

SENATE SUBSTITUTE FOR HOUSE BILL No. 2072

AN ACT concerning the state corporation commission; relating to certain public utilities; authorizing the securitization of certain generating facilities and qualified extraordinary costs; providing for the approval and issuance of securitized utility tariff bonds; enacting the utility financing and securitization act; amending K.S.A. 66-1239 and K.S.A. 2020 Supp. 84-9-109 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) Sections 1 through 14, and amendments thereto, shall be known and may be cited as the utility financing and securitization act.

(b) As used in sections 1 through 14, and amendments thereto:

(1) "Act" means the utility financing and securitization act.

(2) "Adjustment mechanism" means a formula-based rate adjustment, or true-up process approved by the commission for making, at least annually, expeditious periodic adjustments to securitized utility tariff charges, subject to timely commission review to confirm compliance, that customers are required to pay, as authorized in a financing order. The "adjustment mechanism" is utilized to make necessary corrections to adjust for over-collection or under-collection of such securitized utility tariff charges or otherwise to ensure the timely and complete payment of the securitized utility tariff bonds and all other financing costs and other required amounts and charges payable in connection with the securitized utility tariff bonds.

(3) "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support.

(4) "Assignee" means a corporation, limited liability company, general partnership, limited partnership, public authority, trust, financing entity or other entity to which a public utility assigns, sells or transfers, other than as security, all or a portion of its interest in, or right to, securitized utility tariff property.

(5) "Bondholder" means any holder or owner of a securitized utility tariff bond.

(6) "Code" means the Kansas uniform commercial code.

(7) "Commission" means the state corporation commission.

(8) "Electric public utility" means the same as defined in K.S.A. 66-101a, and amendments thereto, and includes a for-profit electric utility whose retail rates are subject to the jurisdiction of the commission. "Electric public utility" does not include a cooperative that has opted to deregulate pursuant to K.S.A. 66-104d, and amendments thereto, or an electric utility owned by one or more such cooperatives.

(9) (A) "Energy transition costs," at the option of and upon application by an electric public utility, and as approved by the commission, includes:

(i) Any of the pretax costs that the electric public utility has incurred or will incur that are caused by, associated with or remain as a result of a retired, abandoned, to be retired or to be abandoned electric generating facility that is the subject of an application for a financing order filed under this act where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission. As used in this paragraph, "pretax costs," if determined reasonable by the commission and not inconsistent with a commission order granting predetermination under K.S.A. 66-1239, and amendments thereto, regarding retirement or abandonment of the subject generating facility, include, but are not limited to, the undepreciated investment in the retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges and deferred expenses. Such "pretax costs" shall be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds and include the cost of retiring any existing indebtedness, fees, costs and expenses to modify existing debt agreements or for waivers or

consents related to existing debt agreements; and

(ii) "pretax costs" that an electric public utility has previously incurred related to the retirement of such an electric generating facility occurring before the effective date of this act.

(B) "Energy transition costs" does not include any monetary penalty, fine or forfeiture assessed against an electric public utility by a governmental agency or court under a federal or state statute or rule or regulation.

(10) "Financing costs" includes, if authorized by the commission in a financing order, costs to issue, service, repay or refinance securitized utility tariff bonds, whether incurred or paid upon issuance of the securitized utility tariff bonds or over the life of the securitized utility tariff bonds, including:

(A) Principal, interest and acquisition, defeasance or redemption premiums payable on securitized utility tariff bonds;

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

(C) any other cost related to issuing, supporting, repaying, refunding and servicing securitized utility tariff bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial or structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs and any other costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds or other amounts or charges payable in connection with securitized utility tariff bonds, including costs related to obtaining the financing order;

(D) any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized utility tariff charges or otherwise resulting from the collection of securitized utility tariff charges, whether paid, payable or accrued;

(E) any state and local taxes, franchise fees, gross receipts and other taxes or similar charges, including commission assessment fees, whether paid, payable or accrued; and

(F) any costs of the commission needed to perform the commission's responsibilities under this act, including costs to engage counsel and a financial adviser.

(11) "Financing order" means an order from the commission pursuant to this act that authorizes the:

(A) Issuance of securitized utility tariff bonds in one or more series;

(B) imposition, collection and periodic adjustments of a securitized utility tariff charge;

(C) creation of securitized utility tariff property; and

(D) sale, assignment or transfer of securitized utility tariff property to an assignee.

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

(13) "Financing statement" means the same as defined in K.S.A. 84-9-102, and amendments thereto.

(14) "Natural gas public utility" means the same as defined in K.S.A. 66-1,200, and amendments thereto.

(15) "Nonbypassable" means that the payment of a securitized utility tariff charge may not be avoided by any existing or future retail customer including special contract customers as provided in section 2, and amendments thereto, located within a public utility service area, as such service area existed on the date of the financing order, or, if the financing order so provides, as such service area may be expanded,

even if the customer elects to purchase electricity or natural gas from a supplier other than the electric or natural gas utility, or its successors or assignees, or receives retail electric or natural gas service from another electric or natural gas service from another electric or natural gas utility operating in the same service area.

(16) "Pledgee" means a financing party to which an electric or natural gas public utility, or its successors or assignees, mortgages, negotiates, pledges or creates a security interest or lien on all or any portion of its interest in or right to securitized utility tariff property.

(17) "Public utility" means an electric public utility or a natural gas public utility whose rates are subject to the jurisdiction of the commission.

(18) "Qualified extraordinary costs" includes, at the option of and upon application by a public utility and as approved by the commission, costs that the public utility has incurred before, on or after the effective date of this act of an extraordinary nature that would cause extreme customer rate impacts if recovered through customary rate-making, including, but not limited to, purchases of gas supplies, transportation costs, fuel and power costs, including carrying charges incurred during anomalous weather events.

(19) (A) "Securitized utility tariff bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that have a maturity date as determined reasonable by the commission, but not later than 32 years from the issue date, that are issued by an:

(i) Electric public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance or refinance commission-approved energy transition costs and financing costs and that are secured by or payable from securitized utility tariff property; or

(ii) electric or natural gas public utility or assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance or refinance commission-approved qualified extraordinary costs and financing costs that are secured by or payable from securitized utility tariff property.

(B) If certificates of participation or ownership are issued, references in this section to principal, interest or premium shall be construed to refer to comparable amounts under those certificates.

(20) "Securitized utility tariff charge" means the amounts authorized by the commission to provide a source of revenue solely to repay, finance or refinance securitized utility tariff bonds and financing costs and that are nonbypassable charges imposed on, and part of all retail customer bills, including bills to special contract customers as provided in section 2, and amendments thereto, collected by an electric or natural gas public utility or its successors or assignees, or a collection agent, in full, separate and apart from the electric or natural gas public utility's base rates. "Securitized utility tariff charges" are paid by all existing or future retail customers receiving electrical or natural gas service from the public utility or its successors or assignees under commission-approved rate schedules or under special contracts, as provided in section 2, and amendments thereto, even if a retail customer elects to purchase electricity or natural gas from an alternative electricity or natural gas supplier following a fundamental change in regulation of public utilities in this state.

(21) "Securitized utility tariff costs" means either energy transition costs or qualified extraordinary costs.

(22) "Securitized utility tariff property" includes:

(A) All rights and interests of a public utility, its successor or assignee under a financing order, including the right to impose, bill, charge, collect and receive securitized utility tariff charges authorized under the financing order and to obtain periodic adjustments to such charges authorized under this section and as provided in the financing order; and

(B) all revenues, collections, claims, rights to payments, payments, money or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payment, payments, money or proceeds.

(23) "Special contract" means the terms of a contract governing the supply of electricity that has been approved by the commission that is not included in generally applicable rate schedules.

(24) "Successor" means, with respect to any legal entity, another legal entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restricting, other insolvency proceeding, merger, acquisition, consolidation or sale or transfer of assets, regardless of the reason such event occurs.

New Sec. 2. (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.

New Sec. 3. (a) The commission shall not, in exercising its powers and carrying out its duties regarding any matter within its authority, consider the:

(1) Securitized utility tariff bonds issued pursuant to a financing order to be the debt of the public utility other than for federal and state income tax purposes;

(2) securitized utility tariff charges paid under the financing order to be the revenue of the public utility for any purpose; or

(3) securitized utility tariff costs or financing costs specified in the financing order to be the costs of the public utility.

(b) The commission shall not determine any action taken by a public utility that is consistent with the financing order to be unjust or unreasonable, and K.S.A. 66-1a01, and amendments thereto, shall not apply to the issuance of securitized utility tariff bonds.

(c) No public utility shall be required to file an application for a financing order under this section or otherwise utilize this section. The commission shall not order or otherwise directly or indirectly require a public utility to use securitized utility tariff bonds to recover securitized utility tariff costs or to finance any project, addition, plant, facility, extension, capital improvement, equipment or any other expenditure. After the issuance of a financing order, the public utility shall retain sole discretion regarding the decision to cause the securitized utility tariff bonds to be issued, including the right to defer or postpone such sale, assignment, transfer or issuance. Nothing shall prevent the public utility from abandoning the issuance of securitized utility tariff bonds under the financing order by filing with the commission a statement of abandonment and the reasons therefor.

(d) Securitized utility tariff bonds authorized under this act shall not be subject to K.S.A. 66-125, and amendments thereto.

(e) The commission shall not refuse to allow a public utility to recover securitized utility tariff costs in an otherwise permissible fashion, or refuse or condition authorization or approval of the issuance and sale by a public utility of securities or the assumption by the public utility of liabilities or obligations, solely because of the potential availability of securitized utility tariff bond financing.

(f) The commission shall not, directly or indirectly, utilize or consider the debt reflected by the securitized utility tariff bonds in establishing the public utility's capital structure used to determine any regulatory matter, including, but not limited to, the public utility's revenue requirement used to set its rates.

(g) The commission shall not, directly or indirectly, consider the existence of securitized utility tariff bonds or the potential use of securitized utility tariff bond financing in determining the public utility's authorized rate of return used to determine the public utility's revenue requirement used to set its rates.

(h) The commission shall not approve an application for a financing order associated with an asset retirement or abandonment if the application does not establish that the securitization of the specified retired or abandoned generating facility provides net quantifiable rate benefits to customers as required under this act.

New Sec. 4. The bills of a public utility that has obtained a financing order and caused securitized utility tariff bonds to be issued shall comply with the provisions of this section, except the failure of a

public utility to comply with this section shall not invalidate, impair or otherwise affect any financing order, securitized utility tariff property, securitized utility tariff charge or securitized utility tariff bonds. The public utility shall:

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

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

New Sec. 5. (a) All securitized utility tariff property specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of securitized utility tariff charges depends on the public utility to which the financing order is issued performing its servicing functions relating to the collection of securitized utility tariff charges and on future electricity or natural gas consumption. Such property exists:

(1) Regardless of whether revenues or proceeds arising from the property have been billed, have accrued or have been collected; and

(2) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity or natural gas by customers.

(b) Securitized utility tariff property specified in a financing order shall exist until securitized utility tariff bonds issued pursuant to the financing order have been paid in full and all financing costs and other costs of such securitized utility tariff bonds have been recovered in full.

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

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

(e) The interest of a transferee, purchaser, acquirer, assignee or pledgee in securitized utility tariff property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge or defense by the public utility or any other person or in connection with the reorganization, bankruptcy or other insolvency of

the public utility or any other entity.

(f) Any successor to a public utility, whether pursuant to any reorganization, bankruptcy or other insolvency proceeding or whether pursuant to any merger or acquisition, sale or other business combination, or transfer by operation of law, as a result of the public utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments or proceeds of the securitized utility tariff property. Nothing in this section shall be construed to limit or impair any authority of the commission concerning the transfer or succession of interests of public utilities.

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

New Sec. 6. (a) The creation, perfection, priority and enforcement of any security interest in securitized utility tariff property to secure the repayment of the principal and interest and other amounts payable in respect of securitized utility tariff bonds, amounts payable under any ancillary agreement and other financing costs are governed by this section and sections 8 and 9, and amendments thereto, and not by the provisions of the code, except as otherwise provided in this section and sections 8 and 9, and amendments thereto.

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

- (1) The financing order is issued;
- (2) a security agreement is executed and delivered by the debtor granting such security interest;
- (3) the debtor has rights in such securitized utility tariff property or the power to transfer rights in such securitized utility tariff property; or
- (4) when value is received for the securitized utility tariff property.

(c) The description of securitized utility tariff property in a security agreement is sufficient if the description refers to this section and the financing order creating the securitized utility tariff property. A security interest shall attach as provided in subsection (b) without physical delivery of collateral or other act.

(d) Upon filing of a financing statement with the office of the secretary of state, as provided in section 9, and amendments thereto, the security interest in securitized utility tariff property shall be perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest and regardless of whether the parties have notice of the security interest. Without limitation, upon such filing, a security interest in the securitized utility tariff property shall be perfected against all claims of lien creditors and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with this section.

(e) The priority of a security interest in securitized utility tariff property is not affected by the commingling of securitized utility tariff charges with other amounts. A pledgee or secured party shall have a perfected security interest in the amount of all securitized utility tariff charges that are deposited in any cash or deposit account of the qualifying public utility in which securitized utility tariff charges have been commingled with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

(f) No application of the adjustment mechanism pursuant to section 2, and amendments thereto, shall affect the validity, perfection or priority of a security interest in or transfer of securitized utility tariff property.

(g) If a default occurs under securitized utility tariff bonds that are

secured by a security interest in securitized utility tariff property, the financing parties or their representatives may exercise the rights and remedies available to a secured party under the code, including the rights and remedies available under part 6 of article 9 of the code, and amendments thereto, as if they were secured parties with a perfected and prior lien under the code. The commission may also order amounts arising from securitized utility tariff charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the district court of the county where the public utility's headquarters is located shall order the sequestration and payment to such financing parties of revenues arising from the securitized utility tariff charges.

New Sec. 7. (a) Any sale, assignment or other transfer of securitized utility tariff property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the securitized utility tariff property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and state income tax purposes. For all purposes other than federal and state income tax purposes, the parties' characterization of a transaction as a sale of an interest in securitized utility tariff property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to such interest in securitized utility tariff property. A sale or similar transfer of an interest in securitized utility tariff property may occur only when:

(1) The financing order creating the securitized utility tariff property has become effective;

(2) the documents evidencing the transfer of securitized utility tariff property have been executed by the assignor and delivered to the assignee; and

(3) value is received for the securitized utility tariff property. After such a transaction, the securitized utility tariff property shall not be subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the securitized utility tariff property perfected in accordance with section 6, and amendments thereto.

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

(1) Commingling of funds from securitized utility tariff charges with other amounts;

(2) the retention by the seller of:

(A) A partial or residual interest, including an equity interest, in the securitized utility tariff property, whether direct or indirect or whether subordinate or otherwise; or

(B) the right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of securitized utility tariff charges;

(3) any recourse that the purchaser may have against the seller;

(4) any indemnification rights, obligations or repurchase rights made or provided by the seller;

(5) the obligation of the seller to collect securitized utility tariff charges on behalf of an assignee;

(6) the transferor acting as the servicer of the securitized utility tariff charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in securitized utility tariff property is sold or assigned, to contract with the assignee or any financing party so that the public utility will continue to operate the public utility system to provide service to the assignee's customers, collect amounts relating to the securitized utility tariff charges for the

benefit and account of such assignee or financing party and account for and remit such amounts to or for the account of such assignee or financing party;

(7) the treatment of the sale, conveyance, assignment or other transfer for tax, financial reporting or other purposes;

(8) the granting or providing to bondholders a preferred right to the securitized utility tariff property or credit enhancement by the public utility or its affiliates with respect to such securitized utility tariff bonds; or

(9) any application of the adjustment mechanism as provided in section 2, and amendments thereto.

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

(1) The issuance of a financing order;

(2) the assignor having rights in such securitized utility tariff property or the power to transfer rights in such securitized utility tariff property to an assignee;

(3) the execution and delivery by the assignor of transfer documents in connection with the issuance of securitized utility tariff bonds; and

(4) the receipt of value for the securitized utility tariff property.

(d) An enforceable transfer of an interest in securitized utility tariff property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with section 9, and amendments thereto. The transfer is perfected against third parties as of the date of filing.

(e) The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or securitized utility tariff property or by the commingling of funds arising from the securitized utility tariff property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under section 6, and amendments thereto, is terminated when they are transferred to a segregated account for the assignee or a financing party. If securitized utility tariff property has been transferred to an assignee or financing party, any proceeds of such property shall be held in trust for the assignee or financing party.

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

(1) Conflicting perfected security interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with section 6, and amendments thereto;

(2) a perfected security interest or right of an assignee has priority over a conflicting unperfected security interest or right of an assignee; and

(3) a perfected security interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

New Sec. 8. The description of securitized utility tariff property being transferred to an assignee in a sales agreement, purchase agreement or other transfer agreement, granted or pledged to a pledgee in a security agreement, pledge agreement or other security document or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the securitized utility tariff property and states that the agreement or financing statement covers all or part of the property described in the financing order. This section applies to all purported transfers of, and

all purported grants or liens or security interests in, securitized utility tariff property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement or other security document was entered into or any financing statement was filed.

New Sec. 9. The secretary of state shall maintain any financing statement filed to perfect a sale or other transfer of securitized utility tariff property and any security interest in securitized utility tariff property in the same manner that the secretary of state maintains financing statements filed under the code to perfect a security interest in collateral owned by a transmitting utility. Except as otherwise provided in this section, all financing statements filed pursuant to this section shall be governed by the provisions regarding financing statements and the filing thereof under the code, including part 5 of article 9 of the code, and amendments thereto. A security interest in securitized utility tariff property may be perfected only by the filing of a financing statement in accordance with this section, and no other method of perfection shall be effective. Notwithstanding any provision of the code to the contrary, a financing statement filed pursuant to this section is effective until a termination statement is filed under the code, and no continuation statement is required to be filed to maintain its effectiveness. A financing statement filed pursuant to this section may indicate that the debtor is a transmitting utility, and without regard to whether the debtor is a public utility, an assignee or otherwise qualifies as a transmitting utility under the code. The failure to make such indication shall not impair the duration and effectiveness of the financing statement.

New Sec. 10. The law governing validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any securitized utility tariff property shall be the laws of this state.

New Sec. 11. Neither the state nor any of its political subdivisions, agencies or instrumentalities shall be liable on any securitized utility tariff bonds, and the bonds shall not be considered a debt or a general obligation of the state nor any political subdivisions, agencies or instrumentalities nor shall they be considered a special obligation or indebtedness of the state nor any of its political subdivisions, agencies or instrumentalities. An issue of securitized utility tariff bonds does not, directly, indirectly or contingently, obligate the state, nor any political subdivisions, agencies or instrumentalities of the state, to levy any tax or make any appropriation for payment of the securitized utility tariff bonds, other than in their capacity as consumers of electricity or natural gas. All securitized utility tariff bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of Kansas is pledged to the payment of the principal of, or interest on, this bond."

New Sec. 12. The following entities may legally invest any sinking funds, moneys or other funds in securitized utility tariff bonds:

(a) Subject to applicable statutory restrictions on state or local investment authority, the state, units of local government, political subdivisions, public bodies and public officers, except for members of the commission and the commission's technical advisory and other staff, or board members and employees of the citizens' utility ratepayer board;

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

(c) personal representatives, guardians, trustees and other fiduciaries; or

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

New Sec. 13. (a) The state and its agencies, including the

commission, hereby pledge and agree with bondholders, the owners of the securitized utility tariff property and other financing parties that the state and its agencies shall not take any action listed in this section. This subsection does not preclude limitation or alteration if full compensation is made by law for the full protection of the securitized utility tariff charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:

(1) Altering the provisions of this section that authorize the commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create securitized utility tariff property and to make the securitized utility tariff charges imposed by a financing order irrevocable, binding or nonbypassable charges for all existing and future retail customers within the service area of the public utility;

(2) taking or permitting any action that impairs or would impair the value of securitized utility tariff property or the security for the securitized utility tariff bonds or revises the securitized utility tariff costs for which recovery is authorized;

(3) impairing the rights and remedies of the bondholders, assignees and other financing parties in any way; or

(4) except for changes made pursuant to the adjustment mechanism authorized under this section, reducing, altering or impairing securitized utility tariff charges that are to be imposed, billed, charged, collected and remitted for the benefit of the bondholders, any assignee and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses or charges incurred and any contracts to be performed in connection with the related securitized utility tariff bonds have been paid and performed in full.

(b) Any person or entity that issues securitized utility tariff bonds may include the language specified in this section in the securitized utility tariff bonds and related documentation.

(c) An assignee or financing party shall not be considered a public utility, an electric public utility, a natural gas public utility or person providing electric or natural gas service by virtue of engaging in the transactions described in this act.

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

(e) If any provision of this act is held invalid or is invalidated, superseded, replaced, repealed or expires for any reason, such occurrence does not affect the validity of any action allowed under this section that is taken by a public utility, an assignee, a financing party, a collection agent or a party to an ancillary agreement, and any such action remains in full force and effect with respect to all securitized utility tariff bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, repealed or expires for any reason.

New Sec. 14. A public utility has sole discretion to determine the method by which it expends or invests the proceeds received from the issuance of securitized utility tariff bonds. Nothing in this act shall be construed to restrict the ability of a public utility from investing the proceeds in infrastructure as the utility deems necessary for it to continue to meet its obligations of providing reasonably efficient and sufficient service pursuant to K.S.A. 66-101b and 66-1,201, and amendments thereto. If the public utility invests in infrastructure, the commission shall review these investments using its regular processes for consideration and rate-making determination of infrastructure investments. For electric public utilities, this review may take place as part of an application for predetermination filed pursuant to K.S.A. 66-1239, and amendments thereto, or for electric and natural gas public utilities, as part of any other rate-making process established by the

commission pursuant to chapter 66 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 15. K.S.A. 66-1239 is hereby amended to read as follows: 66-1239. (a) As used in this section:

- (1) "Commission" means the state corporation commission;
- (2) "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000 annually;
- (3) "generating facility" means any electric generating plant or improvement to existing generation facilities;
- (4) "stake" means a public utility's whole or fractional ownership share or leasehold or other proprietary interest in a generating facility or transmission facility;
- (5) "public utility" ~~has the meaning provided by~~ *means the same as defined in K.S.A. 66-104, and amendments thereto;* and
- (6) "transmission facility" means: (A) Any existing line, and supporting structures and equipment, being upgraded for the transfer of electricity with an operating voltage of 34.5 kilovolts or more of electricity; or (B) any new line, and supporting structures and equipment, being constructed for the transfer of electricity with an operating voltage of 230 kilovolts or more of electricity.

(b) (1) Prior to undertaking the construction of, or participation in, a transmission facility, a public utility may file with the commission a petition for a determination of the rate-making principles and treatment, as proposed by the public utility, that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility to acquire such public utility's stake in the transmission facility during the expected useful life of the transmission facility.

(2) The commission shall issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the transmission facility in all rate-making proceedings on and after such time as the transmission facility is placed in service or the term of the contract commences.

(3) The commission in all proceedings in which the cost of the public utility's stake in the transmission facility is considered shall utilize the rate-making principles and treatment applicable to the transmission facility.

(4) If the commission fails to issue a determination within 180 days of the date a petition for a determination of rate-making principles and treatment is filed, the rate-making principles and treatment proposed by the petitioning public utility will be deemed to have been approved by the commission and shall be binding for rate-making purposes during the useful life of the transmission facility.

(5) If the commission does not have jurisdiction to set wholesale rates for use of the transmission facility the commission need not consider rate-making principles and treatment for wholesale rates for the transmission facility.

(c) (1) Prior to undertaking the construction of, or participation in, a generating facility ~~or, prior to entering into a new contract; or prior to retiring or abandoning a generating facility, or within a reasonable time after retirement or abandonment if filing before retirement or abandonment is not possible under the circumstances,~~ a public utility may file with the commission ~~a petition~~ *an application* for a determination of the rate-making principles and treatment, as proposed by the public utility, that will apply to:

(A) Recovery in wholesale or retail rates of the cost to be incurred by the public utility to acquire such public utility's stake in the generating facility during the expected useful life of the generating facility or the recovery in rates of the contract during the term thereof;  
*or*

(B) *reflection in wholesale or retail rates of the costs to be incurred and the cost savings to be achieved by the public utility in retiring or abandoning such public utility's stake in the generating facility, including, but not limited to, the reasonableness of such retirement or abandonment.*

(2) Any utility seeking a determination of rate-making principles and treatment under subsection (c)(1) shall as a part of its filing submit the following information: (A) A description of the public utility's conservation measures; (B) a description of the public utility's demand side management efforts; (C) the public utility's ten-year generation and load forecasts; and (D) a description of all power supply alternatives considered to meet the public utility's load requirements.

(3) In considering the public utility's supply plan, the commission may consider if the public utility issued a request for proposal from a wide audience of participants willing and able to meet the needs identified under the public utility's generating supply plan, and if the plan selected by the public utility is reasonable, reliable and efficient.

(4) The commission shall issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the generating facility or to the contract in all rate-making proceedings on and after such time as the generating facility is:

(A) Placed in service or the term of the contract commences; *or*

(B) *retired or abandoned.*

(5) The commission in all proceedings in which the cost of the public utility's stake in the generating facility or the cost of the purchased power under the contract is considered shall utilize the rate-making principles and treatment applicable to the generating facility ~~or, contract~~ *or retired or abandoned generating facility.*

(6) If the commission fails to issue a determination within 180 days of the date a petition for a determination of rate-making principles and treatment is filed, the rate-making principles and treatment proposed by the petitioning public utility will be deemed to have been approved by the commission and shall be binding for rate-making purposes during the useful life of the generating facility ~~or, during the term of the contract~~ *or during the period when the cost of the retired or abandoned generating facility is reflected in customer rates.*

(d) The public utility shall have one year from the effective date of the determination of the commission to notify the commission whether it will construct or participate in the construction of the generating or transmission facility ~~or, whether it will perform under terms of the contract~~ *or whether it will retire or abandon the generating facility.*

(e) If the public utility notifies the commission within the one-year period that the public utility will not construct or participate in the construction of the generating or transmission facility ~~or, that it will not perform under the terms of the contract~~ *or that it will not retire or abandon the generating facility,* then the determination of rate-making principles pursuant to subsection (b) or (c) shall be of no further force or effect, shall have no precedential value in any subsequent proceeding, and there shall be no adverse presumption applied in any future proceeding as a result of such notification.

(f) If the public utility notifies the commission under subsection (d) that it will construct or participate in a generating facility or purchase power contract and subsequently does not, *or that it will retire or abandon a generating facility and subsequently does not,* it will be required to notify the commission immediately and file an alternative supply plan with the commission ~~per~~ *pursuant to* subsection (c) within 90 days.

Sec. 16. K.S.A. 2020 Supp. 84-9-109 is hereby amended to read as follows: 84-9-109. (a) **General scope of article.** Except as otherwise provided in subsections (c) and (d), this article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under K.S.A. 84-2-401, 84-2-505, ~~subsection (3) of 84-2-711(3) or subsection (5) of 84-2a-508(5),~~ and amendments thereto, as provided in K.S.A. 2020 Supp. 84-9-110, and

amendments thereto; and

(6) a security interest arising under K.S.A. 84-4-201 or 84-5-118, and amendments thereto.

(b) **Security interest in secured obligation.** The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) **Extent to which article does not apply.** This article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this article;

(2) another statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state;

(3) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under K.S.A. 84-5-114, and amendments thereto.

(d) **Inapplicability of article.** This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) a statutory lien, or a lien given by statute or other rule of law for services or materials, but K.S.A. 2020 Supp. 84-9-333, and amendments thereto, applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but K.S.A. 2020 Supp. 84-9-315 and 84-9-322, and amendments thereto, apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) K.S.A. 2020 Supp. 84-9-340, and amendments thereto, applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) K.S.A. 2020 Supp. 84-9-404, and amendments thereto, applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in K.S.A. 2020 Supp. 84-9-203 and 84-9-308, and amendments thereto;

(B) fixtures in K.S.A. 2020 Supp. 84-9-334, and amendments thereto;

(C) fixture filings in K.S.A. 2020 Supp. 84-9-501, 84-9-502, 84-9-512, 84-9-516 and 84-9-519, and amendments thereto; and

(D) security agreements covering personal and real property in K.S.A. 2020 Supp. 84-9-604, and amendments thereto;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but K.S.A. 2020 Supp. 84-9-315 and 84-9-322, and amendments thereto, apply with respect to proceeds and priorities in proceeds;

(13) an assignment of a deposit account in a consumer transaction, but K.S.A. 2020 Supp. 84-9-315 and 84-9-322, and amendments thereto, apply with respect to proceeds and priorities in proceeds;

(14) an assignment of rights in or under:

(A) A claim or right to receive benefits under any workers compensation, industrial accident or similar statute or regulation which provides benefits for occupational injury or illness; or

(B) a deferred payment or benefit arrangement that enables a participant to exclude or defer recognition of income for purposes of federal or state income taxation; ~~or~~

(15) a transfer by a government or governmental agency or subdivision; or

(16) *the creation, attachment, perfection, priority or enforcement of any sale, assignment of, pledge of, security interest in or other transfer of any interest in, right or portion of any interest or right in any securitized utility tariff property, as defined in section 1, and amendments thereto, except as otherwise provided in the utility financing and securitization act.*

Sec. 17. K.S.A. 66-1239 and K.S.A. 2020 Supp. 84-9-109 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*