

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter J. Costs, Rates and Tariffs.

DIVISION 2. RECOVERY OF STRANDED COSTS.

§25.265. Securitization by River Authorities and Electric Cooperatives.

- (a) **Application.** This section applies to securitization transactions carried out by a river authority or electric cooperative. A river authority or electric cooperative may adopt and use securitization provisions having the effect of the provisions provided by the Public Utility Regulatory Act (PURA), Chapter 39, Subchapter G, to recover its stranded costs in accordance with this section.
- (b) **Definition of stranded costs.**
- (1) For electric cooperatives, the term "stranded costs" when used in this section shall mean "stranded investment" as defined in PURA §41.002(3).
 - (2) For river authorities, the term "stranded costs" when used in this section shall mean the positive excess of the combined net book value of generation assets over the combined market value of the assets, taking into account all of the river authority's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets.
- (c) **Quantification of stranded costs.** Only those river authorities and electric cooperatives having positive stranded costs as determined by this section may securitize such costs.
- (1) For electric cooperatives, the board of directors has the exclusive jurisdiction to reasonably determine the amount of the electric cooperative's stranded investments.
 - (2) For river authorities, the governing body shall determine the amount of stranded costs using an administrative model or other reasonable methodology, and such determinations shall be subject to review and approval by the commission.
- (d) **Demonstration of tangible and quantifiable benefits to ratepayers.** A river authority or electric cooperative may not utilize securitization financing to recover stranded costs unless it demonstrates that securitization provides tangible and quantifiable benefits to ratepayers greater than would have been achieved absent the issuance of transition bonds. Such demonstration shall be performed on an asset-by-asset basis.
- (e) **Limit on amount of qualified costs to be securitized.** The amount securitized may not exceed the sum of:
- (1) the present value, calculated using a discount rate equal to the proposed interest rate on the transition bonds, of the revenue requirement over the life of the proposed transition bonds associated with the stranded costs sought to be securitized, and
 - (2) the costs of issuing, supporting, and servicing the transition bonds and any costs of retiring and refunding existing debt of the river authority or electric cooperative.
- (f) **Use of proceeds.** The proceeds of the transition bonds shall be used solely for the purpose of reducing the amount of recoverable stranded costs as determined pursuant to this section, through the refinancing or retirement of debt of the river authority or electric cooperative.
- (g) **True-up in the event of sale.** A river authority or electric cooperative shall not overrecover its stranded costs. If the recovery of an asset has been securitized through a sale of transition bonds, and the asset is subsequently sold in a bona fide third-party transaction, then that asset shall be subject to true-up. To the extent the total net value received from the sale of such asset exceeds its remaining book value, the river authority or electric cooperative shall make refunds of the entire overcollected amounts, with interest, to its ratepayers through an appropriate mechanism.

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- (h) **Recovery of stranded costs.** An electric cooperative or river authority may recover its securitized stranded costs and the reasonable costs of issuing, supporting, and servicing the transition bonds through a transition charge.
- (1) **Electric Cooperatives.** An electric cooperative may recover its stranded costs through transition charges from all existing or future customers, including the facilities, premises and loads of those customers taking service from the cooperative as of May 1, 1999. An electric cooperative's board of directors has the exclusive jurisdiction to establish non-discriminatory transition charges reasonably designed to recover the stranded costs over an appropriate period of time consistent with this section.
 - (2) **River Authorities.** A river authority may recover its qualified costs, as defined in PURA, Chapter 39, Subchapter G, including its stranded costs as defined herein, through transition charges reasonably designed to recover the stranded costs over an appropriate period of time consistent with this section. Payment of transition charges shall be made by customers taking service from the river authority as of May 1, 1999 or those customers' successors or assigns. Transition charges of a river authority in a financing order adopted pursuant to this section shall be collected by the river authority, and such charges shall not be subject to challenge provided that a river authority's determination as to the existence and amount of stranded costs has been approved under subsections (b) and (c) of this section.
 - (3) **Transition charges for both electric cooperatives and river authorities.**
 - (A) The transition charge shall be sufficient to recover the stranded costs at the level, up to 100%, deemed appropriate by the electric cooperative or river authority.
 - (B) Any transition charges adopted in accordance with this section shall constitute property rights, as described in PURA, Chapter 39, Subchapter G, and otherwise conform in all material respects to the transition charges provided by PURA, Chapter 39, Subchapter G.
 - (C) A river authority or electric cooperative may recover a transition charge notwithstanding the expiration of a wholesale contract.
- (i) **Financing order.** A cooperative or river authority which chooses to adopt and use securitization provisions shall adopt a financing order consistent with this section.
- (1) The financing order shall contain a finding that the present value total amount of revenues to be collected under the financing order is less than the present value of the revenue requirement that would be recovered over the remaining life of the stranded costs using conventional financing methods.
 - (2) The financing order shall have the effects of the provisions provided by PURA, Chapter 39, Subchapter G. The effects shall be detailed in the financing order and shall include, but are not limited to, provisions regarding property rights, set-off, security interests, no bypass, true-up, true sale, and security interests.
 - (3) The financing order shall detail the stranded costs to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years.
 - (4) The financing order shall detail how the proceeds from the transition bond are being used to refinance or retire river authority or cooperative debt as prescribed by subsection (f) of this section.
 - (5) The financing order shall contain findings detailing the tangible and quantifiable benefits as prescribed by subsection (d) of this section.

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- (6) The financing order shall contain a finding that the amount to be securitized does not exceed the limit on qualified costs as prescribed in subsection (e) of this section.
- (7) The financing order shall detail the allocation of the stranded costs to applicable classes and the corresponding design of transition charges.
- (8) The financing order shall provide for a structure and pricing of the transition bonds that results in the lowest transition charges consistent with market conditions.
- (9) The financing order shall include a mechanism requiring that transition charges be reviewed and adjusted at least annually, within 45 days of the anniversary date of the issuance of the transition bonds, to correct any overcollections or undercollections of the preceding 12 months and to 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 transition bonds.
- (10) The financing order shall become effective in accordance with its terms, and the financing order, together with the transition charges, shall thereafter be irrevocable and not subject to reduction, impairment, or adjustment by further action of the cooperative, river authority or the commission, except for periodic true-ups as specified in this section.
- (11) Findings made by the governing body of the electric cooperative or river authority under the rules and procedures described in this section shall be conclusive, subject to the provisions of subsection (c)(2) of this section.