

1 §24-2-4f. Consumer rate relief bonds.

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

4 (1) That some electric utilities in the state have experienced
5 in the past, and may be expected to experience in the future,
6 expanded net energy costs of a magnitude problematic to recover
7 from their customers through the commission's traditional cost
8 recovery mechanisms and which may produce unusually large
9 historical and projected under-recoveries;

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

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

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

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

1 customers; and

2 (6) That in order to use such alternative financing
3 mechanisms, the commission must be empowered to adopt a financing
4 order that advances these goals. The Legislature, therefore,
5 determines that it is in the interest of the state and its citizens
6 to encourage and facilitate the use of alternative financing
7 mechanisms that will enable electric utilities to finance or
8 refinance expanded net energy costs at the lowest reasonably
9 practical cost under certain conditions and to empower the
10 commission to review and approve alternative financing mechanisms
11 when it determines that such approval is in the public interest, as
12 set forth in this section.

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

14 (1) "Adjustment mechanism" means a formula-based mechanism for
15 making adjustments to consumer rate relief charges to correct for
16 over-collection or under-collection of such charges or otherwise to
17 ensure the timely and complete payment and recovery of such charges
18 and financing costs. The adjustment mechanism shall accommodate:
19 (i) Standard adjustments to consumer rate relief charges that are
20 limited to relatively stable conditions of operations; and (ii)
21 nonstandard adjustments to consumer rate relief charges that are
22 necessary to reflect significant changes from historical conditions
23 of operations, such as the loss of significant electrical load. The

1 adjustment mechanism is not to be used as a means to authorize the
2 issuance of consumer rate relief bonds in a principal amount
3 greater, or the payment or recovery of expanded net energy costs in
4 an amount greater, than that which was authorized in the financing
5 order which established the adjustment mechanism.

6 (2) "Ancillary agreement" means a bond insurance policy letter
7 of credit, reserve account, surety bond, swap arrangement, hedging
8 arrangement, liquidity or credit support arrangement or other
9 similar agreement or arrangement entered into in connection with
10 the issuance of consumer rate relief bonds that is designed to
11 promote the credit quality and marketability of the bonds or to
12 mitigate the risk of an increase in interest rates.

13 (3) "Assignee" means a person, corporation, limited liability
14 company, trust, partnership or other entity to which an interest in
15 consumer rate relief property is assigned, sold or transferred,
16 other than as security. The term also includes any entity to which
17 an assignee assigns, sells or transfers, other than as security,
18 the assignee's interest in or right to consumer rate relief
19 property.

20 (4) "Bond" includes debentures, notes, certificates of
21 participation, certificates of beneficial interest, certificates of
22 ownership or other evidences of indebtedness or ownership that are
23 issued by an electric utility or an assignee under a final

1 financing order, the proceeds of which are used directly or
2 indirectly to recover, finance, or refinance expanded net energy
3 costs and that are secured by or payable from revenues from
4 consumer rate relief charges.

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

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

10 (7) "Consumer rate relief charges" means the amounts which are
11 authorized by the commission in a financing order to be collected
12 from a qualifying utility's customers in order to pay and secure
13 the debt service payments of consumer rate relief bonds and
14 associated financing costs.

15 (8) "Consumer rate relief costs" means those costs, including
16 financing costs, which are to be defrayed through consumer rate
17 relief charges.

18 (9) "Consumer rate relief property" means the property,
19 rights, and interests of a qualifying utility or an assignee
20 under a final financing order, including the right to impose,
21 charge, and collect the consumer rate relief charges that shall be
22 used to pay and secure the payment of consumer rate relief bonds
23 and financing costs, and including the right to obtain adjustments

1 to those charges, and any revenues, receipts, collections, rights
2 to payment, payments, moneys, claims, or other proceeds arising
3 from the rights and interests created under the final financing
4 order.

5 (10) "Expanded net energy costs" means historical and, if
6 deemed appropriate by the commission, projected costs, inclusive of
7 carrying charges on under-recovery balances authorized by the
8 commission, including costs incurred prior to the effective date of
9 this statute, adjudicated pursuant to the commission's expanded net
10 energy cost proceedings, which have been authorized for recovery by
11 an order of the commission, whether or not subject to judicial
12 appeal.

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

14 (A) Principal, interest and redemption premiums that are
15 payable on consumer rate relief bonds;

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

17 (C) An amount required to fund or replenish a reserve account
18 or another account established under an indenture, ancillary
19 agreement or other financing document relating to consumer rate
20 relief bonds or the payment of any return on the capital
21 contribution approved by the commission to be made by a qualifying
22 utility to an assignee;

23 (D) Costs of retiring or refunding an existing debt and equity

1 securities of a qualifying utility in connection with the issuance
2 of consumer rate relief bonds but only to the extent the securities
3 were issued for the purpose of financing expanded net energy costs;

4 (E) Costs incurred by a qualifying utility to obtain
5 modifications of or amendments to an indenture, financing
6 agreement, security agreement, or similar agreement or instrument
7 relating to an existing secured or unsecured obligation of the
8 utility in connection with the issuance of consumer rate relief
9 bonds;

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

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

17 (H) Costs related to issuing or servicing consumer rate relief
18 bonds or related to obtaining a financing order, including
19 servicing fees and expenses, trustee fees and expenses, legal fees
20 and expenses, administrative fees, placement fees, underwriting
21 fees, capitalized interest and equity, rating-agency fees and other
22 related costs authorized by the commission in a financing order;
23 and

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

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

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

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

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

16 (B) A party to an ancillary agreement, the rights and
17 obligations of which relate to or depend upon the existence of
18 consumer rate relief property, the enforcement and priority of a
19 security interest in consumer rate relief property, the timely
20 collection and payment of consumer rate relief charges or a
21 combination of these factors.

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

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

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

13 (18) "Nonutility affiliate" means, with respect to any
14 utility, a person that: (i) Is an affiliate of the utility as
15 defined in 15 U.S.C. §79b(a) (11); and (ii) is not a public utility
16 that provides retail utility service to customers in the state
17 within the meaning of section two, article one of this chapter.

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

21 (20) "Qualifying utility" means a public utility engaged in
22 the sale of electric service to retail customers in West Virginia
23 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 15 U.S.C.§79b(a)(12); and (ii) an affiliate of the
7 utility as defined in 15 U.S.C.§79(a)(11).

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,

1 reorganization, restructuring, or other insolvency proceeding, any
2 merger, acquisition, or consolidation, or any sale or transfer of
3 assets, regardless of whether any of these occur as a result of a
4 restructuring of the electric power industry or otherwise.

5 (c) Application for financing order. - Provided, That it or
6 they obtain from the commission an authorization or waiver required
7 by any other provision of this chapter or by commission order with
8 respect to the underlying expanded net energy costs proposed to be
9 financed through the mechanism of consumer rate relief bonds, an
10 electric utility, or two or more affiliated electric utilities
11 engaged in the delivery of electric service to customers in this
12 state, may apply to the commission for a financing order that
13 authorizes the following:

14 (1) The issuance of consumer rate relief bonds, in one or more
15 series, to recover expanded net energy costs;

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

22 (3) The creation of consumer rate relief property under the
23 financing order.

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

1 subsection;

2 (8) A description of the benefits to the qualifying utility's
3 customers that are expected to result from the issuance of the
4 consumer rate relief bonds, including a demonstration that the
5 bonds and their financing costs are just and reasonable and are
6 reasonably expected to achieve the lowest reasonably attainable
7 cost in order to produce cost savings to customers and to mitigate
8 rate impacts on customers, as compared to traditional financing
9 mechanisms or traditional cost-recovery methods available to the
10 electric utility; and

11 (9) Other information required by commission rules.

12 (e) Issuance of financing order.

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

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

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

6 (4) The commission may issue a financing order under this
7 subsection if the commission finds that the issuance of the
8 consumer rate relief bonds and the consumer rate relief charges
9 authorized by the order are just and reasonable and are reasonably
10 expected to achieve the lowest reasonably attainable cost in order
11 to produce cost savings to customers and to mitigate rate impacts
12 on customers, as compared to traditional financing mechanisms or
13 traditional cost-recovery methods available to the electric
14 utility.

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

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

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

22 (C) A description of the financing costs that may be recovered
23 through consumer rate relief charges and the period over which

1 those costs may be recovered;

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

5 (E) A description and approval of the adjustment mechanism for
6 use in the imposition, charging, and collection of the consumer
7 rate relief charges, including: (i) The allocation referred to in
8 paragraph (D) of this subdivision and (ii) any specific
9 requirements for adjusting and reconciling consumer rate relief
10 charges for standard adjustments that are limited to relatively
11 stable conditions of operations and nonstandard adjustments that
12 are necessary to reflect significant changes from historical
13 conditions of operations, such as the loss of substantial
14 electrical load, so long as each and every application of the
15 adjustment mechanism is designed to assure the full and timely
16 payment of consumer rate relief bonds and associated financing
17 costs.

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

19 (G) A finding that the issuance of the consumer rate relief
20 bonds, including financing costs, is just and reasonable and are
21 reasonably expected to achieve the lowest reasonably attainable
22 cost in order to produce cost savings to customers and to mitigate
23 rate impacts on customers, as compared to traditional financing

1 mechanisms or traditional cost-recovery methods available to the
2 electric utility; and

3 (H) Any other provision the commission considers appropriate
4 to ensure the full and timely imposition, charging, collection and
5 adjustment, pursuant to an approved adjustment mechanism, of the
6 consumer rate relief charges.

7 (6) To the extent the commission deems appropriate and
8 compatible with the issuance advice letter procedure under
9 subdivision (9) of this subsection, the commission, in a financing
10 order, shall afford the electric utility flexibility in
11 establishing the terms and conditions for the consumer rate relief
12 bonds to accommodate changes in market conditions, including
13 repayment schedules, interest rates, financing costs, collateral
14 requirements, required debt service and other reserves, and the
15 ability of the qualifying utility, at its option, to effect a
16 series of issuances of consumer rate relief bonds and correlated
17 assignments, sales, pledges, or other transfers of consumer rate
18 relief property. Any changes made under this subdivision to terms
19 and conditions for the consumer rate relief bonds shall be in
20 conformance with the financing order.

21 (7) A financing order shall provide that the creation of
22 consumer rate relief property shall be simultaneous with the sale
23 of that property to an assignee as provided in the application and

1 the pledge of the property to secure consumer rate relief bonds.

2 (8) The commission, in a financing order, shall require that,
3 after the final terms of each issuance of consumer rate relief
4 bonds have been established, and prior to the issuance of those
5 bonds, the qualifying utility shall determine the resulting initial
6 consumer rate relief charges in accordance with the adjustment
7 mechanism described in the financing order. These consumer rate
8 relief charges shall be final and effective upon the issuance of
9 the consumer rate relief bonds, without further commission action.

10 (9) Because the actual structure and pricing of the consumer
11 rate relief bonds will not be known at the time the financing order
12 is issued, in the case of every securitization approved by the
13 commission, the qualifying utility which intends to cause the
14 issuance of such bonds will provide to the commission and the
15 commission's financial adviser, if any, prior to the issuance of
16 the bonds, an issuance advice letter following the determination of
17 the final terms of the bonds. The issuance advice letter shall
18 indicate the final structure of the consumer rate relief bonds and
19 provide the best available estimate of total ongoing costs. The
20 issuance advice letter should report the initial consumer rate
21 relief charges and other information specific to the consumer rate
22 relief bonds to be issued, as the financing order may require. The
23 qualifying utility may proceed with the issuance of the consumer

1 rate relief bonds unless, prior to noon on the fourth business day
2 after the commission receives the issuance advice letter, the
3 commission issues a disapproval letter directing that the bonds as
4 proposed should not be issued and the basis for that disapproval.
5 The financing order may provide such additional provisions relating
6 to the issuance advice letter process as the commission deems
7 appropriate.

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

17 (11) The financing order shall also provide for a procedure
18 requiring the qualifying utility to adjust its rates or provide
19 credits in a manner that would return to customers any overpayments
20 resulting from securitization of historical or projected expanded
21 net energy costs in excess of actual prudently incurred costs as
22 subsequently determined by the commission. The adjustment
23 mechanism may not affect or impair the consumer rate relief

1 property or the right to impose, collect, or adjust the consumer
2 rate relief charges under this section.

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

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

16 (B) Guarantee the obligations of a registered holding company
17 or a nonutility affiliate.

18 (13) A financing order may require the qualifying utility to
19 file with the commission a periodic report showing the receipt and
20 disbursement of proceeds of consumer rate relief bonds and consumer
21 rate relief charges. A financing order may authorize the staff of
22 the commission to review and audit the books and records of the
23 qualifying utility relating to the receipt and disbursement of such

1 proceeds. The provisions of this subdivision does not limit the
2 authority of the commission under this chapter to investigate the
3 practices of the qualifying utility or to audit the books and
4 records of the qualifying utility.

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

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

18 (f) Allowed disposition of consumer rate relief property:

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

1 or a combination of these purposes.

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

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

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

1 (5) All such consumer rate relief property continues to exist
2 until the consumer rate relief bonds issued under the final
3 financing order are paid in full and all financing costs relating
4 to the bonds have been paid in full.

5 (g) Final financing order to remain in effect:

6 (1) A final financing order remains in effect until the
7 consumer rate relief bonds issued under the final financing order
8 and all financing costs related to the bonds have been paid in
9 full.

10 (2) A final financing order remains in effect and unabated,
11 notwithstanding the bankruptcy, reorganization or insolvency of the
12 qualifying utility, or any affiliate of the qualifying utility, or
13 the commencement of any judicial or nonjudicial proceeding on the
14 final financing order.

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

20 (h) Subsequent commission proceeding:

21 Upon petition, or upon its own motion, the commission may
22 commence a proceeding and issue a subsequent financing order that
23 provides for retiring and refunding consumer rate relief bonds

1 issued under the final financing order if the commission finds that
2 the subsequent financing order satisfies all of the requirements of
3 subsection (e) of this section. Effective on retirement of the
4 refunded consumer rate relief bonds and the issuance of new
5 consumer rate relief bonds, the commission shall adjust the related
6 consumer rate relief charges accordingly.

7 (i) Limits on commission authority:

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

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

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

16 (C) Consider the consumer rate relief costs or financing costs
17 authorized under a final financing order to be costs of the
18 qualifying utility.

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

22 (3) The commission may not refuse to allow the recovery of
23 expanded net energy costs solely because an electric utility has

1 elected or may elect to finance those costs through a financing
2 mechanism other than the issuance of consumer rate relief bonds.

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

8 (j) Duties of qualifying utility.

9 (1) A qualifying utility shall cause the proceeds which it
10 receives with respect to consumer rate relief bonds issued pursuant
11 to a financing order to be used for the recovery of the expanded
12 net energy costs which occasioned the issuance of the bonds,
13 including the retirement of debt and/or equity of the qualifying
14 utility which was incurred to finance or refinance such costs and
15 for no other purpose.

16 (2) A qualifying utility shall annually provide a plain-
17 English explanation of the consumer rate relief charges approved in
18 the financing order, as modified by subsequent issuances of
19 consumer rate relief bonds authorized under the financing order, if
20 any, and by application of the adjustment mechanism as provided in
21 subsection (k) of this section. These explanations may be made by
22 bill inserts, website information or other appropriate means as
23 required, or approved if proposed by the qualifying utility, by the

1 commission.

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

5 (4) The failure of a qualifying utility to apply the proceeds
6 which it receives with respect to an issuance of consumer rate
7 relief bonds in a reasonable, prudent and appropriate manner or
8 otherwise comply with any provision of this section does not
9 invalidate, impair or affect any financing order, consumer rate
10 relief property, consumer rate relief charges or consumer rate
11 relief bonds. Subject to the limitations set forth in subsection
12 (g) of this section, nothing in this subdivision prevents or
13 precludes the commission from imposing regulatory sanctions against
14 a qualifying utility for failure to comply with the terms and
15 conditions of a financing order or the requirements of this
16 section.

17 (k) Application of adjustment mechanism; filing of schedules
18 with commission:

19 (1) A qualifying utility shall file with the commission, and
20 the commission shall approve, with or without such modification as
21 is allowed under this subsection, at least annually, or more
22 frequently as provided in the final financing order, a schedule
23 applying the approved adjustment mechanism to the consumer rate

1 relief charges authorized under the final financing order, based on
2 estimates of demand and consumption for each tariff schedule and
3 special contract customer and other mathematical factors. The
4 qualifying utility shall submit with the schedule a request for
5 approval to make the adjustments to the consumer rate relief
6 charges in accordance with the schedule.

7 (2) On the same day a qualifying utility files with the
8 commission its calculation of the adjustment, it shall cause notice
9 of the filing to be given, in the form specified in the financing
10 order, as a Class I legal advertisement in compliance with the
11 provisions of article three, chapter fifty-nine of this code in a
12 newspaper of general circulation published each weekday in Kanawha
13 County. This publication is only required if the calculation of
14 the adjustment filed by the utility with the commission would
15 result in an increase in the amount of the consumer rate relief
16 charges.

17 (3) The commission's review of a request for a standard
18 adjustment is limited to a determination of whether there is a
19 mathematical error in the application of the adjustment mechanism
20 to the consumer rate relief charges. No hearing is required for
21 such an adjustment. Each standard adjustment to the consumer rate
22 relief charges, in an amount as calculated by the qualifying
23 utility but incorporating any correction for a mathematical error

1 as determined by the commission, automatically becomes effective
2 fifteen days following the date on which the qualifying utility
3 files with the commission its calculation of the standard
4 adjustment.

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

1 commission, if necessary, shall be approved by the commission
2 within sixty days and the commission may shorten the filing and
3 hearing periods above in the financing order to ensure this result.
4 Any procedure for a nonstandard adjustment must be consistent with
5 assuring the full and timely payment of debt service of the
6 consumer rate relief bonds and associated financing costs.

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

10 (1) *Nonbypassability of consumer rate relief charges:*

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

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

22 (m) *Utility default:*

23 (1) If a qualifying utility defaults on a required payment of

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

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

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

1 any other entity.

2 (n) Successors to qualifying utility:

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

12 (o) Security interest in consumer rate relief property:

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

20 (2) The description of the consumer rate relief property in a
21 transfer or security agreement and a financing statement is
22 sufficient only if the description refers to this section and the
23 final financing order creating the property. This section applies

1 to all purported transfers of, and all purported grants of, liens
2 on or security interests in that property, regardless of whether
3 the related transfer or security agreement was entered into or the
4 related financing statement was filed, before or after the
5 effective date of this section.

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

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

1 this subsection.

2 (5) The Secretary of State shall maintain any financing
3 statement filed under this subsection in the same manner that the
4 secretary maintains financing statements filed by utilities under
5 article nine of chapter forty-six of this code. The filing of a
6 financing statement under this subsection is governed by the
7 provisions regarding the filing of financing statements in article
8 nine of chapter forty-six of this code. However, a person filing
9 a financing statement under this subsection is not required to file
10 any continuation statements to preserve the perfected status of its
11 security interest.

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

18 (7) The priority of a security interest in consumer rate
19 relief property is not affected by the commingling of collected
20 consumer rate relief charges with other amounts. Any pledged or
21 secured party has a perfected security interest in the amount of
22 all consumer rate relief charges collected that are deposited in a
23 cash or deposit account of the qualifying utility in which such

1 collected charges have been commingled with other funds. Any other
2 security interest that may apply to those funds shall be terminated
3 when the funds are transferred to a segregated account for an
4 assignee or a financing party.

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

9 (p) *Transfer, sale, etc. of consumer rate relief property:*

10 (1) A sale, assignment or transfer of consumer rate relief
11 property under a final financing order is an absolute transfer and
12 true sale of, and not a pledge of or secured transaction relating
13 to, the seller's right, title and interest in, to and under the
14 property, if the documents governing the transaction expressly
15 state that the transaction is a sale or other absolute transfer. A
16 transfer of an interest in that property may be created only when
17 all of the following have occurred:

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

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

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

22 (2) The characterization of the sale, assignment or transfer
23 as an absolute transfer and true sale and the corresponding

1 characterization of the property interest of the purchaser shall be
2 effective and perfected against all third parties and is not
3 affected or impaired by, among other things, the occurrence of any
4 of the following:

5 (A) Commingling of collected consumer rate relief charges with
6 other amounts;

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

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

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

14 (iii) Any recourse that the purchaser or any assignee may have
15 against the seller;

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

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

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

22 (vii) Any application of the adjustment mechanism under the
23 final financing order.

1 (q) Taxation of consumer rate relief charges; consumer rate
2 relief bonds not debt of governmental entities or a pledge of
3 taxing powers:

4 (1) The imposition, billing, collection and receipt of
5 consumer rate relief charges under this section are exempt from
6 state income, sales, franchise, gross receipts, business and
7 occupation and other taxes or similar charges and are not subject
8 to taxation by municipalities of this state under the authority
9 granted to municipalities.

10 (2) Consumer rate relief bonds issued under a final financing
11 order do not constitute a debt or a pledge of the faith and credit
12 or taxing power of this state or of any county, municipality or any
13 other political subdivision of this state. Bondholders have no
14 right to have taxes levied by this state or the taxing authority of
15 any county, municipality or any other political subdivision of this
16 state for the payment of the principal of or interest on the bonds.
17 The issuance of consumer rate relief bonds does not, directly,
18 indirectly or contingently, obligate this state or a county,
19 municipality or political subdivision of this state to levy a tax
20 or make an appropriation for payment of the principal of or
21 interest on the bonds.

22 (r) Consumer rate relief bonds as legal investments. Any of
23 the following may legally invest any sinking funds, moneys or other

1 funds belonging to them or under their control in consumer rate
2 relief bonds:

3 (1) The state, the West Virginia Investment Management Board,
4 the West Virginia Housing Development Fund, municipal corporations,
5 political subdivisions, public bodies and public officers except
6 for members of the Public Service Commission;

7 (2) Banks and bankers, savings and loan associations, credit
8 unions, trust companies, building and loan associations, savings
9 banks and institutions, deposit guarantee associations, investment
10 companies, insurance companies and associations and other persons
11 carrying on a banking or insurance business, including domestic for
12 life and domestic not for life insurance companies; and

13 (3) Personal representatives, guardians, trustees and other
14 fiduciaries.

15 (s) Pledge of state:

16 (1) The state pledges to and agrees with the bondholders,
17 assignees and financing parties under a final financing order that
18 the state will not take or permit any action that impairs the value
19 of consumer rate relief property under the final financing order or
20 revises the consumer rate relief costs for which recovery is
21 authorized under the final financing order or, except as allowed
22 under subsection (j) of this section, reduce, alter or impair
23 consumer rate relief charges that are imposed, charged, collected

1 or remitted for the benefit of the bondholders, assignees and
2 financing parties, until any principal, interest and redemption
3 premium in respect of consumer rate relief bonds, all financing
4 costs and all amounts to be paid to an assignee or financing party
5 under an ancillary agreement are paid or performed in full.

6 (2) A person who issues consumer rate relief bonds is
7 permitted to include the pledge specified in subdivision (1) of
8 this subsection in the consumer rate relief bonds, ancillary
9 agreements and documentation related to the issuance and marketing
10 of the consumer rate relief bonds.

11 (t) West Virginia law governs; this section controls:

12 (1) The law governing the validity, enforceability,
13 attachment, perfection, priority and exercise of remedies with
14 respect to the transfer of consumer rate relief property under a
15 final financing order, the creation of a security interest in any
16 such property, consumer rate relief charges or final financing
17 order are the laws of this state as set forth in this section.

18 (2) This section controls in the event of a conflict between
19 its provisions and any other law regarding the attachment,
20 assignment, or perfection, the effect of perfection or priority of
21 any security interest in or transfer of consumer rate relief
22 property under a final financing order.

23 (u) Severability:

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

17 (v) *Non-utility status.*

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

21 (w) *Effective Date.*

22 This section shall be effective upon passage.

NOTE: The purpose of this bill is to authorize the Public Service Commission of West Virginia to consider and issue a financing order to certain regulated electric utilities to permit the recovery of expanded net energy costs through securitization. The securitization mechanism authorized in the bill would permit commission approved expanded net energy costs, which are generally recoverable in a utility's rates, to be recovered through the issuance of customer rate relief bonds financed at a lower cost to customers than traditional utility financing mechanisms.

On the issuance of a financing order, the utility is authorized to issue consumer rate relief bonds to recover expanded net energy costs. The financing order also authorizes the utility to collect consumer rate relief charges from its customers that would be dedicated to repayment of customer rate relief bonds and related costs pursuant to the financing order. The financing order would be irrevocable, as it is the dedicated revenue stream from the consumer rate relief charges, not the financed expanded net energy costs or the credit of the utility, that is pledged to repay the consumer rate relief bonds. In the financing order process, the commission is required to consider, among other things, whether the issuance of consumer rate relief bonds is reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and mitigate rate impacts to customers when compared to traditional financing mechanisms or traditional cost-recovery methods available to the electric utility.

§24-2-4f is new; therefore, it has been completely underscored.