

**278.670 Definitions for KRS 278.670 to 278.696 and 65.114.**

In addition to the definitions in KRS 278.010, except KRS 278.010(3)(a), which shall apply unless they conflict with or the context otherwise requires, as used in KRS 278.670 to 278.696 and 65.114:

- (1) "Ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with securitized bonds;
- (2) "Assignee" means a legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to securitized property. The term "assignee" includes a corporation, limited liability company, general or limited partnership, public authority, trust, and financing entity to which an assignee assigns, sells or transfers, other than as security, its interest in or right to securitized property;
- (3) "Bondholder" means a person who holds a securitized bond;
- (4) "Code" means the Uniform Commercial Code, KRS Chapter 355;
- (5) "Deferred costs" means costs that have occurred but will be accounted for as part of a regulatory asset;
- (6) "Financing costs" include the following:
  - (a) Interest and acquisition, defeasance, or redemption premiums payable on securitized bonds;
  - (b) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to securitized bonds;
  - (c) Any other cost related to issuing, supporting, repaying, refunding, or servicing securitized bonds, including the following fees and costs without limitation:
    1. Servicing fees, accounting and auditing fees, trustee fees, consulting fees, structuring adviser fees, financial advisor fees, administrative fees, placement and underwriting fees, independent director and manager fees, rating agency fees, stock exchange listing and compliance fees, security registration fees, and filing fees;
    2. Capitalized interest and information technology programming costs; and
    3. Any other costs necessary to otherwise ensure the timely payment of securitized bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;
  - (d) Any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized surcharge or otherwise resulting from the collection of securitized surcharges, in any such case whether paid, payable, or accrued;
  - (e) Any state or local taxes, franchise taxes, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable, or accrued; and

- (f) Any costs associated with performance of the commission's responsibilities under KRS 278.670 to 278.696 and 65.114 in connection with:
  - 1. Approving, approving subject to conditions, or rejecting an application for a financing order; and
  - 2. Retaining counsel, one (1) or more financial advisors, or other consultants as deemed appropriate by the commission and paid pursuant to KRS 278.670 to 278.696 and 65.114, for the issuance advice letter process;
- (7) "Financing order" means an order issued by the commission that authorizes the:
  - (a) Issuance of securitization bonds;
  - (b) Imposition, collection, and periodic adjustment of a securitized surcharge;
  - (c) Creation of securitized property; and
  - (d) Sale, assignment, or transfer of securitized property to an assignee;
- (8) "Financing party" means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders;
- (9) "Financing statement" has the same meaning as in KRS 355.9-102;
- (10) "Formula-based true-up mechanism" means a reconciliation or true-up process that is used to identify over collection or under collection of the securitized surcharge;
- (11) "Issuance advice letter" means a letter from the utility to the commission that describes the final terms and conditions for the bond issuance, including but not limited to the actual structure of the bond issue, pricing, and other bond features such as coupon rates, redemption, and call provisions, and current market conditions affecting the bond issuance;
- (12) "Nonbypassable" means the payment of a securitized utility charge may not be avoided by any existing or future retail customer including special contract customers;
- (13) "Pledgee" means a financing party to which an electric utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to securitized property;
- (14) "Regulatory asset" means, under the standardized financial accounting standards adopted by the commission, expenses that have been authorized by the commission to be capitalized for consideration of recovery in future rates that would otherwise be treated as an expense in a current accounting period;
- (15) "Retired generation costs" means:
  - (a) Pretax costs with respect to retired or abandoned facilities that are included as deferred costs subject to an application for a financing order and include but are not limited to:
    - 1. The undepreciated investment in the retired or abandoned electric generating facility and in any facilities ancillary thereto or used in conjunction therewith;
    - 2. Costs of decommissioning and restoring the site of the electric generating facility;

3. Other applicable capital and operating costs; and
  4. Accrued carrying charges and deferred costs;
- (b) Reduced by:
1. Insurance, scrap, and salvage proceeds;
  2. Applicable unamortized regulatory liabilities for excess deferred income taxes; and
  3. The present value of return on all accumulated deferred income taxes related to pretax costs with respect to a retired or abandoned facility and related facilities, including those due to bonus and accelerated tax depreciation and abandonment losses; and
- (c) Added to pretax costs the electric utility has previously incurred related to the retirement or abandonment of an electric generating facility and related facilities offering before June 29, 2023, including costs associated with:
1. The decommissioning and restoration of the site; and
  2. Environmental compliance related to the operation and retirement of the electric generating facility;
- (16) "Securitization" means a structured process where interests in debt instruments or other receivable income are packaged, underwritten, and sold as asset-backed marketable securities such as bonds;
- (17) "Securitized bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a maturity date as determined reasonable by the commission, but not later than thirty (30) years from the issue date, that are issued by an electric utility or assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance capitalized cost assets and financing costs that are secured by or payable from securitized utility property;
- (18) "Securitized costs" include retired generation costs, as well as the unamortized book value of extraordinary storm costs or other deferred costs associated with prior incurrences, but does not include ongoing utility investments or operating costs;
- (19) "Securitized property" means:
- (a) All rights and interests of a utility, its successor, or assignee under a financing order, including the right to impose, bill, charge, collect, and receive securitized surcharges authorized under the financing order and to obtain periodic adjustments to those charges authorized under KRS 278.670 to 278.696 and 65.114 and as provided in the financing order; and
  - (b) All revenues, collections, claims, rights to payments, payments, moneys, or proceeds arising from the rights and interests specified in the financing order, regardless of whether those revenues, collections, claims, rights to payment, payments, moneys, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, moneys, or proceeds;
- (20) "Securitized surcharge" means the amounts authorized by the commission to repay,

finance, or refinance securitized costs and financing costs that are, except as otherwise provided for in KRS 278.670 to 278.696 and 65.114:

- (a) Nonbypassable and imposed on, and are a part of, all retail customer bills;
  - (b) Collected, in full and separate from the utility's tariffed rates, special contract rates, or other mechanisms by an electric utility or by its successors, assignees, or collection agents; and
  - (c) Paid by all existing or future retail customers receiving electrical service from the electric utility or its successors or assignees under commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in the Commonwealth; and
- (21) "Utility" has the same meaning as in KRS 278.010(3)(a) but shall not include any utility organized under KRS Chapter 279.

**Effective:** June 29, 2023

**History:** Created 2023 Ky. Acts ch. 72, sec. 1, effective June 29, 2023.