

TITLE 61
PUBLIC UTILITY REGULATION

CHAPTER 16
UTILITY COST REDUCTION BONDS

61-1601. LEGISLATIVE INTENT. It is the intent of the legislature in enacting this chapter to authorize the public utilities commission to approve certain cost reduction charges or rates as a method of financing or refinancing costs incurred or to be incurred by electric and gas utilities that will accrue benefits to Idaho consumers through reduced utility rates. The legislature believes that this type of securities legislation is in the public interest but should not be considered as endorsement of, or intended to provide, a mechanism for restructuring of the utility industry in the state of Idaho.

[61-1601, added 2005, ch. 372, sec. 1, p. 1186.]

61-1602. DEFINITIONS. For purposes of this chapter, the following terms shall have the following meanings, unless the context clearly requires otherwise:

(1) "Approved costs" means the amounts that a public utility or assignee has been authorized to recover by the commission pursuant to a cost reduction order including, without limitation:

(a) Amounts incurred or to be incurred for purposes for which a public utility may issue stock and stock certificates or other evidences of interest or ownership, or bonds, notes or other evidences of indebtedness under chapter 9, title 61, Idaho Code;

(b) Amounts necessary to recover federal or state taxes actually paid by a public utility, which tax liability is modified by the transactions approved in a cost reduction order issued by the commission pursuant to this chapter; and

(c) Reasonable costs, as approved by the commission, relating to the issuance, servicing or refinancing of cost reduction instruments under the provisions of this chapter including, without limitation, principal, interest or other payments and accruals, sinking fund payments, debt service and other reserves, costs of credit enhancement, indemnities, if any, owed to an assignee or the trustee for the cost reduction instrument, issuance costs and redemption premiums, if any, and all other reasonable fees, costs and charges with respect to the cost reduction instrument.

(2) "Assignee" means any corporation, limited liability company, trust, partnership or other entity to which a public utility assigns, sells or transfers, other than as security, all or a portion of the public utility's interest in or right to cost reduction property. The term also includes any such entity to which an assignee assigns, sells or transfers, other than as security, the assignee's interest in or right to cost reduction property.

(3) "Chapter 9" means chapter 9, title 28, Idaho Code, as from time to time amended, including any successor provisions.

(4) "Cost reduction instrument" means any instrument, pass-through certificate, note, bond, debenture, certificate of participation, collateral trust certificate, beneficial interest or other evidence of indebtedness or ownership issued by a public utility or an assignee pursuant

to a cost reduction order and an executed indenture, security agreement or other similar instrument that is secured by or payable from cost reduction rates or cost reduction property.

(5) "Cost reduction instrument holder" means any holder of a cost reduction instrument or any trustee, collateral agent or other entity acting for the benefit of or on behalf of any such holder.

(6) "Cost reduction order" means an order of the commission issued in accordance with this chapter that authorizes the imposition and collection of approved costs.

(7) "Cost reduction property" means the irrevocable, vested property right created pursuant to this chapter and one (1) or more cost reduction orders including, without limitation, the right, title and interest of a public service company or assignee to all revenues, collections, claims, payments, money or proceeds of or arising from a cost reduction rate, and all rights to obtain adjustments to such cost reduction rate pursuant to the terms of this chapter and any cost reduction order.

(8) "Cost reduction rate" means a charge or rate that the commission authorizes in a cost reduction order, whether such amounts are billed and/or collected by the public utility, an assignee, any subsidiary or affiliate thereof, or any third party that may assume the responsibility for billing or collecting such cost reduction charges.

(9) "Public utility" means any electric or gas corporation subject to the jurisdiction, regulation and control of the public utilities commission as contained in chapter 1, title 61, Idaho Code.

[61-1602, added 2005, ch. 372, sec. 1, p. 1187.]

61-1603. COST REDUCTION ORDER. (1) A public utility may apply to the commission for a cost reduction order authorizing the recovery of approved costs through the imposition and collection of a cost reduction rate.

(2) A public utility may apply to the commission from time to time for a cost reduction order in a manner prescribed by the commission, in separate proceedings for this purpose or in connection with a general rate case. Such application may also include a request for authority to issue and sell cost reduction instruments to be secured by or payable from the cost reduction rate that results from such cost reduction order or the cost reduction property created by this chapter and the cost reduction order related to such cost reduction rate. Upon such an application, if the commission finds that the public interest would be served if the approved costs were recovered through a cost reduction rate, the commission shall issue a cost reduction order to allow the public utility to recover the approved costs through a cost reduction rate and may also provide authority to issue and sell cost reduction instruments.

(3) A cost reduction order shall detail the approved costs to be recovered and the period of time in which recovery of the approved costs is to occur. A cost reduction order shall specify the amount of the cost reduction rate and the method for determining the amount of the cost reduction rate that from time to time will be sufficient to recover all approved costs. Cost reduction rates shall remain in effect until all approved costs have been paid in full.

(4) A cost reduction order may be issued only upon the application of a public utility and shall become effective only in accordance with its terms and conditions. A public utility may withdraw its application for a cost reduction order if it disagrees with any of the terms and conditions of the or-

der within fourteen (14) days of service of a final order on the public utility. A public utility shall effect the withdrawal of its application by filing a written notice of withdrawal with the commission within such time period. Nothing in this section shall be construed to limit or preclude other remedies that may be available to the public utility under applicable law.

(5) No public utility shall be treated as having acted unreasonably or imprudently by reason of its failure to apply for a cost reduction order, by reason of its withdrawal of an application for a cost reduction order, or by reason of its failure to arrange for the issuance of cost reduction instruments pursuant to a cost reduction order.

(6) Upon issuance of a cost reduction order, a public utility may sell, assign or otherwise transfer or pledge cost reduction property created by this chapter and the applicable cost reduction order, and if authorized by the particular cost reduction order, a public utility or an assignee may issue or cause to be issued cost reduction instruments.

(7) Any cost reduction order, and the approved costs and the cost reduction rates that have been authorized by the commission in such cost reduction order, shall be irrevocable and binding upon the commission. The commission shall not have authority either by rescinding, altering or amending a cost reduction order or otherwise to, either directly or indirectly, revalue or revise for ratemaking purposes the approved costs or the cost reduction rates. Once the commission authorizes a cost reduction rate, it cannot determine in a later proceeding that the cost reduction rate is unjust or unreasonable, or in any way reduce or impair the value of related cost reduction property, either directly or indirectly, by taking the cost reduction rate into account when setting other rates for the public utility; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement or termination. The state of Idaho does hereby pledge to and agree with the owners of cost reduction property and with any cost reduction instrument holders that neither the state nor any of its agencies, including the commission, shall (by administrative or legislative action, ballot initiative or other similar process) limit, alter, restrict or impair the approved costs, the cost reduction rate, the cost reduction property, the cost reduction orders or any rights thereunder or ownership thereof or security interest therein or in any way impair the rights or remedies of any cost reduction instrument holders. The state does hereby acknowledge that any cost reduction instrument holders may and will rely on this pledge and agreement and that they would be irreparably harmed by any such limitation, alteration, restriction or impairment without such adequate provision.

(8) Notwithstanding any other provision of this chapter, the commission will from time to time, and no less frequently than annually, approve adjustments to the cost reduction rates as may be necessary to ensure timely and complete recovery of all approved costs that are the subject of the pertinent cost reduction order.

(9) Subject to the foregoing limitations, the commission has the same authority with respect to a proposed cost reduction rate as it has with regard to any other tariff, schedule or classification the effect of which is to change any rate or charge, including, without limitation, the power granted by chapter 6, title 61, Idaho Code, to conduct a hearing concerning a proposed cost reduction rate and the reasonableness and justness thereof.

(10) The commission shall establish procedures for the expeditious processing of any application for cost reduction orders and adjustments

thereto, including the approval or disapproval of any such orders within forty-five (45) days of the application therefor.

[61-1603, added 2005, ch. 372, sec. 1, p. 1188.]

61-1604. LIMITATION ON AGGREGATE AMOUNT OF COST REDUCTION FINANCING. The amount of approved costs in a cost reduction order, either individually or in the aggregate with previously approved costs included in cost reduction orders that remain outstanding, may not exceed an amount equal to forty percent (40%) of the public utility's total capitalization, including both debt and equity, as of the end of the fiscal year of such public utility preceding the application for such cost reduction order.

[61-1604, added 2005, ch. 372, sec. 1, p. 1189.]

61-1605. COST REDUCTION RATE. (1) Each cost reduction order shall specify a procedure for making adjustments to the cost reduction rate that is the subject of the order.

(2) Upon application by a public utility the commission may:

(a) Authorize the making of adjustments to the cost reduction rate at more frequent intervals than those specified in such order; and/or

(b) Authorize a change in the method for calculating the cost reduction rate from that specified in such order so as to better ensure the timely and complete recovery of all approved costs.

(3) The cost reduction rate shall be treated as a charge for utility services for purposes of determining both the credit and collection standards and the remedies for nonpayment that are available to a public utility.

(4) A cost reduction rate shall constitute cost reduction property when, and to the extent that, a cost reduction order authorizing such cost reduction rate has become effective in accordance with this chapter, and the cost reduction property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the cost reduction order, but in any event until the approved costs are paid in full.

(5) Any surplus cost reduction rate collections in excess of the amounts necessary to pay approved costs shall be used in such manner as the commission may reasonably determine.

(6) The obligation to pay amounts in respect of a cost reduction rate cannot be avoided by the formation of a local publicly owned utility or other entity, or by annexation of any portion of the service territory of the public utility by a local publicly owned electric utility or other entity.

[61-1605, added 2005, ch. 372, sec. 1, p. 1189.]

61-1606. COST REDUCTION INSTRUMENTS. (1) Public utilities and assignees may issue and sell cost reduction instruments upon approval by the commission of such action in a cost reduction order.

(2) Public utilities and assignees may sell and assign all or portions of their interest in cost reduction property that is the basis for the issuance of cost reduction instruments to the extent approved in the pertinent cost reduction order. To the extent approved in the pertinent cost reduction orders, public utilities and assignees may also pledge cost reduction property as collateral, directly or indirectly, for cost reduction instruments providing for a security interest in the cost reduction property, in the manner as set forth in this chapter. Cost reduction property may also be sold or assigned by:

(a) A public utility, an assignee or a trustee for the holders of cost reduction instruments in connection with the exercise of remedies upon a default; or

(b) Any person acquiring the cost reduction property after a sale or assignment pursuant to this subsection.

(3) To the extent that any interest in cost reduction property is so sold or assigned, or is so pledged as collateral, the commission may authorize the public utility to contract with an assignee that it will continue to operate its system to provide service to its customers, will collect amounts with respect to the cost reduction rates for the benefit and account of the assignee, and will account for and remit these amounts to or for the account of the assignee. Contracting with the assignee in accordance with that authorization shall not impair or negate the characterization of the sale, assignment or pledge as an absolute transfer, a true sale or security interest, as applicable.

(4) Upon approval by the commission of a cost reduction order, any issuance of cost reduction instruments approved therein, any related transfer or pledge of cost reduction property and any other transactions incidental to such issuance shall be exempt from the requirements of 61-901 through 61-908, Idaho Code. The commission may include in any cost reduction order any additional approvals that may be required in connection with such issuance under applicable law.

(5) An assignee shall not be considered to be an electric or gas corporation solely by virtue of the transactions described in this chapter.

[61-1606, added 2005, ch. 372, sec. 1, p. 1190.]

61-1607. SECURITY INTEREST. (1) To the extent the provisions of this section conflict with chapter 9 as from time to time in effect, including any successor provisions, this section shall apply.

(2) A security interest in cost reduction property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the cost reduction property perfected in the manner described in this section, and attaches when all of the following have occurred:

(a) The commission has issued a cost reduction order authorizing a cost reduction rate, the right to the imposition and collection of which is included in the cost reduction;

(b) Value has been given by the pledgees of the cost reduction property; and

(c) The pledgor has signed a security agreement covering the cost reduction property.

(3) A valid and enforceable security interest in cost reduction property is perfected when it has attached and when a financing statement has been filed in accordance with chapter 9, naming the pledgor of the cost reduction property as "debtor" and identifying the cost reduction property. Any description of the cost reduction property shall be sufficient if it refers to the cost reduction order creating the cost reduction property. A copy of the financing statement shall be filed with the commission by the pledgor or transferor of the cost reduction property, and the commission may require the pledgor or transferor to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest.

A financing statement filed pursuant to this section shall remain effective until a termination statement is filed.

(4) A perfected security interest in cost reduction property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Cost reduction property shall constitute property for all purposes, including for contracts securing cost reduction instruments, whether or not the revenues and proceeds arising with respect thereto have accrued.

(5) Subject to the terms of the security agreement covering the cost reduction property and the rights of any third parties holding security interests in the cost reduction property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the cost reduction property with other funds of the public utility that is the pledgor or transferor of the cost reduction property, or by any security interest in a deposit account of that public utility perfected under chapter 9, into which the revenues are deposited. Subject to the terms of the security agreement, the pledgees of the cost reduction property shall have a perfected security interest in all cash and deposit accounts of the public utility in which revenues arising with respect to the cost reduction property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the cost reduction property received by the public utility within twelve (12) months before: (a) any default under the security agreement, or (b) the institution of insolvency proceedings by or against the public utility, less payments from the revenues to the pledgees during that twelve (12) month period.

(6) If an event of default occurs under the security agreement covering the cost reduction property, the pledgees of the cost reduction property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under chapter 9, and shall be entitled to foreclose or otherwise enforce their security interest in the cost reduction property, subject to the rights of any third parties holding prior security interests in the cost reduction property perfected in the manner provided in this section. In addition, the commission may require, in the cost reduction order creating the cost reduction property, that, in the event of default by the public utility in payment of revenues arising with respect to the cost reduction property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under section 61-1608, Idaho Code, of the cost reduction property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the cost reduction property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor or transferor of the cost reduction property.

(7) Cost reduction property shall constitute a payment intangible as that term is defined under chapter 9.

(8) Sections 28-9-204 and 28-9-205, Idaho Code, as from time to time amended, including any successor provisions, shall apply to a pledge of cost reduction property by a public utility, assignee or other issuer.

(9) This section sets forth the terms by which a consensual security interest can be created and perfected in cost reduction property. Unless otherwise ordered by the commission with respect to any series of cost reduction instruments on or prior to the issuance of the series, there shall exist a statutory lien as provided in this section. Upon the effective date of the cost reduction order, there shall exist a first priority lien on all cost reduction property then existing or thereafter arising pursuant to the terms of the cost reduction order. This lien shall arise by operation of this section automatically without any action on the part of the public utility, any assignee or other issuer, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the cost reduction instruments issued pursuant to the cost reduction order, the trustee or representative for the holders, and any other entity specified in the cost reduction order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the pertinent cost reduction order, have all rights and remedies of a secured party upon default under chapter 9, and shall be entitled to foreclose or otherwise enforce this statutory lien in the cost reduction property. This lien shall attach to the cost reduction property regardless of who shall own, or shall subsequently be determined to own, the cost reduction property including any public utility, any assignee or other issuer, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the cost reduction property and all third parties upon the effectiveness of the cost reduction order without any further public notice; provided however, that any person may, but shall not be required to, file a financing statement in accordance with subsection (3) of this section. Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the cost reduction property. A perfected statutory lien in cost reduction property is a continuously perfected lien in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting liens shall rank according to priority in time of perfection. In addition, the commission may require, in the cost reduction order creating the cost reduction property, that, in the event of default by the public utility in payment of revenues arising with respect to cost reduction property, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the cost reduction property.

[61-1607, added 2005, ch. 372, sec. 1, p. 1191.]

61-1608. TRANSFERS IN INTEREST. (1) A transfer of cost reduction property by a public utility to an assignee, or by an assignee to another assignee, that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a cost reduction order, shall be treated as an absolute transfer of all of the transferor's right, title and interest, as in a true sale, and not as a pledge or other financing, of the cost reduction property, in each case notwithstanding any contrary treatment for federal or state income and franchise taxes, accounting or other purposes.

(2) A transfer of cost reduction property shall be deemed perfected as against third persons and shall vest title in the transferee when both of the following have taken place:

(a) The commission has issued the cost reduction order authorizing the cost reduction rate included in the cost reduction property; and

(b) A written assignment of the cost reduction property has been executed and delivered to the transferee.

(3) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with chapter 9, naming the assignor of the cost reduction property as debtor and identifying the cost reduction property has priority. Any description of cost reduction property shall be sufficient if it refers to the cost reduction order creating the cost reduction property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

(4) The interest of an assignee or pledgee in cost reduction property and in the revenues and collections arising from such property are not subject to set-off, counterclaim, surcharge or defense by the public utility or any other person or in connection with the bankruptcy of the public utility or any other person.

[61-1608, added 2005, ch. 372, sec. 1, p. 1193.]

61-1609. SUCCESSORS. Any successor to the public utility, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding, or pursuant to any merger, sale or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the public utility pursuant to this chapter in the same manner and to the same extent as was required of the public utility before such proceeding or merger, sale or transfer including, but not limited to, billing, collecting and paying to the cost reduction instrument holders, or their representatives or the applicable financing entity, cost reduction rates and any other revenues arising with respect to the cost reduction property sold to the applicable financing entity or pledged to secure cost reduction instruments and seeking cost reduction rate adjustments, as necessary and permitted by the pertinent cost reduction order, to recover all approved costs designated in such cost reduction order.

[61-1609, added 2005, ch. 372, sec. 1, p. 1194.]

61-1610. DISCLAIMER OF STATE FULL FAITH AND CREDIT. Cost reduction rates, cost reduction property, and any related cost reduction instruments issued under this chapter and any applicable cost reduction orders do not constitute a debt or liability of this state or of any political subdivision thereof and do not constitute a pledge of the full faith and credit of this state or any of its political subdivisions, but are payable solely from the funds provided therefor. Any cost reduction instruments shall 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 Idaho is pledged to the payment of the principal of, or interest on, this instrument."

[61-1610, added 2005, ch. 372, sec. 1, p. 1194.]

61-1611. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[61-1611, added 2005, ch. 372, sec. 1, p. 1194.]