

278.676 Financing order -- Prior issuance of bonds -- Conditions on securitized property.

- (1) A financing order issued by the commission, after a hearing, to an electric utility shall include:
 - (a) The amount of securitized costs to be financed using securitized bonds and a finding that recovery of those costs is fair, just, and reasonable and in the public interest;
 - (b) A description and estimate of the amount of financing costs that may be recovered through securitized surcharges and the period over which securitized costs and financing costs may be recovered;
 - (c) A finding that the proposed issuance of securitized bonds and the imposition and collection of a securitized surcharge are fair, just, and reasonable, in the public interest, and expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds;
 - (d) A finding that the proposed structuring and pricing of the securitized bonds are reasonably expected to result in the lowest securitized surcharges consistent with market conditions at the time the securitized bonds are priced under the terms of the financing order;
 - (e) A requirement that, for so long as the securitized bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized surcharges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving electric service from the electric utility, its successors, or assignees under commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the Commonwealth;
 - (f) A formula-based true-up mechanism for making:
 1. At least annually, expeditious periodic adjustments in the securitized surcharges that customers are required to pay pursuant to the financing order; and
 2. Any adjustments that are necessary to correct for any over collection or under collection of the surcharges and to ensure the timely payment of securitized bonds and financing costs and other required amounts and surcharges payable under the securitized bonds;
 - (g) A requirement that the securitized property:
 1. Is created or shall be created in favor of an electric utility, its successors, or assignees; and
 2. Shall be used to pay or secure securitized bonds and approved financing costs;
 - (h) A statement regarding the degree of flexibility to be afforded to the electric utility in establishing:
 1. The terms and conditions of the securitized bonds, including but not

limited to repayment schedules, expected interest rates, and other financing costs;

2. Subject to the issuance advice letter process, the terms and conditions for the securitized bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service, and other reserves; and
 3. At its option, the issuance or a series of issuances of securitized bonds and correlated assignments, sales, pledges, or other transfers of securitized property;
- (i) A requirement as to how securitized surcharges will be allocated among retail customer classes;
 - (j) A requirement that, after the final terms of a proposed issuance of securitized bonds has been established but before the issuance of the securitized bonds, the electric utility shall determine the initial securitized surcharge in the manner required by and consistent with the financing order. The initial securitized surcharge shall be final and effective upon the issuance of the securitized bonds, with the surcharge to be reflected on a compliance tariff and filing bearing the surcharge and the calculation thereof;
 - (k) A method of:
 1. Tracing funds collected as securitized surcharges or other proceeds of securitized property and authorization to change the method of tracing funds from time to time in accordance with the financing documents; and
 2. Determining that the method, as amended from time to time, shall be used for tracing the funds and the identifiable cash proceeds of any securitized property subject to a financing order under applicable law;
 - (l) A statement specifying the details of a future ratemaking process used to reconcile any differences between the actual securitized costs financed by the electric utility, its successor, or assignee provided that any reconciliation shall not affect the amount of securitized bonds or the associated securitized surcharges paid by customers;
 - (m) A procedure that shall allow the electric utility to earn a return at its weighted average cost of capital authorized by the commission in the electric utility's rate proceedings, and subject to changes in interest rates, any moneys advanced by the electric utility to fund reserves, if any, or capital accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the securitized bonds;
 - (n) An outside date, which shall not be earlier than one (1) year after the date the financing order is no longer subject to appeal, when the authority to issue securitized bonds granted in the financing order expires; and
 - (o) A statement that accumulated deferred income taxes and regulatory liabilities for excess deferred income taxes used in calculating retired generation costs shall be excluded from the rate base in future general rate cases and that no amortization of those excess deferred income taxes shall be reflected in future

general rate cases.

- (2) Notwithstanding any provision of KRS 278.670 to 278.696 and 65.114 to the contrary, in considering whether to find the proposed issuance of securitized bonds and the imposition and collection of a securitized charge to be fair, just, and reasonable and in the public interest, the commission may consider previous instances where the commission has issued a financing order to the applicant and the applicant has previously issued securitized bonds.
- (3) A financing order issued to an electric utility may provide that the creation of the electric utility's securitized property is conditioned upon, and simultaneous with, the:
 - (a) Sale or other transfer of the securitized property to an assignee; and
 - (b) Pledge of the securitized property to secure securitized bonds.

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