

UTILITIES CODE  
TITLE 2. PUBLIC UTILITY REGULATORY ACT  
SUBTITLE B. ELECTRIC UTILITIES  
CHAPTER 41. ELECTRIC COOPERATIVES AND COMPETITION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 41.001. APPLICABLE LAW. Notwithstanding any other provision of law, except Sections 39.155, 39.157(e), 39.203, and 39.904, this chapter governs the transition to and the establishment of a fully competitive electric power industry for electric cooperatives. Regarding the regulation of electric cooperatives, this chapter shall control over any other provision of this title, except for sections in which the term "electric cooperative" is specifically used.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 16.006, eff. September 1, 2019.

Sec. 41.002. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of an electric cooperative as described in Section 161.071.

(2) "Rate" includes any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric cooperative for any service, product, or commodity and any rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(3) "Stranded investment" means:

(A) the excess, if any, of the net book value of generation assets over the market value of the generation assets; and

(B) any above market purchased power costs.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.003. SECURITIZATION. (a) Electric cooperatives

may adopt and use securitization provisions having the effect of the provisions provided by Subchapter G, Chapter 39, to recover through rates stranded costs at a recovery level deemed appropriate by the board of directors up to 100 percent, under rules and procedures that shall be established by the commission.

(b) The rules and procedures for securitization established under Subsection (a) shall include rules and procedures for the recovery of stranded costs under the terms of a rate order adopted by the board of directors of the electric cooperative, which rate order shall have the effect of a financing order.

(c) The rules and procedures established by the commission under Subsection (b) shall include rules and procedures for the issuance of transition bonds issued in a securitized financing transaction. The issuance of any transition bonds issued in a securitized financing transaction by an electric cooperative is expressly authorized and shall be governed by the laws governing the issuance of bonds or other obligations by the electric cooperative. Findings made by the board of directors of an electric cooperative in a rate order issued under the rules and procedures described by this subsection shall be conclusive, and any transition charges incorporated in the rate order to recover the principal, interest, and all reasonable expenses associated with any securitized financing transaction shall constitute property rights, as described in Subchapter G, Chapter 39, and shall otherwise conform in all material respects to the transition charges provided by Subchapter G, Chapter 39.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.004. JURISDICTION OF COMMISSION. Except as specifically provided otherwise in this chapter, the commission has jurisdiction over electric cooperatives only as follows:

(1) to regulate wholesale transmission rates and service, including terms of access, to the extent provided in Subchapter A, Chapter 35;

(2) to regulate certification to the extent provided in Chapter 37;

(3) to establish a code of conduct as provided in

Section 39.157(e) subject to Section 41.054;

(4) to establish terms and conditions, but not rates, for open access to distribution facilities for electric cooperatives providing customer choice, as provided in Section 39.203;

(5) to require reports of electric cooperative operations only to the extent necessary to:

(A) ensure the public safety;

(B) enable the commission to satisfy its responsibilities relating to electric cooperatives under this chapter;

(C) enable the commission to determine the aggregate electric load and energy requirements in the state and the resources available to serve that load; or

(D) enable the commission to determine information relating to market power as provided in Section 39.155; and

(6) to evaluate and monitor the cybersecurity preparedness of an electric cooperative described by Section 39.1516(a)(3) or (4).

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 610 (S.B. 936), Sec. 10, eff. September 1, 2019.

Sec. 41.005. LIMITATION ON MUNICIPAL AUTHORITY. Notwithstanding any other provision of this title, a municipality may not directly or indirectly regulate the rates, operations, and services of an electric cooperative, except, with respect to operations, to the extent necessary to protect the public health, safety, or welfare. This section does not prohibit a municipality from making a lawful charge for the use of public rights-of-way within the municipality as provided by Section 182.025, Tax Code, and Section 33.008. An electric cooperative shall be an electric utility for purposes of Section 182.025, Tax Code, and Section 33.008.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

SUBCHAPTER B. ELECTRIC COOPERATIVE UTILITY CHOICE

Sec. 41.051. BOARD DECISION. (a) The board of directors has the discretion to decide when or if the electric cooperative will provide customer choice.

(b) Electric cooperatives that choose to participate in customer choice may do so at any time on or after January 1, 2002, by adoption of an appropriate resolution of the board of directors. The decision to participate in customer choice by the adoption of a resolution may be revoked only if no customer has opted for choice within four years of the resolution's adoption. An electric cooperative may initiate a customer choice pilot project at any time.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.052. ELECTRIC COOPERATIVES NOT OFFERING CUSTOMER CHOICE. (a) An electric cooperative that chooses not to participate in customer choice may not offer electric energy at unregulated prices directly to retail customers outside its certificated retail service area.

(b) An electric cooperative under Subsection (a) retains the right to offer and provide a full range of customer service and pricing programs to the customers within its certificated retail service area and to purchase and sell electric energy at wholesale without geographic restriction.

(c) A generation and transmission electric cooperative may offer electric energy at unregulated prices directly to retail customers outside of its parent electric cooperatives' certificated service areas only if a majority of the parent electric cooperatives of the generation and transmission electric cooperative have chosen to offer customer choice.

(d) A subsidiary of an electric cooperative may not provide electric energy at unregulated prices outside of its parent electric cooperative's certificated retail service area unless the electric cooperative offers customer choice inside its certificated retail service area.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.053. RETAIL CUSTOMER RIGHT OF CHOICE. (a) If an electric cooperative chooses to participate in customer choice, after that choice, all retail customers within the certificated service area of the electric cooperative shall have the right of customer choice, and the electric cooperative shall provide nondiscriminatory open access for retail service.

(b) Notwithstanding Section 39.107, the metering function may not be deemed a competitive service for customers of the electric cooperative within that service area and may, at the option of the electric cooperative, continue to be offered by the electric cooperative as sole provider.

(c) On its initiation of customer choice, an electric cooperative shall designate itself or another entity as the provider of last resort for retail customers within the electric cooperative's certificated service area and shall fulfill the role of default provider of last resort in the event no other entity is available to act in that capacity.

(d) If a retail electric provider fails to serve a customer described in Subsection (c), on request by the customer, the provider of last resort shall offer the customer the standard retail service package for the appropriate customer class, with no interruption of service, at a fixed, nondiscountable rate that is at least sufficient to cover the reasonable costs of providing that service, as approved by the board of directors.

(e) The board of directors may establish the procedures and criteria for designating the provider of last resort and may redesignate the provider of last resort according to a schedule it considers appropriate.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.054. SERVICE OUTSIDE CERTIFICATED AREA. (a) Notwithstanding any provisions of Chapter 161:

(1) an electric cooperative participating in customer choice shall have the right to offer electric energy and related services at unregulated prices directly to retail customers who

have customer choice without regard to geographic location; and

(2) any person, without restriction, except as may be provided in the electric cooperative's articles of incorporation and bylaws, may be a member of an electric cooperative.

(b) In providing service under Subsection (a) to retail customers outside its certificated service area as that area exists on the date of adoption of customer choice, an electric cooperative becomes subject to commission jurisdiction as to the commission's rules establishing a code of conduct regulating anticompetitive practices under Section 39.157(e), except to the extent those rules conflict with this chapter.

(c) For electric cooperatives participating in customer choice, the commission shall have jurisdiction to establish terms and conditions, but not rates, for access by other electric providers to the electric cooperative's distribution facilities.

(d) Notwithstanding Subsections (b) and (c), the commission shall make accommodation in the code of conduct for specific legal requirements imposed by state or federal law applicable to electric cooperatives. The commission shall accommodate the organizational structures of electric cooperatives and may not prohibit an electric cooperative and any related entity from sharing officers, directors, or employees.

(e) The commission does not have jurisdiction to require the unbundling of services or functions of, or to regulate the recovery of stranded investment of, an electric cooperative or, except as provided by this section, jurisdiction with respect to the rates, terms, and conditions of service for retail customers of an electric cooperative within the electric cooperative's certificated service area.

(f) An electric cooperative shall maintain separate books and records of its operations and the operations of any subsidiary and shall ensure that the rates charged for provision of electric service do not include any costs of its subsidiary or any other costs not related to the provision of electric service.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.055. JURISDICTION OF BOARD OF DIRECTORS. A board of

directors has exclusive jurisdiction to:

(1) set all terms of access, conditions, and rates applicable to services provided by the electric cooperative, except as provided by Sections 41.054 and 41.056, including nondiscriminatory and comparable rates for distribution but excluding wholesale transmission rates, terms of access, and conditions for wholesale transmission service set by the commission under Subchapter A, Chapter 35, provided that the rates for distribution established by the electric cooperative shall be comparable to the distribution rates that apply to the electric cooperative and its subsidiaries;

(2) determine whether to unbundle any energy-related activities and, if the board of directors chooses to unbundle, whether to do so structurally or functionally;

(3) reasonably determine the amount of the electric cooperative's stranded investment;

(4) establish nondiscriminatory transition charges reasonably designed to recover the stranded investment over an appropriate period of time;

(5) determine the extent to which the electric cooperative will provide various customer services, including nonelectric services, or accept the services from other providers;

(6) manage and operate the electric cooperative's utility systems, including exercise of control over resource acquisition and any related expansion programs;

(7) establish and enforce service quality standards, reliability standards, and consumer safeguards designed to protect retail electric customers;

(8) determine whether a base rate reduction is appropriate for the electric cooperative;

(9) determine any other utility matters that the board of directors believes should be included;

(10) sell electric energy and capacity at wholesale, regardless of whether the electric cooperative participates in customer choice;

(11) determine the extent to which the electric cooperative offers energy efficiency programs and how the programs

are administered by the electric cooperative; and

(12) make any other decisions affecting the electric cooperative's method of conducting business that are not inconsistent with the provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 28, eff. September 1, 2007.

Sec. 41.056. ANTICOMPETITIVE ACTIONS. (a) If, after notice and hearing, the commission finds that an electric cooperative providing customer choice has engaged in anticompetitive behavior by not providing other retail electric providers with nondiscriminatory terms and conditions of access to distribution facilities or customers within the electric cooperative's certificated service area that are comparable to the electric cooperative's and its subsidiaries' terms and conditions of access to distribution facilities or customers, the commission shall notify the electric cooperative.

(b) The electric cooperative shall have three months to cure the anticompetitive or noncompliant behavior described in Subsection (a). If the behavior is not fully remedied within that time, the commission may prohibit the electric cooperative or its subsidiary from providing retail service outside its certificated retail service area until the behavior is remedied.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.057. BILLING. (a) An electric cooperative that opts for customer choice may continue to bill directly electric customers located in its certificated service area for all transmission and distribution services. The electric cooperative may also bill directly for generation and customer services provided by the electric cooperative or its subsidiaries to those customers.

(b) A customer served by an electric cooperative for transmission and distribution services and by a retail electric provider for retail service has the option of being billed directly



by each service provider or receiving a single bill for distribution, transmission, and generation services from the electric cooperative.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.058. TARIFFS FOR OPEN ACCESS. An electric cooperative that owns or operates transmission and distribution facilities shall file tariffs implementing the open access rules established by the commission under Section 39.203 with the appropriate regulatory authorities having jurisdiction over the transmission and distribution service of the electric cooperative before the 90th day preceding the date the electric cooperative offers customer choice.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.059. NO POWER TO AMEND CERTIFICATES. Nothing in this chapter empowers a board of directors to issue, amend, or rescind a certificate of public convenience and necessity granted by the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.060. CUSTOMER SERVICE INFORMATION. (a) The commission shall keep information submitted by customers and retail electric providers pertaining to the provision of electric service by electric cooperatives.

(b) The commission shall notify the appropriate electric cooperative of information submitted by a customer or retail electric provider, and the electric cooperative shall respond to the customer or retail electric provider. The electric cooperative shall notify the commission of its response.

(c) The commission shall prepare a report for the Sunset Advisory Commission that includes information submitted and responses by electric cooperatives in accordance with the Sunset Advisory Commission's schedule for reviewing the commission.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.061. RETAIL RATE CHANGES BY ELECTRIC COOPERATIVES.

(a) This section shall apply to retail rates of an electric cooperative that has not adopted customer choice and to the retail delivery rates of an electric cooperative that has adopted customer choice. This section may not apply to rates for:

(1) sales of electric energy by an electric cooperative that has adopted customer choice; or

(2) wholesale sales of electric energy.

(b) An electric cooperative may change its rates by:

(1) adopting a resolution approving the proposed change;

(2) mailing notice of the proposed change to each affected customer whose rate would be increased by the proposed change at least 30 days before implementation of the proposed change, which notice may be included in a monthly billing; and

(3) holding a meeting to discuss the proposed rate changes with affected customers, if any change is expected to increase total system annual revenues by more than \$100,000 or one percent, whichever is greater.

(c) An electric cooperative may implement the proposed rates on completion of the requirements under Subsection (b), and those rates shall remain in effect until changed by the electric cooperative as provided by this section or, for rates other than retail delivery rates, until this section is no longer applicable because the electric cooperative adopts customer choice.

(d) The electric cooperative may reconsider a rate change at any time and adjust the rate by board resolution without additional notice or meeting of customers if the rate as adjusted is not expected to increase the revenues from a customer class. However, if notice is given to a customer class that would receive an increase as a result of the adjustment, then the rates for the customer class may be increased without additional meeting of the customers. A customer may petition to appeal within the time provided in Subsection (f).

(e) Retail rates set by an electric cooperative that has not adopted customer choice and retail delivery rates set by an electric cooperative that has adopted customer choice shall be just and reasonable, not unreasonably preferential, prejudicial, or

discriminatory; provided, however, if the customer agrees, an electric cooperative may charge a market-based rate to customers who have energy supply options if rates are not increased for other customers as a result.

(f) A customer of the electric cooperative who is adversely affected by a rate setting resolution of the electric cooperative is entitled to judicial review. A person initiates judicial review by filing a petition in the district court of Travis County not later than the 90th day after the resolution is implemented.

(g) The resolution of the electric cooperative setting rates, as it may have been amended as described in Subsection (d), shall be presumed valid, and the burden of showing that the resolution is invalid rests on the persons challenging the resolution. A court reviewing a change of a rate or rates by an electric cooperative may consider any relevant factor including the cost of providing service.

(h) If the court finds that the electric cooperative's resolution setting rates violates the standards contained in Subsection (e), or that the electric cooperative's rate violates Subsection (e), the court shall enter an order:

(1) stating the specific basis for its determination that the rates set in the electric cooperative's resolution violate Subsection (e); and

(2) directing the electric cooperative to:

(A) set, within 60 days, revised retail rates that do not violate the standards of Subsection (e); and

(B) refund or credit against future bills, at the electric cooperative's option, revenues collected under the rate found to violate the standards of Subsection (e) that exceed the revenues that would have been collected under the revised rates. The refund or credit shall be made over a period of not more than 12 months, as determined by the court.

(i) The court may not enter an order delaying or prohibiting implementation of a rate change or set revised rates either for the period the challenged resolution was in effect or prospectively.

(j) A person having obtained an order of the court requiring an electric cooperative to set revised retail rates pursuant to

Subsection (h)(2)(A) may, once the order is no longer subject to appeal, initiate an original proceeding in the district court of Travis County either to:

(1) seek enforcement of the court's order by writ of mandamus if the electric cooperative has failed to adopt a resolution approving revised rates within the time prescribed; or

(2) seek judicial review of the electric cooperative's most current resolution setting rates as provided in this section, if the electric cooperative has set revised rates pursuant to the order of the court within the time prescribed. In the event of such enforcement proceeding or judicial review the court may, in addition to the other remedies provided for in this section, award reasonable costs, including reasonable attorney's fees, to the party prevailing on the case as a whole. Additionally, if the court finds that either party has acted in bad faith solely for the purpose of perpetuating the rate dispute between the parties, the court may impose sanctions on the offending party in accordance with the provisions of Subsections (b), (c), and (e), Section 10.004, Civil Practice and Remedies Code.

(k) An electric cooperative that has not adopted customer choice and that has not changed each of its nonresidential rates since January 1, 1999, shall, on or before May 1, 2002, adopt a resolution setting rates. The resolution shall be subject to judicial review as provided in this section whether or not any rate is changed. In the event the electric cooperative fails to adopt a resolution setting rates pursuant to this subsection, a customer may petition for judicial review of the electric cooperative's rates. A person initiates judicial review by filing a petition in the district court of Travis County not later than November 1, 2002. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.062. ALLOCATION OF STRANDED INVESTMENT. Any competition transition charge shall be allocated among retail customer classes based on the relevant customer class characteristics as of the end of the electric cooperative's most recent fiscal year before implementation of customer choice, in accordance with the methodology used to allocate the costs of the

underlying assets or expenses in the electric cooperative's most recent cost of service study certified by a professional engineer or certified public accountant or approved by the commission. In multiply certificated areas, a retail customer may not avoid stranded cost recovery charges by switching to another electric cooperative, an electric utility, or a municipally owned utility. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

#### SUBCHAPTER C. RIGHTS NOT AFFECTED

Sec. 41.101. INTERFERENCE WITH CONTRACT. (a) This subtitle may not interfere with or abrogate the rights or obligations of parties, including a retail or wholesale customer, to a contract with an electric cooperative or its subsidiary.

(b) No provision of this subtitle may interfere with or be deemed to abrogate the rights or obligations of a party under a contract or an agreement concerning certificated service areas. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.102. ACCESS TO WHOLESALE MARKET. Nothing in this subtitle shall limit the access of an electric cooperative or its subsidiary, either on its own behalf or on behalf of its customers, to the wholesale electric market. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.103. PROTECTION OF BONDHOLDERS. Nothing in this subtitle or any rule adopted under this subtitle shall impair contracts, covenants, or obligations between an electric cooperative and its lenders and holders of bonds issued on behalf of or by the electric cooperative. Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

Sec. 41.104. TAX-EXEMPT STATUS. Nothing in this subtitle may impair the tax-exempt status of electric cooperatives, nor shall anything in this subtitle compel any electric cooperative to use its facilities in a manner that violates any contractual provisions, bond covenants, or other restrictions applicable to

facilities financed by tax-exempt or federally insured or guaranteed debt.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 39, eff. Sept. 1, 1999.

#### SUBCHAPTER D. MARKET PARTICIPATION AND SECURITIZATION

Sec. 41.151. PURPOSE. (a) The purpose of this subchapter is to enable electric cooperatives to use securitization financing to recover extraordinary costs and expenses incurred due to the abnormal weather events that occurred in this state in the period beginning 12:00 a.m., February 12, 2021, and ending at 11:59 p.m., February 20, 2021. This type of debt will reduce the cost of financing the extraordinary costs and expenses relative to the costs that would be incurred using conventional electric cooperative financing methods. The proceeds of the securitized bonds shall be used solely for the purposes of financing or refinancing the extraordinary costs and expenses, including costs relating to consummation and administration of the securitized financing. The board of each electric cooperative involved in the financing shall ensure that securitization provides tangible and quantifiable benefits to its members, greater than would have been achieved absent the issuance of securitized bonds. Each board that chooses to securitize under this subchapter shall ensure that the structuring and pricing of the securitized bonds are consistent with market conditions and the terms of the financing order. This subchapter may be used by a group of electric cooperatives to issue securitized bonds in a combined securitization transaction.

(b) A cooperative that owes the independent organization certified under Section [39.151](#), Utilities Code, for the ERCOT power region amounts incurred as a result of operations during the period beginning 12:01 a.m., February 12, 2021, and ending at 11:59 p.m., February 20, 2021, shall:

(1) use all means necessary to securitize the amount owed the independent organization, calculated solely according to the protocols of the independent organization in effect during the period of emergency promulgated subject to the approval of the commission; and

(2) fully repay the amount described by Subdivision (1) immediately upon receipt of the securitized amount along with any additional amounts necessary to fully satisfy the amount owed. Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.152. DEFINITIONS. In this subchapter:

(1) "Assignee" means any individual, corporation, or other legally recognized entity, including a special purpose entity, to which an interest in securitized property is transferred, other than as security.

(2) "Board" means the governing body of an electric cooperative.

(3) "Combined securitization transaction" means the issuance of securitized bonds under this subchapter in a transaction involving at least two electric cooperatives acting together.

(4) "Extraordinary costs and expenses" means:

(A) costs and expenses incurred by an electric cooperative for electric power and energy purchased during the period of emergency in excess of what would have been paid for the same amount of electric power and energy at the average rate incurred by the electric cooperative for electric power and energy purchased during the month of January 2021;

(B) costs and expenses incurred by an electric cooperative to generate and transmit electric power and energy during the period of emergency, including fuel costs, operation and maintenance expenses, overtime costs, and all other costs and expenses that would not have been incurred but for the abnormal weather events; and

(C) any charges imposed on the electric cooperative or on a power supplier to the electric cooperative that were passed on to the electric cooperative by the applicable regional transmission organization or independent system operator, resulting from defaults by other market participants of the regional transmission organization or independent system operator for costs relating to the period of emergency.

(5) "Financing order" means an order of a board approving the issuance of securitized bonds, which may be through participation in a combined securitization transaction, and the creation of securitized charges for the recovery of qualified costs.

(6) "Financing party" means a holder of securitized bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

(7) "Qualified costs" means up to 100 percent of an electric cooperative's:

(A) extraordinary costs and expenses;

(B) costs of issuing, supporting, repaying, servicing, and refinancing the securitized bonds, whether incurred or paid upon issuance of the securitized bonds or over the life of the securitized bonds or the refunded securitized bonds, whether incurred directly or allocated in a combined securitization transaction; and

(C) any costs of retiring and refunding the electric cooperative's existing debt securities initially issued to finance the extraordinary costs and expenses including interest accrued on debt securities over their term, whether incurred directly or allocated in a combined securitization transaction.

(8) "Period of emergency" means the period beginning 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20, 2021.

(9) "Securitized bonds" means bonds, debentures, notes, certificates of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric cooperative, its successors, or an assignee of the electric cooperative or group of electric cooperatives under a financing order or financing orders, that have a term not longer than 30 years, and that are secured by or payable, primarily, from securitized property and the proceeds thereof and, in a combined securitization transaction, securitized property contributed by other electric cooperatives. If certificates of participation, beneficial interest, or ownership are issued, references in this subchapter to principal, interest, or premium shall refer to



comparable amounts under those certificates.

(10) "Securitized charges" means nonbypassable amounts to be charged for the use or availability of electric services, approved by the board under a financing order to recover qualified costs, that shall be collected by an electric cooperative, its successors, an assignee, or other collection agents as provided for in the financing order.

(11) "Securitized property" means the property right created under this subchapter, including the right, title, and interest of the electric cooperative or its assignee:

(A) in and to the securitized charges established under a financing order, including all rights to obtain adjustments in accordance with Section 41.157 and the financing order;

(B) to be paid the amount that is determined in a financing order to be the amount that the electric cooperative or its transferee is lawfully entitled to receive under this subchapter and the proceeds thereof; and

(C) in and to all revenue, collections, claims, payments, money, or process of or arising from the securitized charges that are the subject of a financing order.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.153. FINANCING ORDERS; TERMS. (a) The board shall adopt a financing order to recover the electric cooperative's qualified costs consistent with the standards in Section 41.151.

(b) The financing order shall detail the amount of qualified costs to be recovered and the period over which the nonbypassable securitized charges shall be recovered, which period may not exceed 30 years.

(c) Securitized charges shall be collected and allocated among customers in the manner provided by the financing order.

(d) A financing order becomes effective in accordance with its terms, and the financing order, together with the securitized charges authorized in the order, after it takes effect, is irrevocable and not subject to denial, rescission, reduction, impairment, adjustment, or other alteration by further action of

the board or by action of any regulatory or other governmental body of this state, except as permitted by Section 41.157. A financing order issued under this subchapter has the same force and effect of a financing order issued under Chapter 39.

(e) A financing order may be reviewed by appeal by a member of the electric cooperative to a district court in the county where the electric cooperative is domiciled, filed not later than the 15th day after the date the financing order is adopted by the board. The judgment of the district court may be reviewed only by direct appeal to the Supreme Court of Texas filed not later than the 15th day after the date of the entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the financing order adopted by the board, other information considered by the board in adopting the resolutions, and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this subchapter.

(f) The board or, in a combined securitization transaction, the boards of all participating electric cooperatives, may adopt a financing order or financing orders providing for retiring and refunding securitized bonds on making a finding that the future securitized charges required to service the new securitized bonds, including transaction costs, will be less than the future securitized charges required to service the securitized bonds being refunded. After the indefeasible repayment in full of all outstanding securitized bonds and associated financing costs, the board shall adjust the related securitized charges accordingly. Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.154. PROPERTY RIGHTS. (a) The rights and interests of an electric cooperative or its subsidiary, affiliate, successor, financing party, or assignee under a financing order, including the right to impose, collect, receive, and enforce the payment of securitized charges authorized in the financing order,

shall be only contract rights until the property is first transferred or pledged to an assignee or financing party, as applicable, in connection with the issuance of securitized bonds, at which time the property becomes securitized property.

(b) Securitized property that is specified in the financing order constitutes a present vested property right for all purposes, including for purposes of Sections 16 and 17, Article I, Texas Constitution, Section 10, Article I, United States Constitution, and the Fifth Amendment to the United States Constitution, and the laws of this state and the United States, even if the imposition and collection of securitized charges depend on further acts of the electric cooperative or others that may not have yet occurred.

(c) Securitized property shall exist regardless of whether securitized charges have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the electric cooperative or its successors or assigns.

(d) On the issuance of the securitized bonds and the financing order, and when the requirements of Section 41.159 are met, the securitized charges, including their nonbypassability, are irrevocable, final, nondiscretionary, and effective without further action by the electric cooperative or any other person or governmental authority. The financing order shall remain in effect and the property shall continue to exist for the same period as the pledge of the state described in Section 41.160.

(e) All revenue, collections, claims, payments, money, or proceeds of or arising from or relating to securitized charges shall constitute proceeds of the securitized property arising from the financing order.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.155. NO SETOFF. The interest of an assignee or pledgee in securitized property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, recoupment, or defense by the electric cooperative or any other person or in connection with the bankruptcy of the

electric cooperative or any other entity. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric cooperative, its successors, or assignees.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.156. NO BYPASS. (a) A financing order shall include terms ensuring that the imposition and collection of securitized charges authorized in the order shall be nonbypassable and apply to all customers connected to the electric cooperative's system assets and taking service, regardless of whether the system assets continue to be owned by the electric cooperative.

(b) The electric cooperative, its servicer, any entity providing electric transmission or distribution services, and any retail electric provider providing services to a retail customer in the electric cooperative's certificated service area as it existed on the date of enactment of this subchapter are entitled to collect and must remit, consistent with this subchapter and any financing order adopted under this subchapter, the securitized charges from the retail customers and from retail customers that switch to new on-site generation. Such retail customers are required to pay the securitized charges.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.157. TRUE-UP. (a) A financing order shall be reviewed and adjusted promptly if after its adoption there are additional charges, reductions, or refunds of extraordinary costs and expenses, to:

(1) ensure that there is not an over-collection or an under-collection of extraordinary costs and expenses; and

(2) ensure that collections on the securitized property will be sufficient to timely make all periodic and final payments of principal, interest, fees, and other amounts and to timely fund all reserve accounts, if any, related to the securitized bonds.

(b) A financing order shall also include a mechanism

requiring that securitized charges be reviewed by the board and adjusted at least annually, not later than the 45th day after the anniversary date of the issuance of the securitized bonds, to:

(1) correct over-collections or under-collections of the preceding 12 months; and

(2) ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitized bonds.

(c) The electric cooperatives that are members of a generation and transmission cooperative may include in their financing orders the ability to allocate any true-up amounts over the retail customers of all electric cooperatives that are members of the same generation and transmission cooperative.

(d) In a combined securitization transaction, each generation and transmission cooperative may calculate all adjustments and determinations relevant to each true-up by each electric cooperative member of the generation and transmission cooperative participating in the securitization transaction, with the adjustments being allocated across the electric cooperatives in the manner agreed to by all of the participating electric cooperatives under their financing orders.

(e) A governmental authority may not disapprove of or alter any adjustments made or proposed to be made under this subchapter other than to correct computation or other manifest errors.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. [1580](#)), Sec. 1, eff. June 18, 2021.

Sec. 41.158. TRUE SALE. An agreement by an electric cooperative or assignee to transfer securitized property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the securitized property is transferred. The transaction shall be treated as an absolute sale regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitized

property, the fact that the electric cooperative acts as the collector of securitized charges relating to the securitized property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.159. SECURITY INTERESTS; ASSIGNMENT; COMMINGLING; DEFAULT. (a) Securitized property does not constitute an account or general intangible under Section 9.106, Business & Commerce Code. The transfer, sale, or assignment, or the creation, granting, perfection, and enforcement of liens and security interests in securitized property are governed by this section and not by the Business & Commerce Code. Securitized property shall constitute property for all purposes, including for contracts securing securitized bonds, regardless of whether the securitized property revenues and proceeds have accrued.

(b) A valid and enforceable transfer, sale, or assignment, or lien and security interest, as applicable, in securitized property may be created only by a financing order and the execution and delivery of a transfer, sale, or assignment, or security agreement, as applicable, with a financing party in connection with the issuance of securitized bonds. The transfer, sale, assignment, or lien and security interest, as applicable, shall attach automatically from the time that value is received for the securitized bonds and, on perfection through the filing of notice with the secretary of state in accordance with the rules prescribed under Subsection (d), shall be a continuously perfected transfer, sale, and assignment, or lien and security interest, as applicable, in the securitized property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing and take precedence over any subsequent judicial or other lien creditor. If notice is filed before the 10th day after the date value is received for the securitized bonds, the transfer, sale, or assignment, or security interest, as applicable, shall be perfected retroactive to the date value was received. Otherwise, the transfer, sale, or assignment, or security interest, as applicable,

shall be perfected as of the date of filing.

(c) Transfer, sale, or assignment of an interest in securitized property to an assignee shall be perfected against all third parties, including subsequent judicial or other lien creditors, when the financing order becomes effective, transfer documents have been delivered to the assignee, and a notice of that transfer has been filed in accordance with the rules prescribed under Subsection (d). However, if notice of the transfer has not been filed in accordance with this subsection before the 10th day after the delivery of transfer documentation, the transfer of the interest is not perfected against third parties until the notice is filed.

(d) The secretary of state shall implement this section by establishing and maintaining a separate system of records for the filing of notices under this section and prescribing the rules for those filings based on Chapter 9, Business & Commerce Code, adapted to this subchapter and using the terms defined in this subchapter.

(e) The priority of a lien and security interest perfected under this section is not impaired by any later modification of the financing order under Section 41.157 or by the commingling of funds arising from securitized charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If securitized property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(f) Securitized bonds shall be secured by a statutory lien on the securitized property in favor of the owners or beneficial owners of securitized bonds. The lien shall automatically arise on issuance of the securitized bonds without the need for any action or authorization by the electric cooperative or the board. The lien shall be valid and binding from the time the securitized bonds are executed and delivered. The securitized property shall be immediately subject to the lien, and the lien shall immediately attach to the securitized property and be effective, binding, and enforceable against the electric cooperative, its creditors, their successors, assignees, and all others asserting rights therein,

regardless of whether those persons have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. The lien is created by this subchapter and not by any security agreement, but may be enforced by any financing party or their representatives as if they were secured parties under Chapter 9, Business & Commerce Code. On application by or on behalf of the financing parties, a district court in the county where the electric cooperative is domiciled may order that amounts arising from securitized charges be transferred to a separate account for the financing parties' benefit.

(g) The statutory lien is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, that may subsequently attach to that securitized property or proceeds thereof unless the owners or beneficial owners of securitized bonds as specified in the trust agreement or indenture have agreed in writing otherwise. The statutory lien is a lien on the securitized charges and all securitized charge revenues or other proceeds that are deposited in any deposit account or other account of the servicer or other person in which securitized charge revenues or other proceeds have been commingled with other funds.

(h) The statutory lien is not adversely affected or impaired by, among other things, the commingling of securitized charge revenues or other proceeds from securitized charges with other amounts regardless of the person holding those amounts.

(i) The electric cooperative, any successor or assignee of the electric cooperative, or any other person with any operational control of any portion of the electric cooperative's system assets, whether as owner, lessee, franchisee, or otherwise, and any successor servicer of collections of the securitized charges shall be bound by the requirements of this subchapter and shall perform and satisfy all obligations imposed under this subchapter in the same manner and to the same extent as did its predecessor, including the obligation to bill, adjust, and enforce the payment of securitized charges.

(j) If a default or termination occurs under the securitized bonds, the financing parties or their representatives may foreclose



on or otherwise enforce their lien and security interest in any securitized property as if they were secured parties under Chapter 9, Business & Commerce Code, and on application by the electric cooperative or by or on behalf of the financing parties, a district court in the county where the electric cooperative is domiciled may order that amounts arising from securitized charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, a district court in the county where the electric cooperative is domiciled shall order the sequestration and payment to them of revenues arising from the securitized charges.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.160. PLEDGE OF STATE. Securitized bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power. The state pledges, however, for the benefit and protection of assignees, financing parties, and the electric cooperative, that it will not take or permit, or permit any agency or other governmental authority or political subdivision of the state to take or permit, any action that would impair the value of securitized property, or, except as permitted by Section 41.157, reduce, alter, or impair the securitized charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related securitized bonds have been paid and performed in full. Any party issuing securitized bonds is authorized to include this pledge in any documentation relating to those bonds.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.161. TAX EXEMPTION. Transactions involving the transfer and ownership of securitized property and the receipt of securitized charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.162. NOT PUBLIC UTILITY. An assignee or financing party may not be considered to be a public utility, electric cooperative, or person providing electric service solely by virtue of the transactions described in this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.

Sec. 41.163. SEVERABILITY. Effective on the date the first securitized bonds are issued under this subchapter, if any provision in this title or portion of this title is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this subchapter or any other provision of this title that is relevant to the issuance, administration, payment, retirement, or refunding of securitized bonds or to any actions of the electric cooperative, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

Added by Acts 2021, 87th Leg., R.S., Ch. 950 (S.B. 1580), Sec. 1, eff. June 18, 2021.