

1 AN ACT relating to affordable and reliable energy for Kentucky.

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

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

5 *In addition to the definitions in KRS 278.010, which apply unless they conflict with this*
6 *section or if the context otherwise requires, as used in Sections 1 to 18 of this Act:*

7 *(1) "Ancillary agreement" means a bond, insurance policy, letter of credit, reserve*
8 *account, surety bond, interest rate lock or swap arrangement, hedging*
9 *arrangement, liquidity or credit support arrangement, or other similar*
10 *arrangement entered into in connection with the issuance of securitized bonds*
11 *that is designed to promote credit quality and marketability of the securitized*
12 *bonds or to mitigate the risk of an increase in interest rates;*

13 *(2) "Assignee" means a legally recognized entity to which an electric utility assigns,*
14 *sells, or transfers, other than as security, all or a portion of its interest in or right*
15 *to securitized property. The term "assignee" includes a corporation, limited*
16 *liability company, general or limited partnership, public authority, trust,*
17 *financing entity, or other entity to which an assignee assigns, sells or transfers,*
18 *other than as security, its interest in or right to securitized property;*

19 *(3) "Bondholder" means a person who holds a securitized bond;*

20 *(4) "Code" means the Uniform Commercial Code, KRS Chapter 355;*

21 *(5) "Commonwealth" means the Commonwealth of Kentucky;*

22 *(6) "Deferred expenses" means costs that have occurred but will be accounted for as*
23 *part of a regulatory asset;*

24 *(7) "Extraordinary storm costs" means any costs incurred by an electric utility*
25 *arising from or related to any storm, weather-related event, or natural disaster,*
26 *including but not limited to costs of mobilization, staging, construction,*
27 *reconstruction, replacement or repair of production, generation, transport,*

1 transmission, distribution, or general plant facilities and increased fuel, energy
2 commodity, hedging, trading, and other professional costs;

3 (8) "Financing costs" means costs to issue, service, repay, or refinance the
4 securitized bonds, whether incurred or paid upon issuance of the securitized
5 bonds or over the life of the securitized bonds, and includes the following:

6 (a) Interest and acquisition, defeasance, or redemption premiums payable on
7 securitized bonds;

8 (b) Any payment required under an ancillary agreement and any amount
9 required to fund or replenish a reserve account or other accounts
10 established under the terms of any indenture, ancillary agreement, or other
11 financing documents pertaining to securitized bonds;

12 (c) Any other cost related to issuing, supporting, repaying, refunding, and
13 servicing securitized bonds, including but not limited to the following fees
14 and costs:

15 1. Servicing fees, accounting and auditing fees, trustee fees, consulting
16 fees, structuring adviser fees, financial advisor fees, administrative
17 fees, placement and underwriting fees, independent director and
18 manager fees, rating agency fees, stock exchange listing and
19 compliance fees, security registration fees, and filing fees;

20 2. Capitalized interest and information technology programming costs;
21 and

22 3. Any other costs necessary to otherwise ensure the timely payment of
23 securitized bonds or other amounts or charges payable in connection
24 with the bonds, including costs related to obtaining the financing
25 order;

26 (d) Any taxes and license fees or other fees imposed on the revenues generated
27 from the collection of the securitized surcharge or otherwise resulting from

- 1 the collection of securitized surcharges, whether paid, payable, or accrued;
- 2 (e) Any state or local taxes, franchise, gross receipts, and other taxes or similar
- 3 charges, including commission assessment fees, whether paid, payable, or
- 4 accrued; and
- 5 (f) Any costs associated with performance of the commission's responsibilities
- 6 under Sections 1 to 18 of this Act in connection with:
- 7 1. Approving, approving subject to conditions, or rejecting an application
- 8 for a financing order;
- 9 2. Performing duties under the issuance advice letter process; and
- 10 3. Retaining counsel, one (1) or more financial advisors, or other
- 11 consultants as deemed appropriate by the commission and paid
- 12 pursuant to Sections 1 to 18 of this Act;
- 13 (9) "Financing order" means an order issued by the commission under Sections 1 to
- 14 18 of this Act that authorizes the:
- 15 (a) Issuance of securitization bonds;
- 16 (b) Imposition, charging, billing, collection, and periodic adjustment of a
- 17 securitized surcharge;
- 18 (c) Creation of securitized property; and
- 19 (d) Sale, assignment, or transfer of securitized property to an assignee;
- 20 (10) "Financing party" means bondholders and trustees, collateral agents, any party
- 21 under an ancillary agreement, or any other person acting for the benefit of
- 22 bondholders;
- 23 (11) "Financing statement" has the same meaning as in KRS 355.9-102;
- 24 (12) "Formula-based true-up mechanism" means an adjustment or true-up process
- 25 that is used to identify over-collection or under-collection of the securitized
- 26 surcharge;
- 27 (13) "Issuance advice letter" means a letter from the utility to the commission that

1 describes the final terms and conditions for the bond issuance, including but not
2 limited to the actual structure of the bond issue, pricing, and other bond features
3 such as coupon rates, redemption, and call provisions, and current market
4 conditions affecting the bond issuance;

5 (14) "Nonbypassable" denotes that the payment of a securitized utility charge shall
6 not be avoided by any retail customer of an electric utility or its successors or
7 assigns and shall be paid by the customer that receives service from the electric
8 utility or its successors or assigns for as long as the securitized bonds are
9 outstanding;

10 (15) "Pledgee" means a financing party to which an electric utility or its successors or
11 assignees mortgages, negotiates, pledges, or creates a security interest or lien on
12 all or any portion of its interest in or right to securitized property;

13 (16) "Regulatory asset" means, under the standardized financial accounting standards
14 adopted by the commission, expenses that have been authorized by the
15 commission to be capitalized for consideration of recovery in future rates that
16 would otherwise be treated as an expense in a current accounting period;

17 (17) "Retired generation costs" means:

18 (a) Pretax costs with respect to a retired or abandoned or to-be-retired or to-be-
19 abandoned electric generating facility that is the subject of an application
20 for a financing order filed under Sections 1 to 18 of this Act. Pretax costs
21 subject to an application for a financing order include but are not limited
22 to:

23 1. The undepreciated investment in the retired or abandoned or to be
24 retired or abandoned electric generating facility and in any facilities
25 ancillary thereto or used in conjunction therewith;

26 2. The cost of decommissioning and restoring the site of the electric
27 generating facility;

- 1 3. Other applicable capital and operating costs; and
2 4. Accrued carrying charges and deferred expenses incurred over the
3 term of the securitized bonds calculated and discounted to the date the
4 securitization bonds are issued using the interest rate on those
5 securitized bonds. Accrued carrying charges and deferred expenses
6 may include the cost of retiring any existing indebtedness, fees, costs,
7 and expenses to modify existing debt agreements or for waivers of
8 consents related to existing debt agreements; and

- 9 (b) Pretax costs the electric utility has previously incurred related to the
10 retirement or abandonment of an electric generating facility occurring
11 before the effective date of this Act;

- 12 (18) "Securitization" means a structured process where interests in debt instruments
13 or other receivable income are packaged, underwritten, and sold as asset-backed
14 marketable securities such as bonds;

- 15 (19) "Securitized bonds" means bonds, debentures, notes, certificates of participation,
16 certificates of beneficial interest, certificates of ownership, or other evidences of
17 indebtedness or ownership that are issued by an electric utility or assignee
18 pursuant to a financing order the proceeds of which are used directly or
19 indirectly to recover, finance, or refinance commission-approved securitized costs
20 and financing costs and that are secured by, or payable from, securitized
21 property. If certificates of participation or ownership are issued, references in
22 Sections 1 to 18 of this Act to principal, interest, or premiums shall be construed
23 to refer to comparable amounts under those certificates;

- 24 (20) "Securitized costs" includes retired generation costs, as well as the unamortized
25 book value of extraordinary storm costs or other deferred costs associated with
26 prior incurrences regardless of whether the costs were incurred before or after
27 the effective date of this Act, but does not include ongoing utility investments or

1 operating costs;

2 (21) "Securitized property" means:

3 (a) All property, rights, and interests of a utility, its successor, or assignee
4 under a financing order, including the right to impose, bill, charge, collect,
5 and receive securitized surcharges authorized under the financing order
6 and the right to obtain periodic adjustments to surcharges as provided in the
7 financing order;

8 (b) The right to enforce the foregoing obligation and service obligation of the
9 electric utility identified in this subsection with respect thereto, including
10 the servicing and collection of the securitized surcharges; and

11 (c) All accounts, revenues, collections, claims, rights to payments, payments,
12 money, deposits, or proceeds arising from the property, rights, and interests
13 specified in the financing order, regardless of whether they are imposed,
14 charged, billed, received, collected, or maintained together or commingled
15 with any other accounts, revenues, collections, rights to payment, claims,
16 collections, payments, money, or other proceeds;

17 (22) "Securitized surcharge" means the amounts authorized by the commission to
18 repay, finance, or refinance securitized costs and financing costs. Except as
19 otherwise provided for in Sections 1 to 18 of this Act, securitized surcharges are:

20 (a) Nonbypassable surcharges, imposed on and part of, all retail customer bills;

21 (b) Subject to being collected by an electric utility, its successors, assignees, or
22 collection agents in full and separate from the utility's tariffed rates, special
23 contract rates, or other mechanisms; and

24 (c) Payable by all existing or future retail customers receiving electrical service
25 from the electric utility or its successors or assignees under commission-
26 approved rate schedules even if a retail customer elects to purchase
27 electricity from an alternative electricity supplier following a fundamental

1 *change in regulation of public utilities in the Commonwealth; and*
2 *(23) "Utility" has the same meaning as in KRS 278.010(3)(a) but does not include any*
3 *utility organized under KRS Chapter 279.*

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

6 *(1) An electric utility may apply to the commission for a financing order to finance*
7 *retired generation costs through an issuance of securitized bonds if:*

8 *(a) The electric generating facility that is the subject of an application for a*
9 *financing order filed under Sections 1 to 18 of this Act is retired or*
10 *abandoned prior to the end of the facility's useful life; and*

11 *(b) The electric utility owns or will own the generation that replaces the retired*
12 *or abandoned electric generating facility or facilities.*

13 *(2) The provisions of subsection (1) of this section shall not be construed to require*
14 *that the replacement resource capacity or energy production match the energy or*
15 *capacity production of the retired or abandoned facility or unit or that the*
16 *replacement resource represent the same electric generation technology.*

17 *(3) For any electric generating facility that is a subject of an application for a*
18 *financing order under Sections 1 to 18 of this Act:*

19 *(a) With respect to whether an existing fossil-fired generation unit should be*
20 *retired before the end of its useful or economic life, the utility shall not*
21 *consider the expected costs and savings from securitized financing related*
22 *to the electric generation retired or abandoned or to be retired or*
23 *abandoned; and*

24 *(b) With respect to the proposed investment in new replacement resources to*
25 *replace retired or abandoned electric generation or electric generation that*
26 *will be retired or abandoned, the utility and the commission shall consider*
27 *the savings from securitized financing related to the securitization of the*

1 deferred costs associated with the electric generation that is retired,
2 abandoned, to be retired, or to be abandoned.

3 (4) An electric utility may apply to the commission for a financing order to finance
4 the unamortized book value of extraordinary storm costs or other deferred costs
5 associated with prior incurrences, excluding ongoing utility investments or
6 operating costs if:

7 (a) The application is filed before the effective date of this Act; and

8 (b) The amount to be securitized totals, in aggregate and calculated at the time
9 of the filing of the application, an amount equal to or exceeding one
10 hundred fifty million dollars (\$150,000,000).

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

13 (1) An application for a financing order shall contain:

14 (a) If the application is made pursuant to subsection (1) of Section 2 of this Act,
15 the dollar amount of the retired generation costs and a description of:

16 1. The electric generating facility or facilities that the electric utility has
17 retired or abandoned or proposes to retire or abandon prior to the date
18 that all undepreciated investment relating thereto has been recovered
19 through rates and the reasons for undertaking the early retirement or
20 abandonment of the facility or facilities; or

21 2. If the electric utility is subject to a separate commission order or
22 proceeding relating to the retirement or abandonment of the electric
23 generating facility or facilities, a description of the order or other
24 applicable proceedings;

25 (b) If the application is made pursuant to subsection (4) of Section 2 of this Act,
26 the unamortized book value of the dollar amount of the extraordinary storm
27 costs or other eligible deferred costs associated with prior incurrences

- 1 before the effective date of this Act;
- 2 (c) The reasons for having incurred the costs submitted for securitization for
3 an application made pursuant to paragraph (a) or (b) of this subsection, and
4 the retail customer rate impact that would result from customary
5 ratemaking treatment of those costs;
- 6 (d) A statement of whether the electric utility proposes to finance all or a
7 portion of the deferred costs using securitized bonds. If the electric utility
8 proposes to finance a portion of the costs, the electric utility shall identify
9 the specific portion of the deferred costs in the application. By electing not
10 to finance all or any portion of deferred costs using securitized bonds, an
11 electric utility shall not be deemed to waive its right to reflect those costs in
12 its retail rates pursuant to a separate proceeding with the commission;
- 13 (e) An estimate of the financing costs related to the securitized bonds;
- 14 (f) An estimate of the securitized surcharges necessary to recover the
15 securitized costs and financing costs and the period for recovery of the
16 costs;
- 17 (g) A comparison between the net present value of the costs to customers that
18 are estimated to result from the issuance of securitized bonds and the cost
19 that would result from an alternative means of providing for the full
20 recovery of and a return on those securitized costs from customers using the
21 utility's current or expected weighted average cost of capital. The
22 comparison should demonstrate that the issuance of securitized bonds and
23 the imposition of securitized surcharges are expected to provide quantifiable
24 net present value benefits to customers;
- 25 (h) A proposed future ratemaking process to reconcile any differences between
26 securitized costs financed by securitized bonds and the final securitized
27 costs incurred by the electric utility, successor, or assignee provided that any

1 reconciliation shall not affect the amount of securitized bonds or the
2 associated securitized surcharges paid by customers; and

3 (i) Testimony supporting the application.

4 (2) Accumulated deferred income taxes and regulatory liabilities for excess deferred
5 income taxes shall be excluded from the rate base in future general rate cases,
6 and no amortization of excess deferred income taxes shall be reflected in future
7 general rate cases.

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

10 (1) Proceedings initiated pursuant to Sections 2 and 3 of this Act shall begin with the
11 filing of an application by an electric utility. The application shall be processed in
12 accordance with the requirements of this section and the administrative
13 regulations promulgated by the commission, except that the commission shall
14 establish a procedural schedule that requires not later than one hundred twenty
15 (120) days after the application is filed:

16 (a) A decision approving the application, approving the application subject to
17 conditions, or denying the application will be issued by the commission; and

18 (b) The commission will issue:

19 1. A financing order approving the application;

20 2. An order approving the application with conditions; or

21 3. An order denying the application along with the reasons for the
22 denial.

23 (2) Judicial review of a financing order may be had only in accordance with KRS
24 278.410. When entering a judgment on an action for review of a financing order
25 issued by the commission under this section, the Circuit Court may consider that
26 time is of the essence for executing the order.

27 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) In performing the responsibilities under Sections 1 to 18 of this Act, the
3 commission may retain counsel, one (1) or more financial advisors, or other
4 consultants as the commission deems appropriate. Outside counsel, advisors, or
5 other consultants engaged by the commission shall:

6 (a) Have no interest in the proposed securitized bonds;

7 (b) Not direct the placement of securitized bonds;

8 (c) File testimony, and be subject to discovery and cross-examination;

9 (d) Not be paid compensation in excess of the compensation generally paid by
10 the utility industry for the same type of service;

11 (e) Be paid by the applicant and have payment be included as financing costs in
12 the securitized surcharge;

13 (f) Be assigned solely to the subject transaction; and

14 (g) Not be an obligation of the Commonwealth.

15 (2) The commission may designate one (1) or more representatives from commission
16 staff, who may be advised by one (1) or more financial advisors contracted with
17 the commission to provide:

18 (a) Input to and collaboration with the electric utility during the process
19 undertaken to place the securitized bonds to market; and

20 (b) An opinion to the commission on the reasonableness of the pricing, terms,
21 and conditions of the securitized bonds on an expedited basis.

22 (3) The designated commission staff and any financial advisor providing advice to
23 commission staff:

24 (a) Shall not have authority to direct how the electric utility places the bonds to
25 market; and

26 (b) Upon reasonable advance request, shall be permitted to attend meetings
27 convened by the electric utility to address placement of the bonds to market.

1 (4) If an electric utility's application for a financing order is denied or withdrawn, or
 2 for any reason securitized bonds are not issued, any costs of retaining financial
 3 advisors, consultants, and counsel on behalf of the commission shall be:

4 (a) Paid by the applicant;

5 (b) Recorded on the books of the utility using appropriate deferral accounting
 6 as a regulatory asset; and

7 (c) Be eligible for full recovery, including carrying costs, subject to commission
 8 approval.

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

11 (1) A financing order issued by the commission, after a hearing, to an electric utility
 12 shall include:

13 (a) The amount of securitized costs to be financed using securitized bonds;

14 (b) A description and estimate of the amount of financing costs that may be
 15 recovered through securitized surcharges and the period over which
 16 securitized costs and financing costs may be recovered;

17 (c) A description of the securitized property, the creation of which is authorized
 18 by the financing order;

19 (d) A requirement directing that:

20 1. Securitized costs shall be allocated to and recovered from the
 21 residential customer classes on the basis of total revenue;

22 2. The remaining securitized costs shall be allocated to and collected
 23 from nonresidential customer classes on the basis of nonfuel revenue;
 24 and

25 3. Use of any other provision the commission considers appropriate to
 26 ensure the full and timely imposition, charging, billing, collection, and
 27 adjustment of the securitized surcharges, is performed pursuant to an

- 1 approved adjustment mechanism;
- 2 (e) A finding that the issuance of securitized bonds, including financing costs,
3 and the imposition, billing, and collection of a securitized surcharge are just
4 and reasonable and in the public interest and are expected to provide
5 quantifiable net present value benefits to customers as compared to recovery
6 of the component of securitized costs that would have been incurred absent
7 the issuance of securitized bonds;
- 8 (f) A finding that the proposed structuring and pricing of the securitized bonds
9 are reasonably expected to result in the lowest securitized surcharges
10 consistent with market conditions at the time the securitized bonds are
11 priced under the terms of the financing order;
- 12 (g) A requirement that, for so long as the securitized bonds are outstanding and
13 until all financing costs have been paid in full, the imposition, charging,
14 billing, and collection of securitized surcharges authorized under a
15 financing order shall be nonbypassable and paid by all existing and future
16 retail customers receiving electrical service from the electric utility, its
17 successors, or assignees under commission-approved rate schedules even if
18 a retail customer elects to purchase electricity from an alternative electric
19 supplier following a fundamental change in regulation of public utilities in
20 this Commonwealth;
- 21 (h) A formula-based true-up mechanism for making:
- 22 1. At least annually, expeditious periodic adjustments in the securitized
23 surcharges that customers are required to pay pursuant to the
24 financing order; and
- 25 2. Any adjustments that are necessary to:
- 26 a. Correct for any over-collection or under-collection of the
27 surcharges; or

- 1 **b. Ensure the timely payment of securitized bonds and financing**
2 **costs and other required amounts and surcharges payable under**
3 **the securitized bonds;**
- 4 **(i) A requirement that the securitized property:**
- 5 **1. Is created or shall be created in favor of an electric utility, its**
6 **successors, or assignees; and**
- 7 **2. Shall be used to pay or secure securitized bonds and approved**
8 **financing costs;**
- 9 **(j) A requirement as to how securitized surcharges will be allocated among**
10 **retail customer classes;**
- 11 **(k) A requirement that, after the final terms of a proposed issuance of**
12 **securitized bonds has been established and before the issuance of**
13 **securitized bonds, the electric utility shall determine the initial securitized**
14 **surcharge in accordance with the financing order. The initial securitized**
15 **surcharge shall be final and effective upon the issuance of the securitized**
16 **bonds, with the surcharge to be reflected on a compliance tariff and filing**
17 **bearing the surcharge and the calculation thereof;**
- 18 **(l) A statement specifying the details of a future ratemaking process used to**
19 **reconcile any differences between the actual securitized costs financed by**
20 **the securitized bonds and the final securitized costs incurred by the electric**
21 **utility, its successors, or assignees provided that any reconciliation shall not**
22 **affect the amount of securitized bonds or the associated securitized**
23 **surcharges paid by customers;**
- 24 **(m) A procedure that shall allow the electric utility to earn a return at its**
25 **weighted average cost of capital authorized from time to time by the**
26 **commission in the electric utility's rate proceedings, subject to changes in**
27 **interest rates, on any moneys advanced by the electric utility to fund**

1 reserves, if any, or capital accounts established under the terms of any
2 indenture, ancillary agreement, or other financing documents pertaining to
3 the securitized bonds; and

4 (n) An outside date, which shall not be earlier than one (1) year after the date
5 the financing order is no longer subject to appeal, when the authority to
6 issue securitized bonds granted in the financing order expires.

7 (2) Notwithstanding any provision of Sections 1 to 18 of this Act to the contrary, in
8 considering whether to find the proposed issuance of securitized bonds and the
9 imposition and collection of a securitized surcharge to be fair, just, and
10 reasonable and in the public interest, the commission may consider previous
11 instances where the commission has issued a financing order to the applicant and
12 the applicant has previously issued securitized bonds.

13 (3) A financing order issued to an electric utility may provide that the creation of the
14 electric utility's securitized property is conditioned upon and simultaneous with
15 the:

16 (a) Sale or other transfer of the securitized property to an assignee; and

17 (b) Pledge of the securitized property to secure securitized bonds.

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

20 (1) Prior to the issuance of each series of securitized bonds, the electric utility shall
21 provide an issuance advice letter to the commission following the determination
22 of the final terms of the series of securitized bonds no later than three (3)
23 business days after the pricing of the securitized bonds.

24 (2) The issuance advice letter shall:

25 (a) Report the initial securitized surcharges and other information specific to
26 the securitized bonds as required by the commission;

27 (b) Be included in the financing order;

- 1 (c) Indicate the final structure of the securitized bonds; and
2 (d) Provide the best available estimate of total ongoing financing costs.
3 (3) The financing order may provide additional provisions relating to the issuance
4 advice letter process as the commission considers appropriate and consistent with
5 Sections 1 to 18 of this Act.

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

- 8 (1) If the commission issues a financing order, the electric utility shall file with the
9 commission a:
10 (a) Tariff containing the mechanism for the assessment of a monthly surcharge
11 to existing rates for the collection of the securitized costs; and
12 (b) Formula-based true-up mechanism.
13 (2) The electric utility shall file the securitized surcharge, based on estimates of
14 consumption for each rate class and other mathematical factors, to collect the
15 appropriate amount of securitized costs. The review by the commission of the
16 securitized surcharge assessed pursuant to this section shall be limited to:
17 (a) Determining whether there are any mathematical or clerical errors in the
18 application of the formula-based true-up mechanism relating to the
19 appropriate amount of any over-collection or under-collection of securitized
20 surcharges; and
21 (b) The amount of an adjustment to the securitized surcharge.
22 (3) The adjustment to the securitized surcharge shall ensure solely for the recovery
23 of:
24 (a) Revenues sufficient to provide for the payment of principal, interest,
25 acquisition, defeasance, financing costs, or redemption premium; and
26 (b) Other fees, costs, and charges with respect to securitized bonds approved
27 under the financing order.

- 1 (4) Within ten (10) days after receiving an electric utility's filing of the formula-
2 based true-up adjustment to the securitized surcharge pursuant to this section,
3 the commission shall either:
- 4 (a) Affix an official stamp on the filing indicating the commission's review is
5 complete; or
- 6 (b) Inform the electric utility of any mathematical or clerical errors in the
7 electric utility's calculation.
- 8 (5) If the commission informs the electric utility of mathematical or clerical errors in
9 its calculation, the electric utility shall correct its error and refile its monthly
10 securitized surcharge.
- 11 (6) The time frames described in this section for filing and commission review shall
12 apply equally to the utility's refiled request for the securitized surcharge.
- 13 (7) Any determination of the commission made in connection with any financing
14 order and any financing order of the commission issued pursuant to this section
15 shall be binding and irrevocable, and the final order of the commission shall be
16 binding on the commission and the Commonwealth. Except for changes made
17 pursuant to the formula-based true-up mechanism authorized in this section, the
18 commission may not:
- 19 (a) Amend, modify, or terminate the financing order by any subsequent action;
20 or
- 21 (b) Reduce, impair, postpone, terminate, or otherwise adjust securitized
22 surcharges approved in the financing order.
- 23 (8) After issuance of a financing order, the electric utility retains sole discretion
24 regarding whether to:
- 25 (a) Assign, sell, or otherwise transfer securitized property; or
26 (b) Cause securitized bonds to be issued, including the right to defer or
27 postpone the assignment, sale, transfer, or issuance of securitized bonds.

1 (9) The commission in a financing order may specify the degree of flexibility to be
2 afforded the electric utility in establishing:

3 (a) The terms and conditions for the securitized bonds to accommodate changes
4 in market conditions, including repayment schedules, interest rates,
5 financing costs, collateral requirements, required debt service, and other
6 reserves; and

7 (b) At the electric utility's option, to affect a series of issuances of securitized
8 bonds and correlated assignments, sales, pledges, or other transfers of
9 securitized property.

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

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

14 (1) Unless an earlier date is specified in the financing order, the electric utility may
15 proceed with the issuance of the securitized bonds unless prior to noon on the
16 fourth business day after the pricing of the securitized bonds, the commission
17 issues a disapproval order:

18 (a) Directing that the securitized bonds, as proposed, not be issued; and

19 (b) Stating the basis for the disapproval.

20 (2) At the request of an electric utility, the commission may open a proceeding and
21 issue a subsequent financing order that provides for refinancing, retiring, or
22 refunding securitized bonds issued pursuant to the original financing order if the
23 commission finds that the subsequent financing order satisfies all the criteria
24 specified in Sections 1 to 18 of this Act. Effective upon retirement of the refunded
25 securitized bonds and the issuance of new securitized bonds, the electric utility
26 shall adjust and the commission shall approve the related securitized surcharges
27 accordingly.

- 1 (3) A financing order remains in effect and securitized property under the financing
2 order continues to exist until:
- 3 (a) Securitized bonds issued pursuant to the financing order have been paid in
4 full or defeased; and
- 5 (b) In each case, all commission-approved financing costs of the securitized
6 bonds have been recovered in full.
- 7 (4) A financing order issued to an electric utility remains in effect and unabated
8 notwithstanding the reorganization, bankruptcy, or other insolvency proceedings,
9 merger, or sale of the electric utility or its successors or assignees.
- 10 (5) The commission shall not, in exercising its powers and carrying out its duties
11 regarding any matter within its authority:
- 12 (a) Consider the securitized bonds issued pursuant to a financing order to be
13 the debt of the electric utility other than for federal and state income tax
14 purposes;
- 15 (b) Consider the securitized surcharges paid under the financing order to be the
16 revenue of the electric utility for any purpose;
- 17 (c) Consider the securitized costs or financing costs specified in the financing
18 order to be the costs of the electric utility;
- 19 (d) Consider the presence of securitized assets as impacting the relative risk of
20 the utility as it relates to determining an appropriate return on equity for
21 ratemaking purposes; or
- 22 (e) Determine any action taken by an electric utility which is consistent with the
23 financing order to be unjust or unreasonable.
- 24 (6) No electric utility shall be:
- 25 (a) Required to apply for a financing order under Section 6 of this Act; or
26 (b) Otherwise utilize any of the provisions under Sections 1 to 18 of this Act.
- 27 (7) An electric utility's decision not to apply for a financing order shall not be

1 admissible, utilized, or relied on by the commission in any commission
 2 proceeding respecting the electric utility's rates or its accounting. The
 3 commission shall not directly or indirectly:

4 (a) Require an electric utility to use securitized bonds to recover deferred costs
 5 for a regulatory asset;

6 (b) Utilize or consider the debt reflected by the securitized bonds in establishing
 7 the electric utility's capital structure used to determine any regulatory
 8 matter including the electric utility's revenue requirement used to set its
 9 rates; and

10 (c) Consider the existence of securitized bonds or the potential use of
 11 securitized bond financing proceeds in determining:

12 1. The electric utility's authorized rate of return; or

13 2. The electric utility's revenue requirement used to establish its rates.

14 (8) After the issuance of a financing order, the electric utility retains sole discretion
 15 regarding the issuance of the securitized bonds, including the right to defer or
 16 postpone the sale, assignment, transfer, or issuance. Nothing shall prevent the
 17 electric utility from abandoning the issuance of securitized bonds under the
 18 financing order by filing with the commission a statement of abandonment and
 19 the reasons therefor.

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

22 (1) The customer bills of an electric utility that has obtained a financing order and
 23 issued securitized bonds shall:

24 (a) Explicitly reflect that a portion of the customer bill represents securitized
 25 surcharges approved in a financing order issued to the electric utility; and

26 (b) Include the securitized surcharge on each customer's bill as a separate line
 27 item and include both the base rate for the customer's electricity and the

1 amount of the surcharge.

2 (2) If the securitized property has been transferred to an assignee, the customer bill
3 shall include a statement that the assignee is the owner of the rights to securitized
4 surcharges, and the electric utility or other entity, if applicable, is acting as a
5 collection agent or servicer for the assignee.

6 (3) The failure of an electric utility to comply with the provisions of subsection (1) of
7 this section shall not invalidate, impair, or affect any financing order, securitized
8 property, securitized surcharge, or securitized bonds.

9 (4) Each tariff of the electric utility shall indicate the applicable securitized
10 surcharge and the ownership of the surcharge.

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

13 (1) All securitized property that is specified in a financing order constitutes an
14 existing, present intangible property right or interest therein, notwithstanding the
15 fact that the imposition and collection of securitized surcharges depends on the
16 electric utility performing its servicing functions relating to the collection of
17 securitized surcharges and on future electricity consumption. The property right
18 or interest therein exists regardless:

19 (a) Of whether the revenues or proceeds arising from the property have been
20 billed, accrued, or collected; and

21 (b) That the value or amount of the property is dependent on the future
22 provision of service to customers by the electric utility, its successors, or
23 assignees and on the future consumption of electricity by its customers.

24 (2) Securitized property specified in a financing order exists until the securitized
25 bonds issued pursuant to the financing order are paid in full and all financing
26 costs and other costs of the securitized bonds have been recovered in full.

27 (3) Any portion of securitized property specified in a financing order issued to an

1 electric utility may be transferred, sold, conveyed, or assigned to a successor or
2 assignee that is wholly owned, directly or indirectly, by the electric utility and
3 created for the limited purpose of acquiring, owning, or administering securitized
4 property or issuing securitized bonds under the financing order. Any portion of
5 securitized property may be pledged to secure:

6 (a) Securitized bonds issued pursuant to the financing order;

7 (b) Amounts payable to financing parties and to counterparties under any
8 ancillary agreements; and

9 (c) Other financing costs.

10 (4) Any transfer, sale, conveyance, assignment, grant of a security interest in or
11 pledge of securitized property by an electric utility, or an affiliate of the electric
12 utility, to an assignee, to the extent previously authorized in a financing order,
13 does not require the prior consent and approval of the commission.

14 (5) If an electric utility defaults on any required remittance of securitized surcharges
15 arising from securitized property specified in a financing order, a court, upon
16 application by an interested party, and without limiting any other remedies
17 available to the applying party, shall order the sequestration and payment of the
18 revenues arising from the securitized property to the financing parties, their
19 successors, or assignees. The financing order shall remain in full force and effect
20 notwithstanding any reorganization, bankruptcy, or other insolvency proceedings
21 with respect to the electric utility, its successors, or assignees.

22 (6) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in
23 securitized property specified in a financing order issued to an electric utility, and
24 in the revenue and collections arising from that property, shall not be subject to
25 setoff, counterclaim, surcharge, or defense by:

26 (a) The electric utility; or

27 (b) Any other person in connection with the reorganization, bankruptcy, or

1 other insolvency of the electric utility or of any other entity.

2 (7) Any successor to an electric utility, whether pursuant to any reorganization,
3 bankruptcy or other insolvency proceeding, any merger or acquisition, sale or
4 other business combination, or transfer by operation of law as a result of the
5 electric utility restructuring or otherwise, shall perform and satisfy all obligations
6 of, and have the same rights under a financing order as, the electric utility under
7 the financing order in the same manner and to the same extent as the electric
8 utility, including collecting and paying to the person entitled to receive the
9 revenues, collections, payments, or proceeds of the securitized property. Nothing
10 in Sections 1 to 18 of this Act shall limit or impair any authority of the
11 commission concerning the transfer or succession of interests of electric utilities.

12 (8) Securitized bonds shall be nonrecourse to the credit or any assets of the electric
13 utility other than the securitized property as specified in the financing order and
14 any rights under any ancillary agreement.

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

17 (1) The creation, perfection, priority, and enforcement of any security interest in
18 securitized property to secure the repayment of the principal and interest and
19 other amounts payable in respect of securitized bonds, amounts payable under
20 any ancillary agreement, and other financing costs are governed by Sections 1 to
21 18 of this Act and not by the provisions of the code, except as otherwise provided
22 in Sections 1 to 18 of this Act.

23 (2) A security interest in securitized property is created, valid, and binding when the
24 later of the following list of actions has occurred:

25 (a) The financing order is issued;

26 (b) A security agreement is executed and delivered by the debtor granting the
27 security interest;

- 1 (c) The debtor has rights to the securitized property or the power to transfer
2 rights in the securitized property; or
- 3 (d) The value is received for the securitized property.
- 4 (3) A description of securitized property in a security agreement shall be sufficient if
5 the description refers to Sections 1 to 18 of this Act and the financing order
6 creating the securitized property. A security interest shall attach as provided in
7 this section without any physical delivery of collateral or other act.
- 8 (4) Upon the filing of a financing statement with the Office of the Secretary of State,
9 as provided in this section, a security interest in securitized property shall be
10 perfected against all parties having claims of any kind in tort, contract, or
11 otherwise against the person granting the security interest, and regardless of
12 whether the parties have notice of the security interest. Without limiting the
13 foregoing, upon the time of filing a security interest in securitized property shall
14 be perfected against all claims of lien creditors, and shall have priority over all
15 competing security interests and other claims other than any security interest
16 previously perfected in accordance with this section.
- 17 (5) The priority of a security interest in securitized property shall not be affected by
18 the commingling of securitized surcharges with other amounts. Any pledgee or
19 secured party shall have a perfected security interest in the amount of all
20 securitized surcharges that are deposited in any cash or deposit account of the
21 qualifying electric utility where securitized surcharges have been commingled
22 with other funds, and any other security interest that may apply to those funds
23 shall be terminated when the funds are transferred to a segregated account for
24 the assignee or a financing party.
- 25 (6) No application of the formula-based true-up mechanism as provided in Sections 1
26 to 18 of this Act shall affect the validity, perfection, or priority of a security
27 interest in, or a transfer of, securitized property.

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

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

13 (1) Any sale, assignment, or other transfer of securitized property shall be an
14 absolute transfer and true sale of, and not a pledge of or secured transaction
15 relating to, the seller's right, title, and interest in, to, and under the securitized
16 property if the documents governing the transaction expressly state that the
17 transaction is a sale or other absolute transfer other than for federal and state
18 income tax purposes.

19 (2) For all purposes, other than federal and state income tax purposes, the parties'
20 characterization of a transaction as a sale of an interest in securitized property
21 shall be conclusive that the transaction is a true sale and that ownership has
22 passed to the party characterized as the purchaser regardless of whether the
23 purchaser has possession of any documents evidencing or pertaining to the
24 interest. A sale or similar outright transfer of an interest in securitized property
25 may occur only when all the following actions have occurred:

26 (a) The financing order creating the securitized property has become effective;

27 (b) The documents evidencing the transfer of securitized property have been

1 executed by the assignor and delivered to the assignee; and

2 (c) Value is received for the securitized property.

3 (3) An enforceable transfer of an interest in securitized property to an assignee is
4 perfected against all third parties, including prior or subsequent judicial or other
5 lien creditors, when notice of that transfer has been given by the filing of a
6 financing statement in accordance with Section 15 of this Act. The transfer shall
7 be perfected against third parties as of the date of filing. After a transaction and
8 filing, the transfer of the securitized property shall be absolute and made free and
9 clear, and not subject to competing claims of any kind, including any claims of
10 the creditors of the transferor, whether or not supported by any prior security
11 interest or lien, other than prior claims or security interests in the securitized
12 property perfected in accordance with this section.

13 (4) The characterization of the sale, assignment, or other transfer as an absolute
14 transfer and true sale and the corresponding characterization of the property
15 interest of the purchaser shall not be affected or impaired by the occurrence of
16 any of the following factors:

17 (a) Commingling of securitized charges with other amounts;

18 (b) The retention by the seller of:

19 1. A partial or residual interest, including an equity interest in the
20 securitized property, whether direct or indirect, or whether
21 subordinate or otherwise; or

22 2. The right to recover costs associated with taxes, franchise fees, or
23 license fees imposed on the collection of securitized charges;

24 (c) Any recourse that the purchaser may have against the seller;

25 (d) Any indemnification rights, obligations, or repurchase rights made or
26 provided by the seller;

27 (e) The obligation of the seller to collect securitized surcharges on behalf of an

1 assignee;

2 (f) The transferor acting as the servicer of the securitized surcharges or the
3 existence of any contract that authorizes or requires the electric utility, to
4 the extent that any interest in securitized property is sold or assigned, to
5 contract with the assignee or any financing party that it will:

6 1. Continue to operate its system to provide service to its customers;

7 2. Collect amounts with respect to the securitized surcharges for the
8 benefit and account of the assignee or financing party; and

9 3. Account for and remit required amounts to or for the account of the
10 assignee or financing party;

11 (g) The treatment of the sale, conveyance, assignment, or other transfer for tax,
12 financial reporting, or other purposes;

13 (h) The granting or providing to bondholders of a preferred right to the
14 securitized property or credit enhancement by the electric utility or its
15 affiliates with respect to the securitized bonds; or

16 (i) Any application of the formula-based true-up mechanism as provided in
17 Sections 1 to 18 of this Act.

18 (5) Any right that an electric utility has in the securitized property before its pledge,
19 sale, or transfer, or any other right created under Sections 1 to 18 of this Act, or
20 created in the financing order and assignable under Sections 1 to 18 of this Act
21 or assignable pursuant to a financing order, is property in the form of a contract
22 right or a cause of action. Transfer of an interest of securitized property to an
23 assignee shall be enforceable only upon the later of:

24 (a) The issuance of a financing order;

25 (b) The assignor having rights in the securitized property or the power to
26 transfer rights in the securitized property to an assignee;

27 (c) The execution and delivery by the assignor of transfer documents in

1 connection with the issuance of securitized bonds; and

2 (d) The receipt of value for the securitized property.

3 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) The priority of transfer, perfected under this section and Sections 12, 13, 15, and
6 16 of this Act, shall not be impaired by any later modification of the financing
7 order or securitized property or by the commingling of funds arising from
8 securitized property with other funds. The priority of transfer continues when any
9 securitized property is collected and deposited in a cash or deposit account of the
10 electric utility or other deposit account that contains other funds. Any other
11 security interest that may apply to those funds, other than a security interest
12 perfected under this section, shall be terminated when those funds are transferred
13 to a segregated account for the assignee or a financing party. If securitized
14 property has been transferred to an assignee or financing party, any proceeds of
15 that property shall be held in trust for the assignee or financing party.

16 (2) The priority of the conflicting interest of assignees in the same interest or rights
17 in any securitized property shall be determined as follows:

18 (a) Conflicting perfected interests or rights of assignees rank according to
19 priority in time of perfection. Priority dates from the time of filing covering
20 the transfer shall be made in accordance with Section 12 of this Act;

21 (b) A perfected interest or right of an assignee has priority over a conflicting
22 unperfect interest or right of an assignee; and

23 (c) A perfected interest or right of an assignee has priority over a person who
24 becomes a lien creditor after the perfection of the assignee's interest or
25 right.

26 (3) The description of securitized property being transferred to an assignee in any
27 sale agreement, purchase agreement, or other transfer agreement, granted or

1 pledged to a pledgee in any security agreement, pledge agreement, or other
2 security document, or indicated in any financing statement, shall be sufficient
3 only if the description or indication:

4 (a) Refers to the financing order that created the securitized property; and

5 (b) States that the agreement or financing statement covers all or part of the
6 property described in the financing order.

7 (4) Sections 1 to 18 of this Act shall apply to all purported transfers of, and all
8 purported grants, liens, or security interests in, securitized property, regardless of
9 whether the related sale agreement, purchase agreement, or transfer agreement,
10 security agreement, pledge agreement, or other security document was entered
11 into, or any financing statement was filed before or after the effective date of this
12 Act.

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

15 (1) The Secretary of State shall maintain any financing statement filed to perfect a
16 sale or other transfer of securitized property and any security interest in
17 securitized property under this section and Sections 12, 13, and 14 of this Act in
18 the same manner that the Secretary of State maintains financing statements filed
19 under the code to perfect a security interest in collateral owned by a transmitting
20 utility.

21 (2) Except as otherwise provided in this section, all financing statements filed
22 pursuant to this section shall be governed by the provisions regarding financing
23 statements and the filing thereof under the code, including Part 5 of Article 9 of
24 the code. A security interest in securitized property may be perfected only by the
25 filing of a financing statement in accordance with this section, and no other
26 method of perfection shall be effective. Notwithstanding any provision of the code
27 to the contrary, a financing statement filed pursuant to this section shall be

1 effective until a termination statement is filed under the code, and no
2 continuation statement need be filed to maintain its effectiveness.

3 (3) A financing statement filed pursuant to this section may indicate that the debtor
4 is a transmitting utility, and without regard to whether the debtor is an electric
5 utility, an assignee or otherwise qualifies as a transmitting utility under the code,
6 but the failure to make such indication shall not impair the duration and
7 effectiveness of the financing statement.

8 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) The laws of the Commonwealth shall govern the validity, enforceability,
11 attachment, perfection, priority, and exercise of remedies with respect to the
12 transfer of an interest or right or the pledge or creation of a security interest in
13 any securitized property.

14 (2) Neither the Commonwealth nor its political subdivisions shall be liable on any
15 securitized bonds. The bonds shall not be a:

16 (a) Debt or a general obligation of the Commonwealth or any of its political
17 subdivisions, agencies, or instrumentalities; or

18 (b) Special obligations or indebtedness of the Commonwealth or any of its
19 political subdivisions, agencies, or instrumentalities.

20 (3) An issue of securitized bonds shall not directly, indirectly, or contingently
21 obligate the Commonwealth or any agency, political subdivision, or
22 instrumentality of the Commonwealth to levy any tax or make any appropriation
23 for payment of the securitized bonds, other than in their capacity as consumers of
24 electricity. All securitized bonds shall contain on the face thereof a statement to
25 the following effect: "Neither the full faith and credit nor the taxing power of the
26 Commonwealth of Kentucky is pledged to the payment of the principal of, or
27 interest on, this bond."

1 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) All of the following entities may legally invest any sinking funds, moneys, or
4 other funds, in securitized bonds:

5 (a) Subject to applicable statutory restrictions on state or local investment
6 authority, the Commonwealth, units of local government, political
7 subdivisions, public bodies, and public officers, except for:

8 1. Members of the commission;

9 2. The commission's technical advisory and other staff; and

10 3. Employees of the Office of Rate Intervention in the Office of the
11 Attorney General;

12 (b) Banks and bankers, savings and loan associations, credit unions, trust
13 companies, savings banks and institutions, investment companies,
14 insurance associations, and other persons carrying on a banking or
15 insurance business;

16 (c) Personal representatives, guardians, trustees, and other fiduciaries; and

17 (d) All other persons authorized to invest in bonds or other obligations of a
18 similar nature.

19 (2) The Commonwealth and its agencies, including the commission, pledge and
20 agree with bondholders, assignees, the owners of the securitized property, and
21 other financing parties that the Commonwealth and its agencies shall not
22 undertake any of the following prohibited actions:

23 (a) Altering the provisions of Sections 1 to 18 of this Act which authorize the
24 commission to create an irrevocable contract right or chose in action by the
25 issuance of a financing order creating securitized property, making the
26 securitized surcharges imposed by a financing order irrevocable, binding, or
27 impose nonbypassable charges for all existing and future retail customers

- 1 of the electric utility;
- 2 **(b) Taking or permitting any action that impairs or would impair the value of**
- 3 **securitized property or the security for the securitized bonds or revises the**
- 4 **securitized costs for which recovery is authorized;**
- 5 **(c) In any way impairing the rights and remedies of the bondholders, assignees,**
- 6 **and other financing parties; and**
- 7 **(d) Except for changes made pursuant to the formula-based true-up**
- 8 **mechanism authorized under Section 8 of this Act, reducing, altering, or**
- 9 **impairing securitized surcharges that are to be imposed, billed, charged,**
- 10 **collected, and remitted for the benefit of the bondholders, any assignee, and**
- 11 **any other financing parties until any and all principal, interest, premium,**
- 12 **financing costs, and other fees, expenses, or charges incurred, and any**
- 13 **contracts to be performed, in connection with the related securitized bonds**
- 14 **have been paid and performed in full.**
- 15 **(3) Any person or entity that issues securitized bonds may include the language**
- 16 **specified in this section in the securitized bonds and related documentation.**

17 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO

18 READ AS FOLLOWS:

- 19 **(1) An assignee or financing party shall not be deemed an electric utility or person**
- 20 **providing electric service by virtue of engaging in the transactions described in**
- 21 **Sections 1 to 18 of this Act.**
- 22 **(2) If there is a conflict between any of the provisions of Sections 1 to 18 of this Act**
- 23 **and any other law regarding the attachment, assignment, perfection or the effect**
- 24 **of perfection, priority of, assignment or transfer of, or security interest in**
- 25 **securitized property, the provisions of Sections 1 to 18 of this Act shall govern.**
- 26 **(3) If any provision of Sections 1 to 18 is held invalid or is invalidated, superseded,**
- 27 **replaced, repealed, or expires for any reason:**

- 1 (a) That occurrence does not affect the validity of any action allowed under
 2 Sections 1 to 18 of this Act which is taken by an electric utility, assignee,
 3 financing party, collection agent, or party to an ancillary agreement;
 4 (b) Any such action remains in full force and effect with respect to all
 5 securitized bonds issued or authorized in a financing order issued under
 6 Sections 1 to 18 of this Act before the date the provision is held invalid or is
 7 invalidated, superseded, replaced, repealed, or expires for any reason; and
 8 (c) To these ends, the General Assembly of the Commonwealth of Kentucky
 9 hereby declares that the provisions of Sections 1 to 18 of this Act are
 10 intended to be severable and that the General Assembly would have enacted
 11 each section even if any provision of any section should be held to be
 12 unconstitutional or invalid.

13 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
 14 READ AS FOLLOWS:

15 As used in this section and Section 20 of this Act, unless the context otherwise
 16 requires:

- 17 (1) "Biogas" means hydrocarbon gas produced by the anaerobic digestion of
 18 biomass, pyrolysis of biomass, gasification of biomass, or other effective
 19 conversion processes, composed primarily of methane and hydrogen;
 20 (2) "Farm gas" means a gas derived from the conversion of organic wastes resulting
 21 from agriculture;
 22 (3) "Gas utility" means a utility as defined in KRS 278.010(3)(b);
 23 (4) "Hydrogen" means hydrogen gas produced through:
 24 (a) A hydrocarbon conversion process combined with carbon capture,
 25 utilization, and storage;
 26 (b) The use of renewable energy to break down water into hydrogen and
 27 oxygen through electrolysis;

1 (c) The breakdown of methane into hydrogen and solid carbon through
2 pyrolysis; or

3 (d) Other means determined by the commission to have lower lifecycle carbon
4 dioxide emissions than geologic natural gas;

5 (5) "Incremental innovative natural gas cost" means costs that are above the
6 published price index for natural gas, applicable to the geographic location
7 closest in proximity to the innovative natural gas resource;

8 (6) "Innovative natural gas resource" includes but is not limited to farm gas, biogas,
9 renewable natural gas, hydrogen, geological natural gas utilization with carbon
10 dioxide capture or utilization, qualified offsets, renewable natural gas attributes,
11 and energy efficiency resources;

12 (7) "Qualified offsets" means a reduction in greenhouse gas emission or an increase
13 in carbon dioxide storage;

14 (8) "Renewable natural gas" means a pipeline-compatible gaseous fuel derived from
15 a biogenic substance or other renewable sources that has lower lifecycle carbon
16 dioxide emissions than geological natural gas; and

17 (9) "Renewable natural gas attributes" means the environmental attributes
18 associated with renewable natural gas.

19 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) A gas utility may request, and the Public Service Commission may authorize, a
22 mechanism to recover the costs related to the use or development of
23 infrastructure to facilitate the use of innovative natural gas resources for natural
24 gas utility customers.

25 (2) The commission shall only authorize a recovery mechanism after making a
26 finding that cost recovery is in the public interest. A cost recovery mechanism
27 may include:

1 (a) Capital investments for the production, processing, pipeline
2 interconnection, storage, and distribution of innovative natural gas
3 resources;

4 (b) Incremental operating costs associated with capital investments in
5 infrastructure for the production, processing, pipeline interconnection,
6 storage, and distribution of innovative natural gas resources; or

7 (c) Incremental innovative natural gas costs to procure innovative natural gas
8 from third parties.

9 (3) The commission shall grant recovery and authorize a separate recovery
10 mechanism to recover operational expenses or capital costs, or both, associated
11 with the investment in natural gas innovation resources, including a return on
12 the innovative natural gas resource capital investments, utilizing, at a minimum,
13 the authorized return on equity approved by the commission at the utility's most
14 recent general rate case pursuant to a finding that the mechanism is in the public
15 interest.

16 (4) Expenses described in subsection (2)(c) of this section may be reflected in a gas
17 utility's purchased gas adjustment, provided that the total incremental natural gas
18 cost shall not exceed three percent (3%) of the annual cost of natural gas. For the
19 purpose of establishing a recovery cap for the recovery mechanism, three percent
20 (3%) of total annual gas costs shall be computed from the most current reviewed
21 and approved gas costs for the utility in a commission docket as of the first day of
22 the month, twelve (12) months prior to the first day of the period under review.

23 (5) Any commercial or industrial customer only purchasing gas transportation
24 services from the gas utility shall be exempt from the provisions of this section.

25 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
26 READ AS FOLLOWS:

27 The Public Service Commission shall allow the recovery in the general rates of a utility

1 providing the services set forth in KRS 278.010(3)(a) of all reasonable expenses
 2 incurred by the utility to obtain an early site permit from the United States Nuclear
 3 Regulatory Commission for a nuclear power generation facility at one (1) or more sites
 4 intended to meet the projected electricity needs of the customers within the utility's
 5 certified territory. The permit shall be deemed to be used and useful property of the
 6 utility.

7 ➔Section 22. KRS 65A.050 is amended to read as follows:

8 (1) (a) As used in this subsection, "entity seeking dissolution" shall mean:

- 9 1. The DLG;
- 10 2. If the special purpose governmental entity was established by one (1)
 11 county, or by one (1) city, the governing body of the county or city that
 12 established the special purpose governmental entity;
- 13 3. If the special purpose governmental entity was established by multiple
 14 counties and cities, the governing bodies of all establishing entities; or
- 15 4. If the special purpose governmental entity was established other than by
 16 an establishing entity, the governing body or bodies of the county or
 17 counties in which the special purpose governmental entity provides or
 18 provided services, or operates or operated.

19 (b) Any special purpose governmental entity that meets at least one (1) of the
 20 following criteria may be administratively dissolved:

- 21 1. The special purpose governmental entity has taken no action for two (2)
 22 or more consecutive years;
- 23 2. Following a written inquiry from the entity seeking dissolution, the chair
 24 of the special purpose governmental entity either:
 - 25 a. Notifies the entity seeking dissolution in writing that the special
 26 purpose governmental entity has not had a governing board, or has
 27 not had a sufficient number of governing board members to

- 1 constitute a quorum for two (2) or more consecutive years; or
- 2 b. Fails to respond to the inquiry within thirty (30) days;
- 3 3. The special purpose governmental entity fails to register with the DLG
- 4 as required by KRS 65A.090;
- 5 4. The special purpose governmental entity fails to file the information
- 6 required by KRS 65A.020 for two (2) or more consecutive years; or
- 7 5. The governing body of the special purpose governmental entity provides
- 8 documentation to the DLG or the governing body or bodies of the
- 9 establishing entity that it has unanimously adopted a resolution
- 10 declaring the special purpose governmental entity inactive.
- 11 (c) To begin the process of administrative dissolution, the entity seeking
- 12 dissolution shall provide notification of the proposed administrative
- 13 dissolution as provided in this paragraph:
- 14 1. The entity seeking dissolution shall:
- 15 a. Post a notice of proposed administrative dissolution on the registry
- 16 established by KRS 65A.020;
- 17 b. For administrative dissolutions under subparagraphs 3., 4., and 5.
- 18 of paragraph (b) of this subsection, publish, in accordance with the
- 19 provisions of KRS Chapter 424, a notice of proposed
- 20 administrative dissolution, with the cost of the publication billed to
- 21 the special purpose governmental entity for which administrative
- 22 dissolution is sought;
- 23 c. Mail a copy of the notice to the registered contact for the special
- 24 purpose governmental entity, if any; and
- 25 d. Mail a copy of the notice as follows:
- 26 i. If the dissolution is sought by the DLG, to the governing
- 27 body of the establishing entity or county, and to all entities at

- 1 the state level having oversight of or responsibility for the
2 special purpose governmental entity; and
- 3 ii. If the dissolution is sought by an establishing entity or
4 county, to the DLG and any other establishing entities or
5 counties, and to all entities at the state level having oversight
6 of or responsibility for the special purpose governmental
7 entity; and
- 8 2. The notice shall include:
- 9 a. The name of the entity seeking dissolution, and contact
10 information for the entity;
- 11 b. The name of the special purpose governmental entity for which
12 dissolution is sought;
- 13 c. The statutes under which the special purpose governmental entity
14 was organized and operating;
- 15 d. A description of the services provided and the territory of the
16 special purpose governmental entity;
- 17 e. If there is a plan of dissolution as required by paragraph (e) of this
18 subsection, identification of the place where the plan of dissolution
19 may be reviewed;
- 20 f. A statement that any objections to the administrative dissolution
21 shall be filed in writing with the entity seeking to dissolve the
22 special purpose governmental entity within thirty (30) days after
23 the publication date, and the address and process for submitting
24 such objections; and
- 25 g. A statement that if no written objections are received within thirty
26 (30) days of publication of the notice, the special purpose
27 governmental entity shall be administratively dissolved.

- 1 (d) 1. Any resident living in or owning property in the area served by the
2 special purpose governmental entity for which dissolution is sought,
3 who is not a member of the governing body of the special purpose
4 governmental entity or an immediate family member of a member of the
5 governing body of the special purpose governmental entity, may file a
6 written objection to the dissolution with the entity seeking dissolution.
7 The written objection shall state the specific reasons why the special
8 purpose governmental entity shall not be dissolved, and shall be filed
9 within thirty (30) days after the posting of the notice on the registry as
10 required by paragraph (c) of this subsection.
- 11 2. a. Upon the passage of thirty (30) days with no objections filed, and
12 satisfaction of all outstanding obligations of the special purpose
13 governmental entity, the special purpose governmental entity shall
14 be deemed dissolved and, if a dissolution plan was required, the
15 entity seeking dissolution shall proceed to implement the
16 dissolution plan.
- 17 b. Notification of dissolution shall be provided by the entity seeking
18 dissolution to all other entities listed under paragraph (a) of this
19 subsection. The DLG shall maintain a list of all dissolved special
20 purpose governmental entities and the date of dissolution on the
21 registry established by KRS 65A.020.
- 22 3. If written objections are received within thirty (30) days of the
23 publication on the registry required by paragraph (c) of this subsection,
24 the dissolution process shall be aborted, and the process established by
25 subsection (2) of this section shall be utilized if it is determined that
26 dissolution should still be sought, notwithstanding any other dissolution
27 process that may exist in the Kentucky Revised Statutes for the type of

1 special purpose governmental entity for which dissolution is sought.

2 (e) If the special purpose governmental entity for which administrative
3 dissolution is sought:

- 4 1. Is providing services;
- 5 2. Has outstanding liabilities; or
- 6 3. Has assets;

7 the entity seeking dissolution shall, as part of the dissolution process, develop
8 a dissolution plan that includes, as relevant, provisions addressing the
9 continuation of services, the satisfaction of all liabilities, and the distribution
10 of assets of the special purpose governmental entity.

11 (2) Any special purpose governmental entity not meeting the requirements for
12 dissolution under subsection (1) of this section, and for which no specific
13 dissolution provisions apply in the Kentucky Revised Statutes, may be dissolved as
14 provided in this subsection:

15 (a) The dissolution of a special purpose governmental entity may be initiated
16 upon:

- 17 1. The affirmative vote of two-thirds (2/3) of the governing body of the
18 special purpose governmental entity and the adoption of an ordinance by
19 the affirmative vote of two-thirds (2/3) of the governing body of each
20 establishing entity;
- 21 2. The adoption of an ordinance by an affirmative vote of two-thirds (2/3)
22 of the governing body of each establishing entity; or
- 23 3. If there is no establishing entity, by the adoption of an ordinance by an
24 affirmative vote of two-thirds (2/3) of the governing body of each
25 county in which the special purpose governmental entity provides
26 services or operates;

27 (b) Upon initiation of a dissolution after an affirmative vote as provided in

1 paragraph (a) of this subsection, the special purpose governmental entity for
2 which dissolution is sought shall not assume any new obligations or duties,
3 contract for any new debt, or levy any additional fees or taxes unless the new
4 obligations, duties, debt, fees, or taxes are included in the dissolution plan
5 required by paragraph (c) of this subsection. Any contract or agreement or
6 plan for new obligations, duties, debt, fees, or taxes entered into or devised in
7 violation of this paragraph shall be void;

8 (c) After voting to commence dissolution of a special purpose governmental
9 entity, the governing body or bodies initiating the dissolution shall:

10 1. Develop a dissolution plan which, if adopted by an establishing entity
11 shall be by ordinance, which shall include but not be limited to:

12 a. A description of how the necessary governmental services
13 provided by the special purpose governmental entity will be
14 provided upon dissolution of the entity or a statement that the
15 services are no longer needed;

16 b. A plan for the satisfaction of any outstanding obligations of the
17 special purpose governmental entity, including the continuation of
18 any tax levies or fee payments necessary to meet the outstanding
19 obligations;

20 c. Assurances from any organization or entity that will be assuming
21 responsibility for services provided by the special purpose
22 governmental entity, or that will assume the obligations of the
23 special purpose governmental entity, that the organization or entity
24 will, in fact, provide the services or assume the obligations;

25 d. A plan for the orderly transfer of all assets of the special purpose
26 governmental entity in a manner that will continue to benefit those
27 to whom services were provided by the special purpose

- 1 governmental entity;
- 2 e. A date upon which final dissolution of the special purpose
- 3 governmental entity shall occur; and
- 4 f. Any other information the governing body wishes to include.
- 5 The dissolution plan shall be available for public review at least thirty
- 6 (30) days prior to the public hearing required by subparagraph 2. of this
- 7 paragraph;
- 8 2. Hold a public hearing in each county and city that is participating in the
- 9 dissolution to present the proposed dissolution plan and receive
- 10 feedback from the public. The time and location of the hearing, as well
- 11 as the location where a copy of the dissolution plan may be reviewed by
- 12 the public prior to the hearing, shall be advertised as provided in KRS
- 13 424.130, and shall be posted on the registry established by KRS
- 14 65A.020. The hearing shall be held not less than fifteen (15) days, nor
- 15 more than thirty (30) days, after the publication of the notice in the
- 16 newspaper;
- 17 3. Send a copy of the notice required by subparagraph 2. of this paragraph
- 18 to the DLG and to any state entity with oversight authority of the special
- 19 purpose governmental entity;
- 20 4. If the dissolution plan is amended after the public hearing, make the
- 21 amended dissolution plan available for public inspection for at least
- 22 fifteen (15) days prior to the final vote of the governing body under
- 23 subparagraph 6. of this paragraph;
- 24 5. If the special purpose governmental entity is a utility as defined in KRS
- 25 278.010(3), obtain approval from the Public Service Commission
- 26 pursuant to KRS 278.020~~(7)~~~~(6)~~; and
- 27 6. Within sixty (60) days after the date of the public hearing, finally

1 approve or disapprove the dissolution of the special purpose
2 governmental entity and the dissolution plan. Approval shall require:

3 a. If initiated by the governing board of the special purpose
4 governmental entity, the affirmative vote of two-thirds (2/3) of the
5 members of the governing body of the special purpose
6 governmental entity and the adoption of an ordinance by two-
7 thirds (2/3) of the members of the governing body of each
8 establishing entity;

9 b. The adoption of an ordinance by two-thirds (2/3) of the members
10 of the governing body of each establishing entity; or

11 c. If there is no establishing entity, by the adoption of an ordinance
12 by two-thirds (2/3) of the members of the governing body of each
13 county in which the special purpose governmental entity provided
14 services or operated;

15 (d) The governing body or bodies shall notify the DLG of the outcome of the vote
16 or votes taken pursuant to subparagraph 6. of paragraph (c) of this subsection;
17 and

18 (e) Notwithstanding any other provision of this section, the dissolution of a
19 special purpose governmental entity shall not be final until all obligations of
20 the special purpose governmental entity have been satisfied or have been
21 assumed by another entity.

22 ➔Section 23. KRS 278.020 is amended to read as follows:

23 (1) (a) No person, partnership, public or private corporation, or combination thereof
24 shall commence providing utility service to or for the public or begin the
25 construction of any plant, equipment, property, or facility for furnishing to the
26 public any of the services enumerated in KRS 278.010, except:

27 1. Retail electric suppliers for service connections to electric-consuming

- 1 facilities located within its certified territory;
- 2 2. Ordinary extensions of existing systems in the usual course of business;
- 3 or
- 4 3. A water district created under KRS Chapter 74 or a water association
- 5 formed under KRS Chapter 273 that undertakes a waterline extension or
- 6 improvement project if the water district or water association is a Class
- 7 A or B utility as defined in the uniform system of accounts established
- 8 by the commission according to KRS 278.220 and:
- 9 a. The water line extension or improvement project will not cost
- 10 more than five hundred thousand dollars (\$500,000); or
- 11 b. The water district or water association will not, as a result of the
- 12 water line extension or improvement project, incur obligations
- 13 requiring commission approval as required by KRS 278.300.

14 In either case, the water district or water association shall not, as a result

15 of the water line extension or improvement project, increase rates to its

16 customers;

17 until that person has obtained from the commission~~[Public Service~~

18 ~~Commission]~~ a certificate that public convenience and necessity require the

19 service or construction.

20 (b) Upon the filing of an application for a certificate, and after any public hearing

21 which the commission may in its discretion conduct for all interested parties,

22 the commission may issue or refuse to issue the certificate, or issue it in part

23 and refuse it in part, except that the commission shall not refuse or modify an

24 application submitted under KRS 278.023 without consent by the parties to

25 the agreement.

26 (c) The commission, when considering an application for a certificate to construct

27 a base load electric generating facility, may consider the policy of the General

1 Assembly to foster and encourage use of Kentucky coal by electric utilities
2 serving the Commonwealth.

3 (d) The commission, when considering an application for a certificate to construct
4 an electric transmission line, may consider the interstate benefits expected to
5 be achieved by the proposed construction or modification of electric
6 transmission facilities in the Commonwealth.

7 (e) *The commission, when considering an application to construct renewable*
8 *generating facilities, shall consider the policy of the General Assembly to*
9 *foster and encourage regulated utility generation ownership and the*
10 *General Assembly's goal of regulated utilities owning at least seventy-five*
11 *percent (75%) of the renewable generation built in the Commonwealth.*

12 (f) Unless exercised within one (1) year from the grant thereof, exclusive of any
13 delay due to the order of any court or failure to obtain any necessary grant or
14 consent, the authority conferred by the issuance of the certificate of
15 convenience and necessity shall be void, but the beginning of any new
16 construction or facility in good faith within the time prescribed by the
17 commission and the prosecution thereof with reasonable diligence shall
18 constitute an exercise of authority under the certificate.

19 (2) (a) For the purposes of this section, *it shall be a rebuttable presumption that the*
20 *construction of a plant, equipment, property, or facilities whose total*
21 *projected cost is less than three percent (3%) of a utility's total jurisdictional*
22 *net utility plant as stated in the utility's most recent annual report filed with*
23 *the commission does not materially affect the utility's financial condition*
24 *and therefore constitutes an ordinary extension of an existing system in the*
25 *usual course of business.*

26 (b) Construction of any electric transmission line of one hundred thirty-eight
27 (138) kilovolts or more and of more than *fifty-two thousand eight hundred*

1 twenty (120) days of the filing of an application. If the commission takes no
2 action within that period of time, the application shall be deemed approved.

3 (5) No utility shall exercise any right or privilege under any franchise or permit, after
4 the exercise of that right or privilege has been voluntarily suspended or
5 discontinued for more than one (1) year, without first obtaining from the
6 commission, in the manner provided in subsection (1) of this section, a certificate of
7 convenience and necessity authorizing the exercise of that right or privilege.

8 ~~(6)~~~~(5)~~ No utility shall apply for or obtain any franchise, license, or permit from any
9 city or other governmental agency until it has obtained from the commission, in the
10 manner provided in subsection (1) of this section, a certificate of convenience and
11 necessity showing that there is a demand and need for the service sought to be
12 rendered.

13 ~~(7)~~~~(6)~~ No person shall acquire or transfer ownership of, or control, or the right to
14 control, any utility under the jurisdiction of the commission by sale of assets,
15 transfer of stock, or otherwise, or abandon the same, without prior approval by the
16 commission. The commission shall grant its approval if the person acquiring the
17 utility has the financial, technical, and managerial abilities to provide reasonable
18 service.

19 ~~(8)~~~~(7)~~ No individual, group, syndicate, general or limited partnership, association,
20 corporation, joint stock company, trust, or other entity (an "acquirer"), whether or
21 not organized under the laws of this state, shall acquire control, either directly or
22 indirectly, of any utility furnishing utility service in this state, without having first
23 obtained the approval of the commission. Any acquisition of control without prior
24 authorization shall be void and of no effect. As used in this subsection, the term
25 "control" means the possession, directly or indirectly, of the power to direct or
26 cause the direction of the management and policies of a utility, whether through the
27 ownership of voting securities, by effecting a change in the composition of the

1 board of directors, by contract or otherwise. Control shall be presumed to exist if
2 any individual or entity, directly or indirectly, owns ten percent (10%) or more of
3 the voting securities of the utility. This presumption may be rebutted by a showing
4 that ownership does not in fact confer control. Application for any approval or
5 authorization shall be made to the commission in writing, verified by oath or
6 affirmation, and be in a form and contain the information as the commission
7 requires. The commission shall approve any proposed acquisition when it finds that
8 the same is to be made in accordance with law, for a proper purpose and is
9 consistent with the public interest. The commission may make investigation and
10 hold hearings in the matter as it deems necessary, and thereafter may grant any
11 application under this subsection in whole or in part and with modification and
12 upon terms and conditions as it deems necessary or appropriate. The commission
13 shall grant, modify, refuse, or prescribe appropriate terms and conditions with
14 respect to every such application within sixty (60) days after the filing of the
15 application therefor, unless it is necessary, for good cause shown, to continue the
16 application for up to sixty (60) additional days. The order continuing the application
17 shall state fully the facts that make continuance necessary. In the absence of that
18 action within that period of time, any proposed acquisition shall be deemed to be
19 approved.

20 ~~(9)~~~~(8)~~ Subsection ~~(8)~~~~(7)~~ of this section shall not apply to any acquisition of control
21 of any:

- 22 (a) Utility which derives a greater percentage of its gross revenue from business
23 in another jurisdiction than from business in this state if the commission
24 determines that the other jurisdiction has statutes or rules which are applicable
25 and are being applied and which afford protection to ratepayers in this state
26 substantially equal to that afforded such ratepayers by subsection ~~(8)~~~~(7)~~ of
27 this section;

- 1 (b) Utility by an acquirer who directly, or indirectly through one (1) or more
2 intermediaries, controls, or is controlled by, or is under common control with,
3 the utility, including any entity created at the direction of such utility for
4 purposes of corporate reorganization; or
- 5 (c) Utility pursuant to the terms of any indebtedness of the utility, provided the
6 issuance of indebtedness was approved by the commission.

7 ~~(10)~~~~(9)~~ In a proceeding on an application filed pursuant to this section, any interested
8 person, including a person over whose property the proposed transmission line will
9 cross, may request intervention, and the commission shall, if requested, conduct a
10 public hearing in the county in which the transmission line is proposed to be
11 constructed, or, if the transmission line is proposed to be constructed in more than
12 one county, in one of those counties. The commission shall issue its decision no
13 later than ninety (90) days after the application is filed, unless the commission
14 extends this period, for good cause, to one hundred twenty (120) days. The
15 commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its
16 discretion, it deems it necessary to hire a competent, qualified and independent firm
17 to assist it in reaching its decision. The issuance by the commission of a certificate
18 that public convenience and necessity require the construction of an electric
19 transmission line shall be deemed to be a determination by the commission that, as
20 of the date of issuance, the construction of the line is a prudent investment.

21 ~~(11)~~~~(10)~~ The commission shall not approve any application under subsection ~~(7)~~~~(6)~~
22 or ~~(8)~~~~(7)~~ of this section for the transfer of control of a utility described in KRS
23 278.010(3)(f) unless the commission finds, in addition to findings required by those
24 subsections, that the person acquiring the utility has provided evidence of financial
25 integrity to ensure the continuity of sewage service in the event that the acquirer
26 cannot continue to provide service.

27 ~~(12)~~~~(11)~~ The commission shall not accept for filing an application requesting authority

1 to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to
2 cease providing services unless the applicant has provided written notice of the
3 filing to the following:

- 4 (a) Kentucky Division of Water;
- 5 (b) Office of the Attorney General; and
- 6 (c) The county judge/executive, mayor, health department, planning and zoning
7 commission, and public sewage service provider of each county and each city
8 in which the utility provides utility service.

9 ~~(13)~~~~(12)~~ The commission may grant any application requesting authority to abandon
10 facilities that provide services as set forth in KRS 278.010(3)(f) or to cease
11 providing services upon terms and conditions as the commission deems necessary
12 or appropriate, but not before holding a hearing on the application and no earlier
13 than ninety (90) days from the date of the commission's acceptance of the
14 application for filing, unless the commission finds it necessary for good cause to act
15 upon the application earlier.

16 ~~(14)~~~~(13)~~ If any provision of this section or the application thereof to any person or
17 circumstance is held invalid, the invalidity shall not affect other provisions or
18 applications of this section which can be given effect without the invalid provision
19 or application, and to that end the provisions are declared to be severable.

20 ➔Section 24. KRS 278.021 is amended to read as follows:

- 21 (1) If the commission, after notice and hearing, enters an order in which it finds that a
22 utility is abandoned, the commission may bring an action in the Franklin Circuit
23 Court for an order attaching the assets of the utility and placing those assets under
24 the sole control and responsibility of a receiver.
- 25 (2) For purposes of this section, a utility shall be considered abandoned if it:
 - 26 (a) Disclaims, renounces, relinquishes, or surrenders all property interests or all
27 rights to utility property, real or personal, necessary to provide service;

- 1 (b) Notifies the commission of its intent to abandon the operation of the facilities
2 used to provide service;
- 3 (c) Fails to comply with an order of the commission in which the commission
4 determined that the utility is not rendering adequate service, specified the
5 actions necessary for the utility to render adequate service, and fixed a
6 reasonable time for the utility to perform such actions, and the failure of the
7 utility to comply with the order presents a serious and imminent threat to the
8 health or safety of a significant portion of its customers; or
- 9 (d) Fails to meet its financial obligations to its suppliers and is unable or
10 unwilling to take necessary actions to correct the failure after receiving
11 reasonable notice from the commission, and the failure poses an imminent
12 threat to the continued availability of gas, water, electric, or sewer utility
13 service to its customers.
- 14 (3) Within twenty (20) days after commencing an action in Franklin Circuit Court, the
15 commission shall file a certified copy of the record of the administrative proceeding
16 in which the commission entered its finding of abandonment.
- 17 (4) Any action brought pursuant to KRS 278.410 for review of an order of the
18 commission containing a finding that a utility is abandoned shall be consolidated
19 with any action brought pursuant to subsection (1) of this section and based upon
20 the same order.
- 21 (5) Any receiver appointed by the court shall file a bond in an amount fixed by the
22 court. The receiver shall operate the utility to preserve its assets, to restore or
23 maintain a reasonable level of service, and to serve the best interests of its
24 customers.
- 25 (6) During the pendency of any receivership, the receiver may bring or defend any
26 cause of action on behalf of the utility and generally perform acts on behalf of the
27 utility as the court may authorize.

1 (7) The receiver shall control and manage the assets and operations of the utility until
2 the Franklin Circuit Court, after reasonable notice and hearing, orders the receiver
3 to return control of those assets to the utility or to liquidate those assets as provided
4 by law.

5 (8) (a) Notwithstanding subsection (1) of this section, the commission may petition
6 the Franklin Circuit Court to appoint temporarily a receiver to operate and
7 manage the assets of an abandoned utility. After notice to the utility and a
8 hearing, the court may grant a petition, upon terms and conditions as it deems
9 appropriate, upon a showing by a preponderance of the evidence:

- 10 1. That a utility has been abandoned;
- 11 2. That the abandonment is an immediate threat to the public health, safety,
12 or the continued availability of service to the utility's customers; and
- 13 3. That the delay required for the commission to conduct a hearing would
14 place the public health, safety, or continued utility service at
15 unnecessary risk.

16 (b) Sixty (60) days after its entry, the order of temporary receivership shall
17 terminate and control and responsibility for the assets and operations of the
18 utility shall revert to the utility without further action of the court unless the
19 commission brings an action under subsection (1) of this section.

20 (9) Nothing contained in this section shall be construed as requiring the commission to
21 approve an application made pursuant to KRS 278.020(7)~~(6)~~ for authority to
22 abandon a utility or other assets of a utility or to cease the provision of utility
23 service.

24 ➔Section 25. KRS 278.516 is amended to read as follows:

25 (1) The legislature finds and determines that:

26 (a) Small telephone utilities lack the resources to fully participate in the existing
27 regulatory processes, particularly under traditional rate of return and

- 1 certificate of public convenience and necessity regulation;
- 2 (b) Regulation, if not tailored specifically to the needs of small telephone utilities,
3 can retard the growth and development of small telephone utilities by
4 requiring the expenditure of excessive time and money responding to and
5 addressing regulatory processes instead of devoting those resources to
6 customer service and more productive business concerns and issues; and
- 7 (c) It is in the public interest to provide regulatory flexibility to small telephone
8 utilities to better enable them to adjust to the competition and innovation that
9 has come and is coming to the telecommunications industry as found and
10 determined by the legislature at KRS 278.512(1).
- 11 (2) In addition to the definitions set forth at KRS 278.010, the following definitions
12 shall apply to this section:
- 13 (a) "Telephone utility" means a telephone utility as defined at KRS 278.010(3)(e)
14 except that it includes local exchange carriers only;
- 15 (b) "Local exchange carrier" means a traditional wireline telephone utility which
16 provides its subscribers with access to the national public switched telephone
17 network;
- 18 (c) "Traditional wireline telephone utility" means one whose delivery of its
19 telephone utility services is characterized by the predominant use of wire or
20 wireline connections carrying communications transmissions between the
21 subscriber of the utility and the national public switched telephone network;
- 22 (d) "Small telephone utility" means a local exchange carrier providing telephone
23 utility service and having not more than fifty thousand (50,000) access lines in
24 Kentucky;
- 25 (e) "Largest telephone utility" means the local exchange carrier providing
26 telephone utility service in Kentucky and having the greatest number of
27 access lines in Kentucky;

- 1 (f) "Access lines" mean the telephone lines provided by a local exchange carrier.
2 In calculating the number of access lines provided by a local exchange carrier,
3 the number of access lines provided by all telephone utilities under common
4 ownership or control, as defined in KRS 278.020(8)~~[(7)]~~, with that telephone
5 utility shall be counted;
- 6 (g) "GDP" means the real Gross Domestic Product Price Index, as it may be
7 amended from time to time, as it is published by the Bureau of Economic
8 Analysis of the United States Department of Commerce;
- 9 (h) "Annual percent change in the GDP" means, for any given calendar year, the
10 annul percentage change in the GDP as it is calculated by the Bureau of
11 Economic Analysis of the United States Department of Commerce;
- 12 (i) "Basic business rate" and "basic residential rate" mean the total rates or
13 charges which must be paid by a business or residential subscriber,
14 respectively, to a local exchange carrier in order to receive, outside of a
15 standard metropolitan statistical area, telephone utility service within a
16 specified geographic area for local calling and for which tariffed rates or
17 charges are assessed, regardless of the amount of use of local calling;
- 18 (j) "Standard metropolitan statistical area" means any area in Kentucky
19 designated as such, or as a part thereof, pursuant to 44 U.S.C. sec. 3504(d)(3)
20 and 31 U.S.C. sec. 1104(d), as they may be amended, by the Office of
21 Management and Budget of the Executive Office of the President of the
22 United States; provided, however, that for purposes of this section, "standard
23 metropolitan statistical area" shall include only the two (2) largest, as
24 measured by population, standard metropolitan statistical areas, regardless of
25 whether that area is located wholly or partially in Kentucky;
- 26 (k) "Basic business service" or "basic residential service" means the service for
27 which basic business rates or basic residential rates are charged;

- 1 (l) "Average basic business or residential rate, including zone charges," means
2 the total revenues which should be produced by the imposition of those rates
3 or charges divided by the number of access lines to which those rates or
4 charges are applicable;
- 5 (m) "Zone charges" mean mileage or zone charges and are the charges assessed by
6 a telephone utility on the basis of a subscriber's distance from a central office
7 in order that the subscriber may receive basic business or residential services;
- 8 (n) "Subscriber" means the person or entity legally and financially responsible for
9 the bill rendered by a telephone utility for its services;
- 10 (o) "Intrastate access charges" mean the charges assessed for use of the
11 telecommunications facilities of one telephone utility by another person or
12 entity in order to deliver to the public for compensation telephone messages
13 originating and terminating within Kentucky;
- 14 (p) "Interstate access charges" mean the charges assessed for use of the
15 telecommunications facilities of one (1) telephone utility by another person or
16 entity in order to deliver to the public for compensation telephone messages
17 originating or terminating, but not both, in Kentucky; and
- 18 (q) "Pic charges" are charges assessed by a local exchange carrier in order to
19 implement a change in a subscriber's long distance carrier.
- 20 (3) (a) If a small telephone utility elects to be regulated as provided in subsection (7)
21 of this section, a small telephone utility once during any twenty-four (24)
22 month period may adjust or implement each of the following rates or charges:
23 basic business rate; basic residential rate; zone charges; or installation charges
24 for basic business or basic residential services by an amount not to exceed the
25 sum of the annual percentage changes in the GDP for the immediately
26 preceding two (2) calendar years multiplied by the existing rate or charge to
27 be adjusted. However, in no event shall a small telephone utility so adjust:

- 1 1. Its basic business rate, including zone charges, if the resulting average
2 basic business rate, including zone charges, would thereby exceed the
3 average basic business rate, including zone charges, of the largest
4 telephone utility;
 - 5 2. Its basic residential rate, including zone charges, if the resulting average
6 basic residential rate would thereby exceed the average basic residential
7 rate including zone charges, of the largest telephone utility; or
 - 8 3. If its average basic business rate, including zone charges, its average
9 basic residential rate, including zone charges, or its installation charges
10 for basic business or basic residential services would be increased by
11 more than twenty percent (20%).
- 12 (b) At least sixty (60) calendar days before the effective date of such an
13 adjustment of its rates or charges, a small telephone utility shall file a copy of
14 its revised rates and tariffs with the commission and shall mail notice of the
15 proposed rate adjustment to each affected subscriber and the commission. The
16 notice shall state:
- 17 1. The GDP for the preceding two (2) calendar years;
 - 18 2. The amount by which any of the small telephone utility's rates or
19 charges identified in subsection (3)(a) of this section will be adjusted;
20 and
 - 21 3. The right of subscribers to object to the adjustment and request
22 commission review by filing a letter or petition with the commission.
- 23 (c) If by the forty-fifth calendar day following the date of the notice to
24 subscribers of such a proposed adjustment to its rates or charges, the
25 commission has received letters or petitions requesting commission review of
26 the adjustment signed by at least five hundred (500) subscribers or five
27 percent (5%) of subscribers, whichever is greater, the commission shall

1 immediately notify the small telephone utility of this fact, and the proposed
2 rate adjustment shall not become effective as scheduled. The small telephone
3 utility may withdraw the proposed rate or charge adjustment, or if it decides to
4 proceed, the commission shall review the proposed rate adjustment as though
5 no election had been made pursuant to subsection (7) of this section.

6 (4) Any other provision of this chapter notwithstanding, a small telephone utility which
7 has elected to be regulated pursuant to this section may adjust any of its rates,
8 charges, or tariffs, except for:

- 9 (a) Its basic business rate;
- 10 (b) Its basic residential rate;
- 11 (c) Its zone charges;
- 12 (d) Its installation charges for basic business or basic residential services;
- 13 (e) Its access charges; or
- 14 (f) Its pic charges,

15 without regard to the effect on its revenues, by filing its proposed rates, charges, or
16 tariffs with the commission and by notifying its subscribers, both at least thirty (30)
17 calendar days prior to the effective date of its proposed rates, charges, or tariffs.

18 (5) A small telephone utility which has elected to be regulated pursuant to this section
19 shall not:

- 20 (a) Adjust its intrastate access charges if the adjustment requires the small
21 telephone utility's access charge customers, including interexchange carriers,
22 to pay intrastate access charges at levels exceeding the small telephone
23 utility's interstate access charge levels; or
- 24 (b) Adjust its intrastate pic charges if the adjustment requires the small telephone
25 utility's customers to pay intrastate pic charges at levels exceeding the small
26 telephone utility's interstate pic charge levels.

27 The small telephone utility may decrease its intrastate access charges or intrastate

1 pic charges to any level without restriction. Adjustments to intrastate access charge
2 rates or intrastate pic charges shall be effective thirty (30) calendar days following
3 the filing of access charge tariffs or pic charge tariffs with the commission.

4 (6) The rates, charges, earnings, or revenues of a small telephone utility which has
5 elected to be regulated pursuant to this section and is in compliance with the
6 provisions of this section shall be deemed by the commission to be in compliance
7 with KRS 278.030(1).

8 (7) A small telephone utility may elect, at any time, to be regulated by the provisions,
9 in their entirety only, of this section by filing a verified resolution of the utility's
10 board of directors, or other governing body, so electing with the commission. An
11 election shall be effective immediately upon filing with the commission and shall
12 remain effective until withdrawn by the filing with the commission of a verified
13 resolution of the small telephone utility's board of directors or other governing
14 body; provided, however, that all resolutions of election or withdrawal shall remain
15 in effect for at least one (1) year from the date of their filing with the commission.
16 A resolution electing to be regulated by the provisions of this section shall mean
17 that the small telephone utility so electing shall be regulated by this section and
18 shall not be regulated by KRS 278.020(1) and 278.300. Nothing in this section,
19 however, shall be construed to alter the applicability of KRS 278.020~~(6)~~~~(5)~~ or
20 278.030(2) to small telephone utilities electing to be regulated by the provisions of
21 this section.

22 (8) A small telephone utility which has elected to be regulated pursuant to this section
23 may file an application with the commission pursuant to KRS 278.020(1), and, if a
24 utility does so, that application shall be deemed to have been granted unless within
25 thirty (30) calendar days following the filing of the application, the commission
26 denies the application. If the application is denied or none is filed, the small
27 telephone utility electing to be regulated pursuant to this section may engage in the

1 construction of the plant or facilities, or the purchase of equipment or properties, to
2 provide the services described in KRS 278.010(3)(e). However, if the small
3 telephone utility subsequently files a resolution of withdrawal under subsection (7)
4 of this section, the increased value of property that resulted from any construction
5 project denied approval by the commission or not submitted to the commission for
6 approval may be excluded from the small utility's rate base for rate making
7 purposes if the cost of construction exceeded one million dollars (\$1,000,000) or
8 five percent (5%) of the value of the small telephone utility's property as reflected
9 in the utility's most recent annual report filed with the commission.

10 ➔Section 26. KRS 355.9-109 is amended to read as follows:

- 11 (1) Except as otherwise provided in subsections (3) and (4) of this section, this article
12 applies to:
- 13 (a) A transaction, regardless of its form, that creates a security interest in personal
14 property or fixtures by contract;
 - 15 (b) An agricultural lien;
 - 16 (c) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
 - 17 (d) A consignment;
 - 18 (e) A security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), or
19 355.2A-508(5), as provided in KRS 355.9-110; and
 - 20 (f) A security interest arising under KRS 355.4-210 or 355.5-118.
- 21 (2) The application of this article to a security interest in a secured obligation is not
22 affected by the fact that the obligation is itself secured by a transaction or interest to
23 which this article does not apply.
- 24 (3) This article does not apply to the extent that:
- 25 (a) A statute, regulation, or treaty of the United States preempts this article;
 - 26 (b) Another statute of this Commonwealth expressly governs the creation,
27 perfection, priority, or enforcement of a security interest created by this

- 1 Commonwealth or a governmental unit of this Commonwealth;
- 2 (c) A statute of another state, a foreign country, or a governmental unit of another
3 state or a foreign country, other than a statute generally applicable to security
4 interests, expressly governs creation, perfection, priority, or enforcement of a
5 security interest created by the state, country, or governmental unit; or
- 6 (d) The rights of a transferee beneficiary or nominated person under a letter of
7 credit are independent and superior under KRS 355.5-114.
- 8 (4) This article does not apply to:
- 9 (a) A landlord's lien, other than an agricultural lien;
- 10 (b) A lien, other than an agricultural lien, given by statute or other rule of law for
11 services or materials, but KRS 355.9-333 applies with respect to priority of
12 the lien;
- 13 (c) An assignment of a claim for wages, salary, or other compensation of an
14 employee, or for workers' compensation benefits payable to an individual;
- 15 (d) A sale of accounts, chattel paper, payment intangibles, or promissory notes as
16 part of a sale of the business out of which they arose;
- 17 (e) An assignment of accounts, chattel paper, payment intangibles, or promissory
18 notes which is for the purpose of collection only;
- 19 (f) An assignment of a right to payment under a contract to an assignee that is
20 also obligated to perform under the contract;
- 21 (g) An assignment of a single account, payment intangible, or promissory note to
22 an assignee in full or partial satisfaction of a preexisting indebtedness;
- 23 (h) A transfer of an interest in or an assignment of a claim under a policy of
24 insurance, other than an assignment by or to a health-care provider of a
25 health-care-insurance receivable and any subsequent assignment of the right
26 to payment, but KRS 355.9-315 and 355.9-322 apply with respect to proceeds
27 and priorities in proceeds;

- 1 (i) An assignment of a right represented by a judgment, other than a judgment
2 taken on a right to payment that was collateral;
- 3 (j) A right of recoupment or set-off, but:
- 4 1. KRS 355.9-340 applies with respect to the effectiveness of rights of
5 recoupment or set-off against deposit accounts; and
- 6 2. KRS 355.9-404 applies with respect to defenses or claims of an account
7 debtor;
- 8 (k) The creation or transfer of an interest in or lien on real property, including a
9 lease or rents thereunder, except to the extent that provision is made for:
- 10 1. Liens on real property in KRS 355.9-203 and 355.9-308;
- 11 2. Fixtures in KRS 355.9-334;
- 12 3. Fixture filings in KRS 355.9-501, 355.9-502, 355.9-512, 355.9-516, and
13 355.9-519; and
- 14 4. Security agreements covering personal and real property in KRS 355.9-
15 604;
- 16 (l) An assignment of a claim arising in tort, other than a commercial tort claim,
17 but KRS 355.9-315 and 355.9-322 apply with respect to proceeds and
18 priorities in proceeds;
- 19 (m) An assignment of a deposit account in a consumer transaction, but KRS
20 355.9-315 and 355.9-322 apply with respect to proceeds and priorities in
21 proceeds;
- 22 (n) A claim or right to receive compensation for injuries or sickness as described
23 in 26 U.S.C. sec. 104(a)(1) or (2), as amended from time to time;
- 24 (o) A claim or right to receive benefits under a special needs trust as described in
25 42 U.S.C. sec. 1396p(d)(4), as amended from time to time;
- 26 (p) A right to receive money under a structured settlement as defined by KRS
27 454.430; ~~or~~

- 1 (q) A public-finance transaction or a transfer by a government or governmental
2 unit; or
- 3 (r) The creation, attachment, perfection, priority, or enforcement of any
4 security interest in, or the sale, assignment, or other transfer of, any
5 securitized property as defined in Section 1 of this Act, or any interest
6 therein or any portion thereof, in each case except as otherwise expressly
7 provided for in Sections 1 to 18 of this Act.