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To: Ways and Means

HOUSE BILL NO. 1498

1 AN ACT TO CREATE THE HURRICANE KATRINA ELECTRIC UTILITY
2 CUSTOMER RELIEF AND ELECTRIC UTILITY SYSTEM RESTORATION ACT; TO
3 ESTABLISH A MECHANISM BY WHICH THE MISSISSIPPI PUBLIC SERVICE
4 COMMISSION MAY AUTHORIZE AND CERTIFY AN ELECTRIC UTILITY FINANCING
5 ORDER AND THE STATE MAY ISSUE GENERAL OBLIGATION BONDS TO PAY THE
6 COSTS OF REPAIRING DAMAGE TO THE SYSTEMS OF ELECTRIC UTILITIES
7 CAUSED BY HURRICANE KATRINA; TO AUTHORIZE ELECTRIC UTILITIES TO
8 PETITION THE PUBLIC SERVICE COMMISSION FOR THE ISSUANCE OF A
9 FINANCING ORDER WHICH, WHEN TRANSMITTED TO THE STATE BOND
10 COMMISSION BY AN ELECTRIC UTILITY, AUTHORIZES THE ISSUANCE OF
11 BONDS TO PAY THE COSTS ASSOCIATED WITH RESTORING THE SYSTEM OF THE
12 ELECTRIC UTILITY; TO PROVIDE THE CONTENTS OF SUCH A PETITION; TO
13 AUTHORIZE THE PUBLIC UTILITIES STAFF TO CONDUCT AN INDEPENDENT
14 INVESTIGATION OF THE PETITION; TO ESTABLISH THE DUTIES OF THE
15 PUBLIC SERVICE COMMISSION WITH REGARD TO SUCH PETITIONS; TO
16 PROVIDE FOR THE CONTENTS OF FINANCING ORDERS; TO PROVIDE THAT THE
17 FINANCING ORDER SHALL REQUIRE THE ELECTRIC UTILITY TO COLLECT A
18 SYSTEM RESTORATION CHARGE FROM ITS RETAIL CUSTOMERS SUFFICIENT TO
19 PAY THE DEBT SERVICE ON ANY BONDS ISSUED PURSUANT TO THE FINANCING
20 ORDER; TO PROVIDE FOR ANNUAL ADJUSTMENTS TO THE SYSTEM RESTORATION
21 CHARGES TO ENSURE THAT THE CHARGES ARE SUFFICIENT TO PAY THE DEBT
22 SERVICE ON ANY BONDS ISSUED PURSUANT TO THIS ACT; TO PROVIDE THE
23 METHOD FOR APPEALING DECISIONS OF THE PUBLIC SERVICE COMMISSION
24 WITH RESPECT TO A FINANCING ORDER; TO PROVIDE FOR THE DURATION OF
25 A FINANCING ORDER; TO AUTHORIZE THE ISSUANCE OF STATE GENERAL
26 OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED THE AMOUNT SPECIFIED
27 IN THE FINANCING ORDER TO BE UTILIZED BY AN ELECTRIC UTILITY TO
28 PAY THE COST OF REPAIRS NECESSITATED BY HURRICANE KATRINA; TO
29 AUTHORIZE THE CREATION OF SINKING FUNDS INTO WHICH SYSTEM
30 RESTORATION CHARGES COLLECTED BY THE ELECTRIC UTILITY SHALL BE
31 DEPOSITED AND TO PROVIDE THAT MONEY IN THE SINKING FUNDS SHALL BE
32 UTILIZED TO PAY THE DEBT SERVICE ON BONDS ISSUED PURSUANT TO A
33 FINANCING ORDER; AND FOR RELATED PURPOSES.

34 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

35 **SECTION 1.** This act shall be known and may be cited as the
36 "Hurricane Katrina Electric Utility Customer Relief and Electric
37 Utility System Restoration Act."

38 **SECTION 2.** It is hereby determined and declared to be the
39 policy of the State of Mississippi, for the benefit of customers
40 of the electric utilities within the state that the state
41 establish a mechanism by which the Mississippi Public Service
42 Commission may authorize and certify an electric utility financing

43 order and the state may issue system restoration bonds pursuant to
44 that financing order, the proceeds from which shall be used to
45 securitize the system restoration costs and storm damage reserve
46 levels of those electric utilities affected by Hurricane Katrina,
47 thereby providing electric utility customers relief from
48 traditional methods of recovering system restoration costs. The
49 exercise of powers conferred by this act are the performance of
50 essential public purposes.

51 **SECTION 3.** As used in this act:

52 (a) "Commission" or "Public Service Commission" means
53 the Mississippi Public Service Commission.

54 (b) "Customer" or "electric utility customer" means a
55 retail customer of an electric utility.

56 (c) "Electric utility" or "utility" means any utility
57 as defined in Section 77-3-3(d)(i), but not including electric
58 power associations.

59 (d) "Eligible funds" means any funds derived from any
60 source which may by law or other authorization be used to retire
61 any obligations arising from or connected with the issuance of
62 system restoration bonds.

63 (e) "Financing costs" means:

64 (i) Interest and acquisition, defeasance or
65 redemption premiums that are payable on system restoration bonds
66 issued pursuant to this act;

67 (ii) Any amount required to fund or replenish any
68 system restoration sinking fund or other account established
69 pursuant to the authority conferred under this act and the terms
70 of any financing order or other financing documents pertaining to
71 system restoration bonds; and

72 (iii) Any other cost related to supporting,
73 repaying, servicing and refunding system restoration bonds,
74 including, but not limited to, servicing fees, accounting and
75 auditing fees, trustee fees, legal fees, consulting fees,

76 administrative fees, placement and underwriting fees, rating
77 agency fees, stock exchange listing and compliance fees.

78 (f) "Financing order" means an irrevocable final order
79 issued by the Public Service Commission pursuant to Section 4 of
80 this act which provides a mechanism for an electric utility to
81 request the State Bond Commission to authorize the issuance of
82 system restoration bonds and the creation of system restoration
83 property.

84 (g) "Issuance costs" means:

85 (i) Any initial payment made on or before issuance
86 and any amount required to fund any system restoration sinking
87 fund or other account established pursuant to the authority
88 conferred under this act and the terms of any financing order; and

89 (ii) Any other cost related to issuance of system
90 restoration bonds, including, but not limited to, trustee fees,
91 legal fees, consulting fees, administrative fees, placement and
92 underwriting fees, capitalized interest, rating agency fees, stock
93 exchange listing and compliance fees, and filing fees, including
94 costs related to obtaining the financing order.

95 (h) "State" means the State of Mississippi.

96 (i) "Storm" means Hurricane Katrina, which made
97 landfall in the state on August 29, 2005, and caused catastrophic
98 damages to the people and property of and within the State of
99 Mississippi, including electric utilities and their facilities
100 throughout the state, and which has been declared a natural
101 disaster by proclamation, dated September 2, 2005, of the Governor
102 of the State of Mississippi.

103 (j) "System restoration activity" means any activity or
104 activities by or on behalf of an electric utility in connection
105 with the preparation for and the restoration of service associated
106 with electric power outages affecting customers of an electric
107 utility as the result of the storm, including, but not limited to,
108 mobilization, logistical support staging, housing, fueling,

109 contracting and construction, reconstruction, replacement or
110 repair of electric generation, transmission or distribution
111 facilities and related activities approved by the commission.

112 (k) "System restoration bonds" or "bonds" means those
113 bonds, including refunding bonds, that are issued by the State
114 Bond Commission pursuant to this act.

115 (l) "System restoration charge" means the mechanism and
116 amounts authorized by the Public Service Commission to recover,
117 finance or refinance the system restoration bonds, financing costs
118 and any other cost necessary to otherwise ensure the timely
119 payment of system restoration bonds and other required amounts and
120 charges payable in connection with the system restoration bonds to
121 be imposed on, and as a part of, all customer bills and collected
122 by an electric utility or its successors or assignees, or a
123 collection agent, through a charge that is separate and apart from
124 the base rates of the electric utility, which charge shall be paid
125 by customers, including special contract customers, for and with
126 regard to all electric load directly or indirectly connected to
127 electric facilities of the electric utility or its successors or
128 assignees under the Public Service Commission approved rate
129 schedules, even if the customer elects to purchase electricity
130 from an alternative electricity supplier following a fundamental
131 change in regulation of public utilities in this state.

132 (m) "System restoration costs" means, at the option and
133 request of the electric utility, and as approved by the commission
134 pursuant to Section 4 of this act, those prudent incremental costs
135 incurred or to be incurred, as determined by the commission, by an
136 electric utility in undertaking a system restoration activity.
137 Such costs shall be net of applicable insurance proceeds and,
138 where determined appropriate by the commission taking into account
139 the interests of the electric utility's customers, the need for
140 financial stability in the provision of electric utility service,
141 and the public interest, and such costs shall include adjustments

142 for normal capital replacement and operating costs and other
143 potential offsets and adjustments; however, such costs shall not
144 include system outage related lost profits. System restoration
145 costs may, in the commission's discretion, include the costs to
146 finance any deficiency or deficiencies in storm damage reserves
147 incurred before such time as the system restoration bonds are
148 issued and any costs of retiring any other existing indebtedness
149 relating to system restoration activities.

150 (n) "System restoration property" means:

151 (i) All rights and interests of the state arising
152 out of or in connection with the issuance of system restoration
153 bonds under this act, including the right to receive the system
154 restoration charges, as periodically adjusted, imposed, billed,
155 collected and transferred by the electric utility on behalf of the
156 state pursuant to a financing order, and the right to obtain
157 periodic adjustments to such charges as provided in the financing
158 order and this act. System restoration property shall not be an
159 asset of the electric utility; but, the electric utility shall
160 have only a duty to carry out its obligations and responsibilities
161 under this act and the State Bond Commission action taken under
162 this act with respect to system restoration property; and

163 (ii) All collections, claims, rights to payments,
164 payments, money or proceeds arising from the rights and interests
165 specified in subparagraph (i), regardless of whether such
166 collections, claims, rights to payment, payments, money or
167 proceeds are imposed, billed, received, collected, or maintained
168 together with or commingled with other collections, rights to
169 payment, payments, money or proceeds.

170 (o) "Storm damage reserve" means an electric utility
171 storm reserve or such other similar reserve, as may be amended
172 from time to time, established by law, rule or pursuant to any
173 order of the commission.

174 (p) "Mississippi Public Utilities Staff" means those
175 persons employed by the public utilities staff established in
176 Section 77-2-1.

177 **SECTION 4.** (1) Not more than one hundred twenty (120) days
178 after the effective date of this act, an electric utility affected
179 by the storm may petition the Public Service Commission for a
180 financing order to make such determinations as are provided for in
181 this section which, when transmitted by an electric utility to the
182 State Bond Commission as provided in this act, authorizes the
183 State Bond Commission to issue system restoration bonds. In
184 addition to any other information required by the Public Service
185 Commission, the applying electric utility shall:

186 (a) Describe the system restoration activities that the
187 electric utility has undertaken or proposes to undertake and
188 describe the reasons for undertaking the activities.

189 (b) Set forth the known prudently incurred system
190 restoration costs and an estimate of the costs of any system
191 restoration activities that are not completed, or for which the
192 costs are not yet known, as identified and requested by the
193 electric utility.

194 (c) Set forth the storm damage reserve that the
195 electric utility proposes to establish or replenish and that such
196 electric utility has determined would be appropriate to recover
197 through system restoration bonds. The electric utility shall also
198 identify the level that the electric utility is funding or will
199 seek to fund through other means, together with a description of
200 the factors and calculations used in determining the amounts and
201 methods of recovery.

202 (d) Indicate whether the electric utility proposes to
203 finance all or a portion of the system restoration costs and storm
204 damage reserve using system restoration bonds. If the electric
205 utility proposes to finance a portion of such costs, the electric
206 utility shall identify that portion in its application.

207 (e) Estimate the financing costs and issuance costs
208 related to the system restoration bonds.

209 (f) Describe and estimate the system restoration charge
210 necessary to recover the system restoration cost and fund or
211 replenish the storm damage reserve, including any financing costs
212 and issuance costs and the period for recovery of such costs.

213 (g) Estimate any cost savings and demonstrate how it
214 would avoid or significantly mitigate rate impacts to customers
215 resulting from financing system restoration costs with system
216 restoration bonds as opposed to the traditional method of
217 recovering such costs from customers and through alternative
218 financing methods available to the electric utility.

219 (h) File with the Public Service Commission direct
220 testimony supporting the application.

221 (i) Timely provide the Public Service Commission or the
222 Mississippi Public Utilities Staff such additional information and
223 documentation as they may reasonably request.

224 (j) Provide a copy of the petition to the State Bond
225 Commission.

226 (2) When deemed necessary by the Executive Director of the
227 Mississippi Public Utilities Staff, the Mississippi Public
228 Utilities Staff may conduct its own independent investigation as
229 to the electric utility's petition for a financing order subject
230 to and within the time limitations prescribed in this act.

231 (3) (a) Proceedings on an application submitted pursuant to
232 subsection (1) of this section shall begin with a petition by an
233 electric utility and shall be disposed of in accordance with the
234 provisions of Section 77-3-47 and applicable Public Service
235 Commission procedural rules, except that the provisions of this
236 section, to the extent applicable, shall control. The issuance of
237 a financing order, the system restoration bonds and the
238 implementation or adjustment of a system restoration charge under

239 this act shall not constitute a change in rates pursuant to
240 Section 77-3-37 or 77-3-39.

241 (i) Within seven (7) days after the filing of an
242 application, the Public Service Commission shall issue a
243 scheduling order, which sets a hearing date and provides for the
244 issuance of a financing order not more than one hundred twenty
245 (120) days after the date the petition is filed.

246 (ii) Not more than one hundred twenty (120) days
247 after the date the petition is filed, the commission shall issue a
248 financing order or an order rejecting the petition. A party to
249 the Public Service Commission proceeding may petition the
250 commission for reconsideration of the financing order not more
251 than seven (7) days after the date the financing order is issued.
252 The Public Service Commission shall rule on the petition for
253 reconsideration, by and through the issuance of a final financing
254 order upon reconsideration, not more than fourteen (14) days after
255 the filing of the petition. A failure by the Public Service
256 Commission to act upon such petition for reconsideration within
257 the specified time period shall be deemed a refusal of the
258 petition, and the financing order shall remain in effect. Any
259 judicial review shall be as provided in Section 5 of this act.

260 (iii) Upon issuance of a final financing order to
261 an electric utility, the electric utility shall have sixty (60)
262 days from the issuance of the financing order to request the State
263 Bond Commission to issue system restoration bonds and the State
264 Bond Commission shall authorize and issue the system restoration
265 bonds as soon as commercially practicable.

266 (iv) If financing orders are issued to more than
267 one (1) electric utility, the State Bond Commission may aggregate
268 multiple financing orders into a single issue of system
269 restoration bonds so as to reduce the costs of issuance.

270 (b) In a financing order issued on behalf of an
271 electric utility, the Public Service Commission shall:

272 (i) Specify the amount of prudently incurred
273 system restoration costs and the level of storm damage reserves,
274 taking into consideration, to the extent the Public Service
275 Commission deems appropriate, any other methods used to recover
276 these costs.

277 (ii) With advice from, and in consultation with,
278 the State Bond Commission and any outside consultant or counsel,
279 provide a description and estimate of the amount of financing
280 costs which may be recovered through system restoration charges
281 and the minimum and maximum period over which such costs may be
282 recovered.

283 (iii) Determine that the financing method proposed
284 pursuant to this act is reasonably expected to result in lower
285 overall costs or would avoid or significantly mitigate rate
286 impacts to customers as compared with alternative methods of
287 financing or traditional methods of recovering system restoration
288 costs.

289 (iv) Provide that, for the period specified
290 pursuant to subparagraph (ii) of this paragraph, the imposition
291 and collection of the system restoration charge authorized in the
292 financing order shall be paid by customers receiving transmission
293 or distribution service from the electric utility or its
294 successors or assignees under Public Service Commission approved
295 rate schedules or under special contracts, even if the customer
296 elects to purchase electricity from an alternative electric
297 supplier following a fundamental change in regulation of public
298 utilities in the state.

299 (v) Set forth the level of the storm damage
300 reserves and any limitations on how the reserve may be held,
301 accessed or used.

302 (vi) With advice from, and in consultation with,
303 the State Bond Commission and any outside consultant or counsel,
304 the Public Service Commission shall establish and employ a

305 mechanism for making expeditious periodic adjustments in the
306 system restoration charge that customers are required to pay under
307 the financing order and for making any adjustments that are
308 necessary to correct for any overcollection or undercollection of
309 the system restoration charge or to otherwise ensure the timely
310 payment of system restoration bonds, financing costs and any other
311 required amounts and charges payable in connection with the system
312 restoration bonds.

313 (vii) Specify the system restoration property to
314 be created in favor of the state upon the issuance of system
315 restoration bonds to secure prompt payment of the system
316 restoration bonds and any associated financing costs and any other
317 required amounts and charges payable in connection therewith as
318 they shall come due.

319 (viii) With advice from, and in consultation with,
320 the State Bond Commission and any outside consultant or counsel,
321 specify, to the extent possible, the terms and conditions of the
322 system restoration bonds, including, but not limited to, repayment
323 schedules, maximum interest rates, issuance costs, financing
324 costs, and any other required amounts and charges payable as they
325 shall come due.

326 (ix) Provide that the system restoration charge be
327 allocated to the customer rate classes in the same manner that
328 each such class is allocated its portion of the electric utility's
329 annual base rate revenues using the criteria set out in Section
330 77-3-33 and the commission's rules.

331 (x) Provide that upon the issuance of system
332 restoration bonds, the electric utility shall institute the
333 resulting initial system restoration charge in accordance with the
334 financing order and such initial system restoration charge shall
335 be effective upon the issuance of such system restoration bonds
336 without further action of the Public Service Commission.

337 (xi) Require the electric utility to file
338 supplemental monthly reports with the Public Service Commission
339 detailing any system restoration activity undertaken and any
340 system restoration costs incurred after the issuance of system
341 restoration bonds. Such filing shall be made in such form and
342 with such detail as the financing order or any prior order issued
343 to an electric utility by the Public Service Commission in
344 connection with the storm may provide.

345 (xii) Include any other conditions that the Public
346 Service Commission or the State Bond Commission considers
347 appropriate and that are not otherwise inconsistent with this act.

348 (c) In performing any of its responsibilities under
349 this subsection, the Public Service Commission may engage outside
350 consultants or counsel, including, but not limited to, the State
351 Bond Commission. Any expenses associated with such services shall
352 be included as part of financing costs and included in the total
353 amount of system restoration bonds issued pursuant to this act.

354 (d) If the Public Service Commission issues a financing
355 order and the system restoration charge is collected, the electric
356 utility shall file with the Public Service Commission at least
357 once annually a petition or a letter requesting the Public Service
358 Commission to review the system restoration charge established in
359 the financing order and make any necessary adjustments described
360 in paragraph (b)(vi) of this subsection. Upon receipt of the
361 petition, the Public Service Commission shall notify the State
362 Bond Commission, and the State Bond Commission shall perform an
363 audit of the appropriate system restoration sinking fund. The
364 Public Service Commission shall, with advice from, and in
365 consultation with, the State Bond Commission and, if desired, any
366 outside consultant or counsel, determine the appropriate amount of
367 any overcollection or undercollection of the system restoration
368 charge and the amount of any adjustment that may be required. The
369 adjustments shall ensure the recovery of revenues sufficient to

370 provide for the payment of principal and interest when due on
371 system restoration bonds approved under a financing order. Within
372 thirty (30) days after receiving an electric utility's petition or
373 letter pursuant to this paragraph, the Public Service Commission
374 shall, if necessary, revise the system restoration charge and
375 notify the electric utility of such revision, or, if no revision
376 to the system restoration charge is required, the Public Service
377 Commission shall so notify the electric utility.

378 (e) Upon the Public Service Commission's revision of a
379 system restoration charge and timely notification to the electric
380 utility, the electric utility shall promptly adjust the system
381 restoration charge to become effective the next practicable
382 billing cycle as specified in the Public Service Commission's
383 notification of such revision.

384 (f) Subsequent to the issuance of system restoration
385 bonds authorized by a financing order, the financing order shall
386 be irrevocable except as provided in this act. The Public Service
387 Commission may not amend, modify or terminate the financing order
388 by any subsequent action or reduce, impair, postpone, terminate or
389 otherwise adjust the system restoration charge approved in the
390 financing order. After the issuance of a financing order, the
391 electric utility retains sole discretion to request the system
392 restoration bonds be issued.

393 (g) At the request of an electric utility, the Public
394 Service Commission may commence a proceeding and issue a
395 subsequent financing order that authorizes the retirement or
396 refunding of system restoration bonds issued pursuant to the
397 original financing order if the Public Service Commission finds
398 that the subsequent financing order satisfies all of the criteria
399 specified in this subsection. Effective on retirement of the
400 system restoration bonds and the issuance of new system
401 restoration bonds, the Public Service Commission shall adjust the
402 related system restoration charge accordingly.

403 (h) An electric utility shall have sixty (60) days from
404 the issuance of a final financing order to request the State Bond
405 Commission to authorize the issuance of system restoration bonds.
406 Upon such request, the State Bond Commission shall authorize and
407 issue the system restoration bonds as soon as practicable. If no
408 such request is made by the electric utility within sixty (60)
409 days from the issuance of the final financing order by the Public
410 Service Commission, the financing order shall stand repealed.

411 **SECTION 5.** A party to a proceeding on a petition for a
412 financing order may appeal the financing order, after
413 reconsideration as provided for in this act, by direct appeal to
414 the Mississippi Supreme Court. An appeal must be filed within
415 seven (7) days after the petition for reconsideration has been
416 refused or deemed refused, or within seven (7) days after the
417 issuance of the final financing order upon reconsideration. Every
418 appeal shall briefly state the nature of the proceedings before
419 the Public Service Commission, and shall specify the final
420 financing order, upon reconsideration, complained of. Upon the
421 filing of an appeal, the Clerk of the Mississippi Supreme Court
422 shall serve notice of the appeal upon the Public Service
423 Commission, and the Public Service Commission shall, within
424 twenty-one (21) days after the service of the notice, certify to
425 the court the record in the case, which shall include a transcript
426 of all testimony, together with all exhibits or copies of the
427 exhibits, all pleadings, orders, findings and opinions entered in
428 the case. The parties and the Public Service Commission may
429 stipulate that a specified portion of the record shall be
430 certified to the court as the record on appeal. Every appeal of
431 Public Service Commission financing orders shall take precedence
432 over other cases as a matter affecting the public interest, and
433 the court shall docket and dispose of the appeal at the earliest
434 time compatible with the ends of justice. The court may hear and
435 dispose of the appeal in termtime or vacation, and the court may

436 sustain or dismiss the appeal, or modify or vacate the order
437 complained of in whole or in part, as the case may be. In case
438 the order is wholly or partly vacated, the court may also, in its
439 discretion, remand the matter to the Public Service Commission for
440 such further proceedings not inconsistent with the order of the
441 court as, in the opinion of the court, justice may require. The
442 final financing order upon reconsideration shall not be vacated or
443 set aside either in whole or in part, except for errors of law,
444 unless the court finds that the order of the Public Service
445 Commission is not supported by substantial evidence, is contrary
446 to the manifest weight of the evidence, is in excess of the
447 statutory authority or jurisdiction of the Public Service
448 Commission, or violates constitutional rights. If the Mississippi
449 Supreme Court remands the matter to the Public Service Commission
450 for further proceedings, the Public Service Commission shall enter
451 a final financing order upon remand not more than thirty (30) days
452 from the time of receipt of the mandate of the court.

453 **SECTION 6.** Except as provided in this act, a financing order
454 shall:

455 (a) Remain in effect until the system restoration bonds
456 issued pursuant to the order have been paid in full and the
457 commission-approved financing costs of the system restoration
458 bonds have been recovered in full.

459 (b) Remain in effect and unabated notwithstanding the
460 bankruptcy, sale, transfer, reorganization, merger or dissolution
461 of the electric utility or its successors or assignees.

462 **SECTION 7.** (1) System restoration bonds issued pursuant to
463 a financing order shall not be the debt of the electric utility.
464 System restoration charges paid under any financing order shall
465 not be considered the revenue of the electric utility for any
466 purpose, including any evaluation of the electric utility made
467 pursuant to a formula-type rate of return rate plan established in
468 Section 77-3-2. System restoration costs or financing costs,

469 issuance costs and other costs specified in the financing order
470 shall not be considered the costs of the electric utility.

471 (2) System restoration bonds shall not be used to finance
472 any project, addition, plant, facility, extension, capital
473 improvement, equipment, or any other expenditure, unless the
474 electric utility has filed a petition under this act to finance
475 such expenditure using system restoration bonds. No action taken
476 by an electric utility pursuant to a financing order issued under
477 this act shall be deemed to be unjust or unreasonable.

478 **SECTION 8.** (1) (a) All system restoration property that is
479 specified in a financing order shall constitute an existing,
480 present property right or interest of the state in the property,
481 notwithstanding that the imposition and collection of a system
482 restoration charge depends on the electric utility to which the
483 financing order is issued performing its servicing functions
484 relating to the collection of the system restoration charge and on
485 future provision of electric service. System restoration property
486 shall exist whether or not the revenues or proceeds arising from
487 the property have been billed, have accrued, or have been
488 collected and notwithstanding the fact that the value or amount of
489 the property is dependent on the future provision of service to
490 customers by the electric utility or its successors or assignees.

491 (b) System restoration property specified in a
492 financing order shall continue to exist until the system
493 restoration bonds issued pursuant to the financing order are paid
494 in full and all financing costs and other costs of the bonds have
495 been recovered in full.

496 (c) All system restoration property specified in a
497 financing order shall be pledged to secure system restoration
498 bonds issued pursuant to the financing order.

499 (d) The electric utility shall have no right to nor any
500 interest in the system restoration property other than the
501 obligation to collect the system restoration charges and transfer

502 those charges to the state as directed in any financing order and
503 any resolution of the State Bond Commission.

504 (e) The interest of the state in the system restoration
505 property specified in a financing order issued to an electric
506 utility, and in the revenue and collections arising from that
507 system restoration property, is not subject to setoff,
508 counterclaim, surcharge or defense by the electric utility or any
509 other person or in connection with the reorganization, bankruptcy
510 or other insolvency of the electric utility or any other entity.

511 (f) Any successor to an electric utility, whether
512 pursuant to any reorganization, bankruptcy or other insolvency
513 proceeding, or whether pursuant to any merger or acquisition, sale
514 or other business combination, or transfer by operation of law, as
515 a result of electric utility restructuring or otherwise, shall
516 perform and satisfy all obligations of, and have the same rights
517 under a financing order as, the electric utility under the
518 financing order in the same manner and to the same extent as the
519 electric utility, including collecting and paying to the person
520 entitled to receive the revenues, collections, payments or
521 proceeds of the system restoration property.

522 **SECTION 9.** (1) A special fund, to be designated the
523 "Hurricane Katrina Electric Utility Customer Relief and Electric
524 Utility System Restoration Fund," is created within the State
525 Treasury. The fund shall be maintained by the State Treasurer as
526 a separate and special fund, separate and apart from the General
527 Fund of the state. Unexpended amounts remaining in the fund at
528 the end of a fiscal year shall not lapse into the State General
529 Fund, and any interest earned or investment earnings on amounts in
530 the fund shall be deposited into such fund to the credit of the
531 appropriate account.

532 (2) The expenditure of money deposited into the fund shall
533 be under the direction of the commission, and such funds shall be
534 paid by the State Treasurer upon warrants issued by the commission

535 upon requisitions submitted by electric utilities and approved by
536 the commission pursuant to an exclusive procedure developed by the
537 State Bond Commission with advice from, and in consultation with,
538 the commission. This procedure shall be incorporated in the State
539 Bond Commission's resolution authorizing the sale of the bonds.
540 Money deposited into the fund shall be disbursed to electric
541 utilities from the appropriate account to pay the costs associated
542 with system restoration activity by the electric utility that is
543 necessary as a result of the storm.

544 (3) There shall be created accounts in the fund for each
545 electric utility for which a financing order is issued. The
546 proceeds of system restoration bonds issued pursuant to a
547 financing order shall be allocated to the account of the electric
548 utility for which the financing order was issued.

549 (4) Immediately upon the deposit to the fund of the proceeds
550 of the system restoration bonds, electric utilities shall be
551 entitled to requisition disbursements from the appropriate account
552 of the fund sufficient to recover the system restoration costs
553 incurred by the electric utility prior to the date of the deposit
554 of the proceeds of the system restoration bonds if the costs are
555 approved by the commission in the financing order issued to the
556 electric utility. An electric utility may requisition
557 disbursements from the appropriate account of the fund for costs
558 incurred after the deposit to the fund of the proceeds of system
559 restoration bonds if the costs are approved by the commission in
560 conjunction with the financing order.

561 (5) The primary purpose of this act being to serve the
562 public good and to benefit the public as a whole, any
563 distributions of the bond proceeds to recover system restoration
564 costs pursuant to this section are intended to be contributions to
565 the capital of the electric utility companies making the
566 requisitions.

567 **SECTION 10.** (1) For the purpose of providing for the
568 payment of the principal of and interest upon bonds issued under
569 the provisions of this act, the State Treasurer shall establish in
570 the State Treasury a system restoration bond sinking fund for each
571 electric utility for which bonds are issued under this act
572 pursuant to a financing order. Each sinking fund shall consist of
573 the system restoration property required to be deposited into the
574 fund by an electric utility pursuant to this act and such other
575 eligible funds as may otherwise be designated for deposit therein.
576 Funds required in excess of the amounts available in the system
577 restoration bond sinking fund established for an electric utility
578 to pay the principal of and interest when due upon bonds issued
579 pursuant to a financing order issued for the electric utility
580 pursuant to the provisions of this act shall be appropriated from
581 the State General Fund. Unexpended amounts remaining in a sinking
582 fund at the end of a fiscal year shall not lapse into the State
583 General Fund, and any interest earned or investment earnings on
584 amounts in a sinking fund shall be deposited into the sinking
585 fund.

586 (2) All system restoration property received by an electric
587 utility shall be deposited in the sinking fund of the electric
588 utility not less than monthly upon receipt by the electric
589 utility. The State Treasurer shall mandate the manner in which
590 such deposit shall be made.

591 (3) Any eligible funds other than system restoration
592 property received by a participating electric utility or the state
593 from any source for the purpose of financing or meeting system
594 restoration costs shall be paid into the system restoration
595 sinking fund of each participating electric utility in proportion
596 to their obligation for the payment of the system restoration
597 bonds. If such funds are directed to the state, the state shall
598 determine the amount of money it would have directed to a
599 participating electric utility in the absence of the participation

600 of the electric utility, and direct that amount to the system
601 restoration sinking fund of the participating electric utility.

602 (4) The money in each bond sinking fund established for an
603 electric utility pursuant to this act shall be used to pay the
604 principal and interest on system restoration bonds issued under a
605 financing order issued to the electric utility when due, and
606 shall, when advisable, be paid as soon as possible to reduce the
607 bonded indebtedness secured by that fund. It is the purpose of
608 this act to ensure that the system restoration bonds are retired
609 as soon as possible, consistent with the terms of the bonds, the
610 costs involved and the best interests of the electric utility
611 customers to be benefited.

612 (5) The State Bond Commission shall submit to the Public
613 Service Commission an accounting of the sinking funds at the same
614 time as an electric utility files a petition under Section 4(3)(d)
615 of this act. The commission shall consider this audit when
616 considering any adjustment to the system restoration charge.

617 (6) When the State Bond Commission determines that a system
618 restoration sinking fund or system restoration sinking funds are
619 sufficient to retire the outstanding bonds, it shall certify this
620 to the commission in writing. The State Bond Commission shall
621 retire the bonds not more than sixty (60) days after such
622 certification. Any unexpended amounts remaining in the sinking
623 fund following the retirement of the bonds shall be credited to
624 the State General Fund.

625 (7) Upon the retirement of the bonds, the electric utility
626 shall immediately petition the Public Service Commission for a
627 determination on the collection of system restoration charges from
628 electric utility customers.

629 **SECTION 11.** (1) An electric utility desiring the issuance
630 of system restoration bonds pursuant to a financing order shall
631 deliver a timely request to the State Bond Commission. Upon
632 receipt of such request, the State Bond Commission, in its

633 discretion, may act as the issuing agent, prescribe the form of
634 the bonds, advertise for and accept bids, issue and sell the bonds
635 so authorized to be sold, and do any and all other things
636 necessary and advisable in connection with the issuance and sale
637 of such bonds. With advice and consultation from the commission,
638 the State Bond Commission shall determine the amount of bonds to
639 be issued; however, the amount of bonds issued shall not exceed
640 the amount authorized in the financing order.

641 (2) Prior to the issuance of system restoration bonds under
642 this act, the State Bond Commission shall request that the State
643 Treasurer establish necessary system restoration bond sinking
644 funds as provided in Section 10 of this act.

645 (3) Any investment earnings on amounts deposited into the
646 Hurricane Katrina Electric Utility Customer Relief and Electric
647 Utility System Restoration Fund created in Section 9 of this act
648 shall be used to pay debt service on bonds issued under this act,
649 in accordance with the proceedings authorizing issuance of such
650 bonds.

651 **SECTION 12.** The principal of and interest on the bonds
652 authorized under this act shall be payable in the manner provided
653 in this section. Such bonds shall bear such date or dates, be in
654 such denomination or denominations, bear interest at such rate or
655 rates (not to exceed the limits set forth in Section 75-17-101),
656 be payable at such place or places within or without the State of
657 Mississippi, shall mature absolutely at such time or times not
658 less than five (5) years nor more than twenty-five (25) years from
659 date of issue, be redeemable before maturity at such time or times
660 and upon such terms, with or without premium, shall bear such
661 registration privileges, and shall be substantially in such form,
662 all as shall be determined by resolution of the State Bond
663 Commission.

664 **SECTION 13.** The bonds authorized by this act shall be signed
665 by the Chairman of the State Bond Commission, or by his facsimile

666 signature, and the official seal of the State Bond Commission
667 shall be affixed thereto, attested by the Secretary of the State
668 Bond Commission. The interest coupons, if any, to be attached to
669 such bonds may be executed by the facsimile signatures of such
670 officers. Whenever any such bonds shall have been signed by the
671 officials designated to sign the bonds who were in office at the
672 time of such signing but who may have ceased to be such officers
673 before the sale and delivery of such bonds, or who may not have
674 been in office on the date such bonds may bear, the signatures of
675 such officers upon such bonds and coupons shall nevertheless be
676 valid and sufficient for all purposes and have the same effect as
677 if the person so officially signing such bonds had remained in
678 office until their delivery to the purchaser, or had been in
679 office on the date such bonds may bear. However, notwithstanding
680 anything herein to the contrary, such bonds may be issued as
681 provided in the Registered Bond Act of the State of Mississippi.

682 **SECTION 14.** All bonds and interest coupons issued under the
683 provisions of this act have all the qualities and incidents of
684 negotiable instruments under the provisions of the Uniform
685 Commercial Code, and in exercising the powers granted by this act,
686 the commission shall not be required to and need not comply with
687 the provisions of the Uniform Commercial Code.

688 **SECTION 15.** The State Bond Commission shall act as the
689 issuing agent for the bonds authorized under this act, prescribe
690 the form of the bonds, advertise for and accept bids, issue and
691 sell the bonds so authorized to be sold, pay all fees and costs
692 incurred in such issuance and sale, and do any and all other
693 things necessary and advisable in connection with the issuance and
694 sale of such bonds. The State Bond Commission is authorized and
695 empowered to pay the costs that are incident to the sale, issuance
696 and delivery of the bonds authorized under this act from the
697 proceeds derived from the sale of such bonds. The State Bond
698 Commission shall sell such bonds on sealed bids at public sale,

699 and for such price as it may determine to be for the best interest
700 of the state, but no such sale shall be made at a price less than
701 par plus accrued interest to the date of delivery of the bonds to
702 the purchaser. All interest accruing on such bonds so issued
703 shall be payable semiannually or annually; however, the first
704 interest payment may be for any period of not more than one (1)
705 year.

706 Notice of the sale of any such bonds shall be published at
707 least one time, not less than ten (10) days before the date of
708 sale, and shall be so published in one or more newspapers
709 published or having a general circulation in the City of Jackson,
710 Mississippi, and in one or more other newspapers or financial
711 journals with a national circulation, to be selected by the State
712 Bond Commission.

713 The State Bond Commission, when issuing any bonds under the
714 authority of this act, may provide that bonds, at the option of
715 the state, may be called in for payment and redemption at the call
716 price named therein and accrued interest on such date or dates
717 named therein.

718 **SECTION 16.** The bonds issued under the provisions of this
719 act shall be payable from the appropriate sinking fund established
720 pursuant to Section 10 of this act and are general obligations of
721 the State of Mississippi, and for the payment thereof the full
722 faith and credit of the State of Mississippi is irrevocably
723 pledged. If the funds available in the appropriate sinking fund
724 and any funds appropriated by the Legislature for such purpose are
725 insufficient to pay the principal of and the interest upon such
726 bonds as they become due, the deficiency shall be paid by the
727 State Treasurer from any funds in the State Treasury not otherwise
728 appropriated. All such bonds shall contain recitals on their
729 faces substantially covering the foregoing provisions of this
730 section.

731 **SECTION 17.** Upon the issuance and sale of bonds under the
732 provisions of this act, the State Bond Commission shall transfer
733 the proceeds of any such sale or sales to the special fund created
734 in Section 9 of this act. The proceeds of such bonds shall be
735 disbursed solely as provided in Section 9 of this act.

736 **SECTION 18.** The bonds authorized under this act may be
737 issued without any other proceedings or the happening of any other
738 conditions or things other than those proceedings, conditions and
739 things which are specified or required by this act. Any
740 resolution providing for the issuance of bonds under the
741 provisions of this act shall become effective immediately upon its
742 adoption by the State Bond Commission, and any such resolution may
743 be adopted at any regular or special meeting of the commission by
744 a majority of its members.

745 **SECTION 19.** The bonds authorized under the authority of this
746 act may be validated in the Chancery Court of the First Judicial
747 District of Hinds County, Mississippi, in the manner and with the
748 force and effect provided by Chapter 13, Title 31, Mississippi
749 Code of 1972, for the validation of county, municipal, school
750 district and other bonds. The notice to taxpayers required by
751 such statutes shall be published in a newspaper published or
752 having a general circulation in the City of Jackson, Mississippi.

753 **SECTION 20.** Any holder of bonds issued under the provisions
754 of this act or of any of the interest coupons pertaining thereto
755 may, either at law or in equity, by suit, action, mandamus or
756 other proceeding, protect and enforce any and all rights granted
757 under this act, or under such resolution, and may enforce and
758 compel performance of all duties required by this act to be
759 performed, in order to provide for the payment of bonds and
760 interest thereon.

761 **SECTION 21.** All bonds issued under the provisions of this
762 act shall be legal investments for trustees and other fiduciaries,
763 and for savings banks, trust companies and insurance companies

764 organized under the laws of the State of Mississippi, and such
765 bonds shall be legal securities which may be deposited with and
766 shall be received by all public officers and bodies of this state
767 and all municipalities and political subdivisions for the purpose
768 of securing the deposit of public funds.

769 **SECTION 22.** The Attorney General of the State of Mississippi
770 shall represent the State Bond Commission in issuing, selling and
771 validating bonds provided for in this act.

772 **SECTION 23.** Upon an application by an electric utility to
773 the commission pursuant to Section 4 of this act and the issuance
774 of a financing order by the commission, the State Bond Commission
775 shall, upon the request of the electric utility, issue refunding
776 bonds for the purpose of paying any system restoration bonds at or
777 prior to their maturity or upon acceleration or redemption.

778 Refunding bonds may be issued at such time prior to the maturity
779 or redemption of the refunded bonds as the commission and the
780 State Bond Commission may determine. The refunding bonds shall be
781 issued pursuant to the Mississippi Bond Refinancing Act, Section
782 31-27-1 et seq.

783 **SECTION 24.** Bonds issued under the provisions of this act
784 and income therefrom shall be exempt from all taxation in the
785 State of Mississippi.

786 **SECTION 25.** The proceeds of the bonds issued under this act
787 shall be used solely for the purposes herein provided, including
788 the costs incident to the issuance and sale of such bonds.

789 **SECTION 26.** The State Treasurer is authorized, without
790 further process of law, to certify to the Department of Finance
791 and Administration the necessity for warrants, and the Department
792 of Finance and Administration is authorized and directed to issue
793 such warrants, in such amounts as may be necessary to pay when due
794 the principal of, premium, if any, and interest on, or the
795 accreted value of, all bonds issued under this act; and the State
796 Treasurer shall forward the necessary amount to the designated

797 place or places of payment of such bonds in ample time to
798 discharge such bonds, or the interest thereon, on the due dates
799 thereof.

800 **SECTION 27.** (1) System restoration charges shall not be
801 included within the gross revenues of the electric utility in the
802 calculation of any franchise fees pursuant to Section 77-3-17 or
803 pursuant to any franchise fee agreement between any electric
804 utility and any municipality.

805 (2) Nothing in this act shall be construed or interpreted as
806 lessening or reducing the rights and privileges of an electric
807 utility set out in Section 79-23-1 and in the Mississippi Uniform
808 Trade Secrets Act, Section 75-26-1 et seq., and in the rules and
809 regulations of the Public Service Commission implementing the
810 provisions of such statutes.

811 **SECTION 28.** The state pledges to and agrees with
812 bondholders, the owners of the system restoration property, and
813 other financing parties that the state will not:

814 (a) Alter the provisions of this act which make the
815 system restoration charge imposed by a financing order
816 irrevocable; or

817 (b) Except as allowed under this act, reduce, alter or
818 impair the system restoration charge that is to be imposed,
819 collected and remitted for the benefit of the bondholders and
820 other financing parties until any and all principal, interest,
821 premium, financing costs and other fees, expenses or charges
822 incurred, and any contracts to be performed, in connection with
823 the related system restoration bonds have been paid and performed
824 in full.

825 **SECTION 29.** The provisions of this act shall be deemed to be
826 full and complete authority for the exercise of the powers therein
827 granted, but this act shall not be deemed to repeal or to be in
828 derogation of any existing law of this state.

829 **SECTION 30.** This act shall take effect and be in force from
830 and after its passage.