

CHAPTER 72

(SB 192)

AN ACT relating to investor-owned electric utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

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 Sections 1 to 15 of this Act:

- (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 Sections 1 to 15 of this Act 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 Sections 1 to 15 of this Act, 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 the effective date of this Act 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 Sections 1 to 15 of this Act 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 Sections 1 to 15 of this Act:*
1. *Nonbypassable and imposed on, and are a part of, all retail customer bills;*
 2. *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*
 3. *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.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *An electric utility may apply to the commission for a financing order to finance extraordinary or other deferred costs from previous events for regulatory assets existing and with a value calculated on June 30, 2023, as:*
- (a) *Greater than two hundred million dollars (\$200,000,000) for a single regulatory asset; or*
 - (b) *Having a cumulative total value of greater than two hundred and seventy-five million (\$275,000,000) for multiple regulatory assets.*
- (2) *An application for a financing order shall include:*
- (a) *A description of the deferred costs the utility is seeking to securitize. If more than fifty percent (50%) of the deferred costs are retired generation costs, the application also shall describe:*
 1. *The electric generating facility or facilities that have been retired; and*
 2. *A copy of all previous commission orders related to the deferral of costs applicable to the retirement or abandonment of the facility or facilities;*
 - (b) *The dollar amount of the deferred costs;*
 - (c) *A statement of whether the electric utility proposes to finance all or a portion of deferred costs using securitized bonds. If the electric utility proposes to finance a portion of the costs, the electric utility shall identify the specific portion of the deferred costs in the application. By electing not to finance all or any portion of deferred costs using securitized bonds, an electric utility shall not be deemed to waive its right to reflect those costs in its retail rates pursuant to a separate proceeding with the*

commission. However, at no point shall the electric utility apply to securitize less than the amounts prescribed in subsection (1) of this section;

- (d) An estimate of the financing costs related to the securitized bonds;*
 - (e) An estimate of the securitized surcharges necessary to recover the securitized costs and financing costs and the period for recovery of the costs;*
 - (f) A comparison between the net present value of the costs to ratepayers that are estimated to result from the issuance of securitized bonds and the cost that would result from an alternative means of providing for the full recovery of and return on those securitized costs from customers, using the utility's current or expected weighted average cost of capital. The comparison should demonstrate that the issuance of securitized bonds and the imposition of securitized surcharges are expected to provide quantifiable net present value benefits to customers;*
 - (g) A proposed future ratemaking process to reconcile any differences between securitized costs financed by securitized bonds and the final securitized costs incurred by the electric utility, successor, or assignee, provided that any reconciliation shall not affect the amount of securitized bonds or the associated securitized surcharges paid by customers; and*
 - (h) Testimony supporting the application.*
- (3) The commission shall not accept for filing an application tendered pursuant to this section after December 31, 2024.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) Proceedings on an application submitted pursuant to Section 2 of this Act shall begin with the filing of an application by an electric utility and shall be disposed of in accordance with the requirements of this section and the rules and administrative regulations promulgated by the commission, except as follows:*
- (a) The commission shall establish a procedural schedule that requires that not later than one hundred eighty (180) days after the application is filed:

 - 1. A decision approving the application, approving the application subject to conditions, or denying the application is issued; and*
 - 2. A financing order is issued if the application is approved and the conditions are met, if conditions are imposed; and**
 - (b) The commission shall approve the application for a financing order with or without conditions if the commission finds:

 - 1. The application is in the public interest; and*
 - 2. The resulting estimated securitized surcharge and other rates are fair, just, and reasonable.**
- (2) Judicial review of a financing order shall only be done in accordance with KRS 278.410.*
- (3) In performing the responsibilities under Sections 1 to 15 of this Act, the commission may retain counsel, one (1) or more financial advisors, or other consultants as the commission deems appropriate. Outside counsel, advisors, or other consultants engaged by the commission shall have no interest in the proposed securitized bonds and shall not direct the placement of securitized bonds. The costs associated with retaining counsel or advisors shall:*
- (a) Be paid by the applicant and be included as financing costs in the securitized surcharge;*
 - (b) Be assigned solely to the subject transaction; and*
 - (c) Not be an obligation of the Commonwealth.*
- (4) The commission may designate one (1) or more representatives from commission staff who may be advised by one (1) or more financial advisors contracted with the commission to provide:*
- (a) Input to and collaborate with the electric utility during the process undertaken to place the securitized bonds to market; and*
 - (b) An opinion to the commission on the reasonableness of the pricing, terms, and conditions of the securitized bonds on an expedited basis.*

- (5) *The designated commission staff and any financial advisor providing advice to commission staff shall:*
- (a) *Have no authority to direct how the electric utility places the bonds to market; and*
 - (b) *Be permitted to attend meetings convened by the electric utility to address placement of the bonds to market.*
- (6) *If an electric utility's application for a financing order is denied or withdrawn, or for any reason securitized bonds are not issued, any costs of retaining financial advisors, consultants, and counsel on behalf of the commission shall be:*
- (a) *Paid by the applicant;*
 - (b) *Recorded on the books of the utility using appropriate deferral accounting as a regulatory asset; and*
 - (c) *Be eligible for full recovery, including carrying costs, subject to commission approval.*
- (7) *Prior to the issuance of each series of securitized bonds, the electric utility shall provide an issuance advice letter to the commission following the determination of the final terms of the series of securitized bonds no later than three (3) business days after the pricing of the securitized bonds.*
- (8) *The issuance advice letter shall:*
- (a) *Report the initial securitized surcharges and other information specific to the securitized bonds as required by the commission;*
 - (b) *Be included in the financing order which may contain additional provisions relating to the issuance advice letter process as the commission deems appropriate and not inconsistent with Sections 1 to 15 of this Act;*
 - (c) *Indicate the final structure of the securitized bonds; and*
 - (d) *Provide the best available estimate of total ongoing financing costs.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (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 of 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 Sections 1 to 15 of this Act 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.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon the commission issuing a financing order and after the securitized bonds have been issued, the electric utility shall file with the commission a:*
 - (a) *Tariff containing the mechanism for the assessment of a monthly surcharge to existing rates for the collection of the securitized costs; and*
 - (b) *Formula-based true-up mechanism.*
- (2) *The commission, in a financing order and subject to the issuance advice letter process, shall specify the degree of flexibility to be afforded the electric utility in establishing:*
 - (a) *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*
 - (b) *At its option, a series of issuances of securitized bonds and correlated assignments, sales, pledges, or other transfers of securitized property.*
- (3) *The electric utility shall file a semi-annual update to its monthly surcharge, based on estimates of consumption for each rate class and other mathematical factors, to collect the appropriate amount of securitized costs. The review by the commission of the semi-annual update pursuant to this section shall be limited to:*
 - (a) *Determining whether there are any mathematical or clerical errors in the application of the formula-based true-up mechanism relating to the appropriate amount of any over collection or under collection of a securitized surcharge; and*
 - (b) *The amount of an adjustment.*
- (4) *The adjustments shall ensure solely for the recovery of:*
 - (a) *Revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium; and*
 - (b) *Other fees, costs, and charges with respect to securitized bonds approved under the financing order.*
- (5) *Within ten (10) days after receiving an electric utility's filing of the billing adjustment pursuant to this section, the commission shall either:*
 - (a) *Affix an official stamp on the filing indicating the commission's review is complete; or*
 - (b) *Inform the electric utility of any mathematical or clerical errors in the electric utility's calculation.*
- (6) *If the commission informs the electric utility of mathematical or clerical errors in its calculation, the electric utility shall correct its error and refile its semi-annual surcharge update.*
- (7) *The time frames in subsection (5) of this section shall also apply to a refiled request.*
- (8) *At the time of any transfer of securitized property to an assignee or the issuance of securitized bonds authorized thereby, whichever is earlier, a financing order shall be irrevocable and, except for changes made pursuant to the formula-based true-up mechanism authorized in this section, the commission shall not:*
 - (a) *Amend, modify, or terminate the financing order by any subsequent action; or*
 - (b) *Reduce, impair, postpone, terminate, or otherwise adjust securitized surcharges approved in the financing order.*
- (9) *After issuance of a financing order, the electric utility retains sole discretion regarding whether to:*
 - (a) *Assign, sell, or otherwise transfer securitized property; or*
 - (b) *Cause securitized bonds to be issued, including the right to defer or postpone the assignment, sale, transfer, or issuance of securitized bonds.*

- (10) *Any changes made under this section to terms and conditions for the securitized bonds shall be in conformance with the financing order.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (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 Sections 1 to 15 of this Act. 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 Sections 1 to 15 of this Act.*
- (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.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *If the commission has approved an electric utility's financing order and securitization bonds are issued on the electric utility's behalf, the electric utility shall:*
- (a) *Explicitly state on the customer's bill the portion of securitized surcharges applicable to the rate class as approved in the financing order issued to the electric utility; and*
- (b) *Include the securitized surcharge on each customer's bill as a separate line item and include both the base rate for the customer's electricity and the amount of the surcharge.*
- (2) *If the securitized property has been transferred to an assignee, the customer bill shall include a statement that the assignee is the owner of the rights to securitized surcharges, and the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee.*
- (3) *Each tariff of the electric utility with a commission-approved financing order shall indicate the applicable securitized surcharge and the ownership of the surcharge.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *All securitized property that is specified in a financing order constitutes an existing, present, intangible property right or interest therein, notwithstanding the fact that the imposition and collection of securitized surcharges depends on the electric utility performing its servicing functions relating to the collection of securitized surcharges and on future electricity consumption. The property right or interest therein exists regardless:*
- (a) *Of whether the revenues or proceeds arising from the property have been billed, accrued, or collected; and*
- (b) *That the value or amount of the property is dependent on the future provision of service to customers by the electric utility, its successors, or assignees and on the future consumption of electricity by its customers.*
- (2) *Securitized property specified in a financing order exists until the securitized bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of the securitized bonds have been recovered in full.*
- (3) *Any portion of securitized property specified in a financing order issued to an electric utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly-owned, directly or indirectly, by the electric utility and created for the limited purpose of acquiring, owning, or administering securitized property or issuing securitized bonds under the financing order. Any portion of securitized property may be pledged to secure:*
- (a) *Securitized bonds issued pursuant to the financing order;*
- (b) *Amounts payable to financing parties and to counterparties under any ancillary agreements; and*
- (c) *Other financing costs.*
- (4) *Any transfer, sale, conveyance, assignment, grant of a security interest in, or pledge of securitized property by an electric utility or an affiliate of the electric utility to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the commission.*
- (5) *If an electric utility defaults on any required remittance of securitized surcharges arising from securitized property specified in a financing order, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the securitized property to the financing parties, their successors, or assignees. The*

financing order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility, its successors, or assignees.

- (6) *The interest of a transferee, purchaser, acquirer, assignee, or pledgee in securitized property specified in a financing order issued to an electric utility, and in the revenue and collections arising from that property, shall not be subject to setoff, counterclaim, surcharge, or defense by:*
- (a) *The electric utility; or*
- (b) *Any other person in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or of any other entity.*
- (7) *Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding, any merger or acquisition, sale or other business combination, transfer by operation of law as a result of the electric utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility under the financing order in the same manner and to the same extent as the electric utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the securitized property. Nothing in Sections 1 to 15 of this Act shall limit or impair any authority of the commission concerning the transfer or succession of interests of electric utilities.*
- (8) *Securitized bonds shall be nonrecourse to the credit or any assets of the electric utility other than the securitized property as specified in the financing order and any rights under any ancillary agreement.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *The creation, perfection, priority, and enforcement of any security interest or lien in securitized property to secure the repayment of the principal and interest and other amounts payable in respect of securitized bonds, amounts payable under any ancillary agreement, and other financing costs are governed by Sections 1 to 15 of this Act and not by the provisions of the code or other law, except as otherwise provided in Sections 1 to 15 of this Act.*
- (2) *A security interest in securitized property is created, valid, and binding when the last of all the following actions has occurred:*
- (a) *The financing order is issued;*
- (b) *A security agreement is executed and delivered by the debtor granting the security interest;*
- (c) *The debtor has rights to the securitized property or the power to transfer rights in the securitized property; or*
- (d) *The value is received for the grant of the security interest in the securitized property.*
- (3) *A description of securitized property in a security agreement shall be sufficient if the description refers to Sections 1 to 15 of this Act and the financing order creating the securitized property. A security interest shall attach as provided in this section without any physical delivery of collateral or other act.*
- (4) *Upon the filing of a financing statement with the Office of the Secretary of State as provided in this section, a security interest in securitized property shall be perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, and regardless of whether the parties have notice of the security interest. Without limiting the foregoing, upon the time of filing a security interest in securitized property shall be perfected against all claims of lien creditors, and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with this section.*
- (5) *The priority of a security interest in securitized property shall not be affected by the commingling of securitized surcharges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all securitized surcharges that are deposited in any cash or deposit account of the qualifying electric utility where securitized surcharges have been commingled with other funds, and any other security interest that may apply to those funds shall be terminated when the funds are transferred to a segregated account for the assignee or a financing party.*
- (6) *No application of the formula-based true-up mechanism as provided in Sections 1 to 15 of this Act shall affect the validity, perfection, or priority of a security interest in or a transfer of securitized property.*

- (7) *If a default occurs of the securitized bonds that are secured by a security interest in the securitized property, the financing parties or their representatives may exercise the rights and remedies available to a secured party under the code, including the rights and remedies available under Article 9, Part 6 of the code. The commission also may order amounts arising from securitized charges be transferred to a separate account for the benefit of the financing party, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Circuit Court for the county or city in which the electric utility's headquarters is located shall order the sequestration and payment of revenues arising from the securitized charges to the financing parties.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *Any sale, assignment, or other transfer of securitized property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to the seller's right, title, and interest in, to, and under the securitized property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes.*
- (2) *For all purposes other than federal and state income tax purposes, the parties' characterization of a transaction as a sale of an interest in securitized property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A sale or similar outright transfer of an interest in securitized property may occur only when all the following actions have occurred:*
- (a) *The financing order creating the securitized property has become effective;*
 - (b) *The documents evidencing the transfer of securitized property have been executed by the assignor and delivered to the assignee; and*
 - (c) *Value is received for the securitized property.*

The securitized property shall not be subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the securitized property perfected in accordance with this section.

- (3) *The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall not be affected or impaired by the occurrence of any of the following factors:*
- (a) *Commingling of securitized charges with other amounts;*
 - (b) *The retention by the seller of:*
 - 1. *A partial or residual interest, including an equity interest in the securitized property, whether direct or indirect, or whether subordinate or otherwise; or*
 - 2. *The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of securitized charges;*
 - (c) *Any recourse that the purchaser may have against the seller;*
 - (d) *Any indemnification rights, obligations, or repurchase rights made or provided by the seller;*
 - (e) *The obligation of the seller to collect securitized surcharges on behalf of an assignee;*
 - (f) *The transferor acting as the servicer of the securitized surcharges or the existence of any contract that authorizes or requires the electric utility, to the extent that any interest in securitized property is sold or assigned, to contract with the assignee or any financing party that it will:*
 - 1. *Continue to operate its system to provide service to its customers;*
 - 2. *Collect amounts in respect of the securitized surcharges for the benefit and account of the assignee or financing party; and*
 - 3. *Account for and remit required amounts to or for the account of the assignee or financing party;*
 - (g) *The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes;*

- (h) *The granting or providing to bondholders a preferred right to the securitized property or credit enhancement by the electric utility or its affiliates with respect to the securitized bonds; or*
- (i) *Any application of the formula-based true-up mechanism as provided in Sections 1 to 15 of this Act.*
- (4) *Any right that an electric utility has in the securitized property before its pledge, sale, or transfer, or any other right created under Sections 1 to 15 of this Act, created in the financing order and assignable under Sections 1 to 15 of this Act, or assignable pursuant to a financing order is property in the form of a contract right or a right to sue. Transfer of an interest of securitized property to an assignee shall be enforceable only upon the later of:*
 - (a) *The issuance of a financing order;*
 - (b) *The assignor having rights in the securitized property or the power to transfer rights in the securitized property to an assignee;*
 - (c) *The execution and delivery by the assignor of transfer documents in connection with the issuance of securitized bonds; and*
 - (d) *The receipt of value for the securitized property.*

An enforceable transfer of an interest in securitized property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with Section 12 of this Act. After the transaction and filing, the transfer of the securitized property shall be absolute and shall be made free and clear of, and not subject to, competing claims of the creditors of the transferor, regardless of whether or not the competing claims are supported by any prior security interest or lien, other than prior claims or security interests in the securitized property perfected in accordance with this section.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *The priority of transfer perfected under Sections 9 to 12 of this Act shall not be impaired by any later modification of the financing order or securitized property or by the commingling of funds arising from securitized property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under Sections 9 and 10 of this Act and this section is terminated when those funds are transferred to a segregated account for the assignee or a financing party. If securitized property has been transferred to an assignee or financing party, any proceeds of that property shall be held in trust for the assignee or financing party.*
- (2) *The priority of the conflicting interest of assignees in the same interest or rights in any securitized property shall be determined as follows:*
 - (a) *Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time of filing covering the transfer shall be made in accordance with Section 12 of this Act;*
 - (b) *A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee; and*
 - (c) *A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of the assignee's interest or right.*
- (3) *The description of securitized property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement shall be sufficient only if the description or indication:*
 - (a) *Refers to the financing order that created the securitized property; and*
 - (b) *States that the agreement or financing statement covers all or part of the property described in the financing order.*
- (4) *Sections 1 to 15 of this Act shall apply to all purported transfers of, and all purported grants, liens, or security interests in, securitized property, regardless of whether the related sale agreement, purchase agreement, or transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State shall maintain any financing statement filed to perfect a sale or other transfer of securitized property and any security interest in securitized property under Sections 1 to 15 of this Act in the same manner that the Secretary of State maintains financing statements filed under the code to perfect a security interest in collateral owned by a transmitting utility.*
- (2) *Except as otherwise provided in this section, all financing statements filed pursuant to this section shall be governed by the provisions regarding financing statements and the filing thereof under the code, including Article 9, Part 5 of the code. A security interest in securitized property may be perfected only by the filing of a financing statement in accordance with this section, and no other method of perfection shall be effective. Notwithstanding any provision of the code to the contrary, a financing statement filed pursuant to this section shall be effective until a termination statement is filed under the code, and no continuation statement shall need to be filed to maintain its effectiveness.*
- (3) *A financing statement filed pursuant to this section may indicate that the debtor is a transmitting utility, and without regard to whether the debtor is an electric utility, an assignee, or otherwise qualifies as a transmitting utility under the code, but the failure to make a transmitting utility's indication shall not impair the duration and effectiveness of the financing statement.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *The laws of the Commonwealth shall govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any securitized property.*
- (2) *Neither the Commonwealth nor its political subdivisions shall be liable on any securitized bonds. The bonds shall not be a:*
 - (a) *Debt or a general obligation of the Commonwealth or any of its political subdivisions, agencies, or instrumentalities; or*
 - (b) *Special obligations or indebtedness of the Commonwealth or any of its political subdivisions, agencies, or instrumentalities.*
- (3) *An issue of securitized bonds shall not directly, indirectly, or contingently, obligate the Commonwealth or any agency, political subdivision, or instrumentality of the Commonwealth to levy any tax or make any appropriation for payment of the securitized bonds, other than in their capacity as consumers of electricity. All securitized bonds shall contain on their face a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Commonwealth of Kentucky is pledged to the payment of the principal of, or interest on, this bond."*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *All of the following entities may legally invest any sinking funds, moneys, or other funds, in securitized bonds:*
 - (a) *Subject to applicable statutory restrictions on state or local investment authority, the Commonwealth, units of local government, political subdivisions, public bodies, and public officers, except for:*
 1. *Members of the commission;*
 2. *The commission's technical advisory and other staff; and*
 3. *Employees of the Attorney General's Office of Rate Intervention;*
 - (b) *Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance associations, and other persons carrying on a banking or insurance business;*
 - (c) *Personal representatives, guardians, trustees, and other fiduciaries; and*
 - (d) *All other persons authorized to invest in bonds or other obligations of a similar nature.*
- (2) *Any determination of the commission made in connection with any financing order and any financing order of the commission issued pursuant to this subsection shall be a binding, irrevocable, and final order of the commission, and binding on the commission and the Commonwealth. The Commonwealth and its agencies, including the commission, pledge and agree with bondholders, the owners of the securitized property, and other financing parties that the Commonwealth and its agencies shall not undertake any of*

the prohibited actions listed in this subsection. This subsection shall not preclude limitation or alteration, if full compensation is made by law for the full protection of the securitized surcharges collected pursuant to a financing order and of the bondholders, any assignee, or financing party entering into a contract with the electric utility. The Commonwealth and its agencies, including the commission, shall not:

- (a) Alter the provisions of Sections 1 to 15 of this Act which authorize the commission to create an irrevocable contract right or right to sue by the issuance of a financing order creating securitized property, making the securitized surcharges imposed by a financing order irrevocable, binding, or affecting the nonbypassable charges for all existing and future retail customers of the electric utility;*
 - (b) Take or permit any action that impairs or would impair the value of securitized property or the security for the securitized bonds or revises the securitized costs for which recovery is authorized;*
 - (c) In any way impair the rights and remedies of the bondholders, assignees, and other financing parties; and*
 - (d) Except for changes made pursuant to the formula-based true-up mechanism authorized under Section 5 of this Act, reduce, alter, or impair securitized surcharges that are to be imposed, billed, charge, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs, and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related securitized bonds have been paid and performed in full.*
- (3) Any person or entity that issues securitized bonds may include the language specified in this subsection in the securitized bonds and related documentation.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) An assignee or financing party shall not be deemed an electric utility or person providing electric service by virtue of engaging in the transactions described in Sections 1 to 15 of this Act.*
- (2) If there is a conflict between any of the provisions of Sections 1 to 15 of this Act and any other law regarding the attachment, assignment, perfection or the effect of perfection, priority of, assignment, or transfer of, or security interest in securitized property, the provisions of Sections 1 to 15 of this Act shall govern.*
- (3) If any provision of Sections 1 to 15 is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason:*
 - (a) The occurrence does not affect the validity of any action allowed under Sections 1 to 15 of this Act which is taken by an electric utility, assignee, financing party, collection agent, or party to an ancillary agreement; and*
 - (b) All actions remain in full force and effect with respect to all securitized bonds issued or authorized in a financing order issued under Sections 1 to 15 of this Act before the date the provision is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason.*

Signed by Governor March 23, 2023.