

278.680 Issuance of securitized bonds by electric utility -- Subsequent financing order -- Limits on commission -- Discretion of electric utility.

- (1) Subsequent to the issuance advice letter, and unless an earlier date is specified in the financing order, the electric utility may proceed with the issuance of the securitized bonds unless, prior to noon on the fourth business day after the pricing of the securitized bonds, the commission issues a disapproval order:
 - (a) Directing that the securitized bonds, as proposed, not be issued; and
 - (b) Stating the basis for the disapproval.
- (2) At the request of an electric utility, the commission may open a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding securitized bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all the criteria specified in KRS 278.670 to 278.696 and 65.114. Effective upon retirement of the refunded securitized bonds and the issuance of new securitized bonds, the electric utility shall adjust and the commission shall approve the related securitized surcharges accordingly.
- (3) A financing order remains in effect and securitized property under the financing order continues to exist until:
 - (a) Securitized bonds issued pursuant to the financing order have been paid in full or defeased; and
 - (b) In each case, all commission-approved financing costs of the securitized bonds have been recovered in full.
- (4) A financing order issued to an electric utility remains in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, merger, or sale of the electric utility or its successors or assignees.
- (5) The commission shall not, in exercising its powers and carrying out its duties regarding any matter within its authority:
 - (a) Consider the securitized bonds issued pursuant to a financing order to be the debt of the electric utility other than for federal and state income tax purposes;
 - (b) Consider the securitized surcharges paid under the financing order to be the revenue of the electric utility for any purpose;
 - (c) Consider the securitized costs or financing costs specified in the financing order to be the costs of the electric utility;
 - (d) Consider the presence of securitized assets as impacting the relative risk of the utility as it relates to determining an appropriate return on equity for ratemaking purposes; or
 - (e) Determine any action taken by an electric utility which is consistent with the financing order to be unjust or unreasonable.
- (6) No electric utility shall be:
 - (a) Required to apply for a financing order; or
 - (b) If not under or applying for a financing order, otherwise be required to utilize any of the provisions under KRS 278.670 to 278.696 and 65.114.

- (7) An electric utility's decision not to apply for a financing order shall not be admissible, utilized, or relied on by the commission in any commission proceeding respecting the electric utility's rates or its accounting. The commission shall not directly or indirectly:
- (a) Order or require an electric utility to use securitized bonds to recover deferred costs for a regulatory asset;
 - (b) Consider the debt reflected by the securitized bonds in establishing the electric utility's capital structure used to determine any regulatory matter, including the electric utility's revenue requirement used to set its rates; and
 - (c) Consider the existence of securitized bonds or the potential use of securitized bond financing proceeds in determining the electric utility's authorized rate of return used to determine the electric utility's revenue requirement used to establish its rates.
- (8) After the issuance of a financing order, the electric utility retains sole discretion regarding the issuance of the securitized bonds, including the right to defer or postpone the sale, assignment, transfer, or issuance. Nothing shall prevent the electric utility from abandoning the issuance of securitized bonds under the financing order by filing with the commission a statement of abandonment and the reasons therefor.

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