

## 2021 Kansas Statutes

**66-1,241. Same; financing order; application; elements of approved financing order; judicial review.** (a)

- (1) An electric public utility, in its sole discretion, may apply to the commission for a financing order as authorized by this act for the recovery of energy transition costs.
- (2) In applying for the financing order, the electric public utility may file an application to issue securitized utility tariff bonds in one or more series, impose, charge and collect securitized utility tariff charges and create securitized utility tariff property related to the recovery of energy transition costs.
- (3) Within 25 days after a complete application is filed, the commission shall establish a procedural schedule that requires the commission to issue a decision on the application not later than 135 days from the date a complete application was filed.
- (4) The commission shall take final action to approve, approve subject to conditions the commission considers appropriate and that are authorized by this section or deny any application for a financing order in a final order issued in accordance with the commission's rules for addressing applications within 135 days of receiving a complete application as authorized by this act. Such final order shall be subject to judicial review in accordance with K.S.A. 66-118a through 66-118o, and amendments thereto, and shall be deemed as arising from a rate hearing pursuant to K.S.A. 66-118a(b), and amendments thereto.

(5) As a prerequisite of filing an application, an electric public utility shall have obtained an order from the commission under K.S.A. 66-1239, and amendments thereto, finding retirement or abandonment of the subject generating facility to be reasonable.

(b) (1) A public utility, in its sole discretion, may apply to the commission for a financing order as authorized by this act for the recovery of qualified extraordinary costs.

- (2) In applying for the financing order, the public utility may file an application to issue securitized utility tariff bonds in one or more series, to impose, charge and collect securitized utility tariff charges and create securitized utility tariff property related to the recovery of qualified extraordinary costs.
- (3) Within 25 days after a complete application is filed, the commission shall establish a procedural schedule that requires the commission to issue a decision on the application not later than 180 days from the date a complete application was filed.
- (4) The commission shall take final action to approve, approve subject to conditions the commission considers appropriate and that are authorized by this section or deny any application for the recovery of qualified extraordinary costs and a financing order in a final order issued in accordance with the commission's rules for addressing applications within 180 days of receiving a complete application as authorized by this act. Such final order shall be subject to judicial review in accordance with K.S.A. 66-118a through 66-118o, and amendments thereto, and shall be deemed as arising from a rate hearing pursuant to K.S.A. 66-118a(b), and amendments thereto.

(c) The application shall include:

- (1) (A) A description of the electric generating facility or facilities that the electric public utility has retired or abandoned, or proposes to retire or abandon, prior to the date that all undepreciated investment relating thereto has been recovered through rates and the reasons for undertaking such early retirement or abandonment. If the electric public utility is subject to a separate commission order or proceeding relating to such retirement or abandonment or as described in subsection (a)(5), the application shall include a description of the order or other proceeding; or
- (B) a description of the qualified extraordinary costs that the public utility proposes to

- recover and how customary rate-making treatment of such costs would result in extreme customer rate impacts;
- (2) a description of the securitized utility tariff costs that the applicant proposes to recover with the proceeds of the securitized utility tariff bonds;
  - (3) (A) an indicator of whether the public utility proposes to finance all or a portion of the securitized utility tariff costs using securitized utility tariff bonds. If the public utility proposes to finance a portion of the securitized utility tariff costs, the public utility shall identify the specific portion in the application;
  - (B) by electing not to finance all or any portion of such securitized utility tariff costs using securitized utility tariff bonds, a public utility shall not be deemed to waive its right to recover or request recovery of such costs pursuant to a separate proceeding with the commission;
  - (4) an estimate of the financing costs related to the securitized utility tariff bonds;
  - (5) an estimate of the securitized utility tariff charges necessary to recover the securitized utility tariff costs and all financing costs, the period for recovery of such costs and a description of the proposed financing structure, including the proposed scheduled final payment dates and final maturity of the securitized utility tariff bonds;
  - (6) the proposed methodology for allocating the revenue requirement for the securitized utility tariff charge among customer classes, including special contract customers, as provided in this section;
  - (7) a description of the nonbypassable securitized utility tariff charge required to be paid by all customers within the public utility's service area for recovery of securitized utility tariff costs and a proposed adjustment mechanism reflecting the allocation methodology referred to in paragraph (6);
  - (8) an estimate of the timing of the potential issuance of the securitized utility tariff bonds or series of bonds;
  - (9) (A) in an application relating to energy transition costs, a comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become energy transition costs from customers. The comparison shall demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide net quantifiable rate benefits to customers or would avoid or mitigate rate impacts to customers; or
  - (B) in an application relating to qualified extraordinary costs, a comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of traditional methods of financing and recovery of such qualified extraordinary costs. The comparison shall demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide net quantifiable rate benefits to customers or would avoid or mitigate rate impacts to customers;
  - (10) (A) specify a future rate-making process to reconcile any difference between the securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the public utility or the assignee;
  - (B) a statement that the reconciliation may affect the public utility's rates or any rider but shall not affect the securitized utility tariff bonds, the securitized utility tariff property or the associated securitized utility tariff charges paid by customers; and
  - (11) direct testimony and schedules supporting the application.
- (d) Following notice and hearing on an application for a financing order, as required by rules and regulations adopted by the commission, the commission may issue a financing

order if the commission finds that the:

- (1) Securitized utility tariff costs described in the application are just and reasonable; and
  - (2) proposed issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges are expected to provide net quantifiable rate benefits to customers when compared to the costs that would result from the application of the traditional method of financing and recovering the securitized utility tariff costs with respect to energy transition costs or that would avoid or mitigate rate impacts to customers.
- (e) A financing order issued by the commission in response to an application filed by a public utility shall include the following elements:
- (1) The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds. The commission shall describe and estimate the amount of financing costs and securitized utility tariff costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered, that shall not be earlier than the date of the final legal maturity of securitized utility tariff bonds to be issued;
  - (2) (A) an approved customer billing mechanism for securitized utility tariff charges, including a specific methodology for allocating the necessary securitized utility tariff charges among the different customer classes including special contract customers and a finding that the resulting securitized utility tariff charges will be just and reasonable, except that the amount of securitized utility tariff charges allocated to special contract customers in connection with the securitization of energy transition costs shall not exceed the rate benefits from the retirement or abandonment of the subject electric utility generating assets that are assigned or allocated to special contract customers. The securitized utility tariff charges allocated to special contract customers as a result of a financing order regarding a retirement or abandonment shall be offset by net quantifiable rate benefits of at least the same amount. The initial allocation of securitized utility tariff charges shall remain in effect until the public utility files a general base rate proceeding; and  
(B) once the commission's order regarding the general base rate proceeding becomes final, all subsequent applications of an adjustment mechanism regarding securitized utility tariff charges shall incorporate changes in the allocation of costs to customers as detailed in the commission's order from the public utility's most recent general base rate proceeding;
  - (3) a finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are expected to provide net quantifiable rate benefits to customers as compared to the traditional methods of financing and recovering securitized utility tariff costs from customers or would avoid or mitigate rate impacts to customers;
  - (4) an approved plan for the public utility, by means other than on the monthly bill, to provide information regarding the benefits of securitization obtained for customers through the financing order;
  - (5) a finding that the structuring, pricing and financing costs of the securitized utility tariff bonds are expected to result in the lowest securitized utility tariff charges, consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order;
  - (6) a requirement that, for so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized utility tariff charges authorized under a financing order shall be nonbypassable;
  - (7) an adjustment mechanism;
  - (8) a description of the securitized utility tariff property that is, or shall be, created in favor of a public utility, or its successors and assignees, and that shall be used to pay and secure the payment of securitized utility tariff bonds and all financing costs authorized in the

financing order;

(9) a statement specifying the degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the securitized utility tariff bonds, including, but not limited to, repayment schedules, expected interest rates and other financing costs;

(10) authorization for the applicant public utility to finance securitized utility tariff costs through the issuance of one or more series of securitized utility tariff bonds;

(11) a requirement that, after the final terms of an issuance of securitized utility tariff bonds have been established and before the issuance of securitized utility tariff bonds, the public utility determines the resulting initial securitized utility tariff charge is in accordance with the financing order and that such initial securitized utility tariff charge be final and effective upon the issuance of such securitized utility tariff bonds without further commission action so long as the securitized utility tariff charge is consistent with the financing order;

(12) a method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property, demonstrating that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any securitized utility tariff property subject to a financing order under applicable law;

(13) a statement specifying a future rate-making process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the utility or assignee provided that any such reconciliation shall not affect the amount of securitized utility tariff bonds or the associated security tariff charges paid by customers;

(14) a procedure that allows the public utility to earn a return, at the cost of capital authorized from time to time by the commission in the public utility's rate proceedings, on any moneys advanced by the public utility to fund reserves, if any, or capital accounts established under the terms of any indenture, ancillary agreement or other financing documents pertaining to the securitized utility tariff bonds;

(15) in a financing order granting authorization to recover energy transition costs by issuing securitized utility tariff bonds, a procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned, or to be retired or abandoned, electric generating facility. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from the rate base in future rate cases and the net tax benefits relating to amounts that will be recovered through issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that would otherwise be issued. The customer credit shall include the net present value of the tax benefits calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds for the estimated accumulated and excess deferred income taxes at the time of securitization, including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds;

(16) in the case of securitized utility tariff bonds issued to recover energy transition costs, provisions that specify the timing of rate-making and regulatory accounting actions required by the financing order to protect the interests of customers and the electric public utility, limited to the following requirements that, to the extent that the commission:

(A) Has issued an order granting predetermination under K.S.A. 66-1239, and amendments thereto, prescribing rate-making parameters or regulatory accounting for retirement or abandonment of the subject electric public utility generating assets, the electric public utility shall be permitted to implement and effectuate such rate-making parameters or regulatory accounting mechanisms; and

(B) has not issued an order granting predetermination under K.S.A. 66-1239, and amendments thereto, prescribing rate-making parameters or regulatory accounting to credit customers with the benefits from retirement of the subject electric public utility generating assets, and the commission shall address such matters in the financing order and customers shall receive the benefits as determined by the commission order simultaneously with the inception of the collection of securitized utility tariff charges;

(17) a date, not earlier than one year after the date that the financing order is no longer subject to appeal, when the authority to issue securitized utility tariff bonds granted in such financing order shall expire; and

(18) any other conditions that the commission deems appropriate and that are consistent with this section.

(f) A financing order issued to a public utility shall permit and may require the creation of the public utility's securitized utility tariff property that is conditioned upon the sale or other transfer of the securitized utility tariff property to an assignee and the pledge of the securitized utility tariff property to secure securitized utility tariff bonds.

(g) If the public utility has been issued a financing order, the public utility shall file with the commission, at least annually, an application or letter applying the adjustment mechanism based on estimates of consumption for each rate class and other mathematical factors and requesting administrative approval to make the applicable adjustments. The commission's review of the filing shall be limited to determining if any mathematical or clerical errors are present in the application of the adjustment mechanism relating to the appropriate amount of any over-collection or under-collection of securitized utility tariff charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenue is sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs or redemption premium and other fees, costs and charges with respect to the securitized utility tariff bonds approved under the financing order. Within 30 days after receiving a public utility's application or letter pursuant to this subsection, the commission shall either approve the application or letter or inform the public utility of any mathematical or clerical errors present in its calculation. If the commission informs the public utility of the presence of mathematical or clerical errors in its calculation, the public utility may correct its error and refile its request. The time frames previously described in this subsection shall apply to a refiled request.

(h) (1) Upon the transfer of the securitized utility tariff property to an assignee or the issuance of securitized utility tariff bonds authorized thereby, whichever occurs first, a financing order shall become irrevocable. Except for changes made pursuant to the adjustment mechanism authorized in this section, the commission shall not amend, modify or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate or otherwise adjust securitized utility tariff charges approved in the financing order.

(2) After the issuance of a financing order, the public utility shall retain sole discretion regarding the decision to cause securitized utility tariff bonds to be issued.

(3) The commission, in a financing order and subject to the issuance advice letter process under paragraph (4), shall afford the public utility flexibility in establishing the terms and conditions for the securitized utility tariff bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves and the ability of the public utility, at its option, to effect a series of issuances of securitized utility tariff bonds and correlated assignments, sales, pledges or other transfers of securitized utility tariff property. Any changes made under this subsection to terms and conditions for the securitized utility tariff bonds shall be in conformance with the financing order.

(4) As the actual structure and pricing of the securitized utility tariff bonds will be unknown at the time the financing order is issued, the public utility that intends to cause the issuance of such bonds shall provide to the commission, prior to the issuance of each series of bonds, an issuance advice letter following the determination of the final terms of such series of bonds not later than one day after the pricing of the securitized utility tariff bonds. The commission shall have the authority to designate a representative from commission staff, who may be advised by a financial adviser contracted with the commission, to observe all facets of the process undertaken by the public utility to place the securitized utility tariff bonds to market so the commission's representative can be prepared, if requested, to provide the commission with an opinion on the reasonableness of the pricing, terms and conditions of the securitized utility tariff bonds on an expedited basis. The form of such issuance advice letter shall be included in the financing order and shall indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the commission may require. Unless an earlier date is specified in the financing order, the public utility may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after the commission receives the issuance advice letter, the commission issues a disapproval letter directing that the bonds as proposed shall not be issued and the basis for that disapproval. The financing order may provide such additional provisions relating to the issuance advice letter process as the commission considers appropriate and as are authorized by this section.

(5) In performing the responsibilities of this section, the commission may engage a financial adviser and counsel as the commission deems necessary. All expenses associated with such services shall be included as part of the financing costs of the securitized utility tariff bonds and shall be included in the securitized utility tariff charge.

(6) If a public utility's application for a financing order is denied or withdrawn, or for any reason securitized utility tariff bonds are not issued, any costs of retaining a financial adviser and counsel on behalf of the commission shall be paid by the applicant public utility and shall be eligible for full recovery by the public utility, including carrying costs, in the public utility's future rates.

(7) An adversely affected party may petition for judicial review of a financing order in accordance with K.S.A. 66-118a and 77-607, and amendments thereto.

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

(j) (1) A financing order remains in effect and securitized utility tariff property under the financing order continues to exist until securitized utility tariff bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all commission-approved financing costs of such securitized utility tariff bonds have been recovered in full.

(2) A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger or sale of the electric public utility or its successors or assignees.

**History:** L. 2021, ch. 29, § 2; April 22.