

COMMITTEE SUBSTITUTE

FOR

H. B. 2858

(BY DELEGATES WHITE, COWLES, ANDES, BOGGS, R. PHILLIPS,
MARCUM, SKAFF, CRAIG AND STORCH)

(Originating in the Committee on Finance)

[March 19, 2013]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4f. Consumer rate relief bonds.

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

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

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

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

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

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

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

34 (b) *Definitions.* — As used in this section:

35 (1) “Adjustment mechanism” means a formula-based
36 mechanism for making adjustments to consumer rate relief
37 charges to correct for over-collection or under-collection of such
38 charges or otherwise to ensure the timely and complete payment

39 and recovery of such charges and financing costs. The
40 adjustment mechanism shall accommodate: (i) Standard
41 adjustments to consumer rate relief charges that are limited to
42 relatively stable conditions of operations; and (ii) nonstandard
43 adjustments to consumer rate relief charges that are necessary to
44 reflect significant changes from historical conditions of
45 operations, such as the loss of significant electrical load. The
46 adjustment mechanism is not to be used as a means to authorize
47 the issuance of consumer rate relief bonds in a principal amount
48 greater, or the payment or recovery of expanded net energy costs
49 in an amount greater, than that which was authorized in the
50 financing order which established the adjustment mechanism.

51 (2) “Ancillary agreement” means a bond insurance policy
52 letter of credit, reserve account, surety bond, swap arrangement,
53 hedging arrangement, liquidity or credit support arrangement or
54 other similar agreement or arrangement entered into in
55 connection with the issuance of consumer rate relief bonds that
56 is designed to promote the credit quality and marketability of the
57 bonds or to mitigate the risk of an increase in interest rates.

58 (3) “Assignee” means a person, corporation, limited liability
59 company, trust, partnership or other entity to which an interest

60 in consumer rate relief property is assigned, sold or transferred,
61 other than as security. The term also includes any entity to which
62 an assignee assigns, sells or transfers, other than as security, the
63 assignee's interest in or right to consumer rate relief property.

64 (4) "Bond" includes debentures, notes, certificates of
65 participation, certificates of beneficial interest, certificates of
66 ownership or other evidences of indebtedness or ownership that
67 are issued by an electric utility or an assignee under a final
68 financing order, the proceeds of which are used directly or
69 indirectly to recover, finance, or refinance expanded net energy
70 costs and that are secured by or payable from revenues from
71 consumer rate relief charges.

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

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

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

80 collected from a qualifying utility's customers in order to pay
81 and secure the debt service payments of consumer rate relief
82 bonds and associated financing costs.

83 (8) "Consumer rate relief costs" means those costs, including
84 financing costs, which are to be defrayed through consumer rate
85 relief charges.

86 (9) "Consumer rate relief property" means the property,
87 rights, and interests of a qualifying utility or an assignee under
88 a final financing order, including the right to impose, charge, and
89 collect the consumer rate relief charges that shall be used to pay
90 and secure the payment of consumer rate relief bonds and
91 financing costs, and including the right to obtain adjustments to
92 those charges, and any revenues, receipts, collections, rights to
93 payment, payments, moneys, claims, or other proceeds arising
94 from the rights and interests created under the final financing
95 order.

96 (10) "Expanded net energy costs" means historical and, if
97 deemed appropriate by the commission, projected costs,
98 inclusive of carrying charges on under-recovery balances
99 authorized by the commission, including costs incurred prior to

100 the effective date of this statute, adjudicated pursuant to the
101 commission's expanded net energy cost proceedings, which have
102 been authorized for recovery by an order of the commission,
103 whether or not subject to judicial appeal.

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

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

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

108 (C) An amount required to fund or replenish a reserve
109 account or another account established under an indenture,
110 ancillary agreement or other financing document relating to
111 consumer rate relief bonds or the payment of any return on the
112 capital contribution approved by the commission to be made by
113 a qualifying utility to an assignee;

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

119 (E) Costs incurred by a qualifying utility to obtain
120 modifications of or amendments to an indenture, financing

121 agreement, security agreement, or similar agreement or
122 instrument relating to an existing secured or unsecured
123 obligation of the utility in connection with the issuance of
124 consumer rate relief bonds;

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

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

132 (H) Costs related to issuing or servicing consumer rate relief
133 bonds or related to obtaining a financing order, including
134 servicing fees and expenses, trustee fees and expenses, legal fees
135 and expenses, administrative fees, placement fees, underwriting
136 fees, capitalized interest and equity, rating-agency fees and other
137 related costs authorized by the commission in a financing order;
138 and

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

141 (12) “Financing order” means an order issued by the
142 commission under subsection (e) of this section that authorizes
143 a qualifying utility to issue consumer rate relief bonds and
144 recover consumer rate relief charges. A financing order may set
145 forth conditions or contingencies on the effectiveness of the
146 relief authorized therein and may grant relief that is different
147 from that which was requested in the application.

148 (13) “Final financing order” means a financing order that has
149 become final and has taken effect as provided in subdivision (10)
150 of subsection (e) of this section.

151 (14) “Financing party” means either of the following:

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

154 (B) A party to an ancillary agreement, the rights and
155 obligations of which relate to or depend upon the existence of
156 consumer rate relief property, the enforcement and priority of a
157 security interest in consumer rate relief property, the timely
158 collection and payment of consumer rate relief charges or a
159 combination of these factors.

160 (15) “Financing statement” has the same meaning as in
161 section one-hundred-two, article nine, chapter forty-six of this
162 code.

163 (16) “Investment grade” means, with respect to the
164 unsecured debt obligations of a utility at any given time of
165 determination, a rating that is within the top four investment
166 rating categories as published by at least one nationally
167 recognized statistical rating organization as recognized by the
168 United States Securities and Exchange Commission.

169 (17) “Nonbypassable” means that the payment of consumer
170 rate relief charges may not be avoided by any West Virginia
171 retail customer of a qualifying utility or its successors and must
172 be paid by any such customer that receives electric delivery
173 service from such utility or its successors for as long as the
174 consumer rate relief bonds are outstanding.

175 (18) “Nonutility affiliate” means, with respect to any utility,
176 a person that: (i) Is an affiliate of the utility as defined in 42
177 U.S.C.§16451(1); and (ii) is not a public utility that provides
178 retail utility service to customers in the state within the meaning
179 of section two, article one of this chapter.

180 (19) “Parent” means, with respect to a utility, a registered
181 holding company or other person that holds a majority
182 ownership or membership interest in the utility.

183 (20) “Qualifying utility” means a public utility engaged in
184 the sale of electric service to retail customers in West Virginia
185 which has applied for and received from the commission a final
186 financing order under this section, including an affiliated electric
187 public utility which has applied jointly for and received such an
188 order.

189 (21) “Registered holding company” means, with respect to
190 a utility, a person that is: (i) A registered holding company as
191 defined in 42 U.S.C.§16451(8); and (ii) an affiliate of the utility
192 as defined in 42 U.S.C.§16451(1).

193 (22) “Regulatory sanctions” means, under the circumstances
194 presented, a regulatory or ratemaking sanction or penalty that the
195 commission is authorized to impose pursuant to this chapter or
196 any proceeding for the enforcement of any provision of this
197 chapter or any order of the commission that the commission is
198 authorized to pursue or conduct pursuant to this chapter,
199 including without limitation: (i) The initiation of any proceeding

200 in which the utility is required to show cause why it should not
201 be required to comply with the terms and conditions of a
202 financing order or the requirements of this section; (ii) the
203 imposition of penalties pursuant to article four of this chapter;
204 and (iii) a proceeding by mandamus, injunction or other
205 appropriate proceeding as provided in section two of this article.

206 (23) "Successor" means, with respect to an entity, another
207 entity that succeeds by operation of law to the rights and
208 obligations of the first legal entity pursuant to any bankruptcy,
209 reorganization, restructuring, or other insolvency proceeding,
210 any merger, acquisition, or consolidation, or any sale or transfer
211 of assets, regardless of whether any of these occur as a result of
212 a restructuring of the electric power industry or otherwise.

213 (c) *Application for financing order.*

214 (1) If an electric utility or affiliate obtains from the
215 commission an authorization or waiver required by any other
216 provision of this chapter or by commission order with respect to
217 the underlying expanded net energy costs proposed to be
218 financed through the mechanism of consumer rate relief bonds,
219 an electric utility, or two or more affiliated electric utilities

220 engaged in the delivery of electric service to customers in this
221 state, may apply to the commission for a financing order that
222 authorizes the following:

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

226 (B) The imposition, charging, and collection of consumer
227 rate relief charges, in accordance with the adjustment mechanism
228 approved by the commission under subparagraph (E),
229 subdivision (6), subsection (e) of this section to recover
230 sufficient amounts to pay and secure the debt service payments
231 of consumer rate relief bonds and associated financing costs; and

232 (C) The creation of consumer rate relief property under the
233 financing order.

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

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

239 The application shall include all of the following:

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

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

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

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

250 (5) An estimate of the amount of consumer rate relief
251 charges necessary to recover the consumer rate relief costs set
252 forth in the application and the calculation for that estimate,
253 which calculation shall take into account the estimated date or
254 dates of issuance and the estimated principal amount of each
255 series of consumer rate relief bonds;

256 (6) A proposed methodology for allocating consumer rate
257 relief charges between and within tariff schedules and to special
258 contract customers;

259 (7) A description of a proposed adjustment mechanism,
260 reflecting the allocation methodology in subdivision (6) of this
261 subsection;

262 (8) A description of the benefits to the qualifying utility's
263 customers that are expected to result from the issuance of the
264 consumer rate relief bonds, including a demonstration that the
265 bonds and their financing costs are just and reasonable and are
266 reasonably expected to achieve the lowest reasonably attainable
267 cost in order to produce cost savings to customers and to
268 mitigate rate impacts on customers, as compared to traditional
269 financing mechanisms or traditional cost-recovery methods
270 available to the electric utility; and

271 (9) Other information required by commission rules.

272 (e) *Issuance of financing order.*

273 (1) Except as otherwise provided in this section, proceedings
274 on an application submitted by an electric utility under
275 subsection (c) of this section are governed by the commission's
276 standard procedural rules. Any party that participated in a
277 proceeding in which the subject expanded net energy costs were
278 authorized or approved automatically has standing to participate

279 in the financing order proceedings and the commission shall
280 determine the standing or lack of standing of any other petitioner
281 for party status.

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

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

290 (4) The commission may issue a financing order under this
291 subsection if the commission finds that the issuance of the
292 consumer rate relief bonds and the consumer rate relief charges
293 authorized by the order are just and reasonable and are
294 reasonably expected to achieve the lowest reasonably attainable
295 cost in order to produce cost savings to customers and to
296 mitigate rate impacts on customers, as compared to traditional
297 financing mechanisms or traditional cost-recovery methods
298 available to the electric utility.

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

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

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

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

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

313 (E) A description and approval of the adjustment mechanism
314 for use in the imposition, charging, and collection of the
315 consumer rate relief charges, including: (i) The allocation
316 referred to in paragraph (D) of this subdivision and (ii) any
317 specific requirements for adjusting and reconciling consumer
318 rate relief charges for standard adjustments that are limited to

319 relatively stable conditions of operations and nonstandard
320 adjustments that are necessary to reflect significant changes from
321 historical conditions of operations, such as the loss of substantial
322 electrical load, so long as each and every application of the
323 adjustment mechanism is designed to assure the full and timely
324 payment of consumer rate relief bonds and associated financing
325 costs;

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

327 (G) A finding that the issuance of the consumer rate relief
328 bonds, including financing costs, is just and reasonable and are
329 reasonably expected to achieve the lowest reasonably attainable
330 cost in order to produce cost savings to customers and to
331 mitigate rate impacts on customers, as compared to traditional
332 financing mechanisms or traditional cost-recovery methods
333 available to the electric utility; and

334 (H) Any other provision the commission considers
335 appropriate to ensure the full and timely imposition, charging,
336 collection and adjustment, pursuant to an approved adjustment
337 mechanism, of the consumer rate relief charges.

338 (6) To the extent the commission deems appropriate and
339 compatible with the issuance advice letter procedure under

340 subdivision (9) of this subsection, the commission, in a financing
341 order, shall afford the electric utility flexibility in establishing
342 the terms and conditions for the consumer rate relief bonds to
343 accommodate changes in market conditions, including
344 repayment schedules, interest rates, financing costs, collateral
345 requirements, required debt service and other reserves, and the
346 ability of the qualifying utility, at its option, to effect a series of
347 issuances of consumer rate relief bonds and correlated
348 assignments, sales, pledges, or other transfers of consumer rate
349 relief property. Any changes made under this subdivision to
350 terms and conditions for the consumer rate relief bonds shall be
351 in conformance with the financing order.

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

356 (8) The commission, in a financing order, shall require that,
357 after the final terms of each issuance of consumer rate relief
358 bonds have been established, and prior to the issuance of those
359 bonds, the qualifying utility shall determine the resulting initial

360 consumer rate relief charges in accordance with the adjustment
361 mechanism described in the financing order. These consumer
362 rate relief charges shall be final and effective upon the issuance
363 of the consumer rate relief bonds, without further commission
364 action.

365 (9) Because the actual structure and pricing of the consumer
366 rate relief bonds will not be known at the time the financing
367 order is issued, in the case of every securitization approved by
368 the commission, the qualifying utility which intends to cause the
369 issuance of such bonds will provide to the commission and the
370 commission's financial adviser, if any, prior to the issuance of
371 the bonds, an issuance advice letter following the determination
372 of the final terms of the bonds. The issuance advice letter shall
373 indicate the final structure of the consumer rate relief bonds and
374 provide the best available estimate of total ongoing costs. The
375 issuance advice letter should report the initial consumer rate
376 relief charges and other information specific to the consumer
377 rate relief bonds to be issued, as the financing order may require.
378 The qualifying utility may proceed with the issuance of the
379 consumer rate relief bonds unless, prior to noon on the fourth

380 business day after the commission receives the issuance advice
381 letter, the commission issues a disapproval letter directing that
382 the bonds as proposed shall not be issued and the basis for that
383 disapproval. The financing order may provide such additional
384 provisions relating to the issuance advice letter process as the
385 commission deems appropriate.

386 (10) An order of the commission issued pursuant to this
387 subsection is a final order of the commission. Any party
388 aggrieved by the issuance of any such order may petition for
389 suspension and review thereof by the Supreme Court of Appeals
390 pursuant to section one, article five of this chapter. In the case of
391 a petition for suspension and review, the Supreme Court of
392 Appeals shall proceed to hear and determine the action as
393 expeditiously as practicable and give the action precedence over
394 other matters not accorded similar precedence by law.

395 (11) The financing order shall also provide for a procedure
396 requiring the qualifying utility to adjust its rates or provide
397 credits in a manner that would return to customers any
398 overpayments resulting from the securitization for the expanded
399 net energy costs in excess of actual prudently incurred costs as

400 subsequently determined by the commission. The adjustment
401 mechanism may not affect or impair the consumer rate relief
402 property or the right to impose, collect, or adjust the consumer
403 rate relief charges under this section.

404 (12) The commission may require, as a condition to the
405 effectiveness of the financing order but in every circumstance
406 subject to the limitations set forth in subdivision (3), subsection
407 (g) of this section, that the qualifying utility give appropriate
408 assurances to the commission that the qualifying utility and its
409 parent will abide by the following conditions during any period
410 in which any consumer rate relief bonds issued pursuant to the
411 financing order are outstanding, in addition to any other
412 obligation either may have under this code or federal law.
413 Without first obtaining the prior consent and approval of the
414 commission, the qualifying utility will not:

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

417 (B) Guarantee the obligations of a registered holding
418 company or a nonutility affiliate.

419 (13) A financing order may require the qualifying utility to
420 file with the commission a periodic report showing the receipt

421 and disbursement of proceeds of consumer rate relief bonds and
422 consumer rate relief charges. A financing order may authorize
423 the staff of the commission to review and audit the books and
424 records of the qualifying utility relating to the receipt and
425 disbursement of such proceeds. The provisions of this
426 subdivision do not limit the authority of the commission under
427 this chapter to investigate the practices of the qualifying utility
428 or to audit the books and records of the qualifying utility.

429 (14) In the case of two or more affiliated utilities that have
430 jointly applied for a financing order as provided in subdivision
431 (1), subsection (c) of this section, a financing order may
432 authorize each affiliated utility to impose consumer rate relief
433 charges on its customers and to cause to be issued consumer rate
434 relief bonds and to receive and use the proceeds which it
435 receives with respect thereto as provided in subdivision (1),
436 subsection (j) of this section.

437 (15) The commission, in its discretion, may engage the
438 services of a financial adviser for the purpose of assisting the
439 commission in its consideration of an application for a financing
440 order and a subsequent issuance of consumer rate relief bonds
441 pursuant to a financing order.

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

443 (1) The consumer rate relief property created in a final
444 financing order may be transferred, sold, conveyed or assigned
445 to any affiliate of the qualifying utility created for the limited
446 purpose of acquiring, owning or administering that property,
447 issuing consumer rate relief bonds under the final financing
448 order or a combination of these purposes.

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

454 (3) A transfer, sale, conveyance, assignment, grant of a
455 security interest in or pledge of consumer rate relief property by
456 a qualifying utility to an affiliate of the utility, to the extent
457 previously authorized in a financing order, does not require the
458 prior consent and approval of the commission under section
459 twelve of this article.

460 (4) The consumer rate relief property constitutes an existing,
461 present property right, notwithstanding any requirement that the

462 imposition, charging, and collection of consumer rate relief
463 charges depend on the qualifying utility continuing to deliver
464 retail electric service or continuing to perform its servicing
465 functions relating to the billing and collection of consumer rate
466 relief charges or on the level of future energy consumption. That
467 property exists regardless of whether the consumer rate relief
468 charges have been billed, have accrued or have been collected
469 and notwithstanding any requirement that the value or amount of
470 the property is dependent on the future provision of service to
471 customers by the qualifying utility.

472 (5) All such consumer rate relief property continues to exist
473 until the consumer rate relief bonds issued under the final
474 financing order are paid in full and all financing costs relating to
475 the bonds have been paid in full.

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

477 (1) A final financing order remains in effect until the
478 consumer rate relief bonds issued under the final financing order
479 and all financing costs related to the bonds have been paid in
480 full.

481 (2) A final financing order remains in effect and unabated,
482 notwithstanding the bankruptcy, reorganization or insolvency of

483 the qualifying utility, or any affiliate of the qualifying utility, or
484 the commencement of any judicial or nonjudicial proceeding on
485 the final financing order.

486 (3) A final financing order is irrevocable and the
487 commission may not reduce, impair, postpone or terminate the
488 consumer rate relief charges authorized in the final financing
489 order or impair the property or the collection or recovery of
490 consumer rate relief costs.

491 (h) *Subsequent commission proceeding.*

492 Upon petition, or upon its own motion, the commission may
493 commence a proceeding and issue a subsequent financing order
494 that provides for retiring and refunding consumer rate relief
495 bonds issued under the final financing order if the commission
496 finds that the subsequent financing order satisfies all of the
497 requirements of subsection (e) of this section. Effective on
498 retirement of the refunded consumer rate relief bonds and the
499 issuance of new consumer rate relief bonds, the commission
500 shall adjust the related consumer rate relief charges accordingly.

501 (i) *Limits on commission authority.*

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

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

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

510 (C) Consider the consumer rate relief costs or financing
511 costs authorized under a final financing order to be costs of the
512 qualifying utility.

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

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

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

527 (j) *Duties of qualifying utility.*

528 (1) A qualifying utility shall cause the proceeds which it
529 receives with respect to consumer rate relief bonds issued
530 pursuant to a financing order to be used for the recovery of the
531 expanded net energy costs which occasioned the issuance of the
532 bonds, including the retirement of debt and/or equity of the
533 qualifying utility which was incurred to finance or refinance
534 such costs and for no other purpose.

535 (2) A qualifying utility shall annually provide a plain-
536 English explanation of the consumer rate relief charges approved
537 in the financing order, as modified by subsequent issuances of
538 consumer rate relief bonds authorized under the financing order,
539 if any, and by application of the adjustment mechanism as
540 provided in subsection (k) of this section. These explanations
541 may be made by bill inserts, website information or other

542 appropriate means as required, or approved if proposed by the
543 qualifying utility, by the commission.

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

547 (4) The failure of a qualifying utility to apply the proceeds
548 which it receives with respect to an issuance of consumer rate
549 relief bonds in a reasonable, prudent and appropriate manner or
550 otherwise comply with any provision of this section does not
551 invalidate, impair or affect any financing order, consumer rate
552 relief property, consumer rate relief charges or consumer rate
553 relief bonds. Subject to the limitations set forth in subsection (g)
554 of this section, nothing in this subdivision prevents or precludes
555 the commission from imposing regulatory sanctions against a
556 qualifying utility for failure to comply with the terms and
557 conditions of a financing order or the requirements of this
558 section.

559 (k) *Application of adjustment mechanism; filing of schedules*
560 *with commission.*

561 (1) A qualifying utility shall file with the commission, and
562 the commission shall approve, with or without such modification

563 as is allowed under this subsection, at least annually, or more
564 frequently as provided in the final financing order, a schedule
565 applying the approved adjustment mechanism to the consumer
566 rate relief charges authorized under the final financing order,
567 based on estimates of demand and consumption for each tariff
568 schedule and special contract customer and other mathematical
569 factors. The qualifying utility shall submit with the schedule a
570 request for approval to make the adjustments to the consumer
571 rate relief charges in accordance with the schedule.

572 (2) On the same day a qualifying utility files with the
573 commission its calculation of the adjustment, it shall cause
574 notice of the filing to be given, in the form specified in the
575 financing order, as a Class I legal advertisement in compliance
576 with the provisions of article three, chapter fifty-nine of this
577 code in a newspaper of general circulation published each
578 weekday in Kanawha County. This publication is only required
579 if the calculation of the adjustment filed by the utility with the
580 commission would result in an increase in the amount of the
581 consumer rate relief charges.

582 (3) The commission's review of a request for a standard
583 adjustment is limited to a determination of whether there is a

584 mathematical error in the application of the adjustment
585 mechanism to the consumer rate relief charges. No hearing is
586 required for such an adjustment. Each standard adjustment to the
587 consumer rate relief charges, in an amount as calculated by the
588 qualifying utility but incorporating any correction for a
589 mathematical error as determined by the commission,
590 automatically becomes effective fifteen days following the date
591 on which the qualifying utility files with the commission its
592 calculation of the standard adjustment.

593 (4) If the commission authorizes a nonstandard adjustment
594 procedure in the financing order, and the qualifying utility files
595 for such an adjustment, the commission shall allow interested
596 parties thirty days from the date the qualifying utility filed the
597 calculation of a nonstandard adjustment to make comments. The
598 commission's review of the total amount required for a
599 nonstandard adjustment shall be limited to the mathematical
600 accuracy of the total adjustment needed to assure the full and
601 timely payment of all debt service costs and related financing
602 costs of the consumer rate relief bonds. The commission may
603 also determine the proper allocation of those costs within and
604 between classes of customers and to special contract customers,

605 the proper design of the consumer rate relief charges and the
606 appropriate application of those charges under the methodology
607 set forth in the formula-based adjustment mechanism approved
608 in the financing order. If the commission determines that a
609 hearing is necessary, the commission shall hold a hearing on the
610 comments within forty days of the date the qualifying utility
611 filed the calculation of the nonstandard adjustment. The
612 nonstandard adjustment, as modified by the commission, if
613 necessary, shall be approved by the commission within sixty
614 days and the commission may shorten the filing and hearing
615 periods above in the financing order to ensure this result. Any
616 procedure for a nonstandard adjustment must be consistent with
617 assuring the full and timely payment of debt service of the
618 consumer rate relief bonds and associated financing costs.

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

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

623 (1) As long as consumer rate relief bonds issued under a
624 final financing order are outstanding, the consumer rate relief
625 charges authorized under the final financing order are

626 nonbypassable and apply to all existing or future West Virginia
627 retail customers of a qualifying utility or its successors and must
628 be paid by any customer that receives electric delivery service
629 from the utility or its successors.

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

634 (m) *Utility default.*

635 (1) If a qualifying utility defaults on a required payment of
636 consumer rate relief charges collected, a court, upon application
637 by an interested party, or the commission, upon application to
638 the commission or upon its own motion, and without limiting
639 any other remedies available to the applying party, shall order
640 the sequestration and payment of the consumer rate relief
641 charges collected for the benefit of bondholders, assignees and
642 financing parties. The order remains in full force and effect
643 notwithstanding a bankruptcy, reorganization or other insolvency
644 proceedings with respect to the qualifying utility or any affiliate
645 thereof.

646 (2) Customers of a qualifying utility shall be held harmless
647 by the qualifying utility for its failure to remit any required
648 payment of consumer rate relief charges collected but such
649 failure does not affect the consumer rate relief property or the
650 rights to impose, collect and adjust the consumer rate relief
651 charges under this section.

652 (3) Consumer rate relief property under a final financing
653 order and the interests of an assignee, bondholder or financing
654 party in that property under a financing agreement are not
655 subject to set off, counterclaim, surcharge or defense by the
656 qualifying utility or other person, including as a result of the
657 qualifying utility's failure to provide past, present, or future
658 services, or in connection with the bankruptcy, reorganization,
659 or other insolvency proceeding of the qualifying utility, any
660 affiliate, or any other entity.

661 (n) *Successors to qualifying utility.*

662 A successor to a qualifying utility is bound by the
663 requirements of this section. The successor shall perform and
664 satisfy all obligations of the electric utility under the final
665 financing order in the same manner and to the same extent as the

666 qualifying utility including the obligation to collect and pay
667 consumer rate relief charges to the person(s) entitled to receive
668 them. The successor has the same rights as the qualifying utility
669 under the final financing order in the same manner and to the
670 same extent as the qualifying utility.

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

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

679 (2) The description of the consumer rate relief property in a
680 transfer or security agreement and a financing statement is
681 sufficient only if the description refers to this section and the
682 final financing order creating the property. This section applies
683 to all purported transfers of, and all purported grants of, liens on
684 or security interests in that property, regardless of whether the
685 related transfer or security agreement was entered into or the

686 related financing statement was filed, before or after the
687 effective date of this section.

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

693 (4) The security interest attaches without any physical
694 delivery of collateral or other act and upon the filing of the
695 financing statement with the Office of the Secretary of State. The
696 lien of the security interest is valid, binding and perfected
697 against all parties having claims of any kind in tort, contract or
698 otherwise against the person granting the security interest,
699 regardless of whether the parties have notice of the lien. Also
700 upon this filing, a transfer of an interest in the consumer rate
701 relief property is perfected against all parties having claims of
702 any kind, including any judicial lien, or other lien creditors or
703 any claims of the seller or creditors of the seller, other than
704 creditors holding a prior security interest, ownership interest or
705 assignment in the property previously perfected in accordance
706 with this subsection.

707 (5) The Secretary of State shall maintain any financing
708 statement filed under this subsection in the same manner that the
709 secretary maintains financing statements filed by utilities under
710 article nine of chapter forty-six of this code. The filing of a
711 financing statement under this subsection is governed by the
712 provisions regarding the filing of financing statements in article
713 nine of chapter forty-six of this code. However, a person filing
714 a financing statement under this subsection is not required to file
715 any continuation statements to preserve the perfected status of its
716 security interest.

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

723 (7) The priority of a security interest in consumer rate relief
724 property is not affected by the commingling of collected
725 consumer rate relief charges with other amounts. Any pledged or
726 secured party has a perfected security interest in the amount of

727 all consumer rate relief charges collected that are deposited in a
728 cash or deposit account of the qualifying utility in which such
729 collected charges have been commingled with other funds. Any
730 other security interest that may apply to those funds shall be
731 terminated when the funds are transferred to a segregated
732 account for an assignee or a financing party.

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

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

738 (1) A sale, assignment or transfer of consumer rate relief
739 property under a final financing order is an absolute transfer and
740 true sale of, and not a pledge of or secured transaction relating
741 to, the seller's right, title and interest in, to and under the
742 property, if the documents governing the transaction expressly
743 state that the transaction is a sale or other absolute transfer. A
744 transfer of an interest in that property may be created only when
745 all of the following have occurred:

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

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

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

750 (2) The characterization of the sale, assignment or transfer
751 as an absolute transfer and true sale and the corresponding
752 characterization of the property interest of the purchaser shall be
753 effective and perfected against all third parties and is not
754 affected or impaired by, among other things, the occurrence of
755 any of the following:

756 (A) Commingling of collected consumer rate relief charges
757 with other amounts;

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

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

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

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

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

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

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

773 (vii) Any application of the adjustment mechanism under the
774 final financing order.

775 (q) *Taxation of consumer rate relief charges; consumer rate*
776 *relief bonds not debt of governmental entities or a pledge of*
777 *taxing powers.*

778 (1) The imposition, billing, collection and receipt of
779 consumer rate relief charges under this section are exempt from
780 state income, sales, franchise, gross receipts, business and
781 occupation and other taxes or similar charges: *Provided,*
782 ~~however,~~ That neither this exemption nor any other provision of
783 this subsection shall preclude any municipality from taxing
784 consumer rate relief charges under the authority granted to
785 municipalities pursuant to sections five and five-a of article
786 thirteen in chapter eight of this code.

787 (2) Consumer rate relief bonds issued under a final financing
788 order do not constitute a debt or a pledge of the faith and credit
789 or taxing power of this state or of any county, municipality or
790 any other political subdivision of this state. Bondholders have no
791 right to have taxes levied by this state or the taxing authority of
792 any county, municipality or any other political subdivision of
793 this state for the payment of the principal of or interest on the
794 bonds. The issuance of consumer rate relief bonds does not,
795 directly, indirectly or contingently, obligate this state or a
796 county, municipality or political subdivision of this state to levy
797 a tax or make an appropriation for payment of the principal of or
798 interest on the bonds.

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

803 (1) The state, the West Virginia Investment Management
804 Board, the West Virginia Housing Development Fund, municipal
805 corporations, political subdivisions, public bodies and public
806 officers except for members of the Public Service Commission;

807 (2) Banks and bankers, savings and loan associations, credit
808 unions, trust companies, building and loan associations, savings
809 banks and institutions, deposit guarantee associations,
810 investment companies, insurance companies and associations
811 and other persons carrying on a banking or insurance business,
812 including domestic for life and domestic not for life insurance
813 companies; and

814 (3) Personal representatives, guardians, trustees and other
815 fiduciaries.

816 (s) *Pledge of state.*

817 (1) The state pledges to and agrees with the bondholders,
818 assignees and financing parties under a final financing order that
819 the state will not take or permit any action that impairs the value
820 of consumer rate relief property under the final financing order
821 or revises the consumer rate relief costs for which recovery is
822 authorized under the final financing order or, except as allowed
823 under subsection (j) ~~(k)~~ of this section, reduce, alter or impair
824 consumer rate relief charges that are imposed, charged, collected
825 or remitted for the benefit of the bondholders, assignees and
826 financing parties, until any principal, interest and redemption

827 premium in respect of consumer rate relief bonds, all financing
828 costs and all amounts to be paid to an assignee or financing party
829 under an ancillary agreement are paid or performed in full.

830 (2) A person who issues consumer rate relief bonds is
831 permitted to include the pledge specified in subdivision (1) of
832 this subsection in the consumer rate relief bonds, ancillary
833 agreements and documentation related to the issuance and
834 marketing of the consumer rate relief bonds.

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

836 (1) The law governing the validity, enforceability,
837 attachment, perfection, priority and exercise of remedies with
838 respect to the transfer of consumer rate relief property under a
839 final financing order, the creation of a security interest in any
840 such property, consumer rate relief charges or final financing
841 order are the laws of this state as set forth in this section.

842 (2) This section controls in the event of a conflict between
843 its provisions and any other law regarding the attachment,
844 assignment, or perfection, the effect of perfection or priority of
845 any security interest in or transfer of consumer rate relief
846 property under a final financing order.

847 (u) *Severability.*

848 If any provision of this section or the application thereof to
849 any person, circumstance or transaction is held by a court of
850 competent jurisdiction to be unconstitutional or invalid, the
851 unconstitutionality or invalidity does not affect the
852 Constitutionality or validity of any other provision of this section
853 or its application or validity to any person, circumstance or
854 transaction, including, without limitation, the irrevocability of a
855 financing order issued pursuant to this section, the validity of the
856 issuance of consumer rate relief bonds, the imposition of
857 consumer rate relief charges, the transfer or assignment of
858 consumer rate relief property or the collection and recovery of
859 consumer rate relief charges. To these ends, the Legislature
860 hereby declares that the provisions of this section are intended to
861 be severable and that the Legislature would have enacted this
862 section even if any provision of this section held to be
863 unconstitutional or invalid had not been included in this section.

864 (v) *Non-utility status.*

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