SECURITIZATION: A VALUABLE TOOL FOR COST RECOVERY OPPORTUNITIES OUTSIDE A NORMAL RATE CASE

In recent years, a flurry of legislative activity has addressed utility securitization. Seventeen states have passed legislation offering securitization options to their electric utilities in the last decade, and several other states have proposed similar legislation. Securitization, while not a new concept, has been a successful tool for utilities to improve cost recovery while saving customers money on their electric bills. In this paper, we analyze trends in securitization legislation and detail the options that may work for your utility.

What Is Securitization?

When a utility incurs a large or unexpected but prudent expenditure, it typically seeks recovery of that expenditure through a rate case. This creates regulatory lag, which is not ideal for the utility's financials. Further, it is not ideal for customers, as delays in cost recovery can increase the cost burden for customers due to regulatory assets accruing carrying charges. These charges are often calculated at the utility's cost of debt.

Securitization can help solve these problems. Under securitization legislation, a utility usually issues a bond—often backed by state government—for the amount needed to cover the expenditure. This bond issuance allows the utility to receive the cash inflow all at once, instead of through the typical process in rate case proceedings. In a traditional rate case, utilities attempt to recover the costs of asset construction after the fact, with cost recovery spread over the useful life of the asset. With securitized property, the utility receives the cash from the bond immediately, along with the right to recover the bond's principal and interest from customers.

The cost of securitization is typically lower than the utility's typical cost of debt. Securitization replaces the utility's usual rate of return on capital, including cost of equity, and replaces it with the interest rate of

the bond. The difference between these two can be substantial, with rates of return that can be two to five times higher than the secured bond's interest rate. This allows the utility to lower customers' bills, or the savings can be reinvested in additional or expanded programs.

Is Securitization the Perfect Solution?

Securitization has its drawbacks. It has seen pushback in legislatures for letting utilities "off the hook" for bad investments, especially when securitizing fossil-fueled plants. Some investors also do not like to securitize assets that were previously collecting a substantial return. As Brad Viator, former vice president of external affairs for the Edison Electric Institute, said, "Securitizing the closure of those facilities eliminates or reduces the return on equity, meaning the utilities are not making the money they were promised when they built the facility."[1] It is not a tool that works for all asset recovery situations.

However, when properly used, securitization is a win for all parties involved. Utility shareholders see an immediate infusion of cash that will be used over time for the construction of additional assets and capital projects, customers see lower bills, and advocates often see greenlighting of projects that might not have occurred under the traditional process.

Restructuring: The 90s Securitization Boon

Securitization started being widely used by utilities in the mid-to-late 1990s, when many states began to undergo utility restructuring. Under restructuring and the subsequent introduction of customer choice, electricity prices and demand per generation facility were expected to fall more than production costs. This lowered the earnings of the generation assets owned (or previously owned) by the utility and subsequently the assets' value as well, leading to stranded assets or unrecoverable costs for the utilities. Many states in the Mid-Atlantic and New England that restructured in this period enacted legislation allowing utilities to securitize these stranded costs and/or investments. Between 1996 and 2002, Connecticut, Massachusetts, Michigan, New Hampshire, New Jersey, Pennsylvania, and Rhode Island all passed legislation to securitize either stranded assets or deferred supply charges and retired debt and equity due to restructuring.

The results of restructuring did not end at the turn of the millennium. Several states phased in or deferred changes in energy prices under restructuring, allowing time for a supply market to develop in their regions. In Maryland, for example, residential customers faced a 72% increase in their electric supply charge in

1 Brad Viator, "Senate Bill 245: Comprehensive Securitization: A Tool to Prevent Stranded Assets," March 8, 2023.

2006 due to the restructuring legislation. An emergency session of the Maryland General Assembly deferred this rate increase by phasing it in over several years. This legislation also allowed for costs of this deferment to be securitized.

The Fall of Coal: Securitization in the 2010s

The 2010s saw a dramatic change in the fuel diversity of generating plants in the United States.[2] Due to cheap imports of natural gas and the increased supply from fracking, natural gas prices plummeted. Once considered one of the more expensive fuel sources, used almost completely for peaking plants, natural gas quickly became the most viable fuel source to handle base load. This drop in the price of natural gas came while state and federal legislation enacted stricter emission standards for power plants, which impacted coal plants the most. As a result, many coal plants throughout the United States were selected for early retirement. Between 2010 and 2019, seven states (Colorado, Florida, Louisiana, Mississippi, Montana, New Mexico, and Wisconsin) enacted legislation that securitized the retirement and abandonment costs of these plants, or the costs associated with plant improvements to comply with stricter emission standards. This legislation lowered the cost to customers of switching to cheaper and cleaner fuel sources.

Storm Recovery: The Early 2020s

A series of weather and other related major events in the early 2020s saw utilities incur unexpectedly large costs that required recovery, often in the form of increased rates to customers. Whether the result of unexpected severe winter storms in Texas and Oklahoma, wildfires in the west, or the COVID-19 pandemic, some utilities suddenly faced billions of dollars of expenditures to cover fuel purchases, fire mitigation, or storm recovery that needed to be recovered from customers. While such major event expenses used to be recovered through special riders using the utility's typical cost of debt, the sheer dollar amounts led many states (including Arizona, Arkansas, California, Kentucky, Missouri, Oklahoma, Oregon, South Carolina, Texas, and West Virginia) to enact securitization legislation. Securitizing these costs spread out the recovery time, mitigating "rate shock" to customers and alleviating working capital pressure on utility balance sheets to preserve credit ratings. In New York, to proactively save customers money and decrease the impact of severe weather events, legislation was enacted to securitize the cost of improving system resiliency.

2 Sonal Patel, "Why the 2010s Were a Definitive Decade for Power," *POWER Magazine*, January 1, 2020.

What Is the Future of Securitization?

Securitization appears to once again be gaining momentum. More than 30 states have enacted securitization legislation. In 2023 alone, four new states have added or expanded securitization legislation, often for reasons different from historic trends, and Arizona passed securitization legislation in 2025. Virginia and West Virginia now allow fuel costs to be recovered through securitization, joining Idaho, which passed legislation to that effect back in 2001. In Oregon, utilities may now securitize the cost of energy conservation programs and capital investment projects that will affect the affordability of residential bills. Indeed, New York's resiliency legislation in 2022 shows that securitization of new types of projects, assets, and costs will likely be allowed as time moves on.

This is not to say that securitization will be given free rein. Jurisdictions still see the need for prudence regarding securitization. For example, the wildfires that devastated the island of Maui in Hawaii in August 2023 seemed a prime candidate for the use of securitization. To rebuild the destroyed electric infrastructure, Hawaiian Electric would need a large amount of capital for immediate investment. Additionally, customers recovering from the fire would benefit from the reduced financing costs offered by securitization. In January 2024, SB2922 was introduced, a bill that would have allowed recovery of costs and expenses caused by wildfires through securitization. However, additional amendments to the bill that would have reorganized Hawaiian Electric, separating its generation and grid functions, along with worries that this was a bailout for a company that had some liability in the wildfires, ultimately killed the bill.

At MCR, we recommend performing an analysis of securitization legislation to determine if it can be implemented at your company. Our summary of securitization legislation (below) provides a good starting point. If securitization is available, it is an important tool for success in moving forward with projects that have high up-front costs. For utilities in states where securitization is not an option, we recommend working with your state legislature to educate them on the benefits of securitization of large, unexpected expenditures to create a win for customers and the utility.

SUMMARY OF SECURITIZATION LEGISLATION

All Legislation

See later tables for breakdown of legislation by category. Some legislation allows eligible costs in multiple categories.

STATE	BILL NUMBER	ELIGIBLE COSTS	EFFECTIVE YEAR
Arkansas	Act 641	Storm Recovery Costs	2021
Arizona	HB 2679	Major Event Recovery and Transition Asset Retirement Costs	2025
California	AB 913	COVID-19 and Wildfire Recovery	2020
Colorado	SB 19-236	Pretax Electric Generating Facility Retirement	2019
Connecticut	SB 484	Restructuring Stranded Costs	2010

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Florida	Statute 366.95	Nuclear Generating Facility Retirement or Abandonment	2016
Hawaii	Act 211	Green Infrastructure Costs	2013
Idaho	Statute 61.15	Energy Costs	2001
Indiana	SB 386	Electric Generating Facility Retirement	2021
Kansas	HB 2072	Pretax Electric Generating Facility Retirement	2021
Kentucky	SB 192	Retired Generation Facilities and Other Large-Scale Deferred Costs	2023
Louisiana	RS 45.1251	Cancelled Construction of Electric Generating, Transmission, or Large Capital Investment Facilities	2010
Maryland	SB 1	Standard Offer Service Deferment	2006
Massachusetts	Statute XXII.164.1G	Restructuring Stranded Costs	1996
Michigan	Statute 460.10	Regulatory Assets, Restructuring Stranded Costs, Retiring of Existing Debt and Equity	2000
Mississippi	HB 1134	Clean Coal Generation Construction	2013
Missouri	SB 202	Generation Facility Retirement and Extraordinary Costs That Would Cause Extreme Customer Rate Impacts Under Normal Ratemaking	2021
Montana	Energy Impact Assistance Act	Pretax Electric Generating Facility Retirement and Infrastructure Costs	2019
New Hampshire	RSA 369-B	Restructuring Stranded Costs	2000
New Jersey	SB 869	Deferred Supply Charge Balances	2002
New Mexico	Energy Transition Act	Generation Facility Abandonment Costs	2019
New York	SB S6455C	System Resiliency Costs	2022
North Carolina	HB 951	Coal Generating Facility Early Retirement	2021
Ohio	Section 4928.143	Phased-In Standard Offer Service Prices	2012
Oklahoma	SB 1050	Severe Winter Weather Costs (Including Fuel)	2021
Oregon	HB 3143	Severe Weather, Wildfire, and Pandemic Losses and Energy Conservation Programs	2023
Oregon	HB 3179	Large Capital Investments	2025
Pennsylvania	Statute 66.2808	Restructuring Stranded Costs	1996
Rhode Island	Statute 39-1-45	Restructuring Stranded Costs	1997
South Carolina	S1077	Storm Costs	2022
Texas	HB 4492	Winter Storm Uri Costs	2021
Virginia	SB 1265	Deferred Fuel Costs	2023
West Virginia	HB 3308	Environmental Compliance Costs, Fuel Costs, Storm Recovery Costs, Undepreciated Generation Plant Balances	2023
Wisconsin	Statute 196.027	Pollution Control Investments	2012

Major Event Recovery Costs

STATE	BILL NUMBER	ELIGIBLE COSTS	EFFECTIVE YEAR
Arkansas	Act 641	Storm Recovery Costs	2021
Arizona	HB 2679	Major Event Recovery and Transition Asset Retirement Costs	2025
California	AB 913	COVID-19 and Wildfire Recovery	2020

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Kentucky	SB 192	Retired Generation Facilities and Other Large-Scale Deferred Costs	2023
Missouri	SB 202	Generation Facility Retirement and Extraordinary Costs That Would Cause Extreme Customer Rate Impacts Under Normal Ratemaking	2021
Oklahoma	SB 1050	Severe Winter Weather Costs (Including Fuel)	2021
Oregon	HB 3143	Severe Weather, Wildfire, and Pandemic Losses and Energy Conservation Programs	2023
South Carolina	S1077	Storm Costs	2022
Texas	HB 4492	Winter Storm Uri Costs	2021
West Virginia	HB 3308	Environmental Compliance Costs, Fuel Costs, Storm Recovery Costs, Undepreciated Generation Plant Balances	2023

Generation Retirement and Abandonment Costs

STATE	BILL NUMBER	ELIGIBLE COSTS	EFFECTIVE YEAR
Arizona	HB 2679	Major Event Recovery and Transition Asset Retirement Costs	2025
Colorado	SB 19-236	Pretax Electric Generating Facility Retirement	2019
Florida	Statute 366.95	Nuclear Generating Facility Retirement or Abandonment	2016
Indiana	SB 386	Electric Generating Facility Retirement	2021
Kansas	HB 2072	Pretax Electric Generating Facility Retirement	2021
Kentucky	SB 192	Retired Generation Facilities and Other Large-Scale Deferred Costs	2023
Louisiana	RS 45.1251	Cancelled Construction of Electric Generating, Transmission, or Large Capital Investment Facilities	2010
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Montana	Energy Impact Assistance Act	Pretax Electric Generating Facility Retirement and Infrastructure Costs	2019
New Mexico	Energy Transition Act	Generation Facility Abandonment Costs	2019
North Carolina	HB 951	Coal Generating Facility Early Retirement	2021
West Virginia	HB 3308	Environmental Compliance Costs, Fuel Costs, Storm Recovery Costs, Undepreciated Generation Plant Balances	2023

Restructuring Costs

STATE	BILL NUMBER	ELIGIBLE COSTS	EFFECTIVE YEAR
Connecticut	SB 484	Restructuring Stranded Costs	2010
Maryland	SB 1	Standard Offer Service Deferment	2006
Massachusetts	Statute XXII.164.1G	Restructuring Stranded Costs	1996
Michigan	Statute 460.10	Regulatory Assets, Restructuring Stranded Costs, Retiring of Existing Debt and Equity	2000
New Hampshire	RSA 369-B	Restructuring Stranded Costs	2000
New Jersey	SB 869	Deferred Supply Charge Balances	2002

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Ohio	Section 4928.143	Phased-In Standard Offer Service Prices	2012
Pennsylvania	Statute 66.2808	Restructuring Stranded Costs	1996
Rhode Island	Statute 39-1-45	Restructuring Stranded Costs	1997

Energy and Fuel Costs

STATE	BILL NUMBER	ELIGIBLE COSTS	EFFECTIVE YEAR
Idaho	Statute 61.15	Energy Costs	2001
Oklahoma	SB 1050	Severe Winter Weather Costs (Including Fuel)	2021
Virginia	SB 1265	Deferred Fuel Costs	2023
West Virginia	HB 3308	Environmental Compliance Costs, Fuel Costs, Storm Recovery Costs, Undepreciated Generation Plant Balances	2023

Construction, Program, and Infrastructure Costs

STATE	BILL NUMBER	ELIGIBLE COSTS	EFFECTIVE YEAR
Kentucky	SB 192	Retired Generation Facilities and Other Large-Scale Deferred Costs	2023
Michigan	Statute 460.10	Regulatory Assets, Restructuring Stranded Costs, Retiring of Existing Debt and Equity	2000
Mississippi	HB 1134	Clean Coal Generation Construction	2013
Montana	Energy Impact Assistance Act	Pretax Electric Generating Facility Retirement and Infrastructure Costs	2019
New York	SB S6455C	System Resiliency Costs	2022
Oregon	HB 3143	Severe Weather, Wildfire, and Pandemic Losses and Energy Conservation Programs	2023
Oregon	HB 3179	Large Capital Investments	2025
West Virginia	HB 3308	Environmental Compliance Costs, Fuel Costs, Storm Recovery Costs, Undepreciated Generation Plant Balances	2023
Wisconsin	Statute 196.027	Pollution Control Investments	2012

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