

FIRST REGULAR SESSION

# HOUSE BILL NO. 238

## 103RD GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE O'DONNELL.

0798H.011

DANA RADEMAN MILLER, Chief Clerk

---

### AN ACT

To repeal section 393.1700, RSMo, and to enact in lieu thereof one new section relating to the public service commission.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 393.1700, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 393.1700, to read as follows:

393.1700. 1. For purposes of sections 393.1700 to 393.1715, the following terms shall mean:

(1) "Ancillary agreement", 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 utility tariff bonds;

(2) "Assignee", a legally recognized entity to which an electrical corporation assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to securitized utility tariff property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to securitized utility tariff property;

(3) "Bondholder", a person who holds a securitized utility tariff bond;

(4) "Code", the uniform commercial code, chapter 400;

(5) "Commission", the Missouri public service commission;

(6) "Electrical corporation", the same as defined in section 386.020, but shall not include an electrical corporation as described in subsection 2 of section 393.110;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (7) "Energy transition costs" include all of the following:

19 (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned  
20 electric generating facility that is the subject of a petition for a financing order filed under this  
21 section where such early retirement or abandonment is deemed reasonable and prudent by the  
22 commission through a final order issued by the commission, include, but are not limited to,  
23 the undepreciated investment in the retired or abandoned or to be retired or abandoned  
24 electric generating facility and any facilities ancillary thereto or used in conjunction  
25 therewith, costs of decommissioning and restoring the site of the electric generating facility,  
26 other applicable capital and operating costs, accrued carrying charges, and deferred expenses,  
27 with the foregoing to be reduced by applicable tax benefits of accumulated and excess  
28 deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of  
29 retiring any existing indebtedness, fees, costs, and expenses to modify existing debt  
30 agreements or for waivers or consents related to existing debt agreements;

31 (b) Pretax costs that an electrical corporation has previously incurred related to the  
32 retirement or abandonment of such an electric generating facility occurring before August 28,  
33 2021;

34 (8) "Financing costs" includes all of the following:

35 (a) Interest and acquisition, defeasance, or redemption premiums payable on  
36 securitized utility tariff bonds;

37 (b) Any payment required under an ancillary agreement and any amount required to  
38 fund or replenish a reserve account or other accounts established under the terms of any  
39 indenture, ancillary agreement, or other financing documents pertaining to securitized utility  
40 tariff bonds;

41 (c) Any other cost related to issuing, supporting, repaying, refunding, and servicing  
42 securitized utility tariff bonds, including servicing fees, accounting and auditing fees, trustee  
43 fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and  
44 underwriting fees, independent director and manager fees, capitalized interest, rating agency  
45 fees, stock exchange listing and compliance fees, security registration fees, filing fees,  
46 information technology programming costs, and any other costs necessary to otherwise  
47 ensure the timely payment of securitized utility tariff bonds or other amounts or charges  
48 payable in connection with the bonds, including costs related to obtaining the financing order;

49 (d) Any taxes and license fees or other fees imposed on the revenues generated from  
50 the collection of the securitized utility tariff charge or otherwise resulting from the collection  
51 of securitized utility tariff charges, in any such case whether paid, payable, or accrued;

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

54 (f) Any costs associated with performance of the commission's responsibilities under  
55 this section in connection with approving, approving subject to conditions, or rejecting a  
56 petition for a financing order, and in performing its duties in connection with the issuance  
57 advice letter process, including costs to retain counsel, one or more financial advisors, or  
58 other consultants as deemed appropriate by the commission and paid pursuant to this section;

59 (9) "Financing order", an order from the commission that authorizes the issuance of  
60 securitized utility tariff bonds; the imposition, collection, and periodic adjustments of a  
61 securitized utility tariff charge; the creation of securitized utility tariff property; and the sale,  
62 assignment, or transfer of securitized utility tariff property to an assignee;

63 (10) "Financing party", bondholders and trustees, collateral agents, any party under  
64 an ancillary agreement, or any other person acting for the benefit of bondholders;

65 (11) "Financing statement", the same as defined in article 9 of the code;

66 (12) "Pledgee", a financing party to which an electrical corporation or its successors  
67 or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any  
68 portion of its interest in or right to securitized utility tariff property;

69 (13) "Qualified extraordinary costs", costs incurred prudently before, on, or after  
70 August 28, 2021, of an extraordinary nature which would cause extreme customer rate  
71 impacts if reflected in retail customer rates recovered through customary ratemaking, such as  
72 but not limited to those related to purchases of fuel or power, inclusive of carrying charges,  
73 during anomalous weather events;

74 (14) "Rate base cutoff date", the same as defined in subdivision (4) of subsection 1 of  
75 section 393.1400 as such term existed on August 28, 2021;

76 (15) "Securitized utility tariff bonds", bonds, debentures, notes, certificates of  
77 participation, certificates of beneficial interest, certificates of ownership, or other evidences  
78 of indebtedness or ownership that are issued by an electrical corporation or an assignee  
79 pursuant to a financing order, the proceeds of which are used directly or indirectly to recover,  
80 finance, or refinance commission-approved securitized utility tariff costs and financing costs,  
81 and that are secured by or payable from securitized utility tariff property. If certificates of  
82 participation or ownership are issued, references in this section to principal, interest, or  
83 premium shall be construed to refer to comparable amounts under those certificates;

84 (16) "Securitized utility tariff charge", the amounts authorized by the commission to  
85 repay, finance, or refinance securitized utility tariff costs and financing costs and that are,  
86 except as otherwise provided for in this section, nonbypassable charges imposed on and part  
87 of all retail customer bills, collected by an electrical corporation or its successors or assignees,  
88 or a collection agent, in full, separate and apart from the electrical corporation's base rates,  
89 and paid by all existing or future retail customers receiving electrical service from the  
90 electrical corporation or its successors or assignees under commission-approved rate

91 schedules, except for customers receiving electrical service under special contracts as of  
92 August 28, 2021, even if a retail customer elects to purchase electricity from an alternative  
93 electricity supplier following a fundamental change in regulation of public utilities in this  
94 state;

95 (17) "Securitized utility tariff costs", either energy transition costs or qualified  
96 extraordinary costs as the case may be;

97 (18) "Securitized utility tariff property", all of the following:

98 (a) All rights and interests of an electrical corporation or successor or assignee of the  
99 electrical corporation under a financing order, including the right to impose, bill, charge,  
100 collect, and receive securitized utility tariff charges authorized under the financing order and  
101 to obtain periodic adjustments to such charges as provided in the financing order;

102 (b) All revenues, collections, claims, rights to payments, payments, money, or  
103 proceeds arising from the rights and interests specified in the financing order, regardless of  
104 whether such revenues, collections, claims, rights to payment, payments, money, or proceeds  
105 are imposed, billed, received, collected, or maintained together with or commingled with  
106 other revenues, collections, rights to payment, payments, money, or proceeds;

107 (19) "Special contract", electrical service provided under the terms of a special  
108 incremental load rate schedule at a fixed price rate approved by the commission.

109 2. (1) An electrical corporation may petition the commission for a financing order to  
110 finance energy transition costs through an issuance of securitized utility tariff bonds. The  
111 petition shall include all of the following:

112 (a) A description of the electric generating facility or facilities that the electrical  
113 corporation has retired or abandoned, or proposes to retire or abandon, prior to the date that  
114 all undepreciated investment relating thereto has been recovered through rates and the reasons  
115 for undertaking such early retirement or abandonment, or if the electrical corporation is  
116 subject to a separate commission order or proceeding relating to such retirement or  
117 abandonment as contemplated by subdivision (2) of this subsection, and a description of the  
118 order or other proceeding;

119 (b) The energy transition costs;

120 (c) An indicator of whether the electrical corporation proposes to finance all or a  
121 portion of the energy transition costs using securitized utility tariff bonds. If the electrical  
122 corporation proposes to finance a portion of the costs, the electrical corporation shall identify  
123 the specific portion in the petition. By electing not to finance all or any portion of such  
124 energy transition costs using securitized utility tariff bonds, an electrical corporation shall not  
125 be deemed to waive its right to recover such costs pursuant to a separate proceeding with the  
126 commission;

127 (d) An estimate of the financing costs related to the securitized utility tariff bonds;

128 (e) An estimate of the securitized utility tariff charges necessary to recover the  
129 securitized utility tariff costs and financing costs and the period for recovery of such costs;

130 (f) A comparison between the net present value of the costs to customers that are  
131 estimated to result from the issuance of securitized utility tariff bonds and the costs that would  
132 result from the application of the traditional method of financing and recovering the  
133 undepreciated investment of facilities that may become securitized utility tariff costs from  
134 customers. The comparison should demonstrate that the issuance of securitized utility tariff  
135 bonds and the imposition of securitized utility tariff charges are expected to provide  
136 quantifiable net present value benefits to customers;

137 (g) A proposed future ratemaking process to reconcile any differences between  
138 securitized utility tariff costs financed by securitized utility tariff bonds and the final  
139 securitized costs incurred by the electrical corporation or assignee provided that any such  
140 reconciliation shall not affect the amount of securitized utility tariff bonds or the associated  
141 securitized utility tariff charges paid by customers; and

142 (h) Direct testimony supporting the petition.

143 (2) An electrical corporation may petition the commission for a financing order to  
144 finance qualified extraordinary costs. The petition shall include all of the following:

145 (a) A description of the qualified extraordinary costs, including their magnitude, the  
146 reasons those costs were incurred by the electrical corporation and the retail customer rate  
147 impact that would result from customary ratemaking treatment of such costs;

148 (b) An indicator of whether the electrical corporation proposes to finance all or a  
149 portion of the qualified extraordinary costs using securitized utility tariff bonds. If the  
150 electrical corporation proposes to finance a portion of the costs, the electrical corporation  
151 shall identify the specific portion in the petition. By electing not to finance all or any portion  
152 of such qualified extraordinary costs using securitized utility tariff bonds, an electrical  
153 corporation shall not be deemed to waive its right to reflect such costs in its retail rates  
154 pursuant to a separate proceeding with the commission;

155 (c) An estimate of the financing costs related to the securitized utility tariff bonds;

156 (d) An estimate of the securitized utility tariff charges necessary to recover the  
157 qualified extraordinary costs and financing costs and the period for recovery of such costs;

158 (e) A comparison between the net present value of the costs to customers that are  
159 estimated to result from the issuance of securitized utility tariff bonds and the costs that would  
160 result from the application of the customary method of financing and reflecting the qualified  
161 extraordinary costs in retail customer rates. The comparison should demonstrate that the  
162 issuance of securitized utility tariff bonds and the imposition of securitized utility tariff  
163 charges are expected to provide quantifiable net present value benefits to retail customers;

164 (f) A proposed future ratemaking process to reconcile any differences between  
165 securitized utility tariff costs financed by securitized utility tariff bonds and the final  
166 securitized costs incurred by the electrical corporation or assignee provided that any such  
167 reconciliation shall not affect the amount of securitized utility tariff bonds or the associated  
168 securitized utility tariff charges paid by customers; and

169 (g) Direct testimony supporting the petition.

170 (3) (a) Proceedings on a petition submitted pursuant to this subsection begin with the  
171 petition by an electrical corporation and shall be disposed of in accordance with the  
172 requirements of this section and the rules of the commission, except as follows:

173 a. The commission shall establish a procedural schedule that permits a commission  
174 decision no later than two hundred fifteen days after the date the petition is filed;

175 b. No later than two hundred fifteen days after the date the petition is filed, the  
176 commission shall issue a financing order approving the petition, an order approving the  
177 petition subject to conditions, or an order rejecting the petition; provided, however, that the  
178 electrical corporation shall provide notice of intent to file a petition for a financing order to  
179 the commission no less than sixty days in advance of such filing;

180 c. Judicial review of a financing order may be had only in accordance with sections  
181 386.500 and 386.510.

182 (b) In performing its responsibilities under this section in approving, approving  
183 subject to conditions, or rejecting a petition for a financing order, the commission may retain  
184 counsel, one or more financial advisors, or other consultants as it deems appropriate. Such  
185 outside counsel, advisor or advisors, or consultants shall owe a duty of loyalty solely to the  
186 commission and shall have no interest in the proposed securitized utility tariff bonds. The  
187 costs associated with any such engagements shall be paid by the petitioning corporation and  
188 shall be included as financed costs in the securitized utility tariff charge and shall not be an  
189 obligation of the state and shall be assigned solely to the subject transaction. **The**  
190 **commission may directly contract counsel, financial advisors, or other consultants as**  
191 **necessary for effectuating the purposes of this section. Such contracting procedures**  
192 **shall not be subject to the provisions of chapter 34; however the commission shall**  
193 **establish a policy for the bid process. Such policy shall be publicly available and any**  
194 **information related to contracts under the established policy shall be included in**  
195 **publicly available rate case documentation.**

196 (c) A financing order issued by the commission, after a hearing, to an electrical  
197 corporation shall include all of the following elements:

198 a. The amount of securitized utility tariff costs to be financed using securitized utility  
199 tariff bonds and a finding that recovery of such costs is just and reasonable and in the public  
200 interest. The commission shall describe and estimate the amount of financing costs that may

201 be recovered through securitized utility tariff charges and specify the period over which  
202 securitized utility tariff costs and financing costs may be recovered;

203         b. A finding that the proposed issuance of securitized utility tariff bonds and the  
204 imposition and collection of a securitized utility tariff charge are just and reasonable and in  
205 the public interest and are expected to provide quantifiable net present value benefits to  
206 customers as compared to recovery of the components of securitized utility tariff costs that  
207 would have been incurred absent the issuance of securitized utility tariff bonds.  
208 Notwithstanding any provisions of this section to the contrary, in considering whether to  
209 find the proposed issuance of securitized utility tariff bonds and the imposition and collection  
210 of a securitized utility tariff charge are just and reasonable and in the public interest, the  
211 commission may consider previous instances where it has issued financing orders to the  
212 petitioning electrical corporation and such electrical corporation has previously issued  
213 securitized utility tariff bonds;

214         c. A finding that the proposed structuring and pricing of the securitized utility tariff  
215 bonds are reasonably expected to result in the lowest securitized utility tariff charges  
216 consistent with market conditions at the time the securitized utility tariff bonds are priced and  
217 the terms of the financing order;

218         d. A requirement that, for so long as the securitized utility tariff bonds are outstanding  
219 and until all financing costs have been paid in full, the imposition and collection of  
220 securitized utility tariff charges authorized under a financing order shall be nonbypassable  
221 and paid by all existing and future retail customers receiving electrical service from the  
222 electrical corporation or its successors or assignees under commission-approved rate  
223 schedules except for customers receiving electrical service under special contracts on August  
224 28, 2021, even if a retail customer elects to purchase electricity from an alternative electric  
225 supplier following a fundamental change in regulation of public utilities in this state;

226         e. A formula-based true-up mechanism for making, at least annually, expeditious  
227 periodic adjustments in the securitized utility tariff charges that customers are required to pay  
228 pursuant to the financing order and for making any adjustments that are necessary to correct  
229 for any overcollection or undercollection of the charges or to otherwise ensure the timely  
230 payment of securitized utility tariff bonds and financing costs and other required amounts and  
231 charges payable under the securitized utility tariff bonds;

232         f. The securitized utility tariff property that is, or shall be, created in favor of an  
233 electrical corporation or its successors or assignees and that shall be used to pay or secure  
234 securitized utility tariff bonds and approved financing costs;

235         g. The degree of flexibility to be afforded to the electrical corporation in establishing  
236 the terms and conditions of the securitized utility tariff bonds, including, but not limited to,  
237 repayment schedules, expected interest rates, and other financing costs;

238 h. How securitized utility tariff charges will be allocated among retail customer  
239 classes. The initial allocation shall remain in effect until the electrical corporation completes  
240 a general rate proceeding, and once the commission's order from that general rate proceeding  
241 becomes final, all subsequent applications of an adjustment mechanism regarding securitized  
242 utility tariff charges shall incorporate changes in the allocation of costs to customers as  
243 detailed in the commission's order from the electrical corporation's most recent general rate  
244 proceeding;

245 i. A requirement that, after the final terms of an issuance of securitized utility tariff  
246 bonds have been established and before the issuance of securitized utility tariff bonds, the  
247 electrical corporation determines the resulting initial securitized utility tariff charge in  
248 accordance with the financing order, and that such initial securitized utility tariff charge be  
249 final and effective upon the issuance of such securitized utility tariff bonds with such charge  
250 to be reflected on a compliance tariff sheet bearing such charge;

251 j. A method of tracing funds collected as securitized utility tariff charges, or other  
252 proceeds of securitized utility tariff property, determining that such method shall be deemed  
253 the method of tracing such funds and determining the identifiable cash proceeds of any  
254 securitized utility tariff property subject to a financing order under applicable law;

255 k. A statement specifying a future ratemaking process to reconcile any differences  
256 between the actual securitized utility tariff costs financed by securitized utility tariff bonds  
257 and the final securitized utility tariff costs incurred by the electrical corporation or assignee  
258 provided that any such reconciliation shall not affect the amount of securitized utility tariff  
259 bonds or the associated securitized utility tariff charges paid by customers;

260 l. A procedure that shall allow the electrical corporation to earn a return, at the cost of  
261 capital authorized from time to time by the commission in the electrical corporation's rate  
262 proceedings, on any moneys advanced by the electrical corporation to fund reserves, if any, or  
263 capital accounts established under the terms of any indenture, ancillary agreement, or other  
264 financing documents pertaining to the securitized utility tariff bonds;

265 m. In a financing order granting authorization to securitize energy transition costs or  
266 in a financing order granting authorization to securitize qualified extraordinary costs that  
267 include retired or abandoned facility costs, a procedure for the treatment of accumulated  
268 deferred income taxes and excess deferred income taxes in connection with the retired or  
269 abandoned or to be retired or abandoned electric generating facility, or in connection with  
270 retired or abandoned facilities included in qualified extraordinary costs. The accumulated  
271 deferred income taxes, including excess deferred income taxes, shall be excluded from rate  
272 base in future general rate cases and the net tax benefits relating to amounts that will be  
273 recovered through the issuance of securitized utility tariff bonds shall be credited to retail  
274 customers by reducing the amount of such securitized utility tariff bonds that would otherwise



275 be issued. The customer credit shall include the net present value of the tax benefits,  
276 calculated using a discount rate equal to the expected interest rate of the securitized utility  
277 tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of  
278 securitization including timing differences created by the issuance of securitized utility tariff  
279 bonds amortized over the period of the bonds multiplied by the expected interest rate on such  
280 securitized utility tariff bonds;

281 n. An outside date, which shall not be earlier than one year after the date the financing  
282 order is no longer subject to appeal, when the authority to issue securitized utility tariff bonds  
283 granted in such financing order shall expire; and

284 o. Include any other conditions that the commission considers appropriate and that are  
285 not inconsistent with this section.

286 (d) A financing order issued to an electrical corporation may provide that creation of  
287 the electrical corporation's securitized utility tariff property is conditioned upon, and  
288 simultaneous with, the sale or other transfer of the securitized utility tariff property to an  
289 assignee and the pledge of the securitized utility tariff property to secure securitized utility  
290 tariff bonds.

291 (e) If the commission issues a financing order, the electrical corporation shall file  
292 with the commission at least annually a petition or a letter applying the formula-based true-up  
293 mechanism and, based on estimates of consumption for each rate class and other  
294 mathematical factors, requesting administrative approval to make the applicable  
295 adjustments. The review of the filing shall be limited to determining whether there are  
296 any mathematical or clerical errors in the application of the formula-based true-up mechanism  
297 relating to the appropriate amount of any overcollection or undercollection of securitized  
298 utility tariff charges and the amount of an adjustment. The adjustments shall ensure the  
299 recovery of revenues sufficient to provide for the payment of principal, interest, acquisition,  
300 defeasance, financing costs, or redemption premium and other fees, costs, and charges in  
301 respect of securitized utility tariff bonds approved under the financing order. Within thirty  
302 days after receiving an electrical corporation's request pursuant to this paragraph, the  
303 commission shall either approve the request or inform the electrical corporation of any  
304 mathematical or clerical errors in its calculation. If the commission informs the electrical  
305 corporation of mathematical or clerical errors in its calculation, the electrical corporation shall  
306 correct its error and refile its request. The time frames previously described in this paragraph  
307 shall apply to a refiled request.

308 (f) At the time of any transfer of securitized utility tariff property to an assignee or the  
309 issuance of securitized utility tariff bonds authorized thereby, whichever is earlier, a financing  
310 order is irrevocable and, except for changes made pursuant to the formula-based true-up  
311 mechanism authorized in this section, the commission may not amend, modify, or terminate

312 the financing order by any subsequent action or reduce, impair, postpone, terminate, or  
313 otherwise adjust securitized utility tariff charges approved in the financing order. After the  
314 issuance of a financing order, the electrical corporation retains sole discretion regarding  
315 whether to assign, sell, or otherwise transfer securitized utility tariff property or to cause  
316 securitized utility tariff bonds to be issued, including the right to defer or postpone such  
317 assignment, sale, transfer, or issuance.

318 (g) The commission, in a financing order and subject to the issuance advice letter  
319 process under paragraph (h) of this subdivision, shall specify the degree of flexibility to be  
320 afforded the electrical corporation in establishing the terms and conditions for the securitized  
321 utility tariff bonds to accommodate changes in market conditions, including repayment  
322 schedules, interest rates, financing costs, collateral requirements, required debt service and  
323 other reserves and the ability of the electrical corporation, at its option, to effect a series of  
324 issuances of securitized utility tariff bonds and correlated assignments, sales, pledges, or other  
325 transfers of securitized utility tariff property. Any changes made under this paragraph to  
326 terms and conditions for the securitized utility tariff bonds shall be in conformance with the  
327 financing order.

328 (h) As the actual structure and pricing of the securitized utility tariff bonds will be  
329 unknown at the time the financing order is issued, prior to the issuance of each series of  
330 bonds, an issuance advice letter shall be provided to the commission by the electrical  
331 corporation following the determination of the final terms of such series of bonds no later  
332 than one day after the pricing of the securitized utility tariff bonds. The commission shall  
333 have the authority to designate a representative or representatives from commission staff, who  
334 may be advised by a financial advisor or advisors contracted with the commission, to provide  
335 input to the electrical corporation and collaborate with the electrical corporation in all facets  
336 of the process undertaken by the electrical corporation to place the securitized utility tariff  
337 bonds to market so the commission's representative or representatives can provide the  
338 commission with an opinion on the reasonableness of the pricing, terms, and conditions of the  
339 securitized utility tariff bonds on an expedited basis. Neither the designated representative or  
340 representatives from the commission staff nor one or more financial advisors advising  
341 commission staff shall have authority to direct how the electrical corporation places the bonds  
342 to market although they shall be permitted to attend all meetings convened by the electrical  
343 corporation to address placement of the bonds to market. The form of such issuance advice  
344 letter shall be included in the financing order and shall indicate the final structure of the  
345 securitized utility tariff bonds and provide the best available estimate of total ongoing  
346 financing costs. The issuance advice letter shall report the initial securitized utility tariff  
347 charges and other information specific to the securitized utility tariff bonds to be issued, as the  
348 commission may require. Unless an earlier date is specified in the financing order, the

349 electrical corporation may proceed with the issuance of the securitized utility tariff bonds  
350 unless, prior to noon on the fourth business day after the commission receives the issuance  
351 advice letter, the commission issues a disapproval letter directing that the bonds as proposed  
352 shall not be issued and the basis for that disapproval. The financing order may provide such  
353 additional provisions relating to the issuance advice letter process as the commission  
354 considers appropriate and as are not inconsistent with this section.

355 (4) (a) In performing the responsibilities of this section in connection with the  
356 issuance of a financing order, approving the petition, an order approving the petition subject  
357 to conditions, or an order rejecting the petition, the commission shall undertake due diligence  
358 as it deems appropriate prior to the issuance of the order regarding the petition pursuant to  
359 which the commission may request additional information from the electrical corporation and  
360 may engage one or more financial advisors, one or more consultants, and counsel as the  
361 commission deems necessary. Any financial advisor or advisors, counsel, and consultants  
362 engaged by the commission shall have a fiduciary duty with respect to the proposed issuance  
363 of securitized utility bonds solely to the commission. All expenses associated with such  
364 services shall be included as part of the financing costs of the securitized utility tariff bonds  
365 and shall be included in the securitized utility tariff charge.

366 (b) If an electrical corporation's petition for a financing order is denied or withdrawn,  
367 or for any reason securitized utility tariff bonds are not issued, any costs of retaining one or  
368 more financial advisors, one or more consultants, and counsel on behalf of the commission  
369 shall be paid by the petitioning electrical corporation and shall be eligible for full recovery,  
370 including carrying costs, if approved by the commission in the electrical corporation's future  
371 rates.

372 (5) At the request of an electrical corporation, the commission may commence a  
373 proceeding and issue a subsequent financing order that provides for refinancing, retiring, or  
374 refunding securitized utility tariff bonds issued pursuant to the original financing order if the  
375 commission finds that the subsequent financing order satisfies all of the criteria specified in  
376 this section for a financing order. Effective upon retirement of the refunded securitized utility  
377 tariff bonds and the issuance of new securitized utility tariff bonds, the commission shall  
378 adjust the related securitized utility tariff charges accordingly.

379 (6) (a) A financing order remains in effect and securitized utility tariff property under  
380 the financing order continues to exist until securitized utility tariff bonds issued pursuant to  
381 the financing order have been paid in full or defeased and, in each case, all commission-  
382 approved financing costs of such securitized utility tariff bonds have been recovered in full.

383 (b) A financing order issued to an electrical corporation remains in effect and  
384 unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings,  
385 merger, or sale of the electrical corporation or its successors or assignees.

386           3. (1) The commission may not, in exercising its powers and carrying out its duties  
387 regarding any matter within its authority, consider the securitized utility tariff bonds issued  
388 pursuant to a financing order to be the debt of the electrical corporation other than for federal  
389 and state income tax purposes, consider the securitized utility tariff charges paid under the  
390 financing order to be the revenue of the electrical corporation for any purpose, consider the  
391 securitized utility tariff costs or financing costs specified in the financing order to be the costs  
392 of the electrical corporation, nor may the commission determine any action taken by an  
393 electrical corporation which is consistent with the financing order to be unjust or  
394 unreasonable, and section 386.300 shall not apply to the issuance of securitized utility  
395 tariff bonds.

396           (2) Securitized utility tariff charges shall not be utilized or accounted for in  
397 determining the electrical corporation's average overall rate, as defined in section 393.1655  
398 and as used to determine the maximum retail rate impact limitations provided for by  
399 subsections 3 and 4 of section 393.1655.

400           (3) No electrical corporation is required to file a petition for a financing order under  
401 this section or otherwise utilize this section. An electrical corporation's decision not to file a  
402 petition for a financing order under this section shall not be admissible in any commission  
403 proceeding nor shall it be otherwise utilized or relied on by the commission in any proceeding  
404 respecting the electrical corporation's rates or its accounting, including, without limitation,  
405 any general rate proceeding, fuel adjustment clause docket, or proceedings relating to  
406 accounting authority, whether initiated by the electrical corporation or otherwise. The  
407 commission may not order or otherwise directly or indirectly require an electrical corporation  
408 to use securitized utility tariff bonds to recover securitized utility tariff costs or to finance any  
409 project, addition, plant, facility, extension, capital improvement, equipment, or any other  
410 expenditure.

411           (4) The commission may not refuse to allow an electrical corporation to recover  
412 securitized utility tariff costs in an otherwise permissible fashion, or refuse or condition  
413 authorization or approval of the issuance and sale by an electrical corporation of securities or  
414 the assumption by the electrical corporation of liabilities or obligations, because of the  
415 potential availability of securitized utility tariff bond financing.

416           (5) After the issuance of a financing order with or without conditions, the electrical  
417 corporation retains sole discretion regarding whether to cause the securitized utility tariff  
418 bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or  
419 issuance. Nothing shall prevent the electrical corporation from abandoning the issuance of  
420 securitized utility tariff bonds under the financing order by filing with the commission a  
421 statement of abandonment and the reasons therefor; provided, that the electrical corporation's  
422 abandonment decision shall not be deemed imprudent because of the potential availability of

423 securitized utility tariff bond financing; and provided further, that an electrical corporation's  
424 decision to abandon issuance of such bonds may be raised by any party, including the  
425 commission, as a reason the commission should not authorize, or should modify, the rate-  
426 making treatment proposed by the electrical corporation of the costs associated with the  
427 electric generating facility that was the subject of a petition under this section that would have  
428 been securitized as energy transition costs had such abandonment decision not been made, but  
429 only if the electrical corporation requests nonstandard plant retirement treatment of such costs  
430 for rate-making purposes.

431 (6) The commission may not, directly or indirectly, utilize or consider the debt  
432 reflected by the securitized utility tariff bonds in establishing the electrical corporation's  
433 capital structure used to determine any regulatory matter, including but not limited to the  
434 electrical corporation's revenue requirement used to set its rates.

435 (7) The commission may not, directly or indirectly, consider the existence of  
436 securitized utility tariff bonds or the potential use of securitized utility tariff bond financing  
437 proceeds in determining the electrical corporation's authorized rate of return used to  
438 determine the electrical corporation's revenue requirement used to set its rates.

439 4. The electric bills of an electrical corporation that has obtained a financing order  
440 and caused securitized utility tariff bonds to be issued shall comply with the provisions of this  
441 subsection; however, the failure of an electrical corporation to comply with this subsection  
442 does not invalidate, impair, or affect any financing order, securitized utility tariff property,  
443 securitized utility tariff charge, or securitized utility tariff bonds. The electrical corporation  
444 shall do the following:

445 (1) Explicitly reflect that a portion of the charges on such bill represents securitized  
446 utility tariff charges approved in a financing order issued to the electrical corporation and, if  
447 the securitized utility tariff property has been transferred to an assignee, shall include a  
448 statement to the effect that the assignee is the owner of the rights to securitized utility tariff  
449 charges and that the electrical corporation or other entity, if applicable, is acting as a  
450 collection agent or servicer for the assignee. The tariff applicable to customers shall indicate  
451 the securitized utility tariff charge and the ownership of the charge;

452 (2) Include the securitized utility tariff charge on each customer's bill as a separate  
453 line item and include both the rate and the amount of the charge on each bill.

454 5. (1) (a) All securitized utility tariff property that is specified in a financing order  
455 constitutes an existing, present intangible property right or interest therein, notwithstanding  
456 that the imposition and collection of securitized utility tariff charges depends on the electrical  
457 corporation, to which the financing order is issued, performing its servicing functions relating  
458 to the collection of securitized utility tariff charges and on future electricity consumption.  
459 The property exists:

460 a. Regardless of whether or not the revenues or proceeds arising from the property  
461 have been billed, have accrued, or have been collected; and

462 b. Notwithstanding the fact that the value or amount of the property is dependent on  
463 the future provision of service to customers by the electrical corporation or its successors or  
464 assignees and the future consumption of electricity by customers.

465 (b) Securitized utility tariff property specified in a financing order exists until  
466 securitized utility tariff bonds issued pursuant to the financing order are paid in full and all  
467 financing costs and other costs of such securitized utility tariff bonds have been recovered in  
468 full.

469 (c) All or any portion of securitized utility tariff property specified in a financing  
470 order issued to an electrical corporation may be transferred, sold, conveyed, or assigned to a  
471 successor or assignee that is wholly owned, directly or indirectly, by the electrical corporation  
472 and created for the limited purpose of acquiring, owning, or administering securitized utility  
473 tariff property or issuing securitized utility tariff bonds under the financing order. All or any  
474 portion of securitized utility tariff property may be pledged to secure securitized utility tariff  
475 bonds issued pursuant to the financing order, amounts payable to financing parties and to  
476 counterparties under any ancillary agreements, and other financing costs. Any transfer, sale,  
477 conveyance, assignment, grant of a security interest in or pledge of securitized utility tariff  
478 property by an electrical corporation, or an affiliate of the electrical corporation, to an  
479 assignee, to the extent previously authorized in a financing order, does not require the prior  
480 consent and approval of the commission.

481 (d) If an electrical corporation defaults on any required remittance of securitized  
482 utility tariff charges arising from securitized utility tariff property specified in a financing  
483 order, a court, upon application by an interested party, and without limiting any other  
484 remedies available to the applying party, shall order the sequestration and payment of the  
485 revenues arising from the securitized utility tariff property to the financing parties or their  
486 assignees. Any such financing order remains in full force and effect notwithstanding any  
487 reorganization, bankruptcy, or other insolvency proceedings with respect to the electrical  
488 corporation or its successors or assignees.

489 (e) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in securitized  
490 utility tariff property specified in a financing order issued to an electrical corporation, and in  
491 the revenue and collections arising from that property, is not subject to setoff, counterclaim,  
492 surcharge, or defense by the electrical corporation or any other person or in connection with  
493 the reorganization, bankruptcy, or other insolvency of the electrical corporation or any other  
494 entity.

495 (f) Any successor to an electrical corporation, whether pursuant to any reorganization,  
496 bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition,

497 sale, or other business combination, or transfer by operation of law, as a result of electrical  
498 corporation restructuring or otherwise, shall perform and satisfy all obligations of, and have  
499 the same rights under a financing order as, the electrical corporation under the financing order  
500 in the same manner and to the same extent as the electrical corporation, including collecting  
501 and paying to the person entitled to receive the revenues, collections, payments, or proceeds  
502 of the securitized utility tariff property. Nothing in this section is intended to limit or impair  
503 any authority of the commission concerning the transfer or succession of interests of public  
504 utilities.

505 (g) Securitized utility tariff bonds shall be nonrecourse to the credit or any assets of  
506 the electrical corporation other than the securitized utility tariff property as specified in the  
507 financing order and any rights under any ancillary agreement.

508 (2) (a) The creation, perfection, priority, and enforcement of any security interest in  
509 securitized utility tariff property to secure the repayment of the principal and interest and  
510 other amounts payable in respect of securitized utility tariff bonds, amounts payable under  
511 any ancillary agreement and other financing costs are governed by this section and not by the  
512 provisions of the code, except as otherwise provided in this section.

513 (b) A security interest in securitized utility tariff property is created, valid, and  
514 binding at the later of the time:

515 a. The financing order is issued;

516 b. A security agreement is executed and delivered by the debtor granting such  
517 security interest;

518 c. The debtor has rights in such securitized utility tariff property or the power to  
519 transfer rights in such securitized utility tariff property; or

520 d. Value is received for the securitized utility tariff property.

521

522 The description of securitized utility tariff property in a security agreement is sufficient if the  
523 description refers to this section and the financing order creating the securitized utility tariff  
524 property. A security interest shall attach as provided in this paragraph without any physical  
525 delivery of collateral or other act.

526 (c) Upon the filing of a financing statement with the office of the secretary of state as  
527 provided in this section, a security interest in securitized utility tariff property shall be  
528 perfected against all parties having claims of any kind in tort, contract, or otherwise against  
529 the person granting the security interest, and regardless of whether the parties have notice of  
530 the security interest. Without limiting the foregoing, upon such filing a security interest in  
531 securitized utility tariff property shall be perfected against all claims of lien creditors, and  
532 shall have priority over all competing security interests and other claims other than any  
533 security interest previously perfected in accordance with this section.

534 (d) The priority of a security interest in securitized utility tariff property is not  
535 affected by the commingling of securitized utility tariff charges with other amounts. Any  
536 pledgee or secured party shall have a perfected security interest in the amount of all  
537 securitized utility tariff charges that are deposited in any cash or deposit account of the  
538 qualifying electrical corporation in which securitized utility tariff charges have been  
539 commingled with other funds and any other security interest that may apply to those funds  
540 shall be terminated when they are transferred to a segregated account for the assignee or a  
541 financing party.

542 (e) No application of the formula-based true-up mechanism as provided in this  
543 section will affect the validity, perfection, or priority of a security interest in or transfer of  
544 securitized utility tariff property.

545 (f) If a default occurs under the securitized utility tariff bonds that are secured by a  
546 security interest in securitized utility tariff property, the financing parties or their  
547 representatives may exercise the rights and remedies available to a secured party under the  
548 code, including the rights and remedies available under part 6 of article 9 of the code. The  
549 commission may also order amounts arising from securitized utility tariff charges be  
550 transferred to a separate account for the financing parties' benefit, to which their lien and  
551 security interest shall apply. On application by or on behalf of the financing parties, the  
552 circuit court for the county or city in which the electrical corporation's headquarters is located  
553 shall order the sequestration and payment to them of revenues arising from the securitized  
554 utility tariff charges.

555 (3) (a) Any sale, assignment, or other transfer of securitized utility tariff property  
556 shall be an absolute transfer and true sale of, and not a pledge of or secured transaction  
557 relating to, the seller's right, title, and interest in, to, and under the securitized utility tariff  
558 property if the documents governing the transaction expressly state that the transaction is a  
559 sale or other absolute transfer other than for federal and state income tax purposes. For all  
560 purposes other than federal and state income tax purposes, the parties' characterization of a  
561 transaction as a sale of an interest in securitized utility tariff property shall be conclusive that  
562 the transaction is a true sale and that ownership has passed to the party characterized as the  
563 purchaser, regardless of whether the purchaser has possession of any documents evidencing  
564 or pertaining to the interest. A sale or similar outright transfer of an interest in securitized  
565 utility tariff property may occur only when all of the following have occurred:

566 a. The financing order creating the securitized utility tariff property has become  
567 effective;

568 b. The documents evidencing the transfer of securitized utility tariff property have  
569 been executed by the assignor and delivered to the assignee; and

570 c. Value is received for the securitized utility tariff property.



571

572 After such a transaction, the securitized utility tariff property is not subject to any claims of  
573 the transferor or the transferor's creditors, other than creditors holding a prior security interest  
574 in the securitized utility tariff property perfected in accordance with this section.

575 (b) The characterization of the sale, assignment, or other transfer as an absolute  
576 transfer and true sale and the corresponding characterization of the property interest of the  
577 purchaser shall not be affected or impaired by the occurrence of any of the following factors:

578 a. Commingling of securitized utility tariff charges with other amounts;

579 b. The retention by the seller of (i) a partial or residual interest, including an equity  
580 interest, in the securitized utility tariff property, whether direct or indirect, or whether  
581 subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise  
582 fees, or license fees imposed on the collection of securitized utility tariff charges;

583 c. Any recourse that the purchaser may have against the seller;

584 d. Any indemnification rights, obligations, or repurchase rights made or provided by  
585 the seller;

586 e. The obligation of the seller to collect securitized utility tariff charges on behalf of  
587 an assignee;

588 f. The transferor acting as the servicer of the securitized utility tariff charges or the  
589 existence of any contract that authorizes or requires the electrical corporation, to the extent  
590 that any interest in securitized utility tariff property is sold or assigned, to contract with the  
591 assignee or any financing party that it will continue to operate its system to provide service to  
592 its customers, will collect amounts in respect of the securitized utility tariff charges for the  
593 benefit and account of such assignee or financing party, and will account for and remit such  
594 amounts to or for the account of such assignee or financing party;

595 g. The treatment of the sale, conveyance, assignment, or other transfer for tax,  
596 financial reporting, or other purposes;

597 h. The granting or providing to bondholders a preferred right to the securitized utility  
598 tariff property or credit enhancement by the electrical corporation or its affiliates with respect  
599 to such securitized utility tariff bonds;

600 i. Any application of the formula-based true-up mechanism as provided in this  
601 section.

602 (c) Any right that an electrical corporation has in the securitized utility tariff property  
603 before its pledge, sale, or transfer or any other right created under this section or created in the  
604 financing order and assignable under this section or assignable pursuant to a financing order  
605 is property in the form of a contract right or a chose in action. Transfer of an interest in  
606 securitized utility tariff property to an assignee is enforceable only upon the later of:

607 a. The issuance of a financing order;

608           b. The assignor having rights in such securitized utility tariff property or the power to  
609 transfer rights in such securitized utility tariff property to an assignee;

610           c. The execution and delivery by the assignor of transfer documents in connection  
611 with the issuance of securitized utility tariff bonds; and

612           d. The receipt of value for the securitized utility tariff property.

613

614 An enforceable transfer of an interest in securitized utility tariff property to an assignee is  
615 perfected against all third parties, including subsequent judicial or other lien creditors, when a  
616 notice of that transfer has been given by the filing of a financing statement in accordance with  
617 subsection 7 of this section. The transfer is perfected against third parties as of the date of  
618 filing.

619           (d) The priority of a transfer perfected under this section is not impaired by any later  
620 modification of the financing order or securitized utility tariff property or by the commingling  
621 of funds arising from securitized utility tariff property with other funds. Any other security  
622 interest that may apply to those funds, other than a security interest perfected under this  
623 section, is terminated when they are transferred to a segregated account for the assignee or a  
624 financing party. If securitized utility tariff property has been transferred to an assignee or  
625 financing party, any proceeds of that property shall be held in trust for the assignee or  
626 financing party.

627           (e) The priority of the conflicting interests of assignees in the same interest or rights  
628 in any securitized utility tariff property is determined as follows:

629           a. Conflicting perfected interests or rights of assignees rank according to priority in  
630 time of perfection. Priority dates from the time a filing covering the transfer is made in  
631 accordance with subsection 7 of this section;

632           b. A perfected interest or right of an assignee has priority over a conflicting  
633 unperfected interest or right of an assignee;

634           c. A perfected interest or right of an assignee has priority over a person who becomes  
635 a lien creditor after the perfection of such assignee's interest or right.

636           6. The description of securitized utility tariff property being transferred to an assignee  
637 in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to  
638 a pledgee in any security agreement, pledge agreement, or other security document, or  
639 indicated in any financing statement is only sufficient if such description or indication refers  
640 to the financing order that created the securitized utility tariff property and states that the  
641 agreement or financing statement covers all or part of the property described in the financing  
642 order. This section applies to all purported transfers of, and all purported grants or liens or  
643 security interests in, securitized utility tariff property, regardless of whether the related sale

644 agreement, purchase agreement, other transfer agreement, security agreement, pledge  
645 agreement, or other security document was entered into, or any financing statement was filed.

646         7. The secretary of state shall maintain any financing statement filed to perfect a sale  
647 or other transfer of securitized utility tariff property and any security interest in securitized  
648 utility tariff property under this section in the same manner that the secretary of state  
649 maintains financing statements filed under the code to perfect a security interest in collateral  
650 owned by a transmitting utility. Except as otherwise provided in this section, all financing  
651 statements filed pursuant to this section shall be governed by the provisions regarding  
652 financing statements and the filing thereof under the code, including part 5 of article 9 of the  
653 code. A security interest in securitized utility tariff property may be perfected only by the  
654 filing of a financing statement in accordance with this section, and no other method of  
655 perfection shall be effective. Notwithstanding any provision of the code to the contrary, a  
656 financing statement filed pursuant to this section is effective until a termination statement is  
657 filed under the code, and no continuation statement need be filed to maintain its effectiveness.  
658 A financing statement filed pursuant to this section may indicate that the debtor is a  
659 transmitting utility, and without regard to whether the debtor is an electrical corporation, an  
660 assignee or otherwise qualifies as a transmitting utility under the code, but the failure to make  
661 such indication shall not impair the duration and effectiveness of the financing statement.

662         8. The law governing the validity, enforceability, attachment, perfection, priority, and  
663 exercise of remedies with respect to the transfer of an interest or right or the pledge or  
664 creation of a security interest in any securitized utility tariff property shall be the laws of this  
665 state.

666         9. Neither the state nor its political subdivisions are liable on any securitized utility  
667 tariff bonds, and the bonds are not a debt or a general obligation of the state or any of its  
668 political subdivisions, agencies, or instrumentalities, nor are they special obligations or  
669 indebtedness of the state or any agency or political subdivision. An issue of securitized utility  
670 tariff bonds does not, directly, indirectly, or contingently, obligate the state or any agency,  
671 political subdivision, or instrumentality of the state to levy any tax or make any appropriation  
672 for payment of the securitized utility tariff bonds, other than in their capacity as consumers of  
673 electricity. All securitized utility tariff bonds shall contain on the face thereof a statement to  
674 the following effect: "Neither the full faith and credit nor the taxing power of the state of  
675 Missouri is pledged to the payment of the principal of, or interest on, this bond."

676         10. All of the following entities may legally invest any sinking funds, moneys, or  
677 other funds in securitized utility tariff bonds:

678             (1) Subject to applicable statutory restrictions on state or local investment authority,  
679 the state, units of local government, political subdivisions, public bodies, and public officers,

680 except for members of the commission, the commission's technical advisory and other staff,  
681 or employees of the office of the public counsel;

682 (2) Banks and bankers, savings and loan associations, credit unions, trust companies,  
683 savings banks and institutions, investment companies, insurance companies, insurance  
684 associations, and other persons carrying on a banking or insurance business;

685 (3) Personal representatives, guardians, trustees, and other fiduciaries;

686 (4) All other persons authorized to invest in bonds or other obligations of a similar  
687 nature.

688 11. (1) The state and its agencies, including the commission, pledge and agree with  
689 bondholders, the owners of the securitized utility tariff property, and other financing parties  
690 that the state and its agencies will not take any action listed in this subdivision. This  
691 subdivision does not preclude limitation or alteration if full compensation is made by law for  
692 the full protection of the securitized utility tariff charges collected pursuant to a financing  
693 order and of the bondholders and any assignee or financing party entering into a contract with  
694 the electrical corporation. The prohibited actions are as follows:

695 (a) Alter the provisions of this section, which authorize the commission to create an  
696 irrevocable contract right or chose in action by the issuance of a financing order, to create  
697 securitized utility tariff property, and make the securitized utility tariff charges imposed by a  
698 financing order irrevocable, binding, or nonbypassable charges for all existing and future  
699 retail customers of the electrical corporation except its existing special contract customers;

700 (b) Take or permit any action that impairs or would impair the value of securitized  
701 utility tariff property or the security for the securitized utility tariff bonds or revises the  
702 securitized utility tariff costs for which recovery is authorized;

703 (c) In any way impair the rights and remedies of the bondholders, assignees, and other  
704 financing parties;

705 (d) Except for changes made pursuant to the formula-based true-up mechanism  
706 authorized under this section, reduce, alter, or impair securitized utility tariff charges that are  
707 to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any  
708 assignee, and any other financing parties until any and all principal, interest, premium,  
709 financing costs and other fees, expenses, or charges incurred, and any contracts to be  
710 performed, in connection with the related securitized utility tariff bonds have been paid and  
711 performed in full.

712 (2) Any person or entity that issues securitized utility tariff bonds may include the  
713 language specified in this subsection in the securitized utility tariff bonds and related  
714 documentation.

715 12. An assignee or financing party is not an electrical corporation or person providing  
716 electric service by virtue of engaging in the transactions described in this section.

717           13. If there is a conflict between this section and any other law regarding the  
718 attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or  
719 transfer of, or security interest in securitized utility tariff property, this section shall govern.

720           14. If any provision of this section is held invalid or is invalidated, superseded,  
721 replaced, repealed, or expires for any reason, that occurrence does not affect the validity of  
722 any action allowed under this section which is taken by an electrical corporation, an assignee,  
723 a financing party, a collection agent, or a party to an ancillary agreement; and any such action  
724 remains in full force and effect with respect to all securitized utility tariff bonds issued or  
725 authorized in a financing order issued under this section before the date that such provision is  
726 held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.

✓