

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 202
AN ACT

To repeal sections 386.370, 393.106, 394.120, and 400.9-109, RSMo, and to enact in lieu thereof eight new sections relating to electrical corporations.

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

Section A. Sections 386.370, 393.106, 394.120, and 400.9-
2 109, RSMo, are repealed and eight new sections enacted in lieu
3 thereof, to be known as sections 386.370, 393.106, 393.1620,
4 393.1700, 393.1705, 393.1715, 394.120, and 400.9-109, to read
5 as follows:

386.370. 1. The commission shall, prior to the
2 beginning of each fiscal year beginning with the fiscal year
3 commencing on July 1, 1947, make an estimate of the expenses
4 to be incurred by it during such fiscal year reasonably
5 attributable to the regulation of public utilities as
6 provided in chapters 386, 392 and 393 and shall also
7 separately estimate the amount of such expenses directly
8 attributable to such regulation of each of the following
9 groups of public utilities: Electrical corporations, gas
10 corporations, water corporations, heating companies and
11 telephone corporations, telegraph corporations, sewer
12 corporations, and any other public utility as defined in
13 section 386.020, as well as the amount of such expenses not
14 directly attributable to any such group. For purposes of
15 this section, water corporations and sewer corporations will
16 be combined and considered one group of public utilities.

17 2. The commission shall allocate to each such group of
18 public utilities the estimated expenses directly
19 attributable to the regulation of such group and an amount
20 equal to such proportion of the estimated expenses not
21 directly attributable to any group as the gross intrastate
22 operating revenues of such group during the preceding
23 calendar year bears to the total gross intrastate operating
24 revenues of all public utilities subject to the jurisdiction
25 of the commission, as aforesaid, during such calendar year.
26 The commission shall then assess the amount so allocated to
27 each group of public utilities, subject to reduction as
28 herein provided, to the public utilities in such group in
29 proportion to their respective gross intrastate operating
30 revenues during the preceding calendar year, except that the
31 total amount so assessed to all such public utilities shall
32 not exceed [one-fourth] three hundred fifteen thousandths of
33 one percent of the total gross intrastate operating revenues
34 of all utilities subject to the jurisdiction of the
35 commission.

36 3. The commission shall render a statement of such
37 assessment to each such public utility on or before July
38 first and the amount so assessed to each such public utility
39 shall be paid by it to the director of revenue in full on or
40 before July fifteenth next following the rendition of such
41 statement, except that any such public utility may at its
42 election pay such assessment in four equal installments not
43 later than the following dates next following the rendition
44 of said statement, to wit: July fifteenth, October
45 fifteenth, January fifteenth and April fifteenth. The
46 director of revenue shall remit such payments to the state
47 treasurer.

48 4. The state treasurer shall credit such payments to a
49 special fund, which is hereby created, to be known as "The

Public Service Commission Fund", which fund, or its successor fund created pursuant to section 33.571, shall be devoted solely to the payment of expenditures actually incurred by the commission and attributable to the regulation of such public utilities subject to the jurisdiction of the commission, as aforesaid. Any amount remaining in such special fund or its successor fund at the end of any fiscal year shall not revert to the general revenue fund, but shall be applicable by appropriation of the general assembly to the payment of such expenditures of the commission in the succeeding fiscal year and shall be applied by the commission to the reduction of the amount to be assessed to such public utilities in such succeeding fiscal year, such reduction to be allocated to each group of public utilities in proportion to the respective gross intrastate operating revenues of the respective groups during the preceding calendar year.

5. In order to enable the commission to make the allocations and assessments herein provided for, each public utility subject to the jurisdiction of the commission as aforesaid shall file with the commission, within ten days after August 28, 1996, and thereafter on or before March thirty-first of each year, a statement under oath showing its gross intrastate operating revenues for the preceding calendar year, and if any public utility shall fail to file such statement within the time aforesaid the commission shall estimate such revenue which estimate shall be binding on such public utility for the purpose of this section.

393.106. 1. As used in this section, the following terms mean:

(1) "Auxiliary power", the energy used to operate equipment and other load that is directly related to the production of energy by an independent power producer or

6 electrical corporation, obtained through generation at the
7 site or through adjacent transformation and transmission
8 interconnect, but does not include energy used for space
9 heating, lighting, air conditioning, office needs of
10 buildings, and other non-generating uses at the generation
11 site;

12 (2) "Independent power producer", an entity that is
13 also considered a non-utility power producer in the United
14 States. Independent power producers are wholesale
15 electricity producers that operate within the franchised
16 service territories of host utilities and are usually
17 authorized to sell at market-based rates. Unlike
18 traditional electric utilities, independent power producers
19 do not possess transmission facilities or sell electricity
20 in the retail market;

21 (3) "Permanent service", electrical service provided
22 through facilities which have been permanently installed on
23 a structure and which are designed to provide electric
24 service for the structure's anticipated needs for the
25 indefinite future, as contrasted with facilities installed
26 temporarily to provide electrical service during
27 construction. Service provided temporarily shall be at the
28 risk of the electrical supplier and shall not be
29 determinative of the rights of the provider or recipient of
30 permanent service;

31 [(2)] (4) "Structure" or "structures", an
32 agricultural, residential, commercial, industrial or other
33 building or a mechanical installation, machinery or
34 apparatus at which retail electric energy is being delivered
35 through a metering device which is located on or adjacent to
36 the structure and connected to the lines of an electrical
37 supplier. Such terms shall include any contiguous or
38 adjacent additions to or expansions of a particular

39 structure. Nothing in this section shall be construed to
40 confer any right on an electric supplier to serve new
41 structures on a particular tract of land because it was
42 serving an existing structure on that tract.

43 2. Once an electrical corporation or joint municipal
44 utility commission, or its predecessor in interest, lawfully
45 commences supplying retail electric energy to a structure
46 through permanent service facilities, it shall have the
47 right to continue serving such structure, and other
48 suppliers of electrical energy shall not have the right to
49 provide service to the structure except as might be
50 otherwise permitted in the context of municipal annexation,
51 pursuant to section 386.800 and section 394.080, or pursuant
52 to a territorial agreement approved under section 394.312.
53 The public service commission, upon application made by an
54 affected party, may order a change of suppliers on the basis
55 that it is in the public interest for a reason other than a
56 rate differential. The commission's jurisdiction under this
57 section is limited to public interest determinations and
58 excludes questions as to the lawfulness of the provision of
59 service, such questions being reserved to courts of
60 competent jurisdiction. Except as provided in this section,
61 nothing contained herein shall affect the rights, privileges
62 or duties of existing corporations pursuant to this
63 chapter. Nothing in this section shall be construed to make
64 lawful any provision of service which was unlawful prior to
65 July 11, 1991. Nothing in this section shall be construed
66 to make unlawful the continued lawful provision of service
67 to any structure which may have had a different supplier in
68 the past, if such a change in supplier was lawful at the
69 time it occurred. However, those customers who had
70 cancelled service with their previous supplier or had
71 requested cancellation by May 1, 1991, shall be eligible to

change suppliers as per previous procedures. No customer shall be allowed to change electric suppliers by disconnecting service between May 1, 1991, and July 11, 1991.

3. Notwithstanding the provisions of subsection 2 of this section or any other provision of chapters 386 and 394 to the contrary, auxiliary power may be purchased on a wholesale basis, under the applicable federal tariffs of a regional transmission organization instead of under retail service tariffs filed with the public service commission by an electrical corporation, for use at an electric generation facility located in any county of the first classification with more than ninety-two thousand but fewer than one hundred one thousand inhabitants which commenced commercial operations prior to August 28, 2021, and which is operated as an independent power producer.

393.1620. 1. For the purposes of this section, the following terms shall mean:

(1) "Average and excess method", a method for allocation of production plant costs using factors that consider the classes' average demands and excess demands, determined by subtracting the average demands from the non-coincident peak demands, for the four months with the highest system peak loads. The production plant costs are allocated using the class average and excess demands proportionally based on the system load factor, where the system load factor determines the percentage of production plant costs allocated using the average demands, and the remainder of production plant costs are allocated using the excess demands;

(2) "Class cost of service study", a study designed to allocate a utility's costs to each customer class on the basis of which customer class causes the costs;

18 (3) "Commission", the Missouri public service
19 commission;

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

23 (5) "Production plant costs", fixed costs reflected on
24 the electrical corporation's accounting books for the
25 applicable test period, as updated or trued-up, associated
26 with the production or purchase of electricity.

27 2. In determining the allocation of an electrical
28 corporation's total revenue requirement in a general rate
29 case, the commission shall only consider class cost of
30 service study results that allocate the electrical
31 corporation's production plant costs from nuclear and fossil
32 generating units using the average and excess method or one
33 of the following methods of assignment or allocation
34 contained within a National Association of Regulatory
35 Utility Commissioners manual or the Regulatory Assistance
36 Project manual:

37 (1) Multiple coincident peak;

38 (2) Single coincident peak; or

39 (3) Base-intermediate peak.

40 3. This section shall expire on August 28, 2031.

393.1700. 1. For purposes of sections 393.1700 to
2 393.1715, the following terms shall mean:

3 (1) "Ancillary agreement", a bond, insurance policy,
4 letter of credit, reserve account, surety bond, interest
5 rate lock or swap arrangement, hedging arrangement,
6 liquidity or credit support arrangement, or other financial
7 arrangement entered into in connection with securitized
8 utility tariff bonds;

9 (2) "Assignee", a legally recognized entity to which
10 an electrical corporation assigns, sells, or transfers,

11 other than as security, all or a portion of its interest in
12 or right to securitized utility tariff property. The term
13 includes a corporation, limited liability company, general
14 partnership or limited partnership, public authority, trust,
15 financing entity, or any entity to which an assignee
16 assigns, sells, or transfers, other than as security, its
17 interest in or right to securitized utility tariff property;

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

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

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

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

26 (7) "Energy transition costs", all of the following:

27 (a) Pretax costs with respect to a retired or
28 abandoned or to be retired or abandoned electric generating
29 facility that is the subject of a petition for a financing
30 order filed under this section where such early retirement
31 or abandonment is deemed reasonable and prudent by the
32 commission through a final order issued by the commission,
33 include, but are not limited to, the undepreciated
34 investment in the retired or abandoned or to be retired or
35 abandoned electric generating facility and any facilities
36 ancillary thereto or used in conjunction therewith, costs of
37 decommissioning and restoring the site of the electric
38 generating facility, other applicable capital and operating
39 costs, accrued carrying charges, and deferred expenses, with
40 the foregoing to be reduced by applicable tax benefits of
41 accumulated and excess deferred income taxes, insurance,
42 scrap and salvage proceeds, and include the cost of retiring
43 any existing indebtedness, fees, costs, and expenses to

modify existing debt agreements or for waivers or consents
related to existing debt agreements;

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

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

(a) 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 servicing fees, accounting and
auditing fees, trustee fees, legal fees, consulting fees,
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 the 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 charge or otherwise resulting
from the collection of securitized utility tariff charges,
in any such case whether paid, payable, or accrued;

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

81 (f) Any costs of the commission needed to perform the
82 commission responsibilities under this act in connection
83 with the issuance of a financing order including costs to
84 engage counsel and a financial advisor;

85 (9) "Financing order", an order from the commission
86 that authorizes the issuance of securitized utility tariff
87 bonds; the imposition, collection, and periodic adjustments
88 of a securitized utility tariff charge; the creation of
89 securitized utility tariff property; and the sale,
90 assignment, or transfer of securitized utility tariff
91 property to an assignee;

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

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

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

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

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

112 (15) "Securitized utility tariff bonds", bonds,
113 debentures, notes, certificates of participation,
114 certificates of beneficial interest, certificates of
115 ownership, or other evidences of indebtedness or ownership
116 that are issued by an electrical corporation or an assignee
117 pursuant to a financing order, the proceeds of which are
118 used directly or indirectly to recover, finance, or
119 refinance commission-approved securitized utility tariff
120 costs and financing costs, and that are secured by or
121 payable from securitized utility tariff property. If
122 certificates of participation or ownership are issued,
123 references in this section to principal, interest, or
124 premium shall be construed to refer to comparable amounts
125 under those certificates;

126 (16) "Securitized utility tariff charge", the amounts
127 authorized by the commission to repay, finance, or refinance
128 securitized utility tariff costs and financing costs and
129 that are, except as otherwise provided for in this section,
130 nonbypassable charges imposed on and part of all retail
131 customer bills, collected by an electrical corporation or
132 its successors or assignees, or a collection agent, in full,
133 separate and apart from the electrical corporation's base
134 rates, and paid by all existing or future retail customers
135 receiving electrical service from the electrical corporation
136 or its successors or assignees under commission-approved
137 rate schedules, except for customers receiving electrical
138 service under special contracts as of August 28, 2021, even
139 if a retail customer elects to purchase electricity from an
140 alternative electricity supplier following a fundamental
141 change in regulation of public utilities in this state;

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

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

147 (a) All rights and interests of an electrical
148 corporation or successor or assignee of the electrical
149 corporation under a financing order, including the right to
150 impose, bill, charge, collect, and receive securitized
151 utility tariff charges authorized under the financing order
152 and to obtain periodic adjustments to such charges as
153 provided in the financing order;

154 (b) All revenues, collections, claims, rights to
155 payments, payments, money, or proceeds arising from the
156 rights and interests specified in the financing order,
157 regardless of whether such revenues, collections, claims,
158 rights to payment, payments, money, or proceeds are imposed,
159 billed, received, collected, or maintained together with or
160 commingled with other revenues, collections, rights to
161 payment, payments, money, or proceeds;

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

165 2. (1) An electrical corporation may petition the
166 commission for a financing order to finance energy
167 transition costs through an issuance of securitized utility
168 tariff bonds. The petition shall include all of the
169 following:

170 (a) A description of the electric generating facility
171 or facilities that the electrical corporation has retired or
172 abandoned, or proposes to retire or abandon, prior to the
173 date that all undepreciated investment relating thereto has
174 been recovered through rates and the reasons for undertaking

175 such early retirement or abandonment, or if the electrical
176 corporation is subject to a separate commission order or
177 proceeding relating to such retirement or abandonment as
178 contemplated by subdivision (2) of this subsection, and a
179 description of the order or other proceeding;

180 (b) The energy transition costs;

181 (c) An indicator of whether the electrical corporation
182 proposes to finance all or a portion of the energy
183 transition costs using securitized utility tariff bonds. If
184 the electrical corporation proposes to finance a portion of
185 the costs, the electrical corporation shall identify the
186 specific portion in the petition. By electing not to
187 finance all or any portion of such energy transition costs
188 using securitized utility tariff bonds, an electrical
189 corporation shall not be deemed to waive its right to
190 recover such costs pursuant to a separate proceeding with
191 the commission;

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

194 (e) An estimate of the securitized utility tariff
195 charges necessary to recover the securitized utility tariff
196 costs and financing costs and the period for recovery of
197 such costs;

198 (f) A comparison between the net present value of the
199 costs to customers that are estimated to result from the
200 issuance of securitized utility tariff bonds and the costs
201 that would result from the application of the traditional
202 method of financing and recovering the undepreciated
203 investment of facilities that may become securitized utility
204 tariff costs from customers. The comparison should
205 demonstrate that the issuance of securitized utility tariff
206 bonds and the imposition of securitized utility tariff

charges are expected to provide quantifiable benefits to customers;

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

(h) Direct testimony supporting the petition.

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

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

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

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

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

244 (e) A comparison between the net present value of the
245 costs to customers that are estimated to result from the
246 issuance of securitized utility tariff bonds and the costs
247 that would result from the application of the customary
248 method of financing and reflecting the qualified
249 extraordinary costs in retail customer rates. The
250 comparison should demonstrate that the issuance of
251 securitized utility tariff bonds and the imposition of
252 securitized utility tariff charges are expected to provide
253 quantifiable benefits to retail customers;

254 (f) A proposed future ratemaking process to reconcile
255 any differences between securitized utility tariff costs
256 financed by securitized utility tariff bonds and the final
257 securitized costs incurred by the electrical corporation or
258 assignee provided that any such reconciliation shall not
259 affect the amount of securitized utility tariff bonds or the
260 associated securitized utility tariff charges paid by
261 customers; and

262 (g) Direct testimony supporting the petition.

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

268 a. Within fourteen days after the date the petition is
269 filed, the commission shall establish a procedural schedule
270 that permits a commission decision no later than one hundred
271 eighty-five days after the date the petition is filed;

272 b. No later than one hundred eighty-five days after
273 the date the petition is filed, the commission shall issue a
274 financing order approving the petition or an order rejecting
275 the petition; provided, however, that the electrical
276 corporation shall provide notice of intent to file a
277 petition for a financing order to the commission no less
278 than sixty days in advance of such filing;

279 c. An adversely affected party may seek judicial
280 review of a financing order in accordance with sections
281 386.500 and 386.510.

282 (b) A financing order issued by the commission, after
283 a hearing, to an electrical corporation shall include all of
284 the following elements:

285 a. The amount of securitized utility tariff costs to
286 be financed using securitized utility tariff bonds and a
287 finding that recovery of such costs is just and reasonable.
288 The commission shall describe and estimate the amount of
289 financing costs that may be recovered through securitized
290 utility tariff charges and specify the period over which
291 securitized utility tariff costs and financing costs may be
292 recovered;

293 b. A finding that the proposed issuance of securitized
294 utility tariff bonds and the imposition and collection of a
295 securitized utility tariff charge are just and reasonable
296 and are expected to provide quantifiable benefits to
297 customers as compared to the costs to recover the
298 securitized utility tariff costs that would have been
299 incurred absent the issuance of securitized utility tariff
300 bonds;

301 c. A finding that the structuring and pricing of the
302 securitized utility tariff bonds are reasonably expected to
303 result in the lowest securitized utility tariff charges
304 consistent with market conditions at the time the

305 securitized utility tariff bonds are priced and the terms of
306 the financing order;

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

320 e. A formula-based true-up mechanism for making, at
321 least annually, expeditious periodic adjustments in the
322 securitized utility tariff charges that customers are
323 required to pay pursuant to the financing order and for
324 making any adjustments that are necessary to correct for any
325 overcollection or undercollection of the charges or to
326 otherwise ensure the timely payment of securitized utility
327 tariff bonds and financing costs and other required amounts
328 and charges payable in connection with the securitized
329 utility tariff bonds;

330 f. The securitized utility tariff property that is, or
331 shall be, created in favor of an electrical corporation or
332 its successors or assignees and that shall be used to pay or
333 secure securitized utility tariff bonds and all financing
334 costs;

335 g. The degree of flexibility to be afforded to the
336 electrical corporation in establishing the terms and
337 conditions of the securitized utility tariff bonds,

including, but not limited to, repayment schedules, expected interest rates, and other financing costs;

h. How securitized utility tariff charges will be allocated among retail customer classes. The initial allocation shall remain in effect until the electrical corporation completes a general rate proceeding, and once the commission's order from that general 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 electrical corporation's most recent general rate proceeding;

i. 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 electrical corporation determines the resulting initial securitized utility tariff charge 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;

j. A method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property, determining 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;

k. A statement specifying a future ratemaking 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 electrical corporation or assignee provided
that any such reconciliation shall not affect the amount of
securitized utility tariff bonds or the associated
securitized utility tariff charges paid by customers;

1. A procedure that shall allow the electrical
corporation to earn a return, at the cost of capital
authorized from time to time by the commission in the
electrical corporation's rate proceedings, on any moneys
advanced by the electrical corporation 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;

m. In a financing order granting authorization to
securitize energy transition costs or in a financing order
granting authorization to securitize qualified extraordinary
costs that include retired or abandoned facility costs, 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, or in connection with retired
or abandoned facilities included in qualified extraordinary
costs. The accumulated deferred income taxes, including
excess deferred income taxes, shall be excluded from rate
base in future general rate cases and the net tax benefits
relating to amounts that will be recovered through the
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;

n. An outside date, which shall not be earlier than
one year after the date 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

o. Include any other conditions that the commission
considers appropriate and that are authorized by this
section.

(c) A financing order issued to an electrical
corporation may provide that creation of the electrical
corporation's securitized utility tariff property is
conditioned upon, and simultaneous with, 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.

(d) If the commission issues a financing order, the
electrical corporation shall file with the commission at
least annually a petition or a letter applying the formula-
based true-up mechanism and, based on estimates of
consumption for each rate class and other mathematical
factors, requesting administrative approval to make the
applicable adjustments. The review of the filing shall be
limited to determining whether there are any mathematical or
clerical errors in the application of the formula-based true-
up mechanism relating to the appropriate amount of any
overcollection or undercollection of securitized utility
tariff charges and the amount of an adjustment. The
adjustments shall ensure the recovery of revenues sufficient

437 to provide for the payment of principal, interest,
438 acquisition, defeasance, financing costs, or redemption
439 premium and other fees, costs, and charges in respect of
440 securitized utility tariff bonds approved under the
441 financing order. Within thirty days after receiving an
442 electrical corporation's request pursuant to this paragraph,
443 the commission shall either approve the request or inform
444 the electrical corporation of any mathematical or clerical
445 errors in its calculation. If the commission informs the
446 electrical corporation of mathematical or clerical errors in
447 its calculation, the electrical corporation may correct its
448 error and refile its request. The time frames previously
449 described in this paragraph shall apply to a refiled request.

450 a. At the time of any transfer of securitized utility
451 tariff property to an assignee or the issuance of
452 securitized utility tariff bonds authorized thereby,
453 whichever is earlier, a financing order is irrevocable and,
454 except for changes made pursuant to the formula-based true-
455 up mechanism authorized in this section, the commission may
456 not amend, modify, or terminate the financing order by any
457 subsequent action or reduce, impair, postpone, terminate, or
458 otherwise adjust securitized utility tariff charges approved
459 in the financing order. After the issuance of a financing
460 order, the electrical corporation retains sole discretion
461 regarding whether to assign, sell, or otherwise transfer
462 securitized utility tariff property or to cause securitized
463 utility tariff bonds to be issued, including the right to
464 defer or postpone such assignment, sale, transfer, or
465 issuance.

466 b. The commission, in a financing order and subject to
467 the issuance advice letter process under subparagraph c of
468 this paragraph, shall afford the electrical corporation
469 flexibility in establishing the terms and conditions for the

470 securitized utility tariff bonds to accommodate changes in
471 market conditions, including repayment schedules, interest
472 rates, financing costs, collateral requirements, required
473 debt service and other reserves and the ability of the
474 electrical corporation, at its option, to effect a series of
475 issuances of securitized utility tariff bonds and correlated
476 assignments, sales, pledges, or other transfers of
477 securitized utility tariff property. Any changes made under
478 this subparagraph to terms and conditions for the
479 securitized utility tariff bonds shall be in conformance
480 with the financing order.

481 c. As the actual structure and pricing of the
482 securitized utility tariff bonds will be unknown at the time
483 the financing order is issued, the electrical corporation
484 that intends to cause the issuance of such bonds shall
485 provide to the commission, prior to the issuance of each
486 series of bonds, an issuance advice letter following the
487 determination of the final terms of such series of bonds no
488 later than one day after the pricing of the securitized
489 utility tariff bonds. The commission shall have the
490 authority to designate a representative from commission
491 staff, who may be advised by a financial adviser contracted
492 with the commission, to observe all facets of the process
493 undertaken by the electrical corporation to place the
494 securitized utility tariff bonds to market so the
495 commission's representative can be prepared, if requested,
496 to provide the commission with an opinion on the
497 reasonableness of the pricing, terms, and conditions of the
498 securitized utility tariff bonds on an expedited basis. The
499 form of such issuance advice letter shall be included in the
500 financing order and shall indicate the final structure of
501 the securitized utility tariff bonds and provide the best
502 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 electrical corporation 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.

(4) (a) In performing the responsibilities of this section in connection with the issuance of a financing order, the commission shall undertake due diligence as it deems appropriate prior to the issuance of the financing order pursuant to which the commission may request additional information from the electrical corporation and may engage a financial advisor and counsel as the commission deems necessary. Any financial advisor or counsel engaged by the commission shall have a fiduciary duty with respect to the proposed issuance of securitized utility bonds solely to the commission. 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.

(b) If an electrical corporation's petition 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 advisor and counsel on behalf of the commission shall be paid by the petitioning electrical

corporation and shall be eligible for full recovery,
including carrying costs, in the electrical corporation's
future rates.

(5) At the request of an electrical corporation, 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.

(6) (a) 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.

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

3. (1) The commission may not, in exercising its
powers and carrying out its duties regarding any matter
within its authority, consider the securitized utility
tariff bonds issued pursuant to a financing order to be the
debt of the electrical corporation other than for federal
and state income tax purposes, consider the securitized
utility tariff charges paid under the financing order to be

569 the revenue of the electrical corporation for any purpose,
570 consider the securitized utility tariff costs or financing
571 costs specified in the financing order to be the costs of
572 the electrical corporation, nor may the commission determine
573 any action taken by an electrical corporation which is
574 consistent with the financing order to be unjust or
575 unreasonable, and section 386.300 shall not apply to the
576 issuance of securitized utility tariff bonds.

577 (2) Securitized utility tariff charges shall not be
578 utilized or accounted for in determining the electrical
579 corporation's average overall rate, as defined in section
580 393.1655 and as used to determine the maximum retail rate
581 impact limitations provided for by subsections 3 and 4 of
582 section 393.1655.

583 (3) No electrical corporation is required to file a
584 petition for a financing order under this section or
585 otherwise utilize this section. An electrical corporation's
586 decision not to file a petition for a financing order under
587 this section or otherwise utilize this section shall not be
588 admissible in any commission proceeding nor shall it be
589 otherwise utilized or relied on by the commission in any
590 proceeding respecting the electrical corporation's rates or
591 its accounting, including, without limitation, any general
592 rate proceeding, fuel adjustment clause docket, or
593 proceedings relating to accounting authority, whether
594 initiated by the electrical corporation or otherwise. The
595 commission may not order or otherwise directly or indirectly
596 require an electrical corporation to use securitized utility
597 tariff bonds to recover securitized utility tariff costs or
598 to finance any project, addition, plant, facility,
599 extension, capital improvement, equipment, or any other
600 expenditure. After the issuance of a financing order, the
601 electrical corporation retains sole discretion regarding

602 whether to cause the securitized utility tariff bonds to be
603 issued, including the right to defer or postpone such sale,
604 assignment, transfer, or issuance. Nothing shall prevent
605 the electrical corporation from abandoning the issuance of
606 securitized utility tariff bonds under the financing order
607 by filing with the commission a statement of abandonment and
608 the reasons therefor; provided, that the electrical
609 corporation's abandonment decision shall not be deemed
610 imprudent because of the potential availability of
611 securitized utility tariff bond financing.

612 (4) The commission may not refuse to allow an
613 electrical corporation to recover securitized utility tariff
614 costs in an otherwise permissible fashion, or refuse or
615 condition authorization or approval of the issuance and sale
616 by an electrical corporation of securities or the assumption
617 by the electrical corporation of liabilities or obligations,
618 because of the potential availability of securitized utility
619 tariff bond financing.

620 (5) The commission may not, directly or indirectly,
621 utilize or consider the debt reflected by the securitized
622 utility tariff bonds in establishing the electrical
623 corporation's capital structure used to determine any
624 regulatory matter, including but not limited to the
625 electrical corporation's revenue requirement used to set its
626 rates.

627 (6) The commission may not, directly or indirectly,
628 consider the existence of securitized utility tariff bonds
629 or the potential use of securitized utility tariff bond
630 financing proceeds in determining the electrical
631 corporation's authorized rate of return used to determine
632 the electrical corporation's revenue requirement used to set
633 its rates.

634 4. The electric bills of an electrical corporation
635 that has obtained a financing order and caused securitized
636 utility tariff bonds to be issued shall comply with the
637 provisions of this subsection; however, the failure of an
638 electrical corporation to comply with this subsection does
639 not invalidate, impair, or affect any financing order,
640 securitized utility tariff property, securitized utility
641 tariff charge, or securitized utility tariff bonds. The
642 electrical corporation shall do the following:

643 (1) Explicitly reflect that a portion of the charges
644 on such bill represents securitized utility tariff charges
645 approved in a financing order issued to the electrical
646 corporation and, if the securitized utility tariff property
647 has been transferred to an assignee, shall include a
648 statement to the effect that the assignee is the owner of
649 the rights to securitized utility tariff charges and that
650 the electrical corporation or other entity, if applicable,
651 is acting as a collection agent or servicer for the
652 assignee. The tariff applicable to customers shall indicate
653 the securitized utility tariff charge and the ownership of
654 the charge;

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

658 5. (1) (a) All securitized utility tariff property
659 that is specified in a financing order constitutes an
660 existing, present intangible property right or interest
661 therein, notwithstanding that the imposition and collection
662 of securitized utility tariff charges depends on the
663 electrical corporation, to which the financing order is
664 issued, performing its servicing functions relating to the
665 collection of securitized utility tariff charges and on
666 future electricity consumption. The property exists:

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

670 b. Notwithstanding the fact that the value or amount
671 of the property is dependent on the future provision of
672 service to customers by the electrical corporation or its
673 successors or assignees and the future consumption of
674 electricity by customers.

675 (b) Securitized utility tariff property specified in a
676 financing order exists until securitized utility tariff
677 bonds issued pursuant to the financing order are paid in
678 full and all financing costs and other costs of such
679 securitized utility tariff bonds have been recovered in full.

680 (c) All or any portion of securitized utility tariff
681 property specified in a financing order issued to an
682 electrical corporation may be transferred, sold, conveyed,
683 or assigned to a successor or assignee that is wholly owned,
684 directly or indirectly, by the electrical corporation and
685 created for the limited purpose of acquiring, owning, or
686 administering securitized utility tariff property or issuing
687 securitized utility tariff bonds under the financing order.
688 All or any portion of securitized utility tariff property
689 may be pledged to secure securitized utility tariff bonds
690 issued pursuant to the financing order, amounts payable to
691 financing parties and to counterparties under any ancillary
692 agreements, and other financing costs. Any transfer, sale,
693 conveyance, assignment, grant of a security interest in or
694 pledge of securitized utility tariff property by an
695 electrical corporation, or an affiliate of the electrical
696 corporation, to an assignee, to the extent previously
697 authorized in a financing order, does not require the prior
698 consent and approval of the commission.

699 (d) If an electrical corporation defaults on any
700 required remittance of securitized utility tariff charges
701 arising from securitized utility tariff property specified
702 in a financing order, a court, upon application by an
703 interested party, and without limiting any other remedies
704 available to the applying party, shall order the
705 sequestration and payment of the revenues arising from the
706 securitized utility tariff property to the financing parties
707 or their assignees. Any such financing order remains in
708 full force and effect notwithstanding any reorganization,
709 bankruptcy, or other insolvency proceedings with respect to
710 the electrical corporation or its successors or assignees.

711 (e) The interest of a transferee, purchaser, acquirer,
712 assignee, or pledgee in securitized utility tariff property
713 specified in a financing order issued to an electrical
714 corporation, and in the revenue and collections arising from
715 that property, is not subject to setoff, counterclaim,
716 surcharge, or defense by the electrical corporation or any
717 other person or in connection with the reorganization,
718 bankruptcy, or other insolvency of the electrical
719 corporation or any other entity.

720 (f) Any successor to an electrical corporation,
721 whether pursuant to any reorganization, bankruptcy, or other
722 insolvency proceeding or whether pursuant to any merger or
723 acquisition, sale, or other business combination, or
724 transfer by operation of law, as a result of electrical
725 corporation restructuring or otherwise, shall perform and
726 satisfy all obligations of, and have the same rights under a
727 financing order as, the electrical corporation under the
728 financing order in the same manner and to the same extent as
729 the electrical corporation, including collecting and paying
730 to the person entitled to receive the revenues, collections,
731 payments, or proceeds of the securitized utility tariff

property. Nothing in this section is intended 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 electrical corporation other than the securitized utility tariff property as specified in the financing order and any rights under any ancillary agreement.

(2) (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 not by the provisions of the code, except as otherwise provided in this section.

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

a. The financing order is issued;

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

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

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

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 this paragraph without any physical delivery of collateral or other act.

765 (c) Upon the filing of a financing statement with the
766 office of the secretary of state as provided in this
767 section, a security interest in securitized utility tariff
768 property shall be perfected against all parties having
769 claims of any kind in tort, contract, or otherwise against
770 the person granting the security interest, and regardless of
771 whether the parties have notice of the security interest.
772 Without limiting the foregoing, upon such filing a security
773 interest in securitized utility tariff property shall be
774 perfected against all claims of lien creditors, and shall
775 have priority over all competing security interests and
776 other claims other than any security interest previously
777 perfected in accordance with this section.

778 (d) The priority of a security interest in securitized
779 utility tariff property is not affected by the commingling
780 of securitized utility tariff charges with other amounts.
781 Any pledgee or secured party shall have a perfected security
782 interest in the amount of all securitized utility tariff
783 charges that are deposited in any cash or deposit account of
784 the qualifying electrical corporation in which securitized
785 utility tariff charges have been commingled with other funds
786 and any other security interest that may apply to those
787 funds shall be terminated when they are transferred to a
788 segregated account for the assignee or a financing party.

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

793 (f) If a default occurs under the securitized utility
794 tariff bonds that are secured by a security interest in
795 securitized utility tariff property, the financing parties
796 or their representatives may exercise the rights and
797 remedies available to a secured party under the code,

798 including the rights and remedies available under part 6 of
799 article 9 of the code. The commission may also order
800 amounts arising from securitized utility tariff charges be
801 transferred to a separate account for the financing parties'
802 benefit, to which their lien and security interest shall
803 apply. On application by or on behalf of the financing
804 parties, the circuit court for the county or city in which
805 the electrical corporation's headquarters is located shall
806 order the sequestration and payment to them of revenues
807 arising from the securitized utility tariff charges.

808 (3) (a) Any sale, assignment, or other transfer of
809 securitized utility tariff property shall be an absolute
810 transfer and true sale of, and not a pledge of or secured
811 transaction relating to, the seller's right, title, and
812 interest in, to, and under the securitized utility tariff
813 property if the documents governing the transaction
814 expressly state that the transaction is a sale or other
815 absolute transfer other than for federal and state income
816 tax purposes. For all purposes other than federal and state
817 income tax purposes, the parties' characterization of a
818 transaction as a sale of an interest in securitized utility
819 tariff property shall be conclusive that the transaction is
820 a true sale and that ownership has passed to the party
821 characterized as the purchaser, regardless of whether the
822 purchaser has possession of any documents evidencing or
823 pertaining to the interest. A sale or similar outright
824 transfer of an interest in securitized utility tariff
825 property may occur only when all of the following have
826 occurred:

827 a. The financing order creating the securitized
828 utility tariff property has become effective;

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

832 c. Value is received for the securitized utility
833 tariff property.

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

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

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

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

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

855 d. Any indemnification rights, obligations, or
856 repurchase rights made or provided by the seller;

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

859 f. The transferor acting as the servicer of the
860 securitized utility tariff charges or the existence of any
861 contract that authorizes or requires the electrical

862 corporation, to the extent that any interest in securitized
863 utility tariff property is sold or assigned, to contract
864 with the assignee or any financing party that it will
865 continue to operate its system to provide service to its
866 customers, will collect amounts in respect of the
867 securitized utility tariff charges for the benefit and
868 account of such assignee or financing party, and will
869 account for and remit such amounts to or for the account of
870 such assignee or financing party;

871 g. The treatment of the sale, conveyance, assignment,
872 or other transfer for tax, financial reporting, or other
873 purposes;

874 h. The granting or providing to bondholders a
875 preferred right to the securitized utility tariff property
876 or credit enhancement by the electrical corporation or its
877 affiliates with respect to such securitized utility tariff
878 bonds;

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

881 (c) Any right that an electrical corporation has in
882 the securitized utility tariff property before its pledge,
883 sale, or transfer or any other right created under this
884 section or created in the financing order and assignable
885 under this section or assignable pursuant to a financing
886 order is property in the form of a contract right or a chose
887 in action. Transfer of an interest in securitized utility
888 tariff property to an assignee is enforceable only upon the
889 later of:

890 a. The issuance of a financing order;

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

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

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

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

906 (d) The priority of a transfer perfected under this
907 section is not impaired by any later modification of the
908 financing order or securitized utility tariff property or by
909 the commingling of funds arising from securitized utility
910 tariff property with other funds. Any other security
911 interest that may apply to those funds, other than a
912 security interest perfected under this section, is
913 terminated when they are transferred to a segregated account
914 for the assignee or a financing party. If securitized
915 utility tariff property has been transferred to an assignee
916 or financing party, any proceeds of that property shall be
917 held in trust for the assignee or financing party.

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

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

925 b. A perfected interest or right of an assignee has
926 priority over a conflicting unperfected interest or right of
927 an assignee;

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

931 6. The description of securitized utility tariff
932 property being transferred to an assignee in any sale
933 agreement, purchase agreement, or other transfer agreement,
934 granted or pledged to a pledgee in any security agreement,
935 pledge agreement, or other security document, or indicated
936 in any financing statement is only sufficient if such
937 description or indication refers to the financing order that
938 created the securitized utility tariff property and states
939 that the agreement or financing statement covers all or part
940 of the property described in the financing order. This
941 section applies to all purported transfers of, and all
942 purported grants or liens or security interests in,
943 securitized utility tariff property, regardless of whether
944 the related sale agreement, purchase agreement, other
945 transfer agreement, security agreement, pledge agreement, or
946 other security document was entered into, or any financing
947 statement was filed.

948 7. The secretary of state shall maintain any financing
949 statement filed to perfect a sale or other transfer of
950 securitized utility tariff property and any security
951 interest in securitized utility tariff property under this
952 section in the same manner that the secretary of state
953 maintains financing statements filed under the code to
954 perfect a security interest in collateral owned by a
955 transmitting utility. Except as otherwise provided in this
956 section, all financing statements filed pursuant to this
957 section shall be governed by the provisions regarding

958 financing statements and the filing thereof under the code,
959 including part 5 of article 9 of the code. A security
960 interest in securitized utility tariff property may be
961 perfected only by the filing of a financing statement in
962 accordance with this section, and no other method of
963 perfection shall be effective. Notwithstanding any
964 provision of the code to the contrary, a financing statement
965 filed pursuant to this section is effective until a
966 termination statement is filed under the code, and no
967 continuation statement need be filed to maintain its
968 effectiveness. A financing statement filed pursuant to this
969 section may indicate that the debtor is a transmitting
970 utility, and without regard to whether the debtor is an
971 electrical corporation, an assignee or otherwise qualifies
972 as a transmitting utility under the code, but the failure to
973 make such indication shall not impair the duration and
974 effectiveness of the financing statement.

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

980 9. Neither the state nor its political subdivisions
981 are liable on any securitized utility tariff bonds, and the
982 bonds are not a debt or a general obligation of the state or
983 any of its political subdivisions, agencies, or
984 instrumentalities, nor are they special obligations or
985 indebtedness of the state or any agency or political
986 subdivision. An issue of securitized utility tariff bonds
987 does not, directly, indirectly, or contingently, obligate
988 the state or any agency, political subdivision, or
989 instrumentality of the state to levy any tax or make any
990 appropriation for payment of the securitized utility tariff

bonds, other than in their capacity as consumers of
electricity. 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 Missouri is pledged to the payment of
the principal of, or interest on, this bond."

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

(1) 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, the
commission's technical advisory and other staff, or
employees of the office of the public counsel;

(2) 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;

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

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

11. (1) The state and its agencies, including the
commission, pledge and agree with bondholders, the owners of
the securitized utility tariff property, and other financing
parties that the state and its agencies will not take any
action listed in this subdivision. This subdivision 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 electrical corporation. The prohibited actions are as follows:

(a) Alter the provisions of this section, which 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 make the securitized utility tariff charges imposed by a financing order irrevocable, binding, or nonbypassable charges for all existing and future retail customers of the electrical corporation except its existing special contract customers;

(b) Take or permit 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;

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

(d) Except for changes made pursuant to the formula-based true-up mechanism authorized under this section, reduce, alter, or impair 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.

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

1056 12. An assignee or financing party is not an
1057 electrical corporation or person providing electric service
1058 by virtue of engaging in the transactions described in this
1059 section.

1060 13. If there is a conflict between this section and
1061 any other law regarding the attachment, assignment, or
1062 perfection, or the effect of perfection, or priority of,
1063 assignment or transfer of, or security interest in
1064 securitized utility tariff property, this section shall
1065 govern.

1066 14. If any provision of this section is held invalid
1067 or is invalidated, superseded, replaced, repealed, or
1068 expires for any reason, that occurrence does not affect the
1069 validity of any action allowed under this section which is
1070 taken by an electrical corporation, an assignee, a financing
1071 party, a collection agent, or a party to an ancillary
1072 agreement; and any such action remains in full force and
1073 effect with respect to all securitized utility tariff bonds
1074 issued or authorized in a financing order issued under this
1075 section before the date that such provision is held invalid
1076 or is invalidated, superseded, replaced, or repealed, or
1077 expires for any reason.

393.1705. 1. For purposes of this section, the term
2 "replacement resources" shall mean:

3 (1) Renewable generation facilities which produce
4 electric energy from wind, solar thermal sources,
5 photovoltaic cells and panels, dedicated crops grown for
6 energy production, cellulosic agricultural residues, plant
7 residues, methane from landfills, from agricultural
8 operations, or from wastewater treatment, thermal
9 depolymerization or pyrolysis for converting waste material
10 to energy, clean and untreated wood such as pallets,
11 hydropower, not including pumped storage, that does not

12 require a new diversion or impoundment of water and that has
13 a nameplate rating of ten megawatts or less, and fuel cells
14 using hydrogen produced by one of the above-named
15 replacement sources;

16 (2) Generation facilities which produce electric
17 energy from natural gas that enable the electrical
18 corporation to:

19 (a) Provide electric energy when renewable generation
20 facilities and energy storage facilities are insufficient to
21 meet the needs of the electrical corporation's system;

22 (b) Meet requirements of the electrical corporation's
23 regional transmission organization; or

24 (c) Serve the objectives of both paragraphs (a) and
25 (b) of this subdivision;

26 (3) Energy storage facilities that enable the
27 electrical corporation to:

28 (a) Provide electric energy when renewable generation
29 facilities are not generating electric energy in sufficient
30 quantities to meet the needs of the electrical corporation's
31 system;

32 (b) Meet requirements of the electrical corporation's
33 regional transmission organization; or

34 (c) Serve the objectives of both paragraphs (a) and
35 (b) of this subdivision; and

36 (4) Transmission facilities that enable the delivery
37 of electric energy from renewable generation facilities or
38 energy storage facilities, including but not limited to,
39 interconnection, network upgrades, voltage and reactive
40 power support, and transmission facilities needed to
41 maintain reliability as a result of the retirement of
42 generation facilities.

43 2. If requested by an electrical corporation in a
44 petition filed concurrently with a petition filed under

subsection 2 of section 393.1700 to recover securitized utility tariff costs and notwithstanding any other provision of chapter 386 or 393 to the contrary, including section 393.170 which section shall not apply to the construction of replacement resources as defined in subsection 1 of this section:

(1) Unless the commission has, prior to August 28, 2021, issued an order or orders acknowledging retirement by an electrical corporation of specific electric generating facilities and an order or orders authorizing construction by such electrical corporation of generating facilities in place of such retired electric generating facilities, the commission shall approve investment in replacement resources by the electrical corporation of an amount that is approximately equal to the undepreciated investment in the electric generating facilities covered by such petition to acquire or build an existing or new renewable energy resource to replace the retired or abandoned or to be retired or abandoned unit. There is no requirement that the replacement resource's capacity or energy production match the energy or capacity production of the retired or abandoned unit. Such approval shall constitute an affirmative and binding determination by the commission, to be applied in all subsequent proceedings respecting the rates of the electrical corporation, that such investment is prudent and reasonable, that the replacement resource is necessary for the electrical corporation's provision of electric service to its customers, and that such investment shall be reflected in the revenue requirement used to set the electrical corporation's base rates, subject only to the commission's authority to determine that the electrical corporation did not manage or execute the project in a reasonable and prudent manner in some respect and its

78 authority to disallow for ratemaking purposes only that
79 portion of the investment that would not have been incurred
80 had the unreasonable or imprudent management or execution of
81 the project not occurred; and

82 (2) The commission shall create a deferral mechanism
83 by which the electrical corporation shall defer, to a
84 regulatory asset or regulatory liability as appropriate, the
85 changes in the electrical corporation's revenue requirement
86 used to last set its base rates as specified in this
87 subdivision. Such changes shall be deferred during the
88 period starting on the date of retirement or abandonment of
89 the subject unit and ending when the electrical corporation
90 is the subject of the petition and base rates are changed as
91 the result of a general rate proceeding where the rate base
92 cutoff date in that general rate proceeding occurs on or
93 after the retirement or abandonment. For purposes of this
94 subdivision, the changes in the electrical corporation's
95 revenue requirement that shall be deferred shall only
96 consist of:

97 (a) Changes in depreciation expense associated with
98 the retired or abandoned unit;

99 (b) Changes in labor and benefit costs for employees
100 or contractors no longer employed or retained by the
101 electrical corporation who formerly worked at the retired or
102 abandoned unit, net of severance and relocation costs of the
103 electrical corporation paid to such employees or contractors;

104 (c) Changes in nonlabor, nonfuel operations, and
105 maintenance costs caused by the retirement of the unit;

106 (d) Depreciation expense on the replacement resources
107 starting with the date it is recorded to plant in-service on
108 the electrical corporation's books;

109 (e) Labor and benefits costs for employees or
110 contractors who work at the replacement resources; and

111 (f) Nonlabor, nonfuel operations, and maintenance
112 costs of the replacement resources.

113 The base against which changes under paragraphs (a), (b),
114 and (c) of this subdivision shall be the values of each such
115 item used to set the electrical corporation's base electric
116 rates in its last general rate proceeding concluded prior to
117 the time the deferrals are made, provided, if the docketed
118 record in such general rate proceeding does not specify one
119 or more necessary revenue requirement parameters to
120 establish the base for an item because of a "black box"
121 settlement or otherwise, the commission shall, in the docket
122 created by a petition filed under this section and based on
123 the docketed record in such prior general rate proceeding,
124 establish the missing parameters, which shall then be used
125 to accomplish the deferrals. The base with respect to
126 paragraphs (d), (e), and (f) of this subdivision shall be
127 zero.

128 (3) The commission shall also create a deferral
129 mechanism by which the electrical corporation shall defer to
130 a regulatory asset the changes in the electrical
131 corporation's revenue requirement last used to set its base
132 rates as specified in this subdivision. Such changes shall
133 be deferred during the period beginning on the date
134 deferrals cease under subdivision (2) of this subsection and
135 ending when the electrical corporation's base rates are next
136 changed as a result of a general rate proceeding. For
137 purposes of this subdivision, such changes in the electrical
138 corporation's revenue requirement that shall be deferred
139 shall only consist of:

140 (a) Return on the electrical corporation's
141 undepreciated investment in the unit that was retired or
142 abandoned at the electrical corporation's weighted average
143 cost of capital, plus applicable federal, state, and local

income or excise taxes, used to establish the electrical corporation's revenue requirement last used to set its base rates;

(b) Depreciation expense on the replacement resources starting with the date the replacement resource is recorded to plant in-service on the electrical corporation's books;

(c) Increase in-labor and benefits costs for employees or contractors who work at the replacement resources; and

(d) Increase in nonlabor, nonfuel operations, and maintenance costs of the replacement resources.

Notwithstanding the foregoing provisions of this subdivision, deferrals to the regulatory asset created by this subdivision shall cease at the earlier of the date the electrical corporation's base rates are first changed after the replacement resource is recorded to plant in service on the electrical corporation's books where the rate base cutoff date in that general rate proceeding occurred on or after the retirement or abandonment, or the effective date of rates from a base rate case that shall be filed no later than one year after the unit was retired or abandoned. If there is more than one replacement resource for the retired or abandoned plant and if one or more such replacement resource is placed in service prior to the rate base cutoff date in the general rate proceeding described in subdivision (2) of this subsection, the deferrals called for under this subdivision shall be reduced as needed to reflect that event. The weighted average cost of capital to be deferred under paragraph (a) of this subdivision shall be the value used to set the electrical corporation's base electric rates in its last general rate proceeding concluded prior to the time the deferrals are made, provided, if the docketed record in such general rate proceeding does not specify one or more necessary revenue requirement parameters to

177 establish the base for an item because of a "black box"
178 settlement or otherwise, the commission shall, in the docket
179 created by a petition filed under this section and based on
180 the docketed record in such prior general rate proceeding,
181 establish the missing parameters, which shall then be used
182 to accomplish the deferrals. The base with respect to
183 paragraphs (b), (c), and (d) of this subdivision shall be
184 zero.

185 (4) It is the intention of this subsection to the
186 maximum extent practicable that electrical corporation
187 earnings shall not be materially reduced or increased on
188 account of the retirement or abandonment of the unit during
189 the interval between when the unit is retired or abandoned
190 and the date when the electrical corporation's base rates
191 are changed to reflect the investment in a replacement
192 resource, subject to the requirement that deferrals under
193 subdivision (3) of this subsection end no later than the
194 date base rates are reset in a general rate proceeding filed
195 no later than one year after the unit was retired or
196 abandoned.

197 (5) Notwithstanding the provisions of section 393.1400
198 to the contrary, a replacement resource shall not constitute
199 "qualifying electric plant" for purposes of section
200 393.1400, nor shall it constitute a renewable energy
201 resource under section 393.1030, during the period when a
202 deferral is occurring under subdivision (2) or (3) of this
203 subsection. In addition, and notwithstanding the provisions
204 of section 393.1400 to the contrary, deferrals required by
205 this section relating to the electrical corporation's
206 undepreciated investment in the retired or abandoned unit
207 shall not constitute a change in accumulated depreciation
208 when determining the return deferred on qualifying electric
209 plant under section 393.1400.

210 (6) Parts of regulatory asset or liability balances
211 created under this section that are not yet being recovered
212 or returned through rates shall include carrying costs at
213 the electrical corporation's weighted average cost of
214 capital last used to set its base electric service rates or,
215 if such cost of capital was not specified for the revenue
216 requirement last used to set such electric service rates at
217 the weighted average cost of capital determined by the
218 commission under subdivision (3) of this subsection, in each
219 case plus applicable federal, state, and local income or
220 excise taxes. All regulatory asset or liability balances
221 from deferrals under this subsection shall be recovered in
222 base rates over a period equal to the remaining useful life
223 of the replacement resource.

224 (7) In each general rate proceeding concluded after a
225 deferral commences under subdivision (2) or (3) of this
226 subsection, the regulatory asset or liability balances
227 arising from such deferrals, as of the rate base cutoff
228 date, shall be included in the electrical corporation's rate
229 base without any offset, reduction, or adjustment based upon
230 consideration of any other factor, other than to reflect any
231 prudence disallowances ordered by the commission, with the
232 regulatory asset balances arising from such deferrals that
233 occur after the rate base cutoff date to be included in rate
234 base in the next general rate proceeding. The provisions of
235 this section shall not be construed to affect existing law
236 respecting burdens of production and persuasion in general
237 rate proceedings.

238 3. Proceedings on a petition submitted pursuant to
239 this section begin with the filing of a petition by an
240 electrical corporation under this section that is filed
241 concurrently with a petition submitted under section
242 393.1700, and shall be disposed of in accordance with the

requirements of chapters 386 and 393 and the rules of the commission, except as follows:

(1) Within fourteen days after the date the petition is filed, the commission shall establish a procedural schedule that permits a commission decision no later than one hundred eighty-five days after the date the petition is filed. Such procedural schedule shall contain the same milestones and requirements as the procedural schedule adopted in a proceeding seeking approval of a financing order under section 393.1700 and shall run concurrently therewith;

(2) No later than one hundred eighty-five days after the date the petition is filed, the commission shall issue an order approving the petition or rejecting the petition. Any adversely affected party may seek judicial review in accordance with sections 386.500 and 386.510.

393.1715. 1. An electrical corporation may petition the commission for a determination of the ratemaking principles and treatment, as proposed by the electrical corporation, that will apply to the reflection in base rates of the electrical corporation's capital and noncapital costs associated with one or more of the electrical corporation's generating facilities. Without limiting the foregoing, such principles and treatment may also establish the retirement date and useful life parameters used to set depreciation rates for such facilities. Except as provided for in subsection 4 of this section, the ratemaking principles and treatment approved by the commission under this section for such facilities shall apply to the determination of the revenue requirement in each of the electrical corporation's post-determination general rate proceedings until such time as such facility is fully depreciated on the electrical corporation's books.

18 2. If the commission fails to issue a determination
19 within one hundred eighty-five days that a petition for
20 determination of ratemaking principles and treatment is
21 filed, the ratemaking principles and treatment proposed by
22 the petitioning electrical corporation shall be deemed to
23 have been approved by the commission.

24 3. Subject to the provisions of subsection 4 of this
25 section, ratemaking principles and treatment approved by the
26 commission, or deemed to have been approved under subsection
27 2 of this section, shall be binding for ratemaking purposes.

28 4. (1) An electrical corporation with ratemaking
29 principles and treatment approved by the commission, or
30 deemed to have been approved under subsection 2 of this
31 section, shall monitor the major factors and circumstances
32 relating to the facility to which such principles and
33 treatment apply. Such factors and circumstances include,
34 but are not limited to:

35 (a) Terrorist activity or an act of God;
36 (b) A significant change in federal or state tax laws;
37 (c) A significant change in federal utility laws or
38 regulations or a significant change in generally accepted
39 accounting principles;

40 (d) An unexpected, extended outage or shutdown of a
41 major generating unit, other than any major generating unit
42 shut down due to an extended outage at the time of the
43 approval of the ratemaking principles and treatment;

44 (e) A significant change in the cost or reliability of
45 power generation technologies;

46 (f) A significant change in fuel prices and wholesale
47 electric market conditions;

48 (g) A significant change in the cost or effectiveness
49 of emission control technologies;

50 (h) A significant change in the price of emission
51 allowances;

52 (i) A significant change in the electrical
53 corporation's load forecast;

54 (j) A significant change in capital market conditions;

55 (k) A significant change in the scope or effective
56 dates of environmental regulations; or

57 (l) A significant change in federal or state
58 environmental laws.

59 (2) If the electrical corporation determines that one
60 or more major factor or circumstance has changed in a manner
61 that warrants a change in the approved ratemaking principles
62 and treatment, then it shall file a notice in the docket in
63 which the approved ratemaking principles and treatment were
64 established within forty-five days of any such
65 determination. In its notification, the electrical
66 corporation shall:

67 (a) Explain and specify the changes it contends are
68 appropriate to the ratemaking principles and treatment and
69 the reasons for the proposed changes;

70 (b) Provide a description of the alternatives that it
71 evaluated and the process that it went through in developing
72 its proposed changes; and

73 (c) Provide detailed workpapers that support the
74 evaluation and the process whereby proposed changes were
75 developed.

76 (3) If a party has concerns regarding the proposed
77 changes, that party shall file a notice of its concerns
78 within thirty days of the electrical corporation's filing.
79 If the parties do not reach agreement on changes to the
80 ratemaking principles and treatment within ninety days of
81 the date the electrical corporation filed its notice,
82 whether the previously approved ratemaking and treatment

will be changed shall be determined by the commission. If a party to the docket in which the approved ratemaking principles and treatment were approved believes that one or more major factor or circumstance has changed in a manner that warrants a change in the approved ratemaking principles and treatment and if the electrical corporation does not agree the principles and treatment should be changed, such party shall file a notice in the docket in which the approved ratemaking principles and treatment were established within forty-five days of any such determination. In its notification, such party shall:

(a) Explain and specify the changes it contends are appropriate to the ratemaking principles and treatment and the reasons for the proposed changes;

(b) Provide a description of the alternatives that it evaluated and the process that it went through in developing its proposed changes; and

(c) Provide detailed workpapers that support the evaluation and the process whereby proposed changes were developed.

(4) If a party, including the electrical corporation, has concerns regarding the proposed changes, that party shall file a notice of its concerns within thirty days of the other party's filing. If the parties do not reach agreement on changes to the ratemaking principles and treatment within ninety days of the date the notice was filed, whether the previously approved ratemaking and treatment will be changed shall be determined by the commission.

5. A determination of ratemaking principles and treatment under this section does not preclude an electrical corporation from also petitioning the commission under either or both of sections 393.1700 and 393.1705, provided

116 that any costs to which such ratemaking principles and
117 treatment would have applied in the electrical corporation's
118 general rate proceedings which become funded by securitized
119 utility tariff bond proceeds from a securitized utility
120 tariff bond issued under section 393.1700 shall not
121 thereafter be reflected in the electrical corporation's base
122 rates.

123 6. The electrical corporation shall be permitted to
124 retain coal-fired generating assets in rate base and recover
125 costs associated with operating the coal-fired assets that
126 remain in service to provide greater certainty that
127 generating capacity will be available to provide essential
128 service to customers, including during extreme weather
129 events, and the commission shall not disallow any portion of
130 such cost recovery on the basis that such coal-fired
131 generating assets operate at a low capacity factor, or are
132 off-line and providing capacity only, during normal
133 operating conditions.

134 7. The commission may promulgate rules necessary to
135 implement the provisions of sections 393.1700 to 393.1715.
136 Any rule or portion of a rule, as that term is defined in
137 section 536.010, that is created under the authority
138 delegated in this section shall become effective only if it
139 complies with and is subject to all of the provisions of
140 chapter 536 and, if applicable, section 536.028. This
141 section and chapter 536 are nonseverable and if any of the
142 powers vested with the general assembly pursuant to chapter
143 536 to review, to delay the effective date, or to disapprove
144 and annul a rule are subsequently held unconstitutional,
145 then the grant of rulemaking authority and any rule proposed
146 or adopted after August 28, 2021, shall be invalid and void.

394.120. 1. No person shall become a member of a
2 cooperative unless such person shall agree to use electric

3 energy furnished by the cooperative when such electric
4 energy shall be available through its facilities. The
5 bylaws of a cooperative may provide that any person,
6 including an incorporator, shall cease to be a member
7 thereof if he or she shall fail or refuse to use electric
8 energy made available by the cooperative or if electric
9 energy shall not be made available to such person by the
10 cooperative within a specified time after such person shall
11 have become a member thereof. Membership in the cooperative
12 shall not be transferable, except as provided in the
13 bylaws. The bylaws may prescribe additional qualifications
14 and limitations in respect of membership.

15 2. An annual meeting of the members shall be held at
16 such time as shall be provided in the bylaws.

17 3. Special meetings of the members may be called by
18 the board of directors, by any three directors, by not less
19 than ten percent of the members, or by the president.

20 4. Meetings of members shall be held at such place as
21 may be provided in the bylaws. In the absence of any such
22 provisions, all meetings shall be held in the city or town
23 in which the principal office of the cooperative is located.

24 5. Except as herein otherwise provided, written or
25 printed notice stating the time and place of each meeting of
26 members and, in the case of a special meeting, the purpose
27 or purposes for which the meeting is called, shall be given
28 to each member, either personally or by mail, not less than
29 ten nor more than twenty-five days before the date of the
30 meeting.

31 6. Two percent of the first two thousand members and
32 one percent of the remaining members, present in person, or
33 if the bylaws so provide, participating electronically or by
34 mail, shall constitute a quorum for the transaction of
35 business at all meetings of the members, unless the bylaws

36 prescribe the presence of a greater percentage of the
37 members for a quorum. If less than a quorum is present at
38 any meeting, a majority of those present in person may
39 adjourn the meeting from time to time without further notice.

40 7. Each member shall be entitled to one vote on each
41 matter submitted to a vote at a meeting. Voting shall be in
42 person, but, if the bylaws so provide, may also be by proxy,
43 by electronic means, by mail, or any combination thereof.
44 If the bylaws provide for voting by proxy, by electronic
45 means, or by mail, they shall also prescribe the conditions
46 under which proxy, electronic, or mail voting shall be
47 exercised. In any event, no person shall vote as proxy for
48 more than two members at any meeting of the members.

49 8. Notwithstanding the provisions of subsections 2 and
50 7 of this section, the board of directors shall have the
51 power to set the time and place of the annual meeting and
52 also to provide for voting by proxy, electronic means, by
53 mail, or any combination thereof, and to prescribe the
54 conditions under which such voting shall be exercised. The
55 meeting requirement provided in this section may be
56 satisfied through virtual means. The provisions of this
57 subsection shall expire on August 28, 2022.

400.9-109. (a) Except as otherwise provided in
2 subsections (c) and (d), this article applies to:

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

6 (2) An agricultural lien;

7 (3) A sale of accounts, chattel paper, payment
8 intangibles, or promissory notes;

9 (4) A consignment;

10 (5) A security interest arising under section 400.2-
11 401, 400.2-505, 400.2-711(3) or 400.2A-508(5), as provided
12 in section 400.9-110; and

13 (6) A security interest arising under section 400.4-
14 210 or 400.5-118.

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

19 (c) This article does not apply to the extent that:

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

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

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

32 (4) The rights of a transferee beneficiary or
33 nominated person under a letter of credit are independent
34 and superior under section 400.5-114.

35 (d) This article does not apply to:

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

37 (2) A lien, other than an agricultural lien, given by
38 statute or other rule of law for services or materials, but
39 section 400.9-333 applies with respect to priority of the
40 lien;

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

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

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

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

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

55 (8) A transfer of an interest in or an assignment of a
56 claim under a policy of insurance, other than an assignment
57 by or to a health-care provider of a health-care-insurance
58 receivable and any subsequent assignment of the right to
59 payment, but sections 400.9-315 and 400.9-322 apply with
60 respect to proceeds and priorities in proceeds;

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

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

65 (A) Section 400.9-340 applies with respect to the
66 effectiveness of rights of recoupment or set-off against
67 deposit accounts; and

68 (B) Section 400.9-404 applies with respect to defenses
69 or claims of an account debtor;

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

73 (A) Liens on real property in sections 400.9-203 and
74 400.9-308;

75 (B) Fixtures in section 400.9-334;

76 (C) Fixture filings in sections 400.9-501, 400.9-502,
77 400.9-512, 400.9-516 and 400.9-519; and

78 (D) Security agreements covering personal and real
79 property in section 400.9-604;

80 (12) An assignment of a claim arising in tort, other
81 than a commercial tort claim, but sections 400.9-315 and
82 400.9-322 apply with respect to proceeds and priorities in
83 proceeds; [or]

84 (13) An assignment of a deposit account in a consumer
85 transaction, but sections 400.9-315 and 400.9-322 apply with
86 respect to proceeds and priorities in proceeds; [or]

87 (14) An assignment of a claim or right to receive
88 compensation for injuries or sickness as described in 26
89 U.S.C. Section 104(a)(1) or (2), as amended from time to
90 time; [or]

91 (15) An assignment of a claim or right to receive
92 benefits under a special needs trust as described in 42
93 U.S.C. Section 1396p(d)(4), as amended from time to time;
94 [or]

95 (16) A transfer by a government or governmental
96 subdivision or agency; or

97 (17) The creation, attachment, perfection, priority,
98 or enforcement of any security interest in, or the sale,
99 assignment, or other transfer of, any securitized utility
100 tariff property as defined in section 393.1700, or any
101 interest therein or any portion thereof, in each case except
102 as otherwise expressly provided in section 393.1700.