

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2 109, RSMo, are repealed and eight new sections enacted in lieu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 methods of assignment or allocation contained within
34 the National Association of Regulatory Utility Commissioners
35 1992 manual or subsequent manual.

36 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,

financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to securitized utility tariff property;

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

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

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

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

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

(a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;

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

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

52 (a) Interest and acquisition, defeasance, or
53 redemption premiums payable on securitized utility tariff
54 bonds;

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

60 (c) Any other cost related to issuing, supporting,
61 repaying, refunding, and servicing securitized utility
62 tariff bonds, including servicing fees, accounting and
63 auditing fees, trustee fees, legal fees, consulting fees,
64 structuring adviser fees, administrative fees, placement and
65 underwriting fees, independent director and manager fees,
66 capitalized interest, rating agency fees, stock exchange
67 listing and compliance fees, security registration fees,
68 filing fees, information technology programming costs, and
69 any other costs necessary to otherwise ensure the timely
70 payment of securitized utility tariff bonds or other amounts
71 or charges payable in connection with the bonds, including
72 costs related to obtaining the financing order;

73 (d) Any taxes and license fees or other fees imposed
74 on the revenues generated from the collection of the
75 securitized utility tariff charge or otherwise resulting
76 from the collection of securitized utility tariff charges,
77 in any such case whether paid, payable, or accrued;

78 (e) Any state and local taxes, franchise, gross
79 receipts, and other taxes or similar charges, including

commission assessment fees, whether paid, payable, or accrued;

(f) Any costs associated with performance of the commission's responsibilities under this section in connection with approving, approving subject to conditions, or rejecting a petition for a financing order, and in performing its duties in connection with the issuance advice letter process, including costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the commission and paid pursuant to this section;

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

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

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

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

(13) "Qualified extraordinary costs", costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to

those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events;

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

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

(16) "Securitized utility tariff charge", the amounts authorized by the commission to repay, finance, or refinance securitized utility tariff costs and financing costs and that are, except as otherwise provided for in this section, nonbypassable charges imposed on and part of all retail customer bills, collected by an electrical corporation or its successors or assignees, or a collection agent, in full, separate and apart from the electrical corporation's base rates, and paid by all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021, even if a retail customer elects to purchase electricity from an

alternative electricity supplier following a fundamental
change in regulation of public utilities in this state;

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

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

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

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

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

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

(a) A description of the electric generating facility
or facilities that the electrical corporation has retired or
abandoned, or proposes to retire or abandon, prior to the

179 date that all undepreciated investment relating thereto has
180 been recovered through rates and the reasons for undertaking
181 such early retirement or abandonment, or if the electrical
182 corporation is subject to a separate commission order or
183 proceeding relating to such retirement or abandonment as
184 contemplated by subdivision (2) of this subsection, and a
185 description of the order or other proceeding;

186 (b) The energy transition costs;

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

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

200 (e) An estimate of the securitized utility tariff
201 charges necessary to recover the securitized utility tariff
202 costs and financing costs and the period for recovery of
203 such costs;

204 (f) A comparison between the net present value of the
205 costs to customers that are estimated to result from the
206 issuance of securitized utility tariff bonds and the costs
207 that would result from the application of the traditional
208 method of financing and recovering the undepreciated
209 investment of facilities that may become securitized utility
210 tariff costs from customers. The comparison should
211 demonstrate that the issuance of securitized utility tariff

bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value 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 finance 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;

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

246 (d) An estimate of the securitized utility tariff
247 charges necessary to recover the qualified extraordinary
248 costs and financing costs and the period for recovery of
249 such costs;

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

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

268 (g) Direct testimony supporting the petition.

269 (3) (a) Proceedings on a petition submitted pursuant
270 to this subsection begin with the petition by an electrical
271 corporation and shall be disposed of in accordance with the
272 requirements of this section and the rules of the
273 commission, except as follows:

274 a. The commission shall establish a procedural
275 schedule that permits a commission decision no later than

two hundred fifteen days after the date the petition is filed;

b. No later than two hundred fifteen days after the date the petition is filed, the commission shall issue a financing order approving the petition, an order approving the petition subject to conditions, or an order rejecting the petition; provided, however, that the electrical corporation shall provide notice of intent to file a petition for a financing order to the commission no less than sixty days in advance of such filing;

c. Judicial review of a financing order may be had only in accordance with sections 386.500 and 386.510.

(b) In performing its responsibilities under this section in approving, approving subject to conditions, or rejecting a petition for a financing order, the commission may retain counsel, one or more financial advisors, or other consultants as it deems appropriate. Such outside counsel, advisor or advisors, or consultants shall owe a duty of loyalty solely to the commission and shall have no interest in the proposed securitized utility tariff bonds. The costs associated with any such engagements shall be paid by the petitioning corporation and shall be included as financed costs in the securitized utility tariff charge and shall not be an obligation of the state and shall be assigned solely to the subject transaction.

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

a. The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds and a finding that recovery of such costs is just and reasonable and in the public interest. The commission shall describe and estimate the amount of financing costs that may be

309 recovered through securitized utility tariff charges and
310 specify the period over which securitized utility tariff
311 costs and financing costs may be recovered;

312 b. A finding that the proposed issuance of securitized
313 utility tariff bonds and the imposition and collection of a
314 securitized utility tariff charge are just and reasonable
315 and in the public interest and are expected to provide
316 quantifiable net present value benefits to customers as
317 compared to recovery of the components of securitized
318 utility tariff costs that would have been incurred absent
319 the issuance of securitized utility tariff bonds.

320 Notwithstanding any provisions of this section to the
321 contrary, in considering whether to find the proposed
322 issuance of securitized utility tariff bonds and the
323 imposition and collection of a securitized utility tariff
324 charge are just and reasonable and in the public interest,
325 the commission may consider previous instances where it has
326 issued financing orders to the petitioning electrical
327 corporation and such electrical corporation has previously
328 issued securitized utility tariff bonds;

329 c. A finding that the proposed structuring and pricing
330 of the securitized utility tariff bonds are reasonably
331 expected to result in the lowest securitized utility tariff
332 charges consistent with market conditions at the time the
333 securitized utility tariff bonds are priced and the terms of
334 the financing order;

335 d. A requirement that, for so long as the securitized
336 utility tariff bonds are outstanding and until all financing
337 costs have been paid in full, the imposition and collection
338 of securitized utility tariff charges authorized under a
339 financing order shall be nonbypassable and paid by all
340 existing and future retail customers receiving electrical
341 service from the electrical corporation or its successors or

assignees under commission-approved rate schedules except for customers receiving electrical service under special contracts on August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state;

e. A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the securitized utility tariff charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of securitized utility tariff bonds and financing costs and other required amounts and charges payable under the securitized utility tariff bonds;

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

g. The degree of flexibility to be afforded to the electrical corporation in establishing the terms and conditions of the securitized utility tariff bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs;

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

375 incorporate changes in the allocation of costs to customers
376 as detailed in the commission's order from the electrical
377 corporation's most recent general rate proceeding;

378 i. A requirement that, after the final terms of an
379 issuance of securitized utility tariff bonds have been
380 established and before the issuance of securitized utility
381 tariff bonds, the electrical corporation determines the
382 resulting initial securitized utility tariff charge in
383 accordance with the financing order, and that such initial
384 securitized utility tariff charge be final and effective
385 upon the issuance of such securitized utility tariff bonds
386 with such charge to be reflected on a compliance tariff
387 sheet bearing such charge;

388 j. A method of tracing funds collected as securitized
389 utility tariff charges, or other proceeds of securitized
390 utility tariff property, determining that such method shall
391 be deemed the method of tracing such funds and determining
392 the identifiable cash proceeds of any securitized utility
393 tariff property subject to a financing order under
394 applicable law;

395 k. A statement specifying a future ratemaking process
396 to reconcile any differences between the actual securitized
397 utility tariff costs financed by securitized utility tariff
398 bonds and the final securitized utility tariff costs
399 incurred by the electrical corporation or assignee provided
400 that any such reconciliation shall not affect the amount of
401 securitized utility tariff bonds or the associated
402 securitized utility tariff charges paid by customers;

403 l. A procedure that shall allow the electrical
404 corporation to earn a return, at the cost of capital
405 authorized from time to time by the commission in the
406 electrical corporation's rate proceedings, on any moneys
407 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

441 o. Include any other conditions that the commission
442 considers appropriate and that are not inconsistent with
443 this section.

444 (d) A financing order issued to an electrical
445 corporation may provide that creation of the electrical
446 corporation's securitized utility tariff property is
447 conditioned upon, and simultaneous with, the sale or other
448 transfer of the securitized utility tariff property to an
449 assignee and the pledge of the securitized utility tariff
450 property to secure securitized utility tariff bonds.

451 (e) If the commission issues a financing order, the
452 electrical corporation shall file with the commission at
453 least annually a petition or a letter applying the formula-
454 based true-up mechanism and, based on estimates of
455 consumption for each rate class and other mathematical
456 factors, requesting administrative approval to make the
457 applicable adjustments. The review of the filing shall be
458 limited to determining whether there are any mathematical or
459 clerical errors in the application of the formula-based true-
460 up mechanism relating to the appropriate amount of any
461 overcollection or undercollection of securitized utility
462 tariff charges and the amount of an adjustment. The
463 adjustments shall ensure the recovery of revenues sufficient
464 to provide for the payment of principal, interest,
465 acquisition, defeasance, financing costs, or redemption
466 premium and other fees, costs, and charges in respect of
467 securitized utility tariff bonds approved under the
468 financing order. Within thirty days after receiving an
469 electrical corporation's request pursuant to this paragraph,
470 the commission shall either approve the request or inform
471 the electrical corporation of any mathematical or clerical
472 errors in its calculation. If the commission informs the
473 electrical corporation of mathematical or clerical errors in

474 its calculation, the electrical corporation shall correct
475 its error and refile its request. The time frames
476 previously described in this paragraph shall apply to a
477 refiled request.

478 (f) At the time of any transfer of securitized utility
479 tariff property to an assignee or the issuance of
480 securitized utility tariff bonds authorized thereby,
481 whichever is earlier, a financing order is irrevocable and,
482 except for changes made pursuant to the formula-based true-
483 up mechanism authorized in this section, the commission may
484 not amend, modify, or terminate the financing order by any
485 subsequent action or reduce, impair, postpone, terminate, or
486 otherwise adjust securitized utility tariff charges approved
487 in the financing order. After the issuance of a financing
488 order, the electrical corporation retains sole discretion
489 regarding whether to assign, sell, or otherwise transfer
490 securitized utility tariff property or to cause securitized
491 utility tariff bonds to be issued, including the right to
492 defer or postpone such assignment, sale, transfer, or
493 issuance.

494 (g) The commission, in a financing order and subject
495 to the issuance advice letter process under paragraph (h) of
496 this subdivision, shall specify the degree of flexibility to
497 be afforded the electrical corporation in establishing the
498 terms and conditions for the securitized utility tariff
499 bonds to accommodate changes in market conditions, including
500 repayment schedules, interest rates, financing costs,
501 collateral requirements, required debt service and other
502 reserves and the ability of the electrical corporation, at
503 its option, to effect a series of issuances of securitized
504 utility tariff bonds and correlated assignments, sales,
505 pledges, or other transfers of securitized utility tariff
506 property. Any changes made under this paragraph to terms

and conditions for the securitized utility tariff bonds shall be in conformance with the financing order.

(h) As the actual structure and pricing of the securitized utility tariff bonds will be unknown at the time the financing order is issued, prior to the issuance of each series of bonds, an issuance advice letter shall be provided to the commission by the electrical corporation following the determination of the final terms of such series of bonds no later than one day after the pricing of the securitized utility tariff bonds. The commission shall have the authority to designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by the electrical corporation to place the securitized utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis. Neither the designated representative or representatives from the commission staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend meetings convened by the electrical corporation to address placement of the bonds to market. The form of such issuance advice letter shall be included in the financing order and shall indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the

540 securitized utility tariff bonds to be issued, as the
541 commission may require. Unless an earlier date is specified
542 in the financing order, the electrical corporation may
543 proceed with the issuance of the securitized utility tariff
544 bonds unless, prior to noon on the fourth business day after
545 the commission receives the issuance advice letter, the
546 commission issues a disapproval letter directing that the
547 bonds as proposed shall not be issued and the basis for that
548 disapproval. The financing order may provide such
549 additional provisions relating to the issuance advice letter
550 process as the commission considers appropriate and as are
551 not inconsistent with this section.

552 (4) (a) In performing the responsibilities of this
553 section in connection with the issuance of a financing
554 order, approving the petition, an order approving the
555 petition subject to conditions, or an order rejecting the
556 petition, the commission shall undertake due diligence as it
557 deems appropriate prior to the issuance of the order
558 regarding the petition pursuant to which the commission may
559 request additional information from the electrical
560 corporation and may engage one or more financial advisors,
561 one or more consultants, and counsel as the commission deems
562 necessary. Any financial advisor or counsel engaged by the
563 commission shall have a fiduciary duty with respect to the
564 proposed issuance of securitized utility bonds solely to the
565 commission. All expenses associated with such services
566 shall be included as part of the financing costs of the
567 securitized utility tariff bonds and shall be included in
568 the securitized utility tariff charge.

569 (b) If an electrical corporation's petition for a
570 financing order is denied or withdrawn, or for any reason
571 securitized utility tariff bonds are not issued, any costs
572 of retaining one or more financial advisors, one or more

consultants, 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, if approved by the commission 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

606 and state income tax purposes, consider the securitized
607 utility tariff charges paid under the financing order to be
608 the revenue of the electrical corporation for any purpose,
609 consider the securitized utility tariff costs or financing
610 costs specified in the financing order to be the costs of
611 the electrical corporation, nor may the commission determine
612 any action taken by an electrical corporation which is
613 consistent with the financing order to be unjust or
614 unreasonable, and section 386.300 shall not apply to the
615 issuance of securitized utility tariff bonds.

616 (2) Securitized utility tariff charges shall not be
617 utilized or accounted for in determining the electrical
618 corporation's average overall rate, as defined in section
619 393.1655 and as used to determine the maximum retail rate
620 impact limitations provided for by subsections 3 and 4 of
621 section 393.1655.

622 (3) No electrical corporation is required to file a
623 petition for a financing order under this section or
624 otherwise utilize this section. An electrical corporation's
625 decision not to file a petition for a financing order under
626 this section shall not be admissible in any commission
627 proceeding nor shall it be otherwise utilized or relied on
628 by the commission in any proceeding respecting the
629 electrical corporation's rates or its accounting, including,
630 without limitation, any general rate proceeding, fuel
631 adjustment clause docket, or proceedings relating to
632 accounting authority, whether initiated by the electrical
633 corporation or otherwise. The commission may not order or
634 otherwise directly or indirectly require an electrical
635 corporation to use securitized utility tariff bonds to
636 recover securitized utility tariff costs or to finance any
637 project, addition, plant, facility, extension, capital
638 improvement, equipment, or any other expenditure.

639 (4) The commission may not refuse to allow an
640 electrical corporation to recover securitized utility tariff
641 costs in an otherwise permissible fashion, or refuse or
642 condition authorization or approval of the issuance and sale
643 by an electrical corporation of securities or the assumption
644 by the electrical corporation of liabilities or obligations,
645 because of the potential availability of securitized utility
646 tariff bond financing.

647 (5) After the issuance of a financing order with or
648 without conditions, the electrical corporation retains sole
649 discretion regarding whether to cause the securitized
650 utility tariff bonds to be issued, including the right to
651 defer or postpone such sale, assignment, transfer, or
652 issuance. Nothing shall prevent the electrical corporation
653 from abandoning the issuance of securitized utility tariff
654 bonds under the financing order by filing with the
655 commission a statement of abandonment and the reasons
656 therefor; provided, that the electrical corporation's
657 abandonment decision shall not be deemed imprudent because
658 of the potential availability of securitized utility tariff
659 bond financing; and provided further, that an electrical
660 corporation's decision to abandon issuance of such bonds may
661 be raised by any party, including the commission, as a
662 reason the commission should not authorize, or should
663 modify, the rate-making treatment proposed by the electrical
664 corporation of the costs associated with the electric
665 generating facility that was the subject of a petition under
666 this section that would have been securitized as energy
667 transition costs had such abandonment decision not been
668 made, but only if the electrical corporation requests non-
669 standard plant retirement treatment of such costs for rate-
670 making purposes.

671 (6) The commission may not, directly or indirectly,
672 utilize or consider the debt reflected by the securitized
673 utility tariff bonds in establishing the electrical
674 corporation's capital structure used to determine any
675 regulatory matter, including but not limited to the
676 electrical corporation's revenue requirement used to set its
677 rates.

678 (7) The commission may not, directly or indirectly,
679 consider the existence of securitized utility tariff bonds
680 or the potential use of securitized utility tariff bond
681 financing proceeds in determining the electrical
682 corporation's authorized rate of return used to determine
683 the electrical corporation's revenue requirement used to set
684 its rates.

685 4. The electric bills of an electrical corporation
686 that has obtained a financing order and caused securitized
687 utility tariff bonds to be issued shall comply with the
688 provisions of this subsection; however, the failure of an
689 electrical corporation to comply with this subsection does
690 not invalidate, impair, or affect any financing order,
691 securitized utility tariff property, securitized utility
692 tariff charge, or securitized utility tariff bonds. The
693 electrical corporation shall do the following:

694 (1) Explicitly reflect that a portion of the charges
695 on such bill represents securitized utility tariff charges
696 approved in a financing order issued to the electrical
697 corporation and, if the securitized utility tariff property
698 has been transferred to an assignee, shall include a
699 statement to the effect that the assignee is the owner of
700 the rights to securitized utility tariff charges and that
701 the electrical corporation or other entity, if applicable,
702 is acting as a collection agent or servicer for the
703 assignee. The tariff applicable to customers shall indicate

704 the securitized utility tariff charge and the ownership of
705 the charge;

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

709 5. (1) (a) All securitized utility tariff property
710 that is specified in a financing order constitutes an
711 existing, present intangible property right or interest
712 therein, notwithstanding that the imposition and collection
713 of securitized utility tariff charges depends on the
714 electrical corporation, to which the financing order is
715 issued, performing its servicing functions relating to the
716 collection of securitized utility tariff charges and on
717 future electricity consumption. The property exists:

718 a. Regardless of whether or not the revenues or
719 proceeds arising from the property have been billed, have
720 accrued, or have been collected; and

721 b. Notwithstanding the fact that the value or amount
722 of the property is dependent on the future provision of
723 service to customers by the electrical corporation or its
724 successors or assignees and the future consumption of
725 electricity by customers.

726 (b) Securitized utility tariff property specified in a
727 financing order exists until securitized utility tariff
728 bonds issued pursuant to the financing order are paid in
729 full and all financing costs and other costs of such
730 securitized utility tariff bonds have been recovered in full.

731 (c) All or any portion of securitized utility tariff
732 property specified in a financing order issued to an
733 electrical corporation may be transferred, sold, conveyed,
734 or assigned to a successor or assignee that is wholly owned,
735 directly or indirectly, by the electrical corporation and
736 created for the limited purpose of acquiring, owning, or

737 administering securitized utility tariff property or issuing
738 securitized utility tariff bonds under the financing order.
739 All or any portion of securitized utility tariff property
740 may be pledged to secure securitized utility tariff bonds
741 issued pursuant to the financing order, amounts payable to
742 financing parties and to counterparties under any ancillary
743 agreements, and other financing costs. Any transfer, sale,
744 conveyance, assignment, grant of a security interest in or
745 pledge of securitized utility tariff property by an
746 electrical corporation, or an affiliate of the electrical
747 corporation, to an assignee, to the extent previously
748 authorized in a financing order, does not require the prior
749 consent and approval of the commission.

750 (d) If an electrical corporation defaults on any
751 required remittance of securitized utility tariff charges
752 arising from securitized utility tariff property specified
753 in a financing order, a court, upon application by an
754 interested party, and without limiting any other remedies
755 available to the applying party, shall order the
756 sequestration and payment of the revenues arising from the
757 securitized utility tariff property to the financing parties
758 or their assignees. Any such financing order remains in
759 full force and effect notwithstanding any reorganization,
760 bankruptcy, or other insolvency proceedings with respect to
761 the electrical corporation or its successors or assignees.

762 (e) The interest of a transferee, purchaser, acquirer,
763 assignee, or pledgee in securitized utility tariff property
764 specified in a financing order issued to an electrical
765 corporation, and in the revenue and collections arising from
766 that property, is not subject to setoff, counterclaim,
767 surcharge, or defense by the electrical corporation or any
768 other person or in connection with the reorganization,

bankruptcy, or other insolvency of the electrical
corporation or any other entity.

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

- 802 a. The financing order is issued;
803 b. A security agreement is executed and delivered by
804 the debtor granting such security interest;
805 c. The debtor has rights in such securitized utility
806 tariff property or the power to transfer rights in such
807 securitized utility tariff property; or
808 d. Value is received for the securitized utility
809 tariff property.

810 The description of securitized utility tariff property in a
811 security agreement is sufficient if the description refers
812 to this section and the financing order creating the
813 securitized utility tariff property. A security interest
814 shall attach as provided in this paragraph without any
815 physical delivery of collateral or other act.

816 (c) Upon the filing of a financing statement with the
817 office of the secretary of state as provided in this
818 section, a security interest in securitized utility tariff
819 property shall be perfected against all parties having
820 claims of any kind in tort, contract, or otherwise against
821 the person granting the security interest, and regardless of
822 whether the parties have notice of the security interest.
823 Without limiting the foregoing, upon such filing a security
824 interest in securitized utility tariff property shall be
825 perfected against all claims of lien creditors, and shall
826 have priority over all competing security interests and
827 other claims other than any security interest previously
828 perfected in accordance with this section.

829 (d) The priority of a security interest in securitized
830 utility tariff property is not affected by the commingling
831 of securitized utility tariff charges with other amounts.
832 Any pledgee or secured party shall have a perfected security
833 interest in the amount of all securitized utility tariff
834 charges that are deposited in any cash or deposit account of

835 the qualifying electrical corporation in which securitized
836 utility tariff charges have been commingled with other funds
837 and any other security interest that may apply to those
838 funds shall be terminated when they are transferred to a
839 segregated account for the assignee or a financing party.

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

844 (f) If a default occurs under the securitized utility
845 tariff bonds that are secured by a security interest in
846 securitized utility tariff property, the financing parties
847 or their representatives may exercise the rights and
848 remedies available to a secured party under the code,
849 including the rights and remedies available under part 6 of
850 article 9 of the code. The commission may also order
851 amounts arising from securitized utility tariff charges be
852 transferred to a separate account for the financing parties'
853 benefit, to which their lien and security interest shall
854 apply. On application by or on behalf of the financing
855 parties, the circuit court for the county or city in which
856 the electrical corporation's headquarters is located shall
857 order the sequestration and payment to them of revenues
858 arising from the securitized utility tariff charges.

859 (3) (a) Any sale, assignment, or other transfer of
860 securitized utility tariff property shall be an absolute
861 transfer and true sale of, and not a pledge of or secured
862 transaction relating to, the seller's right, title, and
863 interest in, to, and under the securitized utility tariff
864 property if the documents governing the transaction
865 expressly state that the transaction is a sale or other
866 absolute transfer other than for federal and state income
867 tax purposes. For all purposes other than federal and state

income tax purposes, the parties' characterization of a transaction as a sale of an interest in securitized utility tariff property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A sale or similar outright transfer of an interest in securitized utility tariff property may occur only when all of the following have occurred:

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

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

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

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

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

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

b. The retention by the seller of (i) a partial or residual interest, including an equity interest, in the securitized utility tariff property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the

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

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

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

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

f. The transferor acting as the servicer of the securitized utility tariff charges or the existence of any contract that authorizes or requires the electrical corporation, to the extent that any interest in securitized utility tariff property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the securitized utility tariff charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party;

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

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

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

(c) Any right that an electrical corporation has in the securitized utility tariff property before its pledge,

934 sale, or transfer or any other right created under this
935 section or created in the financing order and assignable
936 under this section or assignable pursuant to a financing
937 order is property in the form of a contract right or a chose
938 in action. Transfer of an interest in securitized utility
939 tariff property to an assignee is enforceable only upon the
940 later of:

- 941 a. The issuance of a financing order;
- 942 b. The assignor having rights in such securitized
943 utility tariff property or the power to transfer rights in
944 such securitized utility tariff property to an assignee;
- 945 c. The execution and delivery by the assignor of
946 transfer documents in connection with the issuance of
947 securitized utility tariff bonds; and
- 948 d. The receipt of value for the securitized utility
949 tariff property.

950 An enforceable transfer of an interest in securitized
951 utility tariff property to an assignee is perfected against
952 all third parties, including subsequent judicial or other
953 lien creditors, when a notice of that transfer has been
954 given by the filing of a financing statement in accordance
955 with subsection 7 of this section. The transfer is
956 perfected against third parties as of the date of filing.

957 (d) The priority of a transfer perfected under this
958 section is not impaired by any later modification of the
959 financing order or securitized utility tariff property or by
960 the commingling of funds arising from securitized utility
961 tariff property with other funds. Any other security
962 interest that may apply to those funds, other than a
963 security interest perfected under this section, is
964 terminated when they are transferred to a segregated account
965 for the assignee or a financing party. If securitized
966 utility tariff property has been transferred to an assignee

967 or financing party, any proceeds of that property shall be
968 held in trust for the assignee or financing party.

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

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

976 b. A perfected interest or right of an assignee has
977 priority over a conflicting unperfected interest or right of
978 an assignee;

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

982 6. The description of securitized utility tariff
983 property being transferred to an assignee in any sale
984 agreement, purchase agreement, or other transfer agreement,
985 granted or pledged to a pledgee in any security agreement,
986 pledge agreement, or other security document, or indicated
987 in any financing statement is only sufficient if such
988 description or indication refers to the financing order that
989 created the securitized utility tariff property and states
990 that the agreement or financing statement covers all or part
991 of the property described in the financing order. This
992 section applies to all purported transfers of, and all
993 purported grants or liens or security interests in,
994 securitized utility tariff property, regardless of whether
995 the related sale agreement, purchase agreement, other
996 transfer agreement, security agreement, pledge agreement, or
997 other security document was entered into, or any financing
998 statement was filed.

999 7. The secretary of state shall maintain any financing
1000 statement filed to perfect a sale or other transfer of
1001 securitized utility tariff property and any security
1002 interest in securitized utility tariff property under this
1003 section in the same manner that the secretary of state
1004 maintains financing statements filed under the code to
1005 perfect a security interest in collateral owned by a
1006 transmitting utility. Except as otherwise provided in this
1007 section, all financing statements filed pursuant to this
1008 section shall be governed by the provisions regarding
1009 financing statements and the filing thereof under the code,
1010 including part 5 of article 9 of the code. A security
1011 interest in securitized utility tariff property may be
1012 perfected only by the filing of a financing statement in
1013 accordance with this section, and no other method of
1014 perfection shall be effective. Notwithstanding any
1015 provision of the code to the contrary, a financing statement
1016 filed pursuant to this section is effective until a
1017 termination statement is filed under the code, and no
1018 continuation statement need be filed to maintain its
1019 effectiveness. A financing statement filed pursuant to this
1020 section may indicate that the debtor is a transmitting
1021 utility, and without regard to whether the debtor is an
1022 electrical corporation, an assignee or otherwise qualifies
1023 as a transmitting utility under the code, but the failure to
1024 make such indication shall not impair the duration and
1025 effectiveness of the financing statement.

1026 8. The law governing the validity, enforceability,
1027 attachment, perfection, priority, and exercise of remedies
1028 with respect to the transfer of an interest or right or the
1029 pledge or creation of a security interest in any securitized
1030 utility tariff property shall be the laws of this state.

1031 9. Neither the state nor its political subdivisions
1032 are liable on any securitized utility tariff bonds, and the
1033 bonds are not a debt or a general obligation of the state or
1034 any of its political subdivisions, agencies, or
1035 instrumentalities, nor are they special obligations or
1036 indebtedness of the state or any agency or political
1037 subdivision. An issue of securitized utility tariff bonds
1038 does not, directly, indirectly, or contingently, obligate
1039 the state or any agency, political subdivision, or
1040 instrumentality of the state to levy any tax or make any
1041 appropriation for payment of the securitized utility tariff
1042 bonds, other than in their capacity as consumers of
1043 electricity. All securitized utility tariff bonds shall
1044 contain on the face thereof a statement to the following
1045 effect: "Neither the full faith and credit nor the taxing
1046 power of the state of Missouri is pledged to the payment of
1047 the principal of, or interest on, this bond."

1048 10. All of the following entities may legally invest
1049 any sinking funds, moneys, or other funds in securitized
1050 utility tariff bonds:

1051 (1) Subject to applicable statutory restrictions on
1052 state or local investment authority, the state, units of
1053 local government, political subdivisions, public bodies, and
1054 public officers, except for members of the commission, the
1055 commission's technical advisory and other staff, or
1056 employees of the office of the public counsel;

1057 (2) Banks and bankers, savings and loan associations,
1058 credit unions, trust companies, savings banks and
1059 institutions, investment companies, insurance companies,
1060 insurance associations, and other persons carrying on a
1061 banking or insurance business;

1062 (3) Personal representatives, guardians, trustees, and
1063 other fiduciaries;

1064 (4) All other persons authorized to invest in bonds or
1065 other obligations of a similar nature.

1066 11. (1) The state and its agencies, including the
1067 commission, pledge and agree with bondholders, the owners of
1068 the securitized utility tariff property, and other financing
1069 parties that the state and its agencies will not take any
1070 action listed in this subdivision. This subdivision does
1071 not preclude limitation or alteration if full compensation
1072 is made by law for the full protection of the securitized
1073 utility tariff charges collected pursuant to a financing
1074 order and of the bondholders and any assignee or financing
1075 party entering into a contract with the electrical
1076 corporation. The prohibited actions are as follows:

1077 (a) Alter the provisions of this section, which
1078 authorize the commission to create an irrevocable contract
1079 right or chose in action by the issuance of a financing
1080 order, to create securitized utility tariff property, and
1081 make the securitized utility tariff charges imposed by a
1082 financing order irrevocable, binding, or nonbypassable
1083 charges for all existing and future retail customers of the
1084 electrical corporation except its existing special contract
1085 customers;

1086 (b) Take or permit any action that impairs or would
1087 impair the value of securitized utility tariff property or
1088 the security for the securitized utility tariff bonds or
1089 revises the securitized utility tariff costs for which
1090 recovery is authorized;

1091 (c) In any way impair the rights and remedies of the
1092 bondholders, assignees, and other financing parties;

1093 (d) Except for changes made pursuant to the formula-
1094 based true-up mechanism authorized under this section,
1095 reduce, alter, or impair securitized utility tariff charges
1096 that are to be imposed, billed, charged, collected, and

1097 remitted for the benefit of the bondholders, any assignee,
1098 and any other financing parties until any and all principal,
1099 interest, premium, financing costs and other fees, expenses,
1100 or charges incurred, and any contracts to be performed, in
1101 connection with the related securitized utility tariff bonds
1102 have been paid and performed in full.

1103 (2) Any person or entity that issues securitized
1104 utility tariff bonds may include the language specified in
1105 this subsection in the securitized utility tariff bonds and
1106 related documentation.

1107 12. An assignee or financing party is not an
1108 electrical corporation or person providing electric service
1109 by virtue of engaging in the transactions described in this
1110 section.

1111 13. If there is a conflict between this section and
1112 any other law regarding the attachment, assignment, or
1113 perfection, or the effect of perfection, or priority of,
1114 assignment or transfer of, or security interest in
1115 securitized utility tariff property, this section shall
1116 govern.

1117 14. If any provision of this section is held invalid
1118 or is invalidated, superseded, replaced, repealed, or
1119 expires for any reason, that occurrence does not affect the
1120 validity of any action allowed under this section which is
1121 taken by an electrical corporation, an assignee, a financing
1122 party, a collection agent, or a party to an ancillary
1123 agreement; and any such action remains in full force and
1124 effect with respect to all securitized utility tariff bonds
1125 issued or authorized in a financing order issued under this
1126 section before the date that such provision is held invalid
1127 or is invalidated, superseded, replaced, or repealed, or
1128 expires for any reason.

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

(1) Renewable generation facilities which produce electric energy from wind, solar thermal sources, photovoltaic cells and panels, dedicated crops grown for energy production, cellulosic agricultural residues, plant residues, methane from landfills, from agricultural operations, or from wastewater treatment, thermal depolymerization or pyrolysis for converting waste material to energy, clean and untreated wood such as pallets, hydropower, not including pumped storage, that does not require a new diversion or impoundment of water and that has a nameplate rating of ten megawatts or less, and fuel cells using hydrogen produced by one of the above-named replacement sources;

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

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

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

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

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

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

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

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

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

2. If requested by an electrical corporation in a 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) Except for electric generating facilities retired or abandoned prior to August 28, 2021, unless the commission issues an order rejecting a petition for a financing order filed under the provisions of section 393.1700 that was accompanied by a petition for approval of investment in replacement resources filed under the provisions of this section, 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

67 constitute an affirmative and binding determination by the
68 commission, to be applied in all subsequent proceedings
69 respecting the rates of the electrical corporation, that
70 such investment is prudent and reasonable, that the
71 replacement resource is necessary for the electrical
72 corporation's provision of electric service to its
73 customers, and that such investment shall be reflected in
74 the revenue requirement used to set the electrical
75 corporation's base rates, subject only to the commission's
76 authority to determine that the electrical corporation did
77 not manage or execute the project in a reasonable and
78 prudent manner in some respect and its authority to disallow
79 for ratemaking purposes only that portion of the investment
80 that would not have been incurred had the unreasonable or
81 imprudent management or execution of the project not
82 occurred; and

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

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

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

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

108 (d) The return on the retired or abandoned unit once
109 it is removed from plant-in-service on the electrical
110 corporation's books at the electrical corporation's weighted
111 average cost of capital, plus applicable federal, state, and
112 local income or excise taxes, used to establish the
113 electrical corporation's revenue requirement last used to
114 set its base rates;

115 (e) Depreciation expense on the replacement resources
116 starting with the date it is recorded to plant-in-service on
117 the electrical corporation's books;

118 (f) Labor and benefits costs for employees or
119 contractors who work at the replacement resources;

120 (g) Nonlabor, nonfuel operations, and maintenance
121 costs of the replacement resources; and

122 (h) The return on the replacement resources once they
123 are recorded to plant-in-service on the electrical
124 corporation's books at the electrical corporation's weighted
125 average cost of capital, plus applicable federal, state, and
126 local income or excise taxes, used to establish the
127 electrical corporation's revenue requirement last used to
128 set its base rates.

129 The base against which changes under paragraphs (a), (b),
130 and (c) of this subdivision shall be the values of each such
131 item used to set the electrical corporation's base electric
132 rates in its last general rate proceeding concluded prior to

133 the time the deferrals are made, provided, if the docketed
134 record in such general rate proceeding does not specify one
135 or more necessary revenue requirement parameters to
136 establish the base for paragraphs (a) to (c) of this
137 subdivision because of a "black box" settlement or
138 otherwise, the commission shall, in the docket created by a
139 petition filed under this section and based on the docketed
140 record in such prior general rate proceeding, establish the
141 missing parameters, which shall then be used to accomplish
142 the deferrals. The base with respect to paragraphs (e),
143 (f), and (g) of this subdivision shall be zero.
144 Notwithstanding the foregoing provisions of this
145 subdivision, deferrals created by this subdivision shall
146 cease on the effective date of rates from a base rate case
147 that shall be filed no later than one year after the subject
148 electric generating unit was retired or abandoned. For
149 purposes of this subdivision, the return in paragraphs (d)
150 and (h) shall equal the weighted average cost of capital
151 used to set the electrical corporation's base electrical
152 rates in its last general rate proceeding concluded prior to
153 the time the deferrals are made, provided, if the docketed
154 record in such general rate proceeding does not specify one
155 or more necessary revenue requirement parameters to
156 establish the base for an item because of a "black box"
157 settlement or otherwise, the commission shall, in the docket
158 created by a petition filed under this section and based on
159 the docketed record in such general rate proceeding,
160 establish the missing parameters, which shall then be used
161 to accomplish the deferrals.

162 (3) The commission shall also create a deferral
163 mechanism by which the electrical corporation shall defer to
164 a regulatory asset the changes in the electrical
165 corporation's revenue requirement last used to set its base

166 rates as specified in this subdivision. Such changes shall
167 be deferred during the period beginning on the date
168 deferrals cease under subdivision (2) of this subsection and
169 ending when the electrical corporation's base rates are next
170 changed as a result of a general rate proceeding. For
171 purposes of this subdivision, such changes in the electrical
172 corporation's revenue requirement that shall be deferred
173 shall only consist of:

174 (a) Return on the replacement resources once they go
175 into service on the electrical corporation's books at the
176 electrical corporation's weighted average cost of capital,
177 plus applicable federal, state, and local income or excise
178 taxes, used to establish the electrical corporation's
179 revenue requirement last used to set its base rates;

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

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

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

187 Notwithstanding the foregoing provisions of this
188 subdivision, deferrals to the regulatory asset created by
189 this subdivision shall cease at the earlier of the date the
190 electrical corporation's base rates are first changed after
191 the replacement resource is recorded to plant in service on
192 the electrical corporation's books where the rate base
193 cutoff date in that general rate proceeding occurred on or
194 after the retirement or abandonment, or the effective date
195 of rates from a base rate case that shall be filed no later
196 than one year after the unit was retired or abandoned. If
197 there is more than one replacement resource for the retired
198 or abandoned plant and if one or more such replacement

199 resource is placed in service prior to the rate base cutoff
200 date in the general rate proceeding described in subdivision
201 (2) of this subsection, the deferrals called for under this
202 subdivision shall be reduced as needed to reflect that
203 event. The base with respect to paragraphs (b) and (c) of
204 this subdivision shall be zero. For purposes of this
205 subdivision, the return in paragraph (a) shall equal the
206 weighted average cost of capital used to set the electrical
207 corporation's base electric rates in its last general rate
208 proceeding concluded prior to the time the deferrals are
209 made, provided, if the docketed record in such general rate
210 proceeding does not specify one or more necessary revenue
211 requirement parameters to establish the base for an item
212 because of a "black box" settlement or otherwise, the
213 commission shall, in the docket created by a petition filed
214 under this section and based on the docketed record in such
215 prior general rate proceeding, establish the missing
216 parameters, which shall then be used to accomplish the
217 deferrals.

218 (4) Notwithstanding the provisions of section 393.1400
219 to the contrary, a replacement resource shall not constitute
220 "qualifying electric plant" for purposes of section
221 393.1400, nor shall it constitute a renewable energy
222 resource under section 393.1030, during the period when a
223 deferral is occurring under subdivision (2) or (3) of this
224 subsection. In addition, and notwithstanding the provisions
225 of section 393.1400 to the contrary, deferrals required by
226 this section relating to the electrical corporation's
227 undepreciated investment in the retired or abandoned unit
228 shall not constitute a change in accumulated depreciation
229 when determining the return deferred on qualifying electric
230 plant under section 393.1400.

231 (5) Parts of regulatory asset or liability balances
232 created under this section that are not yet being recovered
233 or returned through rates shall include carrying costs at
234 the electrical corporation's weighted average cost of
235 capital last used to set its base electric service rates or,
236 if such cost of capital was not specified for the revenue
237 requirement last used to set such electric service rates at
238 the weighted average cost of capital determined by the
239 commission under subdivision (3) of this subsection, in each
240 case plus applicable federal, state, and local income or
241 excise taxes. All regulatory asset or liability balances
242 from deferrals under this subsection shall be recovered in
243 base rates over a period equal to the remaining useful life
244 of the replacement resource.

245 (6) In each general rate proceeding concluded after a
246 deferral commences under subdivision (2) or (3) of this
247 subsection, the regulatory asset or liability balances
248 arising from such deferrals, as of the rate base cutoff
249 date, shall be included in the electrical corporation's rate
250 base without any offset, reduction, or adjustment based upon
251 consideration of any other factor, other than to reflect any
252 prudence disallowances ordered by the commission, with the
253 regulatory asset balances arising from such deferrals that
254 occur after the rate base cutoff date to be included in rate
255 base in the next general rate proceeding. The provisions of
256 this section shall not be construed to affect existing law
257 respecting burdens of production and persuasion in general
258 rate proceedings.

259 3. Proceedings on a petition submitted pursuant to
260 this section begin with the filing of a petition by an
261 electrical corporation under this section that is filed
262 concurrently with a petition submitted under section
263 393.1700, 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) The commission shall establish a procedural schedule that permits a commission decision no later than two hundred fifteen days after the date the petition is filed. Such procedural schedule adopted by the commission in connection with a petition filed under this section 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 two hundred fifteen days after the date the petition is filed, the commission shall issue an order approving the petition or, if it also rejects the accompanying petition for a financing order filed under section 393.1700, rejecting the petition. Judicial review may be had only 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 the proposed retirement of 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

16 general rate proceedings until such time as such facility is
17 fully depreciated on the electrical corporation's books.

18 2. If the commission fails to issue a determination
19 within two hundred fifteen 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 agree on a resolution of the concerns, the
80 agreement shall be submitted to the commission for

81 approval. If the parties do not reach agreement on changes
82 to the ratemaking principles and treatment within ninety
83 days of the date the electrical corporation filed its
84 notice, whether the previously approved ratemaking and
85 treatment will be changed shall be determined by the
86 commission. If a party to the docket in which the approved
87 ratemaking principles and treatment were approved believes
88 that one or more major factor or circumstance has changed in
89 a manner that warrants a change in the approved ratemaking
90 principles and treatment and if the electrical corporation
91 does not agree the principles and treatment should be
92 changed, such party shall file a notice in the docket in
93 which the approved ratemaking principles and treatment were
94 established within forty-five days of any such
95 determination. In its notification, such party shall:

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

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

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

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

114 5. A determination of ratemaking principles and
115 treatment under this section does not preclude an electrical
116 corporation from also petitioning the commission under
117 either or both of sections 393.1700 and 393.1705, provided
118 that any costs to which such ratemaking principles and
119 treatment would have applied in the electrical corporation's
120 general rate proceedings which become funded by securitized
121 utility tariff bond proceeds from a securitized utility
122 tariff bond issued under section 393.1700 shall not
123 thereafter be reflected in the electrical corporation's base
124 rates.

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

138 7. The commission may promulgate rules necessary to
139 implement the provisions of sections 393.1700 to 393.1715.
140 Any rule or portion of a rule, as that term is defined in
141 section 536.010, that is created under the authority
142 delegated in this section shall become effective only if it
143 complies with and is subject to all of the provisions of
144 chapter 536 and, if applicable, section 536.028. This
145 section and chapter 536 are nonseverable and if any of the
146 powers vested with the general assembly pursuant to chapter

147 536 to review, to delay the effective date, or to disapprove
148 and annul a rule are subsequently held unconstitutional,
149 then the grant of rulemaking authority and any rule proposed
150 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

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

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

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

(B) Fixtures in section 400.9-334;

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

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

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

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

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

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

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

(17) The creation, attachment, perfection, priority, or enforcement of any security interest in, or the sale, assignment, or other transfer of, any securitized utility 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.