

1 AN ACT relating to investor-owned electric utilities and declaring an emergency.

2 WHEREAS, the General Assembly desires to reduce costs for electric utility
3 customers while encouraging investment in electric generation facilities within the
4 borders of the Commonwealth; and

5 WHEREAS, the General Assembly wishes to allow for the securitization of certain
6 additional utility assets by electric utilities pursuing the development of dispatchable
7 generation located in the Commonwealth;

8 NOW, THEREFORE,

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

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

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

14 (1) "Ancillary agreement" means a bond, insurance policy, letter of credit, reserve
15 account, surety bond, interest rate lock or swap arrangement, hedging arrangement,
16 liquidity or credit support arrangement, or other financial arrangement entered into
17 in connection with securitized bonds;

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

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

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

26 (5) "Deferred costs" means costs that have occurred and are but will be accounted for
27 as part of a regulatory asset;

1 (6) "Environmental control costs" means costs incurred or expected to be incurred
2 by a qualifying electric utility to comply with:
3 (a) 42 U.S.C. sec. 7401 et seq. and not recovered under KRS 278.183; or
4 (b) Any federal, state, or local environmental laws, administrative regulations,
5 orders, or other requirements which apply to coal combustion wastes or by-
6 products from extra-state generation facilities utilized for the production of
7 energy from coal, including expenses and capital costs for services,
8 equipment, and other assets;

9 (7) "Financing costs" means any one (1) or more of [include] the following:

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

12 (b) Any payment required under an ancillary agreement and any amount required
13 to fund or replenish a reserve account or other accounts established under the
14 terms of any indenture, ancillary agreement, or other financing document
15 pertaining to securitized bonds;

16 (c) Any other cost related to issuing, supporting, repaying, refunding, or servicing
17 securitized bonds, including the following fees and costs without limitation:

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

23 2. Capitalized interest and information technology programming costs; and

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

27 (d) Any taxes and license fees or other fees imposed on the revenues generated

1 from the collection of the securitized surcharge or otherwise resulting from
2 the collection of securitized surcharges, in any such case whether paid,
3 payable, or accrued;

4 (e) Any state or local taxes, franchise taxes, gross receipts, and other taxes or
5 similar charges, including commission assessment fees, whether paid,
6 payable, or accrued; and

7 (f) Any costs associated with performance of the commission's responsibilities
8 under KRS 278.670 to 278.696 and 65.114 in connection with:

9 1. Approving, approving subject to conditions, or rejecting an application
10 for a financing order; and

11 2. Retaining counsel, one (1) or more financial advisors, or other
12 consultants as deemed appropriate by the commission and paid pursuant
13 to KRS 278.670 to 278.696 and 65.114, for the issuance advice letter
14 process;

15 (8)(7) "Financing order" means an order issued by the commission that authorizes
16 the:

17 (a) Issuance of securitization bonds;

18 (b) Imposition, collection, and periodic adjustment of a securitized surcharge;

19 (c) Creation of securitized property; and

20 (d) Sale, assignment, or transfer of securitized property to an assignee;

21 **(9)(8)** "Financing party" means bondholders and trustees, collateral agents, any party
22 under an ancillary agreement, or any other person acting for the benefit of
23 bondholders;

24 (10)[(9)] "Financing statement" has the same meaning as in KRS 355.9-102;

25 **(11)**[(10)] "Formula-based true-up mechanism" means a reconciliation or true-up
26 process that is used to identify over collection or under collection of the securitized
27 surcharge;

1 **(12)**~~(11)~~ "Issuance advice letter" means a letter from the utility to the commission that
2 describes the final terms and conditions for the bond issuance, including but not
3 limited to the actual structure of the bond issue, pricing, and other bond features
4 such as coupon rates, redemption, and call provisions, and current market
5 conditions affecting the bond issuance;

6 **(13)**(12) "Nonbypassable" means the payment of a securitized utility charge may not
7 be avoided by any existing or future retail customer including special contract
8 customers;

9 **(14)**~~(13)~~ "Pledgee" means a financing party to which an electric utility or its successors
10 or assignees mortgages, negotiates, pledges, or creates a security interest or lien on
11 all or any portion of its interest in or right to securitized property;

12 **(15)**~~(14)~~ "Regulatory asset" means, under the standardized financial accounting
13 standards adopted by the commission, expenses that have been authorized by the
14 commission to be capitalized for consideration of recovery in future rates that
15 would otherwise be treated as an expense in a current accounting period;

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

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

20 1. The undepreciated investment in the retired or abandoned electric
21 generating facility and in any facilities ancillary thereto or used in
22 conjunction therewith;

23 2. Costs of decommissioning and restoring the site of the electric
24 generating facility;

25 3. Other applicable capital and operating costs; and

26 4. Accrued carrying charges and deferred costs;

27 (b) Reduced by, to the extent as they relate to the retired or abandoned

1 facilities:

2 1. Insurance, scrap, and salvage proceeds;

3 2. Applicable unamortized regulatory liabilities for excess deferred income

4 taxes; and

5 3. The present value of return on all accumulated deferred income taxes

6 related to pretax costs with respect to the~~a~~ retired or abandoned facility

7 and related facilities, including those due to bonus and accelerated tax

8 depreciation and abandonment losses; and

9 (c) Added to pretax costs the electric utility has previously incurred related to the

10 retirement or abandonment of an electric generating facility and related

11 facilities offering before June 29, 2023, including costs associated with:

12 1. The decommissioning and restoration of the site; and

13 2. Environmental compliance related to the operation and retirement of the

14 electric generating facility;

15 (17)~~(16)~~ "Securitization" means a structured process where interests in debt

16 instruments ~~for other receivable income~~ are packaged, underwritten, and sold as

17 asset-backed marketable securities such as bonds;

18 (18)~~(17)~~ "Securitized bonds" means bonds, debentures, notes, certificates of

19 participation, certificates of beneficial interest, certificates of ownership, or other

20 evidences of indebtedness or ownership that have a maturity date as determined

21 reasonable by the commission, but not later than thirty (30) years from the issue

22 date, that are issued by an electric utility or assignee pursuant to a financing order,

23 the proceeds of which are used directly or indirectly to recover, finance, or

24 refinance capitalized cost assets and financing costs that are secured by or payable

25 from securitized utility property;

26 (19)~~(18)~~ "Securitized costs" means any one (1) or more of:~~include~~

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

1 (b) Unamortized book value of deferred~~extraordinary~~ storm costs or other
2 regulatory assets; or

3 (c) Undepreciated extra-state generation utility plant balances including but
4 not limited to environmental control costs associated with an extra-state
5 generation utility plant, in each case whether before or after
6 securitization~~deferred costs associated with prior incurrences, but does not~~
7 ~~include ongoing utility investments or operating costs~~];

8 (20)~~(19)~~ "Securitized property" means:

9 (a) All rights and interests of a utility, its successor, or assignee under a financing
10 order, including the right to impose, bill, charge, collect, and receive
11 securitized surcharges authorized under the financing order and to obtain
12 periodic adjustments to those charges authorized under KRS 278.670 to
13 278.696 and 65.114 and as provided in the financing order; and

14 (b) All revenues, collections, claims, rights to payments, payments, moneys, or
15 proceeds arising from the rights and interests specified in the financing order,
16 regardless of whether those revenues, collections, claims, rights to payment,
17 payments, moneys, or proceeds are imposed, billed, received, collected, or
18 maintained together with or commingled with other revenues, collections,
19 rights to payment, payments, moneys, or proceeds;

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

24 (a) Nonbypassable and imposed on, and are a part of, all retail customer bills;
25 (b) Collectable~~Collected~~, in full in~~and separate from~~ the utility's tariffed rates
26 by an electric utility or by its successors, assignees, or collection agents, and
27 separate from the utility's~~s~~ special contract rates~~s~~ or other mechanisms~~by~~

8 (22) "Undepreciated extra-state generation utility plant balances" means any
9 unrecovered capitalized costs of, or any not yet fully depreciated investments in,
10 one (1) or more fossil fuel-fired electric generating plants that:

11 (a) Are owned by an electric utility on the effective date of this Act;

12 (b) Are located outside of the Commonwealth;

13 (c) Have a nameplate generation capacity in excess of eight hundred (800)
14 megawatts each; and

15 (d) Have included in the plant's related supply, transmission, equipment, and
16 *fixtures at a minimum to the:*

17 1. Net book value of assets on the qualifying electric utility's balance
18 sheet related to the generating plant's related infrastructure and
19 environmental control costs associated with the extra-state generation
20 utility plant; and

21 2. *Accrued carrying charges and deferred costs; and*

22 (23)~~(21)~~ "Utility" has the same meaning as in KRS 278.010(3)(a) but shall not include
23 any utility organized under KRS Chapter 279.

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

25 (1) An electric utility may apply to the commission for a financing order to finance by
26 securitized bonds any securitized costs approved by the commission[extraordinary
27 or other deferred costs from previous events for regulatory assets existing and with

1 a value calculated on June 30, 2023, as:

2 (a) Greater than two hundred million dollars (\$200,000,000) for a single
3 regulatory asset; or

4 (b) Having a cumulative total value of greater than two hundred and seventy-five
5 million (\$275,000,000) for multiple regulatory assets].

6 (2) An application for a financing order shall include:

7 (a) A description and dollar amount of the extra-state generation utility plant
8 balances, deferred storm costs, and other regulatory assets that the utility
9 requests to securitize[of the deferred costs the utility is seeking to securitize.
10 If more than fifty percent (50%) of the deferred costs are retired generation
11 costs, the application also shall describe:
12 1. The electric generating facility or facilities that have been retired; and
13 2. A copy of all previous commission orders related to the deferral of costs
14 applicable to the retirement or abandonment of the facility or facilities];

15 (b) An estimate of the financing costs related to the securitized bonds[The dollar
16 amount of the deferred costs];

17 (c) An estimate of the:
18 1. Securitized surcharges necessary to recover the securitized costs;
19 2. Financing costs; and
20 3. Time period needed for the recovery of securitized and financing
21 costs[A statement of whether the electric utility proposes to finance all
22 or a portion of deferred costs using securitized bonds. If the electric
23 utility proposes to finance a portion of the costs, the electric utility shall
24 identify the specific portion of the deferred costs in the application. By
25 electing not to finance all or any portion of deferred costs using
26 securitized bonds, an electric utility shall not be deemed to waive its
27 right to reflect those costs in its retail rates pursuant to a separate

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

4 (d) **A comparison between the:**

5 **1. Net present value of the costs to ratepayers that are estimated to result**
6 **from the issuance of securitized bonds; and**

7 **2. Cost that would result from an alternative means of providing for the**
8 **full recovery of and return on those securitized costs from customers,**
9 **using the utility's current or expected weighted average cost of**
10 **capital** [An estimate of the financing costs related to the securitized
11 bonds];

12 (e) [An estimate of the securitized surcharges necessary to recover the securitized
13 costs and financing costs and the period for recovery of the costs;

14 (f) A comparison between the net present value of the costs to ratepayers that are
15 estimated to result from the issuance of securitized bonds and the cost that
16 would result from an alternative means of providing for the full recovery of
17 and return on those securitized costs from customers, using the utility's
18 current or expected weighted average cost of capital. The comparison should
19 demonstrate that the issuance of securitized bonds and the imposition of
20 securitized surcharges are expected to provide quantifiable net present value
21 benefits to customers;

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

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

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

5 *(a) Has also filed, on or after January 1, 2026, an application to build or*
6 *acquire in-state dispatchable generation pursuant to KRS 278.020; and*
7 *(b) Has agreed not to seek an increase in base rates that would become effective*
8 *prior to the two (2) years period after the application for a financing order*
9 *is filed with the commission.*

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

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

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

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

- 20 1. A decision approving the application, approving the application subject
21 to conditions, or denying the application is issued; and
- 22 2. A financing order is issued if the application is approved and the
23 conditions are met, if conditions are imposed; ~~and~~

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

- 26 1. The application is in the public interest; and
- 27 2. The resulting estimated securitized surcharge and other rates are fair,

1 just, and reasonable; and

2 (c) *The commission shall not require in any financing order for the*
3 *securitization of an electric utility's securitized costs that the:*
4 *1. Securitized bonds be marketed as a specific type of security; or*
5 *2. Assignee be formed as a specific type of entity, including as a series*
6 *trust.*

7 (2) Judicial review of a financing order shall only be done in accordance with KRS
8 278.410.

9 (3) In performing the responsibilities under KRS 278.670 to 278.696 and 65.114, the
10 commission may retain counsel, one (1) or more financial advisors, or other
11 consultants as the commission deems appropriate. Outside counsel, advisors, or
12 other consultants engaged by the commission shall have no interest in the proposed
13 securitized bonds and shall not direct the placement *or marketing* of securitized
14 bonds. The costs associated with *the commission's* retaining *of* counsel, *or*
15 advisors, *or other consultants* shall:

16 (a) Be paid by the applicant and be included as financing costs in the securitized
17 surcharge;
18 (b) Be assigned solely to the subject transaction; *and*
19 (c) Not be an obligation of the Commonwealth; and

20 (d) *Not exceed seven hundred fifty thousand dollars (\$750,000), except that the*
21 *costs may be adjusted for inflation each year after 2026 using a recognized*
22 *price index selected by the commission.*

23 (4) The commission may designate one (1) or more representatives from commission
24 staff who may be advised by one (1) or more financial advisors contracted with the
25 commission to provide:

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

1 (8) The issuance advice letter shall:

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

4 (b) ~~Be included in the financing order which may contain additional provisions
5 relating to the issuance advice letter process as the commission deems
6 appropriate and not inconsistent with KRS 278.670 to 278.696 and 65.114;~~

7 (e) ~~Indicate the final structure of the securitized bonds; and~~

8 (c)~~(d)~~ Provide the best available estimate of total ongoing financing costs.

9 (9) *A form or template issuance advice letter shall be included in the financing order,
10 which may contain additional provisions relating to the issuance advice letter
11 process as the commission deems appropriate and not inconsistent with KRS
12 278.670 to 278.696 and 65.114.*

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

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

19 (1) Upon the commission issuing a financing order and after the securitized bonds have
20 been issued, the electric utility shall file with the commission a:

21 (a) Tariff containing the mechanism for the assessment of a monthly surcharge to
22 existing rates for the collection of the securitized costs; and

23 (b) Formula-based true-up mechanism.

24 (2) The commission, in a financing order and subject to the issuance advice letter
25 process, shall specify the degree of flexibility to be afforded the electric utility in
26 establishing:

27 (a) The terms and conditions for the securitized bonds to accommodate changes

1 in market conditions, including repayment schedules, interest rates, financing
2 costs, collateral requirements, required debt service, and other reserves; and

3 (b) At its option, a series of issuances of securitized bonds and correlated
4 assignments, sales, pledges, or other transfers of securitized property.

5 (3) The electric utility shall file, at least semiannually, an [a semiannual] update to its
6 monthly surcharge, based on estimates of consumption for each rate class and other
7 mathematical factors, to collect the appropriate amount of securitized costs. The
8 review by the commission of the [semiannual] update pursuant to this section shall
9 be limited to:

10 (a) Determining whether there are any mathematical or clerical errors in the
11 application of the formula-based true-up mechanism relating to the
12 appropriate amount of any over collection or under collection of a securitized
13 surcharge; and

14 (b) The amount of an adjustment required to address a mathematical or clerical
15 error determined pursuant to this section.

16 (4) The adjustments shall ensure solely for the recovery of:

17 (a) Revenues sufficient to provide for the payment of principal, interest,
18 acquisition, defeasance, financing costs, or redemption premium; and

19 (b) Other fees, costs, and charges with respect to securitized bonds approved
20 under the financing order.

21 (5) Within ten (10) days after receiving an electric utility's filing of the billing
22 adjustment pursuant to this section, the commission shall either:

23 (a) Affix an official stamp on the filing indicating the commission's review is
24 complete; or

25 (b) Inform the electric utility of any mathematical or clerical errors in the electric
26 utility's calculation.

27 (6) If the commission informs the electric utility of mathematical or clerical errors in its

1 calculation, the electric utility shall correct its error and refile its ~~semiannual~~
2 }surcharge update.

3 (7) The time frames in subsection (5) of this section shall also apply to a refiled
4 request.

5 (8) At the time of any transfer of securitized property to an assignee or the issuance of
6 securitized bonds authorized thereby, whichever is earlier, a financing order shall
7 be irrevocable and, except for changes made pursuant to the formula-based true-up
8 mechanism authorized in this section, the commission shall not:

9 (a) Amend, modify, or terminate the financing order by any subsequent action; or
10 (b) Reduce, impair, postpone, terminate, or otherwise adjust securitized
11 surcharges approved in the financing order.

12 (9) After issuance of a financing order, the electric utility retains sole discretion
13 regarding whether to:

14 (a) Assign, sell, or otherwise transfer securitized property; or
15 (b) Cause securitized bonds to be issued, including the right to defer or postpone
16 the assignment, sale, transfer, or issuance of securitized bonds.

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

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

20 (1) If the commission has approved an electric utility's financing order and
21 securitization bonds are issued on the electric utility's behalf, the electric utility
22 shall~~;~~

23 (a) ~~;~~ explicitly state on the customer's bill the portion of securitized surcharges
24 applicable to the rate class as approved in the financing order issued to the electric
25 utility~~;~~ and

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

1 surecharge].

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) Each tariff of the electric utility with a commission-approved financing order shall
7 indicate the applicable securitized surcharge and the ownership of the surcharge.

8 ➔Section 6. Whereas the cost of electric energy is rising and the health and safety
9 of the citizens of the Commonwealth depends on lower cost energy through increased
10 electric generation, an emergency is declared to exist, and this Act takes effect upon its
11 passage and approval by the Governor or upon its otherwise becoming a law.