

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4530**

4 (By Delegates White, Varner, Boggs, R. Phillips,
5 Andes, Morgan, Stowers and Poore)

6 (Originating in the Committee on Finance)

7 [February 20, 2012]

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9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §24-2-4f, relating to
12 authorizing the Public Service Commission of West Virginia to
13 consider and authorize the recovery of certain expanded net
14 energy costs by certain electric utilities through the
15 issuance of consumer rate relief bonds, providing definitions,
16 providing an application process for the authorization for
17 recovery of costs, providing duties of a qualifying utility
18 that may recover costs, default and successor provisions,
19 taxation of consumer rate relief charges, and responsibility
20 of Public Service Commission with respect to financing order.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new section, designated §24-2-4f, to read as
24 follows:

25 **ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

26 **§24-2-4f. Consumer rate relief bonds.**

1 (a) Legislative findings. - The Legislature hereby finds and
2 declares as follows:

3 (1) That some electric utilities in the state have experienced
4 expanded net energy costs of a magnitude problematic to recover
5 from their customers through the commission's traditional cost
6 recovery mechanisms, which have resulted in unusually large under-
7 recoveries;

8 (2) That the financing costs of carrying such under-recovery
9 balances and projected costs can be considerable;

10 (3) That the use of traditional utility financing mechanisms
11 to finance or refinance the recovery of such under-recovery
12 balances and projected costs may result in considerable additional
13 costs to be reflected in the approved rates of electric utility
14 customers;

15 (4) That customers of electric utilities in the state have an
16 interest in the electric utilities financing the costs of such
17 under-recovery balances and projected costs at a lower cost than
18 would be afforded by traditional utility financing mechanisms;

19 (5) That alternative financing mechanisms exist which can
20 result in lower costs and mitigate rate impacts to customers and
21 the use of these mechanisms can prove highly beneficial to such
22 customers; and

23 (6) That in order to use such alternative financing
24 mechanisms, the commission must be empowered to adopt a financing
25 order that advances these goals. The Legislature, therefore,
26 determines that it is in the interest of the state and its citizens

1 to encourage and facilitate the use of alternative financing
2 mechanisms that will enable electric utilities to finance or
3 refinance expanded net energy costs at the lowest reasonably
4 practical cost under certain conditions and to empower the
5 commission to review and approve alternative financing mechanisms
6 when it determines that such approval is in the public interest, as
7 set forth in this section.

8 (b) Definitions. - As used in this section:

9 (1) "Adjustment mechanism" means a formula-based mechanism for
10 making adjustments to consumer rate relief charges to correct for
11 over-collection or under-collection of such charges or otherwise to
12 ensure the timely and complete payment and recovery of such charges
13 and financing costs. The adjustment mechanism shall accommodate:
14 (i) Standard adjustments to consumer rate relief charges that are
15 limited to relatively stable conditions of operations; and (ii)
16 nonstandard adjustments to consumer rate relief charges that are
17 necessary to reflect significant changes from historical conditions
18 of operations, such as the loss of significant electrical load. The
19 adjustment mechanism is not to be used as a means to authorize the
20 issuance of consumer rate relief bonds in a principal amount
21 greater, or the payment or recovery of expanded net energy costs in
22 an amount greater, than that which was authorized in the financing
23 order which established the adjustment mechanism.

24 (2) "Ancillary agreement" means a bond insurance policy letter
25 of credit, reserve account, surety bond, swap arrangement, hedging
26 arrangement, liquidity or credit support arrangement or other

1 similar agreement or arrangement entered into in connection with
2 the issuance of consumer rate relief bonds that is designed to
3 promote the credit quality and marketability of the bonds or to
4 mitigate the risk of an increase in interest rates.

5 (3) "Assignee" means a person, corporation, limited liability
6 company, trust, partnership or other entity to which an interest in
7 consumer rate relief property is assigned, sold or transferred,
8 other than as security. The term also includes any entity to which
9 an assignee assigns, sells or transfers, other than as security,
10 the assignee's interest in or right to consumer rate relief
11 property.

12 (4) "Bond" includes debentures, notes, certificates of
13 participation, certificates of beneficial interest, certificates of
14 ownership or other evidences of indebtedness or ownership that are
15 issued by an electric utility or an assignee under a final
16 financing order, the proceeds of which are used directly or
17 indirectly to recover, finance, or refinance expanded net energy
18 costs and that are secured by or payable from revenues from
19 consumer rate relief charges.

20 (5) "Bondholder" means any holder or owner of a consumer rate
21 relief bond.

22 (6) "Commission" means the Public Service Commission of West
23 Virginia, as it may be constituted from time to time, and any
24 successor agency exercising functions similar in purpose thereto.

25 (7) "Consumer rate relief charges" means the amounts which are
26 authorized by the commission in a financing order to be collected

1 from a qualifying utility's customers in order to pay and secure
2 the debt service payments of consumer rate relief bonds and
3 associated financing costs.

4 (8) "Consumer rate relief costs" means those costs, including
5 financing costs, which are to be defrayed through consumer rate
6 relief charges.

7 (9) "Consumer rate relief property" means the property,
8 rights, and interests of a qualifying utility or an assignee
9 under a final financing order, including the right to impose,
10 charge, and collect the consumer rate relief charges that shall be
11 used to pay and secure the payment of consumer rate relief bonds
12 and financing costs, and including the right to obtain adjustments
13 to those charges, and any revenues, receipts, collections, rights
14 to payment, payments, moneys, claims, or other proceeds arising
15 from the rights and interests created under the final financing
16 order.

17 (10) "Expanded net energy costs" means historical and, if
18 deemed appropriate by the commission, projected costs, inclusive of
19 carrying charges on under-recovery balances authorized by the
20 commission, including costs incurred prior to the effective date of
21 this statute, adjudicated pursuant to the commission's expanded net
22 energy cost proceedings, which have been authorized for recovery by
23 an order of the commission, whether or not subject to judicial
24 appeal.

25 (11) "Financing costs" means any of the following:

26 (A) Principal, interest and redemption premiums that are

1 payable on consumer rate relief bonds;

2 (B) A payment required under an ancillary agreement;

3 (C) An amount required to fund or replenish a reserve account
4 or another account established under an indenture, ancillary
5 agreement or other financing document relating to consumer rate
6 relief bonds or the payment of any return on the capital
7 contribution approved by the commission to be made by a qualifying
8 utility to an assignee;

9 (D) Costs of retiring or refunding an existing debt and equity
10 securities of a qualifying utility in connection with the issuance
11 of consumer rate relief bonds but only to the extent the securities
12 were issued for the purpose of financing expanded net energy costs;

13 (E) Costs incurred by a qualifying utility to obtain
14 modifications of or amendments to an indenture, financing
15 agreement, security agreement, or similar agreement or instrument
16 relating to an existing secured or unsecured obligation of the
17 utility in connection with the issuance of consumer rate relief
18 bonds;

19 (F) Costs incurred by a qualifying utility to obtain a
20 consent, release, waiver, or approval from a holder of an
21 obligation described in subparagraph (E) of this subdivision that
22 are necessary to be incurred for the utility to issue or cause the
23 issuance of consumer rate relief bonds;

24 (G) Taxes, franchise fees or license fees imposed on consumer
25 rate relief charges;

26 (H) Costs related to issuing or servicing consumer rate relief

1 bonds or related to obtaining a financing order, including
2 servicing fees and expenses, trustee fees and expenses, legal fees
3 and expenses, administrative fees, placement fees, underwriting
4 fees, capitalized interest and equity, rating-agency fees and other
5 related costs authorized by the commission in a financing order;
6 and

7 (I) Costs that are incurred by the commission for a financial
8 adviser with respect to consumer rate relief bonds.

9 (12) "Financing order" means an order issued by the commission
10 under subsection (e) of this section that authorizes a qualifying
11 utility to issue consumer rate relief bonds and recover consumer
12 rate relief charges. A financing order may set forth conditions or
13 contingencies on the effectiveness of the relief authorized therein
14 and may grant relief that is different from that which was
15 requested in the application.

16 (13) "Final financing order" means a financing order that has
17 become final and has taken effect as provided in subdivision (10)
18 of subsection (e) of this section.

19 (14) "Financing party" means either of the following:

20 (A) A trustee, collateral agent or other person acting for the
21 benefit of any bondholder; or

22 (B) A party to an ancillary agreement, the rights and
23 obligations of which relate to or depend upon the existence of
24 consumer rate relief property, the enforcement and priority of a
25 security interest in consumer rate relief property, the timely
26 collection and payment of consumer rate relief charges or a

1 combination of these factors.

2 (15) "Financing statement" has the same meaning as in section
3 one-hundred-two, article nine, chapter forty-six of this Code.

4 (16) "Investment grade" means, with respect to the unsecured
5 debt obligations of a utility at any given time of determination,
6 a rating that is within the top four investment rating categories
7 as published by at least one nationally recognized statistical
8 rating organization as recognized by the United States Securities
9 and Exchange Commission.

10 (17) "Nonbypassable" means that the payment of consumer rate
11 relief charges may not be avoided by any West Virginia retail
12 customer of a qualifying utility or its successors and must be
13 paid by any such customer that receives electric delivery service
14 from such utility or its successors for as long as the consumer
15 rate relief bonds are outstanding.

16 (18) "Nonutility affiliate" means, with respect to any
17 utility, a person that: (i) Is an affiliate of the utility as
18 defined in 42.S.C.§16451(1); and (ii) is not a public utility that
19 provides retail utility service to customers in the state within
20 the meaning of section two, article one of this chapter.

21 (19) "Parent" means, with respect to a utility, a registered
22 holding company or other person that holds a majority ownership or
23 membership interest in the utility.

24 (20) "Qualifying utility" means a public utility engaged in
25 the sale of electric service to retail customers in West Virginia
26 which has applied for and received from the commission a final

1 financing order under this section, including an affiliated
2 electric public utility which has applied jointly for and received
3 such an order.

4 (21) "Registered holding company" means, with respect to a
5 utility, a person that is: (i) A registered holding company as
6 defined in 42 U.S.C.§16451(8); and (ii) an affiliate of the utility
7 as defined in 42 U.S.C.§16451(1).

8 (22) "Regulatory sanctions" means, under the circumstances
9 presented, a regulatory or ratemaking sanction or penalty that the
10 commission is authorized to impose pursuant to this chapter or any
11 proceeding for the enforcement of any provision of this chapter or
12 any order of the commission that the commission is authorized to
13 pursue or conduct pursuant to this chapter, including without
14 limitation: (i) The initiation of any proceeding in which the
15 utility is required to show cause why it should not be required to
16 comply with the terms and conditions of a financing order or the
17 requirements of this section; (ii) the imposition of penalties
18 pursuant to article four of this chapter; and (iii) a proceeding by
19 mandamus, injunction or other appropriate proceeding as provided in
20 section two of this article.

21 (23) "Successor" means, with respect to an entity, another
22 entity that succeeds by operation of law to the rights and
23 obligations of the first legal entity pursuant to any bankruptcy,
24 reorganization, restructuring, or other insolvency proceeding, any
25 merger, acquisition, or consolidation, or any sale or transfer of
26 assets, regardless of whether any of these occur as a result of a

1 restructuring of the electric power industry or otherwise.

2 (c) Application for financing order.

3 (1) If an electric utility or affiliate obtains from the
4 commission an authorization or waiver required by any other
5 provision of this chapter or by commission order with respect to
6 the underlying expanded net energy costs proposed to be financed
7 through the mechanism of consumer rate relief bonds, an electric
8 utility, or two or more affiliated electric utilities engaged in
9 the delivery of electric service to customers in this state, may
10 apply to the commission for a financing order that authorizes the
11 following:

12 (A) The issuance of consumer rate relief bonds, in one or more
13 series, to recover only those expanded net energy costs that
14 resulted in an under-recovery;

15 (B) The imposition, charging, and collection of consumer rate
16 relief charges, in accordance with the adjustment mechanism
17 approved by the commission under subparagraph (E), subdivision (6),
18 subsection (e) of this section to recover sufficient amounts to pay
19 and secure the debt service payments of consumer rate relief bonds
20 and associated financing costs; and

21 (C) The creation of consumer rate relief property under the
22 financing order.

23 (2) The commission may only consider applications made
24 pursuant to this subsection for the recovery of underlying expanded
25 net energy cost that would be reflected in schedules of rates filed
26 in calendar year 2012.

1 (d) Information required in application for financing order.

2 The application shall include all of the following:

3 (1) A description and quantification of the uncollected
4 expanded net energy costs that the electric utility seeks to
5 recover through the issuance of consumer rate relief bonds;

6 (2) An estimate of the date each series of consumer rate
7 relief bonds is expected to be issued;

8 (3) The expected term during which the consumer rate relief
9 costs for each series of consumer rate relief bonds are expected
10 to be recovered;

11 (4) An estimate of the financing costs associated with the
12 issuance of each series of consumer rate relief bonds;

13 (5) An estimate of the amount of consumer rate relief charges
14 necessary to recover the consumer rate relief costs set forth in
15 the application and the calculation for that estimate, which
16 calculation shall take into account the estimated date or dates of
17 issuance and the estimated principal amount of each series of
18 consumer rate relief bonds;

19 (6) A proposed methodology for allocating consumer rate relief
20 charges between and within tariff schedules and to special contract
21 customers;

22 (7) A description of a proposed adjustment mechanism,
23 reflecting the allocation methodology in subdivision (6) of this
24 subsection;

25 (8) A description of the benefits to the qualifying utility's
26 customers that are expected to result from the issuance of the

1 consumer rate relief bonds, including a demonstration that the
2 bonds and their financing costs are just and reasonable and are
3 reasonably expected to achieve the lowest reasonably attainable
4 cost in order to produce cost savings to customers and to mitigate
5 rate impacts on customers, as compared to traditional financing
6 mechanisms or traditional cost-recovery methods available to the
7 electric utility; and

8 (9) Other information required by commission rules.

9 (e) Issuance of financing order.

10 (1) Except as otherwise provided in this section, proceedings
11 on an application submitted by an electric utility under subsection
12 (c) of this section are governed by the commission's standard
13 procedural rules. Any party that participated in a proceeding in
14 which the subject expanded net energy costs were authorized or
15 approved automatically has standing to participate in the financing
16 order proceedings and the commission shall determine the standing
17 or lack of standing of any other petitioner for party status.

18 (2) Within thirty days after the filing of an application
19 under subsection (c) of this section, the commission shall issue a
20 scheduling order for the proceeding.

21 (3) At the conclusion of proceedings on an application
22 submitted by an electric utility under subsection (c) of this
23 section, the commission shall issue either a financing order,
24 granting the application, in whole or with modifications, or an
25 order denying the application.

26 (4) The commission may issue a financing order under this

1 subsection if the commission finds that the issuance of the
2 consumer rate relief bonds and the consumer rate relief charges
3 authorized by the order are just and reasonable and are reasonably
4 expected to achieve the lowest reasonably attainable cost in order
5 to produce cost savings to customers and to mitigate rate impacts
6 on customers, as compared to traditional financing mechanisms or
7 traditional cost-recovery methods available to the electric
8 utility.

9 (5) The commission shall include all of the following in a
10 financing order issued under this subsection:

11 (A) A determination of the maximum amount and a description of
12 the expanded net energy costs that may be recovered through
13 consumer rate relief bonds issued under the financing order;

14 (B) A description of consumer rate relief property, the
15 creation of which is authorized by the financing order;

16 (C) A description of the financing costs that may be recovered
17 through consumer rate relief charges and the period over which
18 those costs may be recovered;

19 (D) A description of the methodology and calculation for
20 allocating consumer rate relief charges between and within tariff
21 schedules and to special contract customers;

22 (E) A description and approval of the adjustment mechanism for
23 use in the imposition, charging, and collection of the consumer
24 rate relief charges, including: (i) The allocation referred to in
25 paragraph (D) of this subdivision and (ii) any specific
26 requirements for adjusting and reconciling consumer rate relief

1 charges for standard adjustments that are limited to relatively
2 stable conditions of operations and nonstandard adjustments that
3 are necessary to reflect significant changes from historical
4 conditions of operations, such as the loss of substantial
5 electrical load, so long as each and every application of the
6 adjustment mechanism is designed to assure the full and timely
7 payment of consumer rate relief bonds and associated financing
8 costs.

9 (F) The maximum term of the consumer rate relief bonds;

10 (G) A finding that the issuance of the consumer rate relief
11 bonds, including financing costs, is just and reasonable and are
12 reasonably expected to achieve the lowest reasonably attainable
13 cost in order to produce cost savings to customers and to mitigate
14 rate impacts on customers, as compared to traditional financing
15 mechanisms or traditional cost-recovery methods available to the
16 electric utility; and

17 (H) Any other provision the commission considers appropriate
18 to ensure the full and timely imposition, charging, collection and
19 adjustment, pursuant to an approved adjustment mechanism, of the
20 consumer rate relief charges.

21 (6) To the extent the commission deems appropriate and
22 compatible with the issuance advice letter procedure under
23 subdivision (9) of this subsection, the commission, in a financing
24 order, shall afford the electric utility flexibility in
25 establishing the terms and conditions for the consumer rate relief
26 bonds to accommodate changes in market conditions, including

1 repayment schedules, interest rates, financing costs, collateral
2 requirements, required debt service and other reserves, and the
3 ability of the qualifying utility, at its option, to effect a
4 series of issuances of consumer rate relief bonds and correlated
5 assignments, sales, pledges, or other transfers of consumer rate
6 relief property. Any changes made under this subdivision to terms
7 and conditions for the consumer rate relief bonds shall be in
8 conformance with the financing order.

9 (7) A financing order shall provide that the creation of
10 consumer rate relief property shall be simultaneous with the sale
11 of that property to an assignee as provided in the application and
12 the pledge of the property to secure consumer rate relief bonds.

13 (8) The commission, in a financing order, shall require that,
14 after the final terms of each issuance of consumer rate relief
15 bonds have been established, and prior to the issuance of those
16 bonds, the qualifying utility shall determine the resulting initial
17 consumer rate relief charges in accordance with the adjustment
18 mechanism described in the financing order. These consumer rate
19 relief charges shall be final and effective upon the issuance of
20 the consumer rate relief bonds, without further commission action.

21 (9) Because the actual structure and pricing of the consumer
22 rate relief bonds will not be known at the time the financing order
23 is issued, in the case of every securitization approved by the
24 commission, the qualifying utility which intends to cause the
25 issuance of such bonds will provide to the commission and the
26 commission's financial adviser, if any, prior to the issuance of

1 the bonds, an issuance advice letter following the determination of
2 the final terms of the bonds. The issuance advice letter shall
3 indicate the final structure of the consumer rate relief bonds and
4 provide the best available estimate of total ongoing costs. The
5 issuance advice letter should report the initial consumer rate
6 relief charges and other information specific to the consumer rate
7 relief bonds to be issued, as the financing order may require. The
8 qualifying utility may proceed with the issuance of the consumer
9 rate relief bonds unless, prior to noon on the fourth business day
10 after the commission receives the issuance advice letter, the
11 commission issues a disapproval letter directing that the bonds as
12 proposed shall not be issued and the basis for that disapproval.
13 The financing order may provide such additional provisions relating
14 to the issuance advice letter process as the commission deems
15 appropriate.

16 (10) An order of the commission issued pursuant to this
17 subsection is a final order of the commission. Any party aggrieved
18 by the issuance of any such order may petition for suspension and
19 review thereof by the Supreme Court of Appeals pursuant to section
20 one, article five of this chapter. In the case of a petition for
21 suspension and review, the Supreme Court of Appeals shall proceed
22 to hear and determine the action as expeditiously as practicable
23 and give the action precedence over other matters not accorded
24 similar precedence by law.

25 (11) The financing order shall also provide for a procedure
26 requiring the qualifying utility to adjust its rates or provide

1 credits in a manner that would return to customers any overpayments
2 resulting from the securitization for the expanded net energy costs
3 in excess of actual prudently incurred costs as subsequently
4 determined by the commission. The adjustment mechanism may not
5 affect or impair the consumer rate relief property or the right to
6 impose, collect, or adjust the consumer rate relief charges under
7 this section.

8 (12) The commission may require, as a condition to the
9 effectiveness of the financing order but in every circumstance
10 subject to the limitations set forth in subdivision (3), subsection
11 (g) of this section, that the qualifying utility give appropriate
12 assurances to the commission that the qualifying utility and its
13 parent will abide by the following conditions during any period in
14 which any consumer rate relief bonds issued pursuant to the
15 financing order are outstanding, in addition to any other
16 obligation either may have under this code or federal law. Without
17 first obtaining the prior consent and approval of the Commission,
18 the qualifying utility will not:

19 (A) Lend money, directly or indirectly, to a registered
20 holding company or a nonutility affiliate; or

21 (B) Guarantee the obligations of a registered holding company
22 or a nonutility affiliate.

23 (13) A financing order may require the qualifying utility to
24 file with the commission a periodic report showing the receipt and
25 disbursement of proceeds of consumer rate relief bonds and consumer
26 rate relief charges. A financing order may authorize the staff of

1 the commission to review and audit the books and records of the
2 qualifying utility relating to the receipt and disbursement of such
3 proceeds. The provisions of this subdivision do not limit the
4 authority of the commission under this chapter to investigate the
5 practices of the qualifying utility or to audit the books and
6 records of the qualifying utility.

7 (14) In the case of two or more affiliated utilities that have
8 jointly applied for a financing order as provided in subdivision
9 (1), subsection (c) of this section, a financing order may
10 authorize each affiliated utility to impose consumer rate relief
11 charges on its customers and to cause to be issued consumer rate
12 relief bonds and to receive and use the proceeds which it receives
13 with respect thereto as provided in subdivision (1), subsection (j)
14 of this section.

15 (15) The commission, in its discretion, may engage the
16 services of a financial adviser for the purpose of assisting the
17 commission in its consideration of an application for a financing
18 order and a subsequent issuance of consumer rate relief bonds
19 pursuant to a financing order.

20 (f) Allowed disposition of consumer rate relief property.

21 (1) The consumer rate relief property created in a final
22 financing order may be transferred, sold, conveyed or assigned to
23 any affiliate of the qualifying utility created for the limited
24 purpose of acquiring, owning or administering that property,
25 issuing consumer rate relief bonds under the final financing order
26 or a combination of these purposes.

1 (2) All or any portion of the consumer rate relief property
2 may be pledged to secure the payment of consumer rate relief bonds,
3 amounts payable to financing parties and bondholders, amounts
4 payable under any ancillary agreement and other financing costs.

5 (3) A transfer, sale, conveyance, assignment, grant of a
6 security interest in or pledge of consumer rate relief property by
7 a qualifying utility to an affiliate of the utility, to the extent
8 previously authorized in a financing order, does not require the
9 prior consent and approval of the commission under section twelve
10 of this article.

11 (4) The consumer rate relief property constitutes an existing,
12 present property right, notwithstanding any requirement that the
13 imposition, charging, and collection of consumer rate relief
14 charges depend on the qualifying utility continuing to deliver
15 retail electric service or continuing to perform its servicing
16 functions relating to the billing and collection of consumer rate
17 relief charges or on the level of future energy consumption. That
18 property exists regardless of whether the consumer rate relief
19 charges have been billed, have accrued or have been collected and
20 notwithstanding any requirement that the value or amount of the
21 property is dependent on the future provision of service to
22 customers by the qualifying utility.

23 (5) All such consumer rate relief property continues to exist
24 until the consumer rate relief bonds issued under the final
25 financing order are paid in full and all financing costs relating
26 to the bonds have been paid in full.

1 (g) Final financing order to remain in effect.

2 (1) A final financing order remains in effect until the
3 consumer rate relief bonds issued under the final financing order
4 and all financing costs related to the bonds have been paid in
5 full.

6 (2) A final financing order remains in effect and unabated,
7 notwithstanding the bankruptcy, reorganization or insolvency of the
8 qualifying utility, or any affiliate of the qualifying utility, or
9 the commencement of any judicial or nonjudicial proceeding on the
10 final financing order.

11 (3) A final financing order is irrevocable and the commission
12 may not reduce, impair, postpone or terminate the consumer rate
13 relief charges authorized in the final financing order or impair
14 the property or the collection or recovery of consumer rate relief
15 costs.

16 (h) Subsequent commission proceeding.

17 Upon petition, or upon its own motion, the commission may
18 commence a proceeding and issue a subsequent financing order that
19 provides for retiring and refunding consumer rate relief bonds
20 issued under the final financing order if the commission finds that
21 the subsequent financing order satisfies all of the requirements of
22 subsection (e) of this section. Effective on retirement of the
23 refunded consumer rate relief bonds and the issuance of new
24 consumer rate relief bonds, the commission shall adjust the related
25 consumer rate relief charges accordingly.

26 (i) Limits on commission authority.

1 (1) The commission, in exercising its powers and carrying out
2 its duties regarding regulation and ratemaking, may not do any of
3 the following:

4 (A) Consider consumer rate relief bonds issued under a final
5 financing order to be the debt of the qualifying utility;

6 (B) Consider the consumer rate relief charges imposed, charged
7 or collected under a final financing order to be revenue of the
8 qualifying utility; or

9 (C) Consider the consumer rate relief costs or financing costs
10 authorized under a final financing order to be costs of the
11 qualifying utility.

12 (2) The commission may not order or otherwise require,
13 directly or indirectly, an electric utility to use consumer rate
14 relief bonds to finance the recovery of expanded net energy costs.

15 (3) The commission may not refuse to allow the recovery of
16 expanded net energy costs solely because an electric utility has
17 elected or may elect to finance those costs through a financing
18 mechanism other than the issuance of consumer rate relief bonds.

19 (4) If a qualifying utility elects not to finance such costs
20 through the issuance of consumer rate relief bonds as authorized in
21 a final financing order, those costs shall be recovered as
22 authorized by the commission previously or in subsequent
23 proceedings.

24 (j) Duties of qualifying utility.

25 (1) A qualifying utility shall cause the proceeds which it
26 receives with respect to consumer rate relief bonds issued pursuant

1 to a financing order to be used for the recovery of the expanded
2 net energy costs which occasioned the issuance of the bonds,
3 including the retirement of debt and/or equity of the qualifying
4 utility which was incurred to finance or refinance such costs and
5 for no other purpose.

6 (2) A qualifying utility shall annually provide a plain-
7 English explanation of the consumer rate relief charges approved in
8 the financing order, as modified by subsequent issuances of
9 consumer rate relief bonds authorized under the financing order, if
10 any, and by application of the adjustment mechanism as provided in
11 subsection (k) of this section. These explanations may be made by
12 bill inserts, website information or other appropriate means as
13 required, or approved if proposed by the qualifying utility, by the
14 commission.

15 (3) Collected consumer rate relief charges shall be applied
16 solely to the repayment of consumer rate relief bonds and other
17 financing costs.

18 (4) The failure of a qualifying utility to apply the proceeds
19 which it receives with respect to an issuance of consumer rate
20 relief bonds in a reasonable, prudent and appropriate manner or
21 otherwise comply with any provision of this section does not
22 invalidate, impair or affect any financing order, consumer rate
23 relief property, consumer rate relief charges or consumer rate
24 relief bonds. Subject to the limitations set forth in subsection
25 (g) of this section, nothing in this subdivision prevents or
26 precludes the commission from imposing regulatory sanctions against

1 a qualifying utility for failure to comply with the terms and
2 conditions of a financing order or the requirements of this
3 section.

4 (k) Application of adjustment mechanism; filing of schedules
5 with commission.

6 (1) A qualifying utility shall file with the commission, and
7 the commission shall approve, with or without such modification as
8 is allowed under this subsection, at least annually, or more
9 frequently as provided in the final financing order, a schedule
10 applying the approved adjustment mechanism to the consumer rate
11 relief charges authorized under the final financing order, based on
12 estimates of demand and consumption for each tariff schedule and
13 special contract customer and other mathematical factors. The
14 qualifying utility shall submit with the schedule a request for
15 approval to make the adjustments to the consumer rate relief
16 charges in accordance with the schedule.

17 (2) On the same day a qualifying utility files with the
18 commission its calculation of the adjustment, it shall cause notice
19 of the filing to be given, in the form specified in the financing
20 order, as a Class I legal advertisement in compliance with the
21 provisions of article three, chapter fifty-nine of this code in a
22 newspaper of general circulation published each weekday in Kanawha
23 County. This publication is only required if the calculation of
24 the adjustment filed by the utility with the commission would
25 result in an increase in the amount of the consumer rate relief
26 charges.

1 (3) The commission's review of a request for a standard
2 adjustment is limited to a determination of whether there is a
3 mathematical error in the application of the adjustment mechanism
4 to the consumer rate relief charges. No hearing is required for
5 such an adjustment. Each standard adjustment to the consumer rate
6 relief charges, in an amount as calculated by the qualifying
7 utility but incorporating any correction for a mathematical error
8 as determined by the commission, automatically becomes effective
9 fifteen days following the date on which the qualifying utility
10 files with the commission its calculation of the standard
11 adjustment.

12 (4) If the commission authorizes a nonstandard adjustment
13 procedure in the financing order, and the qualifying utility files
14 for such an adjustment, the commission shall allow interested
15 parties thirty days from the date the qualifying utility filed the
16 calculation of a nonstandard adjustment to make comments. The
17 commission's review of the total amount required for a nonstandard
18 adjustment shall be limited to the mathematical accuracy of the
19 total adjustment needed to assure the full and timely payment of
20 all debt service costs and related financing costs of the consumer
21 rate relief bonds. The commission may also determine the proper
22 allocation of those costs within and between classes of customers
23 and to special contract customers, the proper design of the
24 consumer rate relief charges and the appropriate application of
25 those charges under the methodology set forth in the formula-based
26 adjustment mechanism approved in the financing order. If the

1 commission determines that a hearing is necessary, the commission
2 shall hold a hearing on the comments within forty days of the date
3 the qualifying utility filed the calculation of the nonstandard
4 adjustment. The nonstandard adjustment, as modified by the
5 commission, if necessary, shall be approved by the commission
6 within sixty days and the commission may shorten the filing and
7 hearing periods above in the financing order to ensure this result.
8 Any procedure for a nonstandard adjustment must be consistent with
9 assuring the full and timely payment of debt service of the
10 consumer rate relief bonds and associated financing costs.

11 (5) No adjustment approved or deemed approved under this
12 section affects the irrevocability of the final financing order as
13 specified in subdivision (3) of subsection (g) of this section.

14 (1) *Nonbypassability of consumer rate relief charges.*

15 (1) As long as consumer rate relief bonds issued under a final
16 financing order are outstanding, the consumer rate relief charges
17 authorized under the final financing order are nonbypassable and
18 apply to all existing or future West Virginia retail customers of
19 a qualifying utility or its successors and must be paid by any
20 customer that receives electric delivery service from the utility
21 or its successors.

22 (2) The consumer rate relief charges shall be collected by the
23 qualifying utility or the qualifying utility's successors or
24 assignees, or a collection agent, in full through a charge that is
25 separate and apart from the qualifying utility's base rates.

26 (m) *Utility default.*

1 (1) If a qualifying utility defaults on a required payment of
2 consumer rate relief charges collected, a court, upon application
3 by an interested party, or the commission, upon application to the
4 commission or upon its own motion, and without limiting any other
5 remedies available to the applying party, shall order the
6 sequestration and payment of the consumer rate relief charges
7 collected for the benefit of bondholders, assignees and financing
8 parties. The order remains in full force and effect notwithstanding
9 a bankruptcy, reorganization or other insolvency proceedings with
10 respect to the qualifying utility or any affiliate thereof.

11 (2) Customers of a qualifying utility shall be held harmless
12 by the qualifying utility for its failure to remit any required
13 payment of consumer rate relief charges collected but such failure
14 does not affect the consumer rate relief property or the rights to
15 impose, collect and adjust the consumer rate relief charges under
16 this section.

17 (3) Consumer rate relief property under a final financing
18 order and the interests of an assignee, bondholder or financing
19 party in that property under a financing agreement are not subject
20 to set off, counterclaim, surcharge or defense by the qualifying
21 utility or other person, including as a result of the qualifying
22 utility's failure to provide past, present, or future services, or
23 in connection with the bankruptcy, reorganization, or other
24 insolvency proceeding of the qualifying utility, any affiliate, or
25 any other entity.

26 (n) Successors to qualifying utility.

1 A successor to a qualifying utility is bound by the
2 requirements of this section. The successor shall perform and
3 satisfy all obligations of the electric utility under the final
4 financing order in the same manner and to the same extent as the
5 qualifying utility including the obligation to collect and pay
6 consumer rate relief charges to the person(s) entitled to receive
7 them. The successor has the same rights as the qualifying utility
8 under the final financing order in the same manner and to the same
9 extent as the qualifying utility.

10 (o) Security interest in consumer rate relief property.

11 (1) Except as provided in subdivisions (3) through (5) of this
12 subsection, the creation, perfection and enforcement of a security
13 interest in consumer rate relief property under a final financing
14 order to secure the repayment of the principal of and interest on
15 consumer rate relief bonds, amounts payable under any ancillary
16 agreement and other financing costs are governed by this section
17 and not article nine of chapter forty-six of this code.

18 (2) The description of the consumer rate relief property in a
19 transfer or security agreement and a financing statement is
20 sufficient only if the description refers to this section and the
21 final financing order creating the property. This section applies
22 to all purported transfers of, and all purported grants of, liens
23 on or security interests in that property, regardless of whether
24 the related transfer or security agreement was entered into or the
25 related financing statement was filed, before or after the
26 effective date of this section.

1 (3) A security interest in consumer rate relief property under
2 a final financing order is created, valid and binding at the latest
3 of the date that the security agreement is executed and delivered
4 or the date that value is received for the consumer rate relief
5 bonds.

6 (4) The security interest attaches without any physical
7 delivery of collateral or other act and upon the filing of the
8 financing statement with the Office of the Secretary of State. The
9 lien of the security interest is valid, binding and perfected
10 against all parties having claims of any kind in tort, contract or
11 otherwise against the person granting the security interest,
12 regardless of whether the parties have notice of the lien. Also
13 upon this filing, a transfer of an interest in the consumer rate
14 relief property is perfected against all parties having claims of
15 any kind, including any judicial lien, or other lien creditors or
16 any claims of the seller or creditors of the seller, other than
17 creditors holding a prior security interest, ownership interest or
18 assignment in the property previously perfected in accordance with
19 this subsection.

20 (5) The Secretary of State shall maintain any financing
21 statement filed under this subsection in the same manner that the
22 secretary maintains financing statements filed by utilities under
23 article nine of chapter forty-six of this code. The filing of a
24 financing statement under this subsection is governed by the
25 provisions regarding the filing of financing statements in article
26 nine of chapter forty-six of this code. However, a person filing

1 a financing statement under this subsection is not required to file
2 any continuation statements to preserve the perfected status of its
3 security interest.

4 (6) A security interest in consumer rate relief property under
5 a final financing order is a continuously perfected security
6 interest and has priority over any other lien, created by operation
7 of law or otherwise, that may subsequently attach to that property
8 or those rights or interests unless the holder of any such lien has
9 agreed in writing otherwise.

10 (7) The priority of a security interest in consumer rate
11 relief property is not affected by the commingling of collected
12 consumer rate relief charges with other amounts. Any pledged or
13 secured party has a perfected security interest in the amount of
14 all consumer rate relief charges collected that are deposited in a
15 cash or deposit account of the qualifying utility in which such
16 collected charges have been commingled with other funds. Any other
17 security interest that may apply to those funds shall be terminated
18 when the funds are transferred to a segregated account for an
19 assignee or a financing party.

20 (8) No application of the adjustment mechanism as described in
21 subsection (j) of this section affects the validity, perfection or
22 priority of a security interest in or the transfer of consumer rate
23 relief property under the final financing order.

24 (p) Transfer, sale, etc. of consumer rate relief property.

25 (1) A sale, assignment or transfer of consumer rate relief
26 property under a final financing order is an absolute transfer and

1 true sale of, and not a pledge of or secured transaction relating
2 to, the seller's right, title and interest in, to and under the
3 property, if the documents governing the transaction expressly
4 state that the transaction is a sale or other absolute transfer. A
5 transfer of an interest in that property may be created only when
6 all of the following have occurred:

7 (A) The financing order has become final and taken effect;

8 (B) The documents evidencing the transfer of the property have
9 been executed and delivered to the assignee; and

10 (C) Value has been received for the property.

11 (2) The characterization of the sale, assignment or transfer
12 as an absolute transfer and true sale and the corresponding
13 characterization of the property interest of the purchaser shall be
14 effective and perfected against all third parties and is not
15 affected or impaired by, among other things, the occurrence of any
16 of the following:

17 (A) Commingling of collected consumer rate relief charges with
18 other amounts;

19 (B) The retention by the seller of any of the following:

20 (i) A partial or residual interest, including an equity
21 interest, in the consumer rate relief property, whether direct or
22 indirect, or whether subordinate or otherwise;

23 (ii) The right to recover costs associated with taxes,
24 franchise fees or license fees imposed on the collection of
25 consumer rate relief charges;

26 (iii) Any recourse that the purchaser or any assignee may have

1 against the seller;

2 (iv) Any indemnification rights, obligations or repurchase
3 rights made or provided by the seller;

4 (v) The obligation of the seller to collect consumer rate
5 relief charges on behalf of an assignee;

6 (vi) The treatment of the sale, assignment or transfer for
7 tax, financial reporting or other purposes; or

8 (vii) Any application of the adjustment mechanism under the
9 final financing order.

10 (q) Taxation of consumer rate relief charges; consumer rate
11 relief bonds not debt of governmental entities or a pledge of
12 taxing powers.

13 (1) The imposition, billing, collection and receipt of
14 consumer rate relief charges under this section are exempt from
15 state income, sales, franchise, gross receipts, business and
16 occupation and other taxes or similar charges: Provided, however,
17 That neither this exemption nor any other provision of this
18 subsection shall preclude any municipality from taxing consumer
19 rate relief charges under the authority granted to municipalities
20 pursuant to sections five and five-a of article thirteen in chapter
21 eight of this code.

22 (2) Consumer rate relief bonds issued under a final financing
23 order do not constitute a debt or a pledge of the faith and credit
24 or taxing power of this state or of any county, municipality or any
25 other political subdivision of this state. Bondholders have no
26 right to have taxes levied by this state or the taxing authority of

1 any county, municipality or any other political subdivision of this
2 state for the payment of the principal of or interest on the bonds.
3 The issuance of consumer rate relief bonds does not, directly,
4 indirectly or contingently, obligate this state or a county,
5 municipality or political subdivision of this state to levy a tax
6 or make an appropriation for payment of the principal of or
7 interest on the bonds.

8 (r) Consumer rate relief bonds as legal investments. Any of
9 the following may legally invest any sinking funds, moneys or other
10 funds belonging to them or under their control in consumer rate
11 relief bonds:

12 (1) The state, the West Virginia Investment Management Board,
13 the West Virginia Housing Development Fund, municipal corporations,
14 political subdivisions, public bodies and public officers except
15 for members of the Public Service Commission;

16 (2) Banks and bankers, savings and loan associations, credit
17 unions, trust companies, building and loan associations, savings
18 banks and institutions, deposit guarantee associations, investment
19 companies, insurance companies and associations and other persons
20 carrying on a banking or insurance business, including domestic for
21 life and domestic not for life insurance companies; and

22 (3) Personal representatives, guardians, trustees and other
23 fiduciaries.

24 (s) Pledge of state.

25 (1) The state pledges to and agrees with the bondholders,
26 assignees and financing parties under a final financing order that

1 the state will not take or permit any action that impairs the value
2 of consumer rate relief property under the final financing order or
3 revises the consumer rate relief costs for which recovery is
4 authorized under the final financing order or, except as allowed
5 under subsection (j) of this section, reduce, alter or impair
6 consumer rate relief charges that are imposed, charged, collected
7 or remitted for the benefit of the bondholders, assignees and
8 financing parties, until any principal, interest and redemption
9 premium in respect of consumer rate relief bonds, all financing
10 costs and all amounts to be paid to an assignee or financing party
11 under an ancillary agreement are paid or performed in full.

12 (2) A person who issues consumer rate relief bonds is
13 permitted to include the pledge specified in subdivision (1) of
14 this subsection in the consumer rate relief bonds, ancillary
15 agreements and documentation related to the issuance and marketing
16 of the consumer rate relief bonds.

17 (t) West Virginia law governs; this section controls.

18 (1) The law governing the validity, enforceability,
19 attachment, perfection, priority and exercise of remedies with
20 respect to the transfer of consumer rate relief property under a
21 final financing order, the creation of a security interest in any
22 such property, consumer rate relief charges or final financing
23 order are the laws of this state as set forth in this section.

24 (2) This section controls in the event of a conflict between
25 its provisions and any other law regarding the attachment,
26 assignment, or perfection, the effect of perfection or priority of

1 any security interest in or transfer of consumer rate relief
2 property under a final financing order.

3 (u) Severability.

4 If any provision of this section or the application thereof to
5 any person, circumstance or transaction is held by a court of
6 competent jurisdiction to be unconstitutional or invalid, the
7 unconstitutionality or invalidity does not affect the
8 constitutionality or validity of any other provision of this
9 section or its application or validity to any person, circumstance
10 or transaction, including, without limitation, the irrevocability
11 of a financing order issued pursuant to this section, the validity
12 of the issuance of consumer rate relief bonds, the imposition of
13 consumer rate relief charges, the transfer or assignment of
14 consumer rate relief property or the collection and recovery of
15 consumer rate relief charges. To these ends, the Legislature
16 hereby declares that the provisions of this section are intended to
17 be severable and that the Legislature would have enacted this
18 section even if any provision of this section held to be
19 unconstitutional or invalid had not been included in this section.

20 (v) Non-utility status.

21 An assignee or financing party is not an electric public
22 utility or person providing electric service by virtue of engaging
in the transactions with respect to consumer rate relief bonds.