

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2858**

4 (By Delegates White, Cowles, Andes, Boggs, R. Phillips,  
5 Marcum, Skaff, Craig and Storch)

6 (Originating in the Committee on Finance)

7 [March 19, 2013]

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9

10 A BILL to amend and reenact §24-2-4f of the Code of West Virginia,  
11 1931, as amended, relating generally to consumer rate relief  
12 bonds; providing that the rate adjustment mechanism is the  
13 exception to the state's pledge not to reduce, alter or impair  
14 consumer rate relief charges until all amounts to be paid to  
15 an assignee or financing party are paid or performed in full.

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

17 That §24-2-4f of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

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

20 **§24-2-4f. Consumer rate relief bonds.**

21 (a) *Legislative findings.* - The Legislature hereby finds and  
22 declares as follows:

23 (1) That some electric utilities in the state have experienced  
24 expanded net energy costs of a magnitude problematic to recover  
25 from their customers through the commission's traditional cost  
26 recovery mechanisms, which have resulted in unusually large under-

1 recoveries;

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

4       (3) That the use of traditional utility financing mechanisms  
5 to finance or refinance the recovery of such under-recovery  
6 balances and projected costs may result in considerable additional  
7 costs to be reflected in the approved rates of electric utility  
8 customers;

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

13       (5) That alternative financing mechanisms exist which can  
14 result in lower costs and mitigate rate impacts to customers and  
15 the use of these mechanisms can prove highly beneficial to such  
16 customers; and

17       (6) That in order to use such alternative financing  
18 mechanisms, the commission must be empowered to adopt a financing  
19 order that advances these goals. The Legislature, therefore,  
20 determines that it is in the interest of the state and its citizens  
21 to encourage and facilitate the use of alternative financing  
22 mechanisms that will enable electric utilities to finance or  
23 refinance expanded net energy costs at the lowest reasonably  
24 practical cost under certain conditions and to empower the  
25 commission to review and approve alternative financing mechanisms  
26 when it determines that such approval is in the public interest, as

1 set forth in this section.

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

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

18 (2) "Ancillary agreement" means a bond insurance policy letter  
19 of credit, reserve account, surety bond, swap arrangement, hedging  
20 arrangement, liquidity or credit support arrangement or other  
21 similar agreement or arrangement entered into in connection with  
22 the issuance of consumer rate relief bonds that is designed to  
23 promote the credit quality and marketability of the bonds or to  
24 mitigate the risk of an increase in interest rates.

25 (3) "Assignee" means a person, corporation, limited liability  
26 company, trust, partnership or other entity to which an interest in

1 consumer rate relief property is assigned, sold or transferred,  
2 other than as security. The term also includes any entity to which  
3 an assignee assigns, sells or transfers, other than as security,  
4 the assignee's interest in or right to consumer rate relief  
5 property.

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

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

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

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

24 (8) "Consumer rate relief costs" means those costs, including  
25 financing costs, which are to be defrayed through consumer rate  
26 relief charges.

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

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

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

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

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

23           (C) An amount required to fund or replenish a reserve account  
24 or another account established under an indenture, ancillary  
25 agreement or other financing document relating to consumer rate  
26 relief bonds or the payment of any return on the capital

1 contribution approved by the commission to be made by a qualifying  
2 utility to an assignee;

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

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

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

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

20 (H) Costs related to issuing or servicing consumer rate relief  
21 bonds or related to obtaining a financing order, including  
22 servicing fees and expenses, trustee fees and expenses, legal fees  
23 and expenses, administrative fees, placement fees, underwriting  
24 fees, capitalized interest and equity, rating-agency fees and other  
25 related costs authorized by the commission in a financing order;  
26 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.

24 (16) "Investment grade" means, with respect to the unsecured  
25 debt obligations of a utility at any given time of determination,  
26 a rating that is within the top four investment rating categories

1 as published by at least one nationally recognized statistical  
2 rating organization as recognized by the United States Securities  
3 and Exchange Commission.

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

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

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

18 (20) "Qualifying utility" means a public utility engaged in  
19 the sale of electric service to retail customers in West Virginia  
20 which has applied for and received from the commission a final  
21 financing order under this section, including an affiliated  
22 electric public utility which has applied jointly for and received  
23 such an order.

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

1 as defined in 42 U.S.C.§16451(1).

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

15 (23) "Successor" means, with respect to an entity, another  
16 entity that succeeds by operation of law to the rights and  
17 obligations of the first legal entity pursuant to any bankruptcy,  
18 reorganization, restructuring, or other insolvency proceeding, any  
19 merger, acquisition, or consolidation, or any sale or transfer of  
20 assets, regardless of whether any of these occur as a result of a  
21 restructuring of the electric power industry or otherwise.

22 (c) *Application for financing order.*

23 (1) If an electric utility or affiliate obtains from the  
24 commission an authorization or waiver required by any other  
25 provision of this chapter or by commission order with respect to  
26 the underlying expanded net energy costs proposed to be financed

1 through the mechanism of consumer rate relief bonds, an electric  
2 utility, or two or more affiliated electric utilities engaged in  
3 the delivery of electric service to customers in this state, may  
4 apply to the commission for a financing order that authorizes the  
5 following:

6 (A) The issuance of consumer rate relief bonds, in one or more  
7 series, to recover only those expanded net energy costs that could  
8 result in an under-recovery;

9 (B) The imposition, charging, and collection of consumer rate  
10 relief charges, in accordance with the adjustment mechanism  
11 approved by the commission under subparagraph (E), subdivision (6),  
12 subsection (e) of this section to recover sufficient amounts to pay  
13 and secure the debt service payments of consumer rate relief bonds  
14 and associated financing costs; and

15 (C) The creation of consumer rate relief property under the  
16 financing order.

17 (2) The commission may only consider applications made  
18 pursuant to this subsection for the recovery of underlying expanded  
19 net energy costs that would be reflected in schedules of rates  
20 filed in calendar year 2012.

21 (d) *Information required in application for financing order.*

22 The application shall include all of the following:

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

26 (2) An estimate of the date each series of consumer rate

1 relief bonds is expected to be issued;

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

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

7 (5) An estimate of the amount of consumer rate relief charges  
8 necessary to recover the consumer rate relief costs set forth in  
9 the application and the calculation for that estimate, which  
10 calculation shall take into account the estimated date or dates of  
11 issuance and the estimated principal amount of each series of  
12 consumer rate relief bonds;

13 (6) A proposed methodology for allocating consumer rate relief  
14 charges between and within tariff schedules and to special contract  
15 customers;

16 (7) A description of a proposed adjustment mechanism,  
17 reflecting the allocation methodology in subdivision (6) of this  
18 subsection;

19 (8) A description of the benefits to the qualifying utility's  
20 customers that are expected to result from the issuance of the  
21 consumer rate relief bonds, including a demonstration that the  
22 bonds and their financing costs are just and reasonable and are  
23 reasonably expected to achieve the lowest reasonably attainable  
24 cost in order to produce cost savings to customers and to mitigate  
25 rate impacts on customers, as compared to traditional financing  
26 mechanisms or traditional cost-recovery methods available to the

1 electric utility; and

2 (9) Other information required by commission rules.

3 (e) *Issuance of financing order.*

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

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

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

20 (4) The commission may issue a financing order under this  
21 subsection if the commission finds that the issuance of the  
22 consumer rate relief bonds and the consumer rate relief charges  
23 authorized by the order are just and reasonable and are reasonably  
24 expected to achieve the lowest reasonably attainable cost in order  
25 to produce cost savings to customers and to mitigate rate impacts  
26 on customers, as compared to traditional financing mechanisms or

1 traditional cost-recovery methods available to the electric  
2 utility.

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

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

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

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

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

16 (E) A description and approval of the adjustment mechanism for  
17 use in the imposition, charging, and collection of the consumer  
18 rate relief charges, including: (i) The allocation referred to in  
19 paragraph (D) of this subdivision and (ii) any specific  
20 requirements for adjusting and reconciling consumer rate relief  
21 charges for standard adjustments that are limited to relatively  
22 stable conditions of operations and nonstandard adjustments that  
23 are necessary to reflect significant changes from historical  
24 conditions of operations, such as the loss of substantial  
25 electrical load, so long as each and every application of the  
26 adjustment mechanism is designed to assure the full and timely

1 payment of consumer rate relief bonds and associated financing  
2 costs;

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

4 (G) A finding that the issuance of the consumer rate relief  
5 bonds, including financing costs, is 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 (H) Any other provision the commission considers appropriate  
12 to ensure the full and timely imposition, charging, collection and  
13 adjustment, pursuant to an approved adjustment mechanism, of the  
14 consumer rate relief charges.

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

1 and conditions for the consumer rate relief bonds shall be in  
2 conformance with the financing order.

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

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

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

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

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

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

1 this section.

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

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

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

17       (13) A financing order may require the qualifying utility to  
18 file with the commission a periodic report showing the receipt and  
19 disbursement of proceeds of consumer rate relief bonds and consumer  
20 rate relief charges. A financing order may authorize the staff of  
21 the commission to review and audit the books and records of the  
22 qualifying utility relating to the receipt and disbursement of such  
23 proceeds. The provisions of this subdivision do not limit the  
24 authority of the commission under this chapter to investigate the  
25 practices of the qualifying utility or to audit the books and  
26 records of the qualifying utility.

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

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

14           (f) *Allowed disposition of consumer rate relief property.*

15           (1) The consumer rate relief property created in a final  
16 financing order may be transferred, sold, conveyed or assigned to  
17 any affiliate of the qualifying utility created for the limited  
18 purpose of acquiring, owning or administering that property,  
19 issuing consumer rate relief bonds under the final financing order  
20 or a combination of these purposes.

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

25           (3) A transfer, sale, conveyance, assignment, grant of a  
26 security interest in or pledge of consumer rate relief property by

1 a qualifying utility to an affiliate of the utility, to the extent  
2 previously authorized in a financing order, does not require the  
3 prior consent and approval of the commission under section twelve  
4 of this article.

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

17 (5) All such consumer rate relief property continues to exist  
18 until the consumer rate relief bonds issued under the final  
19 financing order are paid in full and all financing costs relating  
20 to the bonds have been paid in full.

21 (g) *Final financing order to remain in effect.*

22 (1) A final financing order remains in effect until the  
23 consumer rate relief bonds issued under the final financing order  
24 and all financing costs related to the bonds have been paid in  
25 full.

26 (2) A final financing order remains in effect and unabated,

1 notwithstanding the bankruptcy, reorganization or insolvency of the  
2 qualifying utility, or any affiliate of the qualifying utility, or  
3 the commencement of any judicial or nonjudicial proceeding on the  
4 final financing order.

5 (3) A final financing order is irrevocable and the commission  
6 may not reduce, impair, postpone or terminate the consumer rate  
7 relief charges authorized in the final financing order or impair  
8 the property or the collection or recovery of consumer rate relief  
9 costs.

10 (h) *Subsequent commission proceeding.*

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

20 (i) *Limits on commission authority.*

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

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

26 (B) Consider the consumer rate relief charges imposed, charged

1 or collected under a final financing order to be revenue of the  
2 qualifying utility; or

3 (C) Consider the consumer rate relief costs or financing costs  
4 authorized under a final financing order to be costs of the  
5 qualifying utility.

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

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

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

18 (j) *Duties of qualifying utility.*

19 (1) A qualifying utility shall cause the proceeds which it  
20 receives with respect to consumer rate relief bonds issued pursuant  
21 to a financing order to be used for the recovery of the expanded  
22 net energy costs which occasioned the issuance of the bonds,  
23 including the retirement of debt and/or equity of the qualifying  
24 utility which was incurred to finance or refinance such costs and  
25 for no other purpose.

26 (2) A qualifying utility shall annually provide a plain-

1 English explanation of the consumer rate relief charges approved in  
2 the financing order, as modified by subsequent issuances of  
3 consumer rate relief bonds authorized under the financing order, if  
4 any, and by application of the adjustment mechanism as provided in  
5 subsection (k) of this section. These explanations may be made by  
6 bill inserts, website information or other appropriate means as  
7 required, or approved if proposed by the qualifying utility, by the  
8 commission.

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

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

24       (k) *Application of adjustment mechanism; filing of schedules*  
25 *with commission.*

26       (1) A qualifying utility shall file with the commission, and

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

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

21 (3) The commission's review of a request for a standard  
22 adjustment is limited to a determination of whether there is a  
23 mathematical error in the application of the adjustment mechanism  
24 to the consumer rate relief charges. No hearing is required for  
25 such an adjustment. Each standard adjustment to the consumer rate  
26 relief charges, in an amount as calculated by the qualifying

1 utility but incorporating any correction for a mathematical error  
2 as determined by the commission, automatically becomes effective  
3 fifteen days following the date on which the qualifying utility  
4 files with the commission its calculation of the standard  
5 adjustment.

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

1 hearing periods above in the financing order to ensure this result.  
2 Any procedure for a nonstandard adjustment must be consistent with  
3 assuring the full and timely payment of debt service of the  
4 consumer rate relief bonds and associated financing costs.

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

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

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

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

20 (m) *Utility default.*

21 (1) If a qualifying utility defaults on a required payment of  
22 consumer rate relief charges collected, a court, upon application  
23 by an interested party, or the commission, upon application to the  
24 commission or upon its own motion, and without limiting any other  
25 remedies available to the applying party, shall order the  
26 sequestration and payment of the consumer rate relief charges

1 collected for the benefit of bondholders, assignees and financing  
2 parties. The order remains in full force and effect notwithstanding  
3 a bankruptcy, reorganization or other insolvency proceedings with  
4 respect to the qualifying utility or any affiliate thereof.

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

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

20 (n) *Successors to qualifying utility.*

21 A successor to a qualifying utility is bound by the  
22 requirements of this section. The successor shall perform and  
23 satisfy all obligations of the electric utility under the final  
24 financing order in the same manner and to the same extent as the  
25 qualifying utility including the obligation to collect and pay  
26 consumer rate relief charges to the person(s) entitled to receive

1 them. The successor has the same rights as the qualifying utility  
2 under the final financing order in the same manner and to the same  
3 extent as the qualifying utility.

4 (o) *Security interest in consumer rate relief property.*

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

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

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

26 (4) The security interest attaches without any physical

1 delivery of collateral or other act and upon the filing of the  
2 financing statement with the Office of the Secretary of State. The  
3 lien of the security interest is valid, binding and perfected  
4 against all parties having claims of any kind in tort, contract or  
5 otherwise against the person granting the security interest,  
6 regardless of whether the parties have notice of the lien. Also  
7 upon this filing, a transfer of an interest in the consumer rate  
8 relief property is perfected against all parties having claims of  
9 any kind, including any judicial lien, or other lien creditors or  
10 any claims of the seller or creditors of the seller, other than  
11 creditors holding a prior security interest, ownership interest or  
12 assignment in the property previously perfected in accordance with  
13 this subsection.

14 (5) The Secretary of State shall maintain any financing  
15 statement filed under this subsection in the same manner that the  
16 secretary maintains financing statements filed by utilities under  
17 article nine of chapter forty-six of this code. The filing of a  
18 financing statement under this subsection is governed by the  
19 provisions regarding the filing of financing statements in article  
20 nine of chapter forty-six of this code. However, a person filing  
21 a financing statement under this subsection is not required to file  
22 any continuation statements to preserve the perfected status of its  
23 security interest.

24 (6) A security interest in consumer rate relief property under  
25 a final financing order is a continuously perfected security  
26 interest and has priority over any other lien, created by operation

1 of law or otherwise, that may subsequently attach to that property  
2 or those rights or interests unless the holder of any such lien has  
3 agreed in writing otherwise.

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

14       (8) No application of the adjustment mechanism as described in  
15 subsection ~~(j)~~ (k) of this section affects the validity, perfection  
16 or priority of a security interest in or the transfer of consumer  
17 rate relief property under the final financing order.

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

19       (1) A sale, assignment or transfer of consumer rate relief  
20 property under a final financing order is an absolute transfer and  
21 true sale of, and not a pledge of or secured transaction relating  
22 to, the seller's right, title and interest in, to and under the  
23 property, if the documents governing the transaction expressly  
24 state that the transaction is a sale or other absolute transfer. A  
25 transfer of an interest in that property may be created only when  
26 all of the following have occurred:

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

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

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

5 (2) The characterization of the sale, assignment or transfer  
6 as an absolute transfer and true sale and the corresponding  
7 characterization of the property interest of the purchaser shall be  
8 effective and perfected against all third parties and is not  
9 affected or impaired by, among other things, the occurrence of any  
10 of the following:

11 (A) Commingling of collected consumer rate relief charges with  
12 other amounts;

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

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

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

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

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

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

26 (vi) The treatment of the sale, assignment or transfer for

1 tax, financial reporting or other purposes; or

2 (vii) Any application of the adjustment mechanism under the  
3 final financing order.

4 (q) *Taxation of consumer rate relief charges; consumer rate*  
5 *relief bonds not debt of governmental entities or a pledge of*  
6 *taxing powers.*

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

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

1 interest on the bonds.

2       (r) *Consumer rate relief bonds as legal investments.* Any of  
3 the following may legally invest any sinking funds, moneys or other  
4 funds belonging to them or under their control in consumer rate  
5 relief bonds:

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

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

16       (3) Personal representatives, guardians, trustees and other  
17 fiduciaries.

18       (s) *Pledge of state.*

19       (1) The state pledges to and agrees with the bondholders,  
20 assignees and financing parties under a final financing order that  
21 the state will not take or permit any action that impairs the value  
22 of consumer rate relief property under the final financing order or  
23 revises the consumer rate relief costs for which recovery is  
24 authorized under the final financing order or, except as allowed  
25 under subsection ~~(j)~~ (k) of this section, reduce, alter or impair  
26 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.*

24 If any provision of this section or the application thereof to  
25 any person, circumstance or transaction is held by a court of  
26 competent jurisdiction to be unconstitutional or invalid, the

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

14 (v) *Non-utility status.*

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

18