

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM  
2026 REGULAR SESSION  
**Unofficial Document**

Amend printed copy of **HB 535/HCS 1**

On page 1, beginning on line 10, and continuing through page 17, line 8, delete Sections 1 to 5 and insert in lieu thereof:

"➔Section 1. KRS 278.670 is amended to read as follows:

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

- (1) "Ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with securitized bonds;
- (2) "Assignee" means a legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to securitized property. The term "assignee" includes a corporation, limited liability company, general or limited partnership, public authority, trust, and financing entity to which an assignee assigns, sells or transfers, other than as security, its interest in or right to securitized property;
- (3) "Bondholder" means a person who holds a securitized bond;
- (4) "Code" means the Uniform Commercial Code, KRS Chapter 355;

Amendment No. HFA

Rep. Rep. Chris Fugate

Committee Amendment

Signed:

Floor Amendment

LRD Drafter: \_\_\_\_\_

Adopted: \_\_\_\_\_

Date: \_\_\_\_\_

Rejected: \_\_\_\_\_

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- (5) "Deferred costs" means costs that have occurred and are~~but will be~~ accounted for as part of a regulatory asset;
- (6) **"Environmental control costs" means costs incurred or expected to be incurred by a qualifying electric utility to comply with:**
- (a) 42 U.S.C. sec. 7401 et seq. and not recovered under KRS 278.183; or**
- (b) Any federal, state, or local environmental laws, administrative regulations, orders, or other requirements which apply to coal combustion wastes or by-products from extra-state generation facilities utilized for the production of energy from coal, including expenses and capital costs for services, equipment, and other assets;**
- (7) "Financing costs" means any one (1) or more of**~~include~~ the following:
- (a) Interest and acquisition, defeasance, or redemption premiums payable on securitized bonds;
- (b) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to securitized bonds;
- (c) Any other cost related to issuing, supporting, repaying, refunding, or servicing securitized bonds, including the following fees and costs without limitation:
1. Servicing fees, accounting and auditing fees, trustee fees, consulting fees, structuring adviser fees, financial advisor fees, administrative fees, placement and underwriting fees, independent director and manager fees, rating agency fees, stock exchange listing and compliance fees, security registration fees, and filing fees;
  2. Capitalized interest and information technology programming costs; and
  3. Any other costs necessary to otherwise ensure the timely payment of securitized

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bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

- (d) Any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized amounts~~[surcharge]~~ or otherwise resulting from the collection of securitized amounts~~[surcharges]~~, in any such case whether paid, payable, or accrued;
- (e) Any state or local taxes, franchise taxes, gross receipts, and other taxes or similar charges, including commission assessment fees, whether paid, payable, or accrued; and
- (f) Any costs associated with performance of the commission's responsibilities under KRS 278.670 to 278.696 and 65.114 in connection with:
  - 1. Approving, approving subject to conditions, or rejecting an application for a financing order; and
  - 2. Retaining counsel, one (1) or more financial advisors, or other consultants as deemed appropriate by the commission and paid pursuant to KRS 278.670 to 278.696 and 65.114, for the issuance advice letter process;

~~(8)~~~~(7)~~ "Financing order" means an order issued by the commission that authorizes the:

- (a) Issuance of securitized~~[securitization]~~ bonds;
- (b) Imposition, collection, and periodic adjustment of a securitized amounts~~[surcharge]~~;
- (c) Creation of securitized property; and
- (d) Sale, assignment, or transfer of securitized property to an assignee;

~~(9)~~~~(8)~~ "Financing party" means bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders;

~~(10)~~~~(9)~~ "Financing statement" has the same meaning as in KRS 355.9-102;

~~(11)~~~~(10)~~ "Formula-based true-up mechanism" means a reconciliation or true-up process that is

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used to identify over collection or under collection of the securitized amount~~[surcharge]~~;

~~(12)~~~~(11)~~ "Issuance advice letter" means a letter from the utility to the commission that describes the final terms and conditions for the bond issuance, including but not limited to the actual structure of the bond issue, pricing, and other bond features such as coupon rates, redemption, and call provisions, and current market conditions affecting the bond issuance;

~~(13)~~~~(12)~~ "Nonbypassable" means the payment of a securitized utility amount~~[charge]~~ may not be avoided by any existing or future retail customer including special contract customers;

~~(14)~~~~(13)~~ "Pledgee" means a financing party to which an electric utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to securitized property;

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

~~(16)~~~~(15)~~ "Retired generation costs" means:

(a) Pretax costs with respect to retired or abandoned facilities that are included as deferred costs subject to an application for a financing order and include but are not limited to:

1. The undepreciated investment in the retired or abandoned electric generating facility and in any facilities ancillary thereto or used in conjunction therewith;
2. Costs of decommissioning and restoring the site of the electric generating facility;
3. Other applicable capital and operating costs; and
4. Accrued carrying charges and deferred costs;

(b) Reduced by, *to the extent as they relate to the retired or abandoned facilities:*

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1. Insurance, scrap, and salvage proceeds;
  2. Applicable unamortized regulatory liabilities for excess deferred income taxes; and
  3. The present value of return on all accumulated deferred income taxes related to pretax costs with respect to the<sup>[a]</sup> retired or abandoned facility and related facilities, including those due to bonus and accelerated tax depreciation and abandonment losses; and
- (c) Added to pretax costs the electric utility has previously incurred related to the retirement or abandonment of an electric generating facility and related facilities offering before June 29, 2023, including costs associated with:
1. The decommissioning and restoration of the site; and
  2. Environmental compliance related to the operation and retirement of the electric generating facility;

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

(18)~~(17)~~ "Securitized bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a maturity date as determined reasonable by the commission, but not later than thirty (30) years from the issue date, that are issued by an electric utility or assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance capitalized cost assets and financing costs that are secured by or payable from securitized utility property;

(19)~~(18)~~ "Securitized costs" **means any one (1) or more of:**~~include~~

- (a) Retired generation costs;~~as well as the~~

- (b)** Unamortized book value of ~~deferred~~~~[extraordinary]~~ storm costs or other regulatory assets; or
- (c)** Undepreciated extra-state generation facility balances, including but not limited to environmental control costs associated with an extra-state generation facility~~[deferred costs associated with prior incurrences, but does not include ongoing utility investments or operating costs];~~

**(20)**~~(19)~~ "Securitized property" means:

- (a) All rights and interests of a utility, its successor, or assignee under a financing order, including the right to impose, bill, charge, collect, and receive securitized amounts~~[surcharges]~~ authorized under the financing order and to obtain periodic adjustments to those amounts~~[charges]~~ authorized under KRS 278.670 to 278.696 and 65.114 and as provided in the financing order; and
- (b) All revenues, collections, claims, rights to payments, payments, moneys, or proceeds arising from the rights and interests specified in the financing order, regardless of whether those revenues, collections, claims, rights to payment, payments, moneys, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, moneys, or proceeds;

**(21)**~~(20)~~ "Securitized amount~~[surcharge]~~" or "cost reduction amount" means the amounts authorized by the commission to repay, finance, or refinance securitized costs and financing costs. Upon authorization, securitized amounts shall be~~[that are]~~, except as otherwise provided for in KRS 278.670 to 278.696 and 65.114:

- (a) Nonbypassable and shall not be imposed on the customer bill as a separate surcharge~~[, and are a part of, all retail customer bills];~~
- (b) Collectable~~[Collected,]~~ in full in~~[and separate from]~~ the utility's tariffed rates by an

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- electric utility or by its successors, assignees, or collection agents, and separate from the utility's ~~special contract rates or other mechanisms by an electric utility or by its successors, assignees, or collection agents~~; and
- (c) Payable~~Paid~~ by all existing or future retail customers receiving electrical services, including transmission and distribution services ~~service~~ from the electric utility or its successors or assignees ~~under commission approved rate schedules even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in the Commonwealth~~; ~~and~~

(22) "Undepreciated extra-state generation facility balances" means any unrecovered capitalized costs of, or any not yet fully depreciated investments in, one (1) or more fossil fuel-fired electric generating facilities, including each separate generation unit, that:

- (a) Are owned by an electric utility on the effective date of this Act;
- (b) Are located outside of the Commonwealth;
- (c) Have a nameplate generation capacity in excess of seven hundred fifty (750) megawatts each; and
- (d) Have included in the facility's related supply, transmission, equipment, and fixtures at a minimum the:
1. Net book value of assets on the qualifying electric utility's balance sheet related to the generating facility's related infrastructure and environmental control costs associated with the extra-state generation facility; and
  2. Accrued carrying charges and deferred costs; and

(23)~~(24)~~ "Utility" has the same meaning as in KRS 278.010(3)(a) but shall not include any utility organized under KRS Chapter 279.

➔ Section 2. KRS 278.672 is amended to read as follows:

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- (1) An electric utility may apply to the commission for a financing order to finance **by securitized bonds any securitized costs approved by the commission**~~[extraordinary or other deferred costs from previous events for regulatory assets existing and with a value calculated on June 30, 2023, as:~~
- ~~(a) Greater than two hundred million dollars (\$200,000,000) for a single regulatory asset;~~  
or
  - ~~(b) Having a cumulative total value of greater than two hundred and seventy five million (\$275,000,000) for multiple regulatory assets].~~
- (2) An application for a financing order shall include:
- (a) A description **and dollar amount of the extra-state generation facility balances, deferred storm costs, and other regulatory assets that the utility requests to securitize**~~[of the deferred costs the utility is seeking to securitize. If more than fifty percent (50%) of the deferred costs are retired generation costs, the application also shall describe:~~
    - 1. ~~The electric generating facility or facilities that have been retired; and~~
    - 2. ~~A copy of all previous commission orders related to the deferral of costs applicable to the retirement or abandonment of the facility or facilities];~~
  - (b) **An estimate of the financing costs related to the securitized bonds**~~[The dollar amount of the deferred costs];~~
  - (c) **An estimate of the:**
    - 1. **Securitized amounts necessary to recover the securitized costs;**
    - 2. **Financing costs; and**
    - 3. **Time period needed for the recovery of securitized and financing costs**~~[A statement of whether the electric utility proposes to finance all or a portion of deferred costs using securitized bonds. If the electric utility proposes to finance~~

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~~a portion of the costs, the electric utility shall identify the specific portion of the deferred costs in the application. By electing not to finance all or any portion of deferred costs using securitized bonds, an electric utility shall not be deemed to waive its right to reflect those costs in its retail rates pursuant to a separate proceeding with the commission. However, at no point shall the electric utility apply to securitize less than the amounts prescribed in subsection (1) of this section];~~

- (d) *A comparison demonstrating that the issuance of securitized bonds and the imposition of securitized amounts are expected to provide aggregate cost savings to ratepayers, as evidenced by submitting a comparison between the:*

- 1. Net present value of the costs to ratepayers that are estimated to result from the issuance of securitized bonds; and*
- 2. Net present value of the costs that are estimated to result from the full recovery of and return on the corresponding securitized costs from customers, using the utility's current or expected weighted average cost of capital and the same discount rate applied in subparagraph 1. of this paragraph.* ~~[An estimate of the financing costs related to the securitized bonds;]~~

*The electric utility shall provide to the commission, the Energy Planning and Inventory Commission, the Attorney General's Office of Rate Intervention, and the Legislative Research Commission, within sixty (60) days of issuance of securitized bonds, an update to the comparison based on the results of the issuance of the securitized bonds;*

- ~~(e) [An estimate of the securitized surcharges necessary to recover the securitized costs and financing costs and the period for recovery of the costs;~~
- ~~(f) A comparison between the net present value of the costs to ratepayers that are~~

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~~estimated to result from the issuance of securitized bonds and the cost that would result from an alternative means of providing for the full recovery of and return on those securitized costs from customers, using the utility's current or expected weighted average cost of capital. The comparison should demonstrate that the issuance of securitized bonds and the imposition of securitized surcharges are expected to provide quantifiable net present value benefits to customers;~~

~~(g)~~ A proposed future ratemaking process to reconcile any differences between securitized costs financed by securitized bonds and the final securitized costs incurred by the electric utility, successor, or assignee, provided that any reconciliation shall not affect the amount of securitized bonds or the associated securitized surcharges paid by customers; and

~~(f)(h)~~ Testimony supporting the application.

(3) The commission shall not accept ~~for filing~~ an application **for a financing order tendered pursuant to this section for retired generation costs or undepreciated extra-state generation facility balances unless the electric utility tendering the application:**

**(a) Has also filed, on or after January 1, 2026, an application to build or acquire in-state dispatchable generation pursuant to KRS 278.020;**

**(b) Includes in the application a statement confirming its agreement not to seek an increase in base rates that would become effective during the five (5) year period after the application for a financing order is filed with the commission, regardless of whether the application is approved;**

**(c) Includes in the application a statement confirming its agreement not to implement any new rider, surcharge, or tracking mechanism, that would become effective during the five (5) year period after the application for a financing order is filed with the commission; and**

**(d) Provides a copy of the application for a financing order to the Attorney General's Office of Rate Intervention, the Energy Planning and Inventory Commission, and the Legislative Research Commission.**

**(4) As used in subsection (3) of this section, "dispatchable" has the same meaning as provided in KRS 164.2807(2)(b)**~~[tendered pursuant to this section after December 31, 2024].~~

➔Section 3. KRS 278.674 is amended to read as follows:

(1) Proceedings on an application submitted pursuant to KRS 278.672 **or Section 1 or 2 of this Act** shall begin with the filing of an application by an electric utility and shall be disposed of in accordance with the requirements of this section and the rules and administrative regulations promulgated by the commission, except as follows:

(a) The commission shall establish a procedural schedule that requires that not later than one hundred eighty (180) days after the application is filed:

1. A decision approving the application, approving the application subject to conditions, or denying the application is issued; and
2. A financing order is issued if the application is approved and the conditions are met, if conditions are imposed;~~[and]~~

(b) The commission shall approve the application for a financing order with or without conditions if the commission finds:

1. The application is in the public interest; and
2. The resulting estimated securitized **amount**~~[surcharge]~~ and other rates are fair, just, and reasonable; **and**

**(c) The commission shall not require in any financing order for the securitization of an electric utility's securitized costs that the:**

- 1. Securitized bonds be marketed as a specific type of security; or**

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**2. Assignee be formed as a specific type of entity, including as a series trust.**

- (2) Judicial review of a financing order shall only be done in accordance with KRS 278.410.
- (3) In performing the responsibilities under KRS 278.670 to 278.696 and 65.114, the commission may retain counsel, one (1) or more financial advisors, or other consultants as the commission deems appropriate. Outside counsel, advisors, or other consultants engaged by the commission shall have no interest in the proposed securitized bonds and shall not direct the placement **or marketing** of securitized bonds. The costs associated with **the commission's** retaining **of** counsel, ~~or~~ advisors, **or other consultants** shall:
- (a) Be paid by the applicant and be included as financing costs in the securitized **amount**~~surecharge~~;
- (b) Be assigned solely to the subject transaction;~~and~~
- (c) Not be an obligation of the Commonwealth; **and**
- (d) Not exceed seven hundred fifty thousand dollars (\$750,000) in total for any transaction, except that the costs may be adjusted for inflation each year after 2026 using a recognized price index selected by the commission.**
- (4) The commission may designate one (1) or more representatives from commission staff who may be advised by one (1) or more financial advisors contracted with the commission to provide:
- (a) Input to and collaboration with the electric utility during the process undertaken to place the securitized bonds to market; and
- (b) An opinion to the commission on the reasonableness of the pricing, terms, and conditions of the securitized bonds on an expedited basis.
- (5) The designated commission staff and any financial advisor providing advice to commission staff shall:
- (a) Have no authority to direct how the electric utility places the bonds to market **or**

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- whether the bonds are required to be marketed as asset-backed securities, corporate bonds, or any other type of security;** ~~and~~
- (b) **Have only the right of input and collaboration on but not decision-making or approval authority over:**
- 1. Securities law filings;**
  - 2. Structuring and marketing documents; or**
  - 3. Transactional documents for the securitized bonds; and**
- (c) Be permitted to attend meetings convened by the electric utility to address placement of the bonds to market.
- (6) If an electric utility's application for a financing order is denied or withdrawn, or for any reason securitized bonds are not issued, any costs of retaining financial advisors, consultants, and counsel on behalf of the commission, **subject to the limitations set forth in subsection (3) of this section,** shall be:
- (a) Paid by the applicant;
  - (b) Recorded on the books of the utility using appropriate deferral accounting as a regulatory asset; and
  - (c) Be eligible for full recovery, including carrying costs, subject to commission approval.
- (7) Prior to the issuance of each series of securitized bonds, the electric utility shall provide an issuance advice letter to the commission following the determination of the final terms of the series of securitized bonds no later than three (3) business days after the pricing of the securitized bonds.
- (8) The issuance advice letter shall:
- (a) Report the initial securitized **amounts** ~~[surcharges]~~ and other information specific to the securitized bonds as required by the commission;

- (b) ~~Be included in the financing order which may contain additional provisions relating to the issuance advice letter process as the commission deems appropriate and not inconsistent with KRS 278.670 to 278.696 and 65.114;~~
- (c) ~~Indicate the final structure of the securitized bonds; and~~
- (c) ~~(d)~~ Provide the best available estimate of total ongoing financing costs.

**(9) A form or template issuance advice letter shall be included in the financing order, which may contain additional provisions relating to the issuance advice letter process as the commission deems appropriate and not inconsistent with KRS 278.670 to 278.696 and 65.114.**

**(10) Nothing in this section modifies the requirements of KRS 278.020(6) or relieves an electric utility of applicable requirements to obtain the commission's approval prior to selling or transferring assets, including assets giving rise to retired generation costs or extra-state generation facilities whose undepreciated extra-state generation facility balances have been securitized pursuant to this section and Sections 1 and 2 of this Act.**

➔Section 4. KRS 278.678 is amended to read as follows:

- (1) Upon the commission issuing a financing order and after the securitized bonds have been issued, the electric utility shall file with the commission a:
- (a) Tariff containing the **amount required to service the securitized bonds which shall not be collected by**~~mechanism for the assessment of~~ a monthly surcharge to existing rates~~for the collection of the securitized costs~~; and
- (b) Formula-based true-up mechanism.
- (2) The commission, in a financing order and subject to the issuance advice letter process, shall specify the degree of flexibility to be afforded the electric utility in establishing:
- (a) The terms and conditions for the securitized bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs,

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- collateral requirements, required debt service, and other reserves; and
- (b) At its option, a series of issuances of securitized bonds and correlated assignments, sales, pledges, or other transfers of securitized property.
- (3) The electric utility shall file, at least semiannually, an ~~a semiannual~~ update to its monthly amount ~~surcharge~~, based on estimates of consumption for each rate class and other mathematical factors, to collect the appropriate amount of securitized costs. The review by the commission of the ~~semiannual~~ update pursuant to this section shall be limited to:
- (a) Determining whether there are any mathematical or clerical errors in the application of the formula-based true-up mechanism relating to the appropriate amount of any over collection or under collection of a securitized amount ~~surcharge~~; and
- (b) The amount of an adjustment *required to address a mathematical or clerical error determined pursuant to this section.*
- (4) The adjustments shall ensure solely for the recovery of:
- (a) Revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium; and
- (b) Other fees, costs, and charges with respect to securitized bonds approved under the financing order.
- (5) Within ten (10) days after receiving an electric utility's filing of the billing adjustment pursuant to this section, the commission shall either:
- (a) Affix an official stamp on the filing indicating the commission's review is complete; or
- (b) Inform the electric utility of any mathematical or clerical errors in the electric utility's calculation.
- (6) If the commission informs the electric utility of mathematical or clerical errors in its

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calculation, the electric utility shall correct its error and refile its monthly amount~~[semiannual surcharge]~~ update.

- (7) The time frames in subsection (5) of this section shall also apply to a refiled request.
- (8) At the time of any transfer of securitized property to an assignee or the issuance of securitized bonds authorized thereby, whichever is earlier, a financing order shall be irrevocable and, except for changes made pursuant to the formula-based true-up mechanism authorized in this section, the commission shall not:
  - (a) Amend, modify, or terminate the financing order by any subsequent action; or
  - (b) Reduce, impair, postpone, terminate, or otherwise adjust securitized amounts~~[surcharges]~~ approved in the financing order.
- (9) After issuance of a financing order, the electric utility retains sole discretion regarding whether to:
  - (a) Assign, sell, or otherwise transfer securitized property; or
  - (b) Cause securitized bonds to be issued, including the right to defer or postpone the assignment, sale, transfer, or issuance of securitized bonds.
- (10) Any changes made under this section to terms and conditions for the securitized bonds shall be in conformance with the financing order.

➔Section 5. KRS 278.682 is amended to read as follows:

- (1) If the commission has approved an electric utility's financing order and securitized~~[securitization]~~ bonds are issued on the electric utility's behalf, the electric utility shall:
  - (a) *Not collect the securitized costs through the use of a separate surcharge on the customer bill*~~[explicitly state on the customer's bill the portion of securitized surcharges applicable to the rate class as approved in the financing order issued to the electric utility]~~; and

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- (b) Upon implementation and annually thereafter, provide to the customer with the customer's bill a notice stating the associated cost savings from securitization; and
- (c) With respect to all cost-reduction amounts under financing orders issued after January 1, 2026, not invoice the cost-reduction amounts as a separate line item or surcharge on customer's bill. The inclusion shall not impair the independent nature of the cost reduction amount as part of securitized property~~[Include the securitized surcharge on each customer's bill as a separate line item and include both the base rate for the customer's electricity and the amount of the surcharge].~~
- (2) If the securitized property has been transferred to an assignee, the annual notice~~[customer bill]~~ shall include a statement that the assignee is the owner of the rights to cost reduction amount~~[securitized surcharges]~~, and the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee.
- (3) Each tariff of the electric utility with a commission-approved financing order shall indicate the applicable cost reduction amount~~[securitized surcharge]~~ and the ownership of the amount~~[surcharge]~~."