areas of rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service.

To read the full transmission reliabilty report, click on the following link:
http://www.psc.state.fl.us/publications/pdf/electricgas/stormhardening2007.pdf

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State of Florida

NEWS RELEASE

2/21/2007	**Contact: 850-413-6482**

FLORIDA PUBLIC SERVICE COMMISSION REPORT SHOWS FLORIDA'S TRANSMISSION SYSTEM RELIABLE

TALLAHASSEE — The Florida Public Service Commission (PSC) submitted a report to the Governor and Legislature today, analyzing the reliability of the existing transmission system and coordinated efforts for future transmission developments. The report shows that Florida's electric transmission grid is reliable for providing service to retail customers, and procedures are in place to address long range transmission needs.

Florida's transmission system currently has about 15,700 miles of transmission lines. Over the next five years, Florida's utilities plan to add approximately 1,100 miles of transmission lines at a cost of approximately $1.7 billion to accommodate the needs of the state's expanding population. In response to a special transmission study of the central Florida region, four utilities plan to spend approximately $277 million for additional transmission facilities, to be completed by 2011.

The Report also addresses the PSC's efforts to examine ways to strengthen the state's electric infrastructure in light of the 2004 and 2005 hurricane seasons. In 2006, the PSC initiated a multi-faceted approach for utilities to better prepare for storms, including more frequent wood pole inspections, vegetation management, and increased construction standards for electric facilities. These storm hardening efforts will continue in 2007.

The PSC is committed to making sure that Florida's consumers receive their electric, natural gas, telephone, water, and wastewater services in a safe, affordable, and reliable manner. The PSC exercises regulatory authority over utilities in the areas of rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service.

For additional information, visit http://www.floridapsc.com/.

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State of Florida

NEWS RELEASE

9/28/2007	**Contact: 850-413-6482**

Florida Public Service Commission Sets Hearing on Storm Hardening Plans for October 2 - 4

TALLAHASSEE — The Florida Public Service Commission (Commission or PSC) will hold a hearing beginning Tuesday, October 2, to review the Storm Hardening Plans filed by Florida's investor-owned electric utilities.

The purpose of this hearing is for the Commission to gather evidence on the 2007 Electric Infrastructure Storm Hardening Plans submitted by Florida Power & Light Company, Gulf Power Company, Progress Energy Florida, Inc., and Tampa Electric Company pursuant to Rule 25-6.0342, Florida Administrative Code. The Commission is scheduled to consider approval of the plans at the December 4, 2007, Agenda Conference.

The Commission will also consider any motions or other matters that may be pending at the time of the hearing. The Commission may rule on any such motions from the bench or may take the matters under advisement.

The hearing is set for the following time and location:

Tuesday, Oct. 2 through Thursday, Oct. 4, 2007
Beginning at 9:30 a.m. Tuesday
Betty Easley Conference Center
Joseph P. Cresse Hearing Room (Room 148)
4075 Esplanade Way
Tallahassee, Florida

The PSC is committed to making sure that Florida's consumers receive their electric, natural gas, telephone, water, and wastewater services in a safe, affordable, and reliable manner. The PSC exercises regulatory authority over utilities in the areas of rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service.

For additional information, visit http://www.floridapsc.com/.

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State of Florida

NEWS RELEASE

4/24/2007

Contact: 850-413-6482

PSC APPROVES PLANS TO FURTHER STRENGTHEN THE STATE'S ELECTRIC INFRASTRUCTURE

TALLAHASSEE — The Florida Public Service Commission (PSC) today approved a proposal by Florida Power & Light (FPL) intended to provide an incentive for local governments to move overhead power lines underground. FPL requested the change to its operating tariff in order to improve reliability of service and reduce vulnerability to storm damage.

"The approved tariff provides local governments with a viable new option to use as a means of strengthening their electric infrastructure," said PSC Chairman Lisa Polak Edgar. "The Commission will continue to encourage Florida's investor-owned utilities to implement strategies to minimize future storm damage and reduce the resulting outages experienced by customers."

Under FPL's previous operating tariff, the company required local governments requesting a conversion project to pay the full cost of moving overhead power lines underground. FPL's revised tariff now credits the sponsoring local government 25 percent of the total expense.

An analysis by FPL indicates the 25 percent undergrounding credit represents the average savings in storm restoration costs the utility's entire customer base would share following a major weather event.

The PSC approved the tariff as a limited time pilot project, expiring in October 2008, when more information on storm hardening is filed and additional cost/benefit reviews can be initiated. At least 60 days before the tariff expires, FPL is required to file a report with the PSC with updated information on the initial estimated storm restoration costs and provide actual figures if they are available. At that time, FPL should be prepared to petition the PSC to continue, modify, or discontinue the tariff.

The PSC is committed to making sure that Florida's consumers receive their electric, natural gas, telephone, water, and wastewater services in a safe, affordable, and reliable manner. The PSC exercises regulatory authority over utilities in the areas of rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service.

For additional information, visit http://www.floridapsc.com/.

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State of Florida

NEWS RELEASE

12/5/2006 **Contact: 850-413-6482**

PSC Approves Rules To Strengthen State's Electric Infrastructure

TALLAHASSEE — The five-member Public Service Commission (PSC) has approved rules requiring Florida's investor-owned electric utilities (IOUs) to cost-effectively strengthen, or storm harden, the state's electric infrastructure. Each IOU will be required to file storm-hardening plans, updated every three years, for Commission approval. Each plan must address such factors as the effect of extreme wind, flooding, and storm surges on electric facilities. The plans must identify critical infrastructure and the utility's deployment strategy for strengthening electric service in their service areas.

In preparing their storm-hardening plans, electric utilities are expected to work hand-in-hand with other utilities, such as telephone and cable companies, which share poles. The costs and benefits to both electric utilities and third-party attachers will be considered by the Commission in approving the storm-hardening plans.

"These storm hardening plans are an important part of the Commission's ongoing initiative to further a 'Culture of Preparedness' for Florida by evaluating the resiliency of our electric infrastructure and addressing measures to reduce outages and restoration time," said Chairman Lisa Polak Edgar. Other Commission actions taken this year to address the affects of future hurricanes and other extreme weather events include requiring investor-owned electric companies to accelerate tree trimming cycles, develop more detailed storm data, strengthen existing transmission structures, initiate collaborative university research on the effects of extreme winds and storm surges on electric facilities, and increase coordination with local governments to facilitate more effective communication on an ongoing basis. Additionally, investor-owned electric companies and local telephone companies are required to inspect their wooden distribution poles once every eight years.

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