

Utility Financing and Securitization Act; Senate Sub. for HB 2072

Senate Sub. for HB 2072 creates the Utility Financing and Securitization Act (UFSA), which allows for the securitization of utility assets to recover energy transition costs for electric public utilities whose retail rates are subject to the jurisdiction of the Kansas Corporation Commission (KCC). The UFSA also allows electric and natural gas public utilities whose retail rates are subject to the KCC to pursue securitization to help finance qualified extraordinary expenses, such as fuel costs incurred during extreme weather events. The bill amends the provisions of the Kansas Energy Security Act and the Uniform Commercial Code to conform to the new provisions created in the UFSA.

The bill takes effect upon publication in the *Kansas Register*.

Utility Financing and Securitization Act

Definitions

The bill defines various terms used throughout the UFSA, including these key terms.

“Electric public utility” means the same as defined in KSA 66-101a and includes a for-profit electric utility whose retail rates are subject to the jurisdiction of the KCC. The definition does not include a cooperative that has opted to deregulate or an electric public utility owned by one or more such cooperatives.

“Energy transition costs” includes, at the option of and upon application by an electric public utility, and as approved by the KCC, 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 the UFSA where such early retirement or abandonment is deemed reasonable and prudent by the KCC through a final order issued by the KCC.

As used in this definition, pretax costs, if determined reasonable by the KCC and not inconsistent with a KCC order granting predetermination 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 are reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, and 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.

Energy transition costs also include 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 the UFSA.

“Financing order” means an order from the KCC pursuant to the UFSA that authorizes:

- The issuance of securitized utility tariff bonds in one or more series;
- The imposition, collection, and periodic adjustments of a securitized utility tariff charge;
- The creation of securitized utility tariff property; and
- The sale, assignment, or transfer of securitized utility tariff property to an assignee.

“Public utility” means an electric or natural gas public utility whose rates are subject to the jurisdiction of the KCC.

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

“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 scheduled maturity date as determined reasonable by the KCC, but not later than 32 years from the issue date, that are issued by an 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 KCC-approved energy transition costs and financing costs and that are secured by or payable from securitized utility tariff property, or an 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 KCC-approved qualified extraordinary costs and financing costs that are secured by or payable from securitized utility tariff property.

“Securitized utility tariff charge” means the amounts authorized by the KCC 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 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.

Such charges are to be paid by all existing or future retail customers receiving electrical or natural gas service from the public utility or its successors or assignees under KCC-approved rate schedules or special contracts, 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 Kansas.

“Securitized utility tariff costs” means either energy transition costs or qualified extraordinary costs.

“Securitized utility tariff property” includes 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 the bill and as provided in the financing order.

The definition also includes 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.

“Special contract” means the terms of a contract governing the supply of electricity that has been approved by the KCC that is not included in generally applicable rate schedules.

Financing Order

Application schedule for recovery of energy transition costs. The bill allows an electric public utility, in its sole discretion, to apply to the KCC for a financing order for the recovery of energy transition costs. In applying for the financing order, the electric public utility can 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.

Within 25 days after a complete application is filed, the bill requires the KCC to establish a procedural schedule that requires the KCC to issue a decision on the application no later than 135 days from the date a completed application is filed.

The KCC is required to take final action to approve, approve subject to conditions the KCC considers appropriate and authorized by the bill, or deny any application for a financing order in a final order, within 135 days of receiving a complete application as authorized by the UFSA. Such final order is subject to judicial review and deemed as arising from a rate hearing.

As a prerequisite of filing an application, the bill requires an electric public utility to obtain an order from the KCC under the KCC process for predetermination under KSA 66-1239 finding retirement or abandonment of the subject generating facility to be reasonable.

Application schedule for recovery of qualified extraordinary costs. The bill allows a public utility, in its sole discretion, to apply to the KCC for a financing order for the recovery of qualified extraordinary costs.

In applying for the financing order, the public utility can file an application to issue securitized utility tariff bonds in one or more series, charge and collect securitized utility tariff charges, and create utility tariff property related to the recovery of qualified extraordinary costs.

Within 25 days after a complete application is filed, the bill requires the KCC to establish a procedural schedule that requires the KCC to issue a decision on the application no later than 180 days from the date a complete application is filed.

The KCC is required to take final action to approve, approve subject to conditions the KCC considers appropriate and that are authorized by the bill, or deny any application for the recovery of qualified extraordinary costs and a financing order in a final order within 180 days of receiving a complete application as authorized by the UFSA. The final order is subject to judicial review and deemed as arising from a rate hearing.

Contents of financing order application. The bill outlines the requirements of the application, including these key elements:

- 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 KCC order or proceeding relating to such retirement or abandonment (predetermination under KSA 66-1239), the bill requires that application to include a description of the order or other proceeding; or
 - 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;
- A description of the securitized utility tariff costs the applicant proposes to recover with the proceeds of the securitized utility tariff bonds;
- 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 is required to identify the specific portion in the application;
 - By electing not to finance all or any portion of such securitized utility tariff costs using securitized utility tariff bonds, a public utility is not deemed to waive its right to recover or request recovery of such costs pursuant to a separate proceeding with the KCC;
- An estimate of the financing costs related to the securitized utility tariff bonds;
- 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; and
- 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 bill requires the comparison to 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 will avoid or mitigate rate impacts on customers.

Review and findings by the KCC. After notice and hearing on an application for a financing order, the KCC is authorized to issue a financing order if the KCC finds:

- Securitized utility tariff costs described in the application are just and reasonable; and
- 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 avoid or mitigate rate impacts on customers.

The bill details the elements that must be contained in a financing order issued by the KCC in response to an application filed by a public utility, including these key elements:

- 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; provided that the amount of securitized utility tariff charges allocated to special contract customers in connection with the securitization of energy transition costs does not exceed the benefits from the retirement or abandonment of the subject electric utility generating assets that are assigned or allocated to special contract customers. The bill requires the securitized utility charges allocated to special contract customers as a result of a financing order regarding a retirement or abandonment be offset by net quantifiable rate benefits of at least the same amount. The initial allocation of securitized utility tariff charges remains in effect until the public utility files a general rate base proceeding;
 - Once the KCC's order regarding the general base rate proceeding becomes final, the bill requires all subsequent applications of an adjustment mechanism regarding securitized utility tariff charges to incorporate changes in the allocation of costs to customers, as detailed in the KCC's order from the public utility's most recent general base rate proceeding;
- A finding 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 to avoid or mitigate rate impacts to customers;

- 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;
- 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 tariff bonds are priced and the terms of the financing order;
- 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 by customers;
- 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 securitization utility tariff bonds;
- 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, which shall be limited to the following requirements, to the extent that the KCC:
 - Has issued an order granting predetermination and prescribing rate-making parameters or regulatory accounting for retirement or abandonment of the subject electric public utility generating assets, then the electric public utility shall be permitted to implement and effectuate such rate-making parameters or regulatory accounting mechanisms; and
 - Has not issued an order granting predetermination prescribing rate-making parameters or regulatory accounting to credit customers with the benefits from retirement of the subject electric public utility generating assets, then the KCC shall address such matters in the financing order and customers shall receive the benefits as determined by KCC order

simultaneously with the inception of the collection of securitized utility tariff charges; and

- Any other conditions the KCC deems appropriate that are consistent with the bill.

A financing order issued to a public utility must 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.

Annual filing. The bill requires a public utility that has been issued a financing order to file with the KCC, 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 KCC's review of the filing is 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 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, the KCC is required to either approve the application or letter or inform the public utility of any mathematical or clerical errors present in its calculation, and, if there are errors, the public utility may correct its error and refile its request. The time frames previously described apply to the refiled request.

Irrevocability and KCC requirements. Upon the transfer of the securitized utility tariff property to an assignee or the issuance of securitized utility tariff bonds, whichever occurs first, a financing order becomes irrevocable. The KCC is prohibited from amending, modifying, or terminating the financing order by a subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized utility tariff charges approved in the financing order, with the exception of changes made *via* the adjustment mechanism.

The public utility retains sole discretion on whether securitized utility tariff bonds should be issued after the issuance of a financing order. The KCC is required to afford the public utility flexibility in establishing the terms and conditions for the securitized tariff bonds to accommodate changes in market conditions.

Issuance advice letter. The public utility is required to provide to the KCC, to the extent requested and 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 no later than one day after the pricing of the securitized utility tariff bonds. The KCC has the authority to designate a representative from KCC staff to observe all facets of the process undertaken by the public utility to place the securitized utility tariff bonds to market so the KCC's representative can be prepared, if requested, to provide the KCC 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 must be included in the financing order and must 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 reports the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the KCC 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 KCC receives the issuance advice letter, the KCC issues a disapproval letter directing that the bonds as proposed not be issued and including the basis for that disapproval.

In performing the responsibilities regarding the issuance advice letter, the KCC may engage a financial adviser and counsel as the KCC deems necessary.

An adversely affected party may petition for judicial review of the financing order.

Refinancing, retiring, or refunding securitized utility tariff bonds. The bill describes the process the KCC may commence for issuing a subsequent financing order regarding refinancing, retiring, or refunding securitized utility tariff bonds or any subsequent issue of a financing order.

KCC Powers and Duties

In exercising its powers and carrying out its duties regarding any matter within its authority, the KCC cannot consider:

- 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;
- Securitized utility tariff charges paid under the financing order to be the revenue of the public utility for any purpose; or
- Securitized utility tariff costs or financing costs specified in the financing order to be the costs of the public utility.

The bill states no public utility is required to file an application for a financing order. The KCC does not have the power to 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.

The bill outlines additional elements the KCC may not consider in the securitization application process. The KCC cannot 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 the UFSA.

Customer Energy Bills

The bill requires the customer bills of a public utility that has obtained a financing order and caused securitized utility tariff bonds to be issued to explicitly reflect that a portion of the

charges on the customer 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, a customer bill must include a statement that the assignee is the owner of the rights to the securitized utility tariff charges and 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 must indicate the securitized utility tariff charge and the ownership of the charge. The public utility is required to also include on the bill 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.

Failure to meet these requirements by the public utility does not invalidate, impair, or otherwise affect any financing order, securitized utility tariff property, securitized utility tariff charge, or securitized utility tariff bond.

Property Rights and Procedures

The bill states all securitized utility tariff property specified in the financing order constitutes an existing, present, intangible property right or interest, 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.

The bill describes the nature of securitized utility tariff property and the powers of a public utility to transfer, sell, convey, or assign the securitized utility tariff property. The bill describes the process of payment if a public utility defaults on any required remittance of securitized utility tariff charges and the process if a public utility reorganizes, becomes insolvent, files for bankruptcy, or is sold or merged with another entity.

Security Interest

The bill describes the timeline for creation, perfection, and enforcement of a security interest in the securitized utility tariff property and the conditions in which a security interest may be created. The bill states the security interest attaches without physical delivery of collateral or other act and is perfected upon the filing of a financing statement with the Office of the Secretary of State.

Sale, Assignment, or Other Transfer

The bill describes the requirements and process for any sale, assignment, or other transfer of securitized utility tariff property, the conditions under which a transfer of an interest in securitized utility tariff property may occur, and when the transfer of an interest in securitized utility tariff property may be enforced.

Description of Securitized Utility Tariff Property

The bill outlines the description of a securitized utility tariff property that must be included when such property is 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. The bill requires the description to indicate or describe the financing order that created the securitized utility tariff property and state the agreement or financing statement covers all or part of the property described in the financing order.

Financing Statements

The Secretary of State is required to maintain all financing statements filed to perfect a sale or other transfer of securitized utility tariff property and any security interest in securitized utility tariff property. All financing statements are governed by the Uniform Commercial Code.

Choice of Laws

The bill requires the laws of Kansas to govern the 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 security interest in any securitized utility tariff property.

Liability of Securitized Utility Tariff Bonds

The bill provides securitized utility tariff bonds shall not be considered debts of the State; neither the State nor any political subdivisions, agencies, or instrumentalities of the State shall be liable for such bonds; and all securitized utility tariff bonds shall have on the face thereof the statement: "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."

Investment in Securitized Utility Tariff Bonds

The bill lists the entities that may legally invest in securitized utility tariff bonds.

Prohibited Actions

The bill lists the actions the State may not engage in, including impairing the value of the securitized utility tariff property and the securitized utility tariff bonds or the rights and remedies of bondholders, assignees, or other financing parties.

Discretion of Public Utility

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.

Kansas Energy Security Act

The bill amends the Kansas Energy Security Act regarding the KCC procedure for rate-making and predetermination to add that, 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 KCC an application for a determination of rate-making principles and treatment. That determination will apply to recovery in wholesale or retail rates for the costs to be incurred by the public utility to acquire such public utility's stake in the generating facility or to 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.

The bill amends certain provisions regarding KCC orders considering the retirement or abandonment of generating facilities.

Uniform Commercial Code

The bill amends provisions of the Uniform Commercial Code to reflect any new security interests that may be created under the provisions of UFSA.