

## 2021 Kansas Statutes

**66-1,240. Utility financing and securitization act; citation.** (a) K.S.A. 2021 Supp. 66-1,240 through 66-1,253, and amendments thereto, shall be known and may be cited as the utility financing and securitization act.

(b) As used in K.S.A. 2021 Supp. 66-1,240 through 66-1,253, 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 K.S.A. 2021 Supp. 66-1,241, 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 K.S.A. 2021 Supp. 66-1,241, 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 K.S.A. 2021 Supp. 66-1,241, 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, restructuring, other insolvency proceeding, merger, acquisition, consolidation or sale or transfer of assets, regardless of the reason such event occurs.

**History:** L. 2021, ch. 29, § 1; April 22.