

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3308

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[Passed February 28, 2023; in effect from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections, designated §24-2-4h and §24-2-21a, all relating to the authority of the Public
3 Service Commission; authorizing the Public Service Commission of West Virginia to
4 consider and authorize the recovery of certain costs by certain utilities through the
5 issuance of consumer rate relief bonds; providing legislative findings; providing definitions;
6 providing application process for financing order authorizing the recovery of certain costs;
7 requiring certain information in application for financing order; providing for issuance of
8 financing order and information contained therein; allowing for disposition of consumer
9 rate relief property; providing for the effect and term of financing order; providing for
10 subsequent Public Service Commission proceedings and limits on commission authority;
11 providing for duties of certain utilities; providing for application of adjustment mechanism
12 and filing of schedules with commission; providing for nonbypassability of consumer rate
13 relief changes; providing consequences and procedures for utility default; providing for
14 requirements and obligations of successors to certain utilities; providing for security
15 interest in consumer rate relief property and transfer and sale of same; providing for
16 limitation on taxation of consumer rate relief charges and exemption thereto; providing
17 that consumer rate relief bonds are not debt of governmental entities or a pledge of taxing
18 power; providing utility consumer rate relief bonds as legal investment; providing for
19 certain pledge of state; providing for governing law; providing for severability and non-
20 utility status; providing for continued viability of certain bonds; and requiring that utilities
21 must obtain consent and approval from the Public Service Commission prior to retiring,
22 abandoning, closing, or otherwise permanently rendering incapable of operating certain
23 plants or units.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4h. Utility consumer rate relief bonds.

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

2 (1) That alternative financing mechanisms, as authorized in §24-2-4e and §22-2-4f of this
3 code have heretofore been narrow exceptions to the general rate-making mechanisms available
4 to the commission in carrying out the regulation of public utilities subject to its jurisdiction.

5 (2) That in 2005, the Legislature authorized an exception applicable to environmental
6 control bonds, which was strictly limited to financing the construction and installation of emission
7 control equipment at electric-generating facilities in the state under certain specific conditions.

8 (3) That in 2012, the Legislature authorized an exception applicable to consumer rate relief
9 bonds, which was strictly limited to financing or refinancing expanded net energy costs of electric
10 utilities under certain specific conditions.

11 (4) That the alternative financing arrangements approved by the commission and
12 implemented pursuant to §24-2-4e and §24-2-4f of this code have proven to be highly effective in
13 mitigating the rate impacts upon affected utility customers in the limited situations previously
14 authorized.

15 (5) That, since the value of alternative financing mechanisms and the benefits which they
16 can provide to the consumers of public utility services in the state have been demonstrated, the
17 commission should be empowered to employ alternative financing mechanisms for an expanded
18 set of eligible costs to be securitized, subject to the procedural protections provided herein.

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

20 (1) "Adjustment mechanism" means a formula-based mechanism for making adjustments
21 to consumer rate relief charges to correct for over-collection or under-collection of such charges
22 or otherwise to ensure the timely and complete payment and recovery of such charges and
23 financing costs. The adjustment mechanism shall accommodate: (i) Standard adjustments to
24 consumer rate relief charges that are limited to relatively stable conditions of operations; and (ii)
25 nonstandard adjustments to consumer rate relief charges that are necessary to reflect significant
26 changes from historical conditions of operations, such as the loss of significant electrical load.
27 The adjustment mechanism is not to be used as a means to authorize the issuance of consumer

28 rate relief bonds in a principal amount greater, or the payment or recovery of eligible costs to be
29 securitized in an amount greater, than that which was authorized in the financing order which
30 established the adjustment mechanism.

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

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

40 (4) "Bond" includes debentures, notes, certificates of participation, certificates of beneficial
41 interest, certificates of ownership, or other evidences of indebtedness or ownership that are
42 issued by an electric utility or an assignee under a final financing order, the proceeds of which are
43 used directly or indirectly to recover, finance, or refinance eligible costs to be securitized and that
44 are secured by or payable from revenues from consumer rate relief charges.

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

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

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

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

55 (9) "Consumer rate relief property" means the property, rights, and interests of a qualifying
56 utility or an assignee under a final financing order, including the right to impose, charge, and
57 collect the consumer rate relief charges that shall be used to pay and secure the payment of
58 consumer rate relief bonds and financing costs, and including the right to obtain adjustments to
59 those charges, and any revenues, receipts, collections, rights to payment, payments, moneys,
60 claims, or other proceeds arising from the rights and interests created under the final financing
61 order.

62 (10) "Eligible costs to be securitized" means historical and, if deemed appropriate by the
63 commission, projected costs and investments, including financing costs, carrying charges on
64 under-recovery balances, and costs incurred prior to the effective date of this section, which have
65 been authorized for recovery by an order of the commission, whether or not subject to judicial
66 appeal, relating to: (i) environmental control costs; (ii) expanded net energy costs; (iii) storm
67 recovery costs; and (iv) undepreciated generation utility plant balances, as such terms are defined
68 in this section.

69 (11) "Environmental control costs" means costs and investments incurred or expected to
70 be incurred by a qualifying utility to comply with the Coal Combustion Rule and the Electric Effluent
71 Limitation Guidelines established by the United States Environmental Protection Agency.

72 (12) "Expanded net energy costs" means costs and investments incurred or expected to
73 be incurred by a qualifying utility and adjudicated pursuant to the commission's expanded net
74 energy cost proceedings.

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

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

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

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

83 (D) Costs of retiring or refunding an existing debt and equity securities of a qualifying utility
84 in connection with the issuance of consumer rate relief bonds but only to the extent the securities
85 were issued for the purpose of financing eligible costs to be securitized;

86 (E) Costs incurred by a qualifying utility to obtain modifications of or amendments to an
87 indenture, financing agreement, security agreement, or similar agreement or instrument relating
88 to an existing secured or unsecured obligation of the utility in connection with the issuance of
89 consumer rate relief bonds;

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

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

94 (H) Costs related to issuing or servicing consumer rate relief bonds or related to obtaining
95 a financing order, including servicing fees and expenses, trustee fees and expenses, legal fees
96 and expenses, administrative fees, placement fees, underwriting fees, capitalized interest and
97 equity, rating-agency fees, and other related costs authorized by the commission in a financing
98 order; and

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

101 (14) "Financing order" means an order issued by the commission under subsection (e) of
102 this section that authorizes a qualifying utility to issue consumer rate relief bonds and recover
103 consumer rate relief charges. A financing order may set forth conditions or contingencies on the

104 effectiveness of the relief authorized therein and may grant relief that is different from that which
105 was requested in the application.

106 (15) "Final financing order" means a financing order that has become final and has taken
107 effect as provided in subdivision (10), subsection (e) of this section.

108 (16) "Financing party" means either of the following:

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

110 (B) A party to an ancillary agreement, the rights and obligations of which relate to or
111 depend upon the existence of consumer rate relief property, the enforcement and priority of a
112 security interest in consumer rate relief property, the timely collection and payment of consumer
113 rate relief charges or a combination of these factors.

114 (17) "Financing statement" has the same meaning as in §46-9-102 of this code.

115 (18) "Nonbypassable" means that the payment of consumer rate relief charges as
116 authorized by the commission for each customer, customer class, and special contract customer
117 may not be avoided by any West Virginia retail customer of a qualifying utility or its successors
118 and must be paid by any such customer that receives service from such utility or its successors
119 for as long as the consumer rate relief bonds are outstanding.

120 (19) "Nonutility affiliate" means, with respect to any utility, a person that: (i) Is an affiliate
121 of the utility as defined in 42 U.S.C. §16451(1); and (ii) is not a public utility that provides retail
122 utility service to customers in the state within the meaning of §24-1-2 of this code.

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

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

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

132 (23) "Regulatory sanctions" means, under the circumstances presented, a regulatory or
133 ratemaking sanction or penalty that the commission is authorized to impose pursuant to this
134 chapter or any proceeding for the enforcement of any provision of this chapter or any order of the
135 commission that the commission is authorized to pursue or conduct pursuant to this chapter,
136 including without limitation: (i) The initiation of any proceeding in which the utility is required to
137 show cause why it should not be required to comply with the terms and conditions of a financing
138 order or the requirements of this section; (ii) the imposition of penalties pursuant to §24-4-1, *et*
139 *seq.* of this code; and (iii) a proceeding by mandamus, injunction, or other appropriate proceeding
140 as provided in §24-2-2 of this code.

141 (24) "Storm recovery costs" means expenses and investments incurred by a qualifying
142 utility arising from or related to any major storm, extraordinary weather-related event or natural
143 disaster, including costs of mobilization, staging, construction, reconstruction, repair, or
144 replacement of production, generation, transport, transmission, distribution, or general facilities.

145 (25) "Successor" means, with respect to an entity, another entity that succeeds by
146 operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy,
147 reorganization, restructuring, or other insolvency proceeding, any merger, acquisition, or
148 consolidation, or any sale or transfer of assets, regardless of whether any of these occur as a
149 result of a restructuring of the electric power industry or otherwise.

150 (26) "Undepreciated generation utility plant balances" means any unrecovered capitalized
151 costs of or undepreciated investments in one or more fossil-fired electric generating plants having
152 nameplate capacity in excess of 1,000 megawatts each, and related supply, transmission,
153 equipment, and fixtures. Undepreciated generation utility plant balances shall include (i) the net
154 book value of assets on the qualifying utility's balance sheet related to such generating plants and

155 related infrastructure, and (ii) carrying costs authorized by the commission: *Provided*, That (A) all
156 costs of removing retired generating plant assets; (B) all capitalized costs and investments in
157 fossil-fired electric generating plants and related supply, transmission, equipment, and fixtures
158 incurred or made by a qualifying utility on or after December 31, 2022; and (C) all non-cash asset
159 retirement obligation assets and related accumulated depreciation, shall each be specifically
160 excluded from the calculation of undepreciated generation utility plant balances.

161 (c) *Application for financing order.*

162 (1) If a public utility or affiliate obtains from the commission an authorization or waiver
163 required by any other provision of this chapter or by commission order with respect to eligible
164 costs to be securitized, a utility, or two or more affiliated utilities engaged in the delivery of utility
165 service to customers in this state, may apply to the commission for a financing order that
166 authorizes the following:

167 (A) The issuance of consumer rate relief bonds, in one or more series, to recover only
168 those eligible costs to be securitized;

169 (B) The imposition, charging, and collection of consumer rate relief charges, in accordance
170 with the adjustment mechanism approved by the commission under §24-2-4h(e)(5)(E) of this
171 code, to recover sufficient amounts to pay and secure the debt service payments of consumer
172 rate relief bonds and associated financing costs; and

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

174 (2) No utility shall be required to file an application for a financing order under this section
175 or otherwise utilize the alternative financing mechanisms authorized by this section.

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

177 The application shall include all of the following:

178 (1) A description and quantification of the eligible costs to be securitized that the utility
179 seeks to recover through the issuance of consumer rate relief bonds;

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

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

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

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

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

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

194 (8) A description of the benefits to the qualifying utility's customers that are expected to
195 result from the issuance of the consumer rate relief bonds, including a demonstration that the
196 bonds and their financing costs are just and reasonable and are reasonably expected to achieve
197 the lowest reasonably attainable cost in order to produce cost savings to customers and to
198 mitigate rate impacts on customers, as compared to traditional financing mechanisms or
199 traditional cost-recovery methods available to the qualifying utility; and

200 (9) Other information required by commission rules.

201 (e) *Issuance of financing order.*

202 (1) Except as otherwise provided in this section, proceedings on an application submitted
203 by a utility under subsection (c) of this section are governed by the commission's standard
204 procedural rules. Any party that participated in a proceeding in which the subject eligible costs to
205 be securitized were authorized or approved automatically has standing to participate in the

206 financing order proceedings and the commission shall determine the standing or lack of standing
207 of any other petitioner for party status.

208 (2) Within 30 days after the filing of an application under subsection (c) of this section, the
209 commission shall issue a scheduling order for the proceeding.

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

213 (4) The commission may issue a financing order under this subsection if the commission
214 finds that the issuance of the consumer rate relief bonds and the consumer rate relief charges
215 authorized by the order are just and reasonable and are reasonably expected to achieve the
216 lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate
217 rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-
218 recovery methods available to the qualifying utility.

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

221 (A) A determination of the maximum amount and a description of the eligible costs to be
222 securitized that may be recovered through consumer rate relief bonds issued under the financing
223 order;

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

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

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

230 (E) A description and approval of the adjustment mechanism for use in the imposition,
231 charging, and collection of the consumer rate relief charges, including: (i) The allocation referred

232 to in paragraph (D) of this subdivision; and (ii) any specific requirements for adjusting and
233 reconciling consumer rate relief charges for standard adjustments that are limited to relatively
234 stable conditions of operations and nonstandard adjustments that are necessary to reflect
235 significant changes from historical conditions of operations, such as the loss of substantial utility
236 load, so long as each and every application of the adjustment mechanism is designed to assure
237 the full and timely payment of consumer rate relief bonds and associated financing costs;

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

239 (G) A finding that the issuance of the consumer rate relief bonds, including financing costs,
240 is just and reasonable and are reasonably expected to achieve the lowest reasonably attainable
241 cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as
242 compared to traditional financing mechanisms or traditional cost-recovery methods available to
243 the qualifying utility; and

244 (H) Any other provision the commission considers appropriate to ensure the full and timely
245 imposition, charging, collection, and adjustment, pursuant to an approved adjustment
246 mechanism, of the consumer rate relief charges, including, if applicable, rate adjustments or sur-
247 credits, effective with the implementation of consumer rate relief charges, to reduce tariff rates by
248 the amounts of revenue requirements related to securitized costs that are recovered in current
249 tariff rates but which will be recovered through the securitization approved by the commission.

250 (6) To the extent the commission deems appropriate and compatible with the issuance
251 advice letter procedure under subdivision (9) of this subsection, the commission, in a financing
252 order, shall afford the qualifying utility flexibility in establishing the terms and conditions for the
253 consumer rate relief bonds to accommodate changes in market conditions, including repayment
254 schedules, interest rates, financing costs, collateral requirements, required debt service and other
255 reserves, and the ability of the qualifying utility, at its option, to effect a series of issuances of
256 consumer rate relief bonds and correlated assignments, sales, pledges, or other transfers of

257 consumer rate relief property. Any changes made under this subdivision to terms and conditions
258 for the consumer rate relief bonds shall be in conformance with the financing order.

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

262 (8) The commission, in a financing order, shall require that, after the final terms of each
263 issuance of consumer rate relief bonds have been established, and prior to the issuance of those
264 bonds, the qualifying utility shall determine the resulting initial consumer rate relief charges in
265 accordance with the adjustment mechanism described in the financing order. These consumer
266 rate relief charges shall be final and effective upon the issuance of the consumer rate relief bonds,
267 without further commission action.

268 (9) Because the actual structure and pricing of the consumer rate relief bonds will not be
269 known at the time the financing order is issued, in the case of every securitization approved by
270 the commission, the qualifying utility which intends to cause the issuance of such bonds will
271 provide to the commission and the commission's financial adviser, if any, prior to the issuance of
272 the bonds, an issuance advice letter following the determination of the final terms of the bonds.
273 The issuance advice letter shall indicate the final structure of the consumer rate relief bonds and
274 provide the best available estimate of total ongoing costs. The issuance advice letter should report
275 the initial consumer rate relief charges and other information specific to the consumer rate relief
276 bonds to be issued, as the financing order may require. The qualifying utility may proceed with
277 the issuance of the consumer rate relief bonds unless, prior to noon on the fourth business day
278 after the commission receives the issuance advice letter, the commission issues a disapproval
279 letter directing that the bonds as proposed shall not be issued and the basis for that disapproval.
280 The financing order may provide such additional provisions relating to the issuance advice letter
281 process as the commission deems appropriate.

282 (10) If a qualified utility issues consumer rate relief bonds pursuant to a financing order
283 from the commission, any determination of the commission made in connection with such
284 financing order issued pursuant to this subsection, including a determination that certain costs
285 constitute eligible costs to be securitized, is binding and a final order of the commission. Any
286 party aggrieved by the issuance of any such order may petition for suspension and review thereof
287 by the Supreme Court of Appeals, but only pursuant to §24-5-1, *et seq.* of this code. In the case
288 of a petition for suspension and review, the Supreme Court of Appeals shall proceed to hear and
289 determine the action as expeditiously as practicable and give the action precedence over other
290 matters not accorded similar precedence by law.

291 (11) The financing order shall also provide for a procedure requiring the qualifying utility
292 to adjust its rates or provide credits in a manner that would return to customers any overpayments
293 resulting from the securitization for the eligible costs to be securitized in excess of actual prudently
294 incurred costs as subsequently determined by the commission. However, the adjustment
295 mechanism may not affect or impair the consumer rate relief property or the right to impose,
296 collect, or adjust the consumer rate relief charges under this section.

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

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

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

307 (13) A financing order may require the qualifying utility to file with the commission a
308 periodic report showing the receipt and disbursement of proceeds of consumer rate relief bonds
309 and consumer rate relief charges. A financing order may authorize the staff of the commission to
310 review and audit the books and records of the qualifying utility relating to the receipt and
311 disbursement of such proceeds. The provisions of this subdivision do not limit the authority of the
312 commission under this chapter to investigate the practices of the qualifying utility or to audit the
313 books and records of the qualifying utility.

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

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

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

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

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

330 (3) A transfer, sale, conveyance, assignment, grant of a security interest in or pledge of
331 consumer rate relief property by a qualifying utility to an affiliate of the utility, to the extent

332 previously authorized in a financing order, does not require the prior consent and approval of the
333 commission under §24-2-12 of this code.

334 (4) The consumer rate relief property constitutes an existing, present property right,
335 notwithstanding that the imposition, charging, and collection of consumer rate relief charges
336 occurs in the future or depends on the qualifying utility or successors continuing to deliver retail
337 electric service or continuing to perform servicing functions relating to the billing and collection of
338 consumer rate relief charges or that the level of future energy consumption may change. That
339 property exists regardless of whether the consumer rate relief charges have been billed, have
340 accrued or have been collected and notwithstanding any requirement that the value or amount of
341 the property is dependent on the future provision of service to customers by the qualifying utility.

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

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

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

348 (2) A final financing order remains in effect and unabated, notwithstanding the bankruptcy,
349 reorganization or insolvency of the qualifying utility, or any affiliate of the qualifying utility, or the
350 commencement of any judicial or nonjudicial proceeding on the final financing order.

351 (3) A final financing order is irrevocable and the commission may not impair, postpone, or
352 terminate the consumer rate relief charges authorized in the final financing order or impair the
353 property or the collection or recovery of consumer rate relief costs.

354 (h) *Subsequent commission proceeding.*

355 Upon petition, or upon its own motion, the commission may commence a proceeding and
356 issue a subsequent financing order that provides for retiring and refunding consumer rate relief
357 bonds issued under the final financing order if the commission finds that the subsequent financing

358 order satisfies all of the requirements of subsection (e) of this section and does not violate the
359 terms of the consumer rate relief bonds issued under the prior financing order. Effective on
360 retirement of the refunded consumer rate relief bonds and the issuance of new consumer rate
361 relief bonds, the commission shall adjust the related consumer rate relief charges accordingly.

362 (i) *Limits on commission authority.*

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

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

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

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

371 (2) The commission may not order or otherwise require, directly or indirectly, a qualifying
372 utility to use consumer rate relief bonds to finance the recovery of eligible costs to be securitized.

373 (3) The commission may not refuse to allow the recovery of eligible costs to be securitized
374 solely because a utility has elected or may elect to finance those costs through a financing
375 mechanism other than the issuance of consumer rate relief bonds.

376 (4) If a qualifying utility elects not to finance such costs through the issuance of consumer
377 rate relief bonds as authorized in a final financing order, those costs may be recovered as
378 authorized by the commission previously or in subsequent proceedings: *Provided*, That previous
379 findings and determinations made by the commission in a financing order related to those costs
380 are not binding on the commission in such subsequent proceeding.

381 (5) Notwithstanding the foregoing, but without limiting the final and binding nature of any
382 financing order of the commission issued pursuant to this subsection, nothing herein restricts the
383 authority of the commission to limit cost recovery to just and reasonable costs that are prudently

384 incurred, to require deferral of regulatory assets, and/or to determine capital structure and costs
385 as the commission determines are prudent, just, and reasonable.

386 (j) *Duties of qualifying utility.*

387 (1) A qualifying utility shall cause the proceeds which it receives with respect to consumer
388 rate relief bonds issued pursuant to a financing order to be used for the recovery of the eligible
389 costs to be securitized which occasioned the issuance of the bonds, including the retirement of
390 debt and/or equity of the qualifying utility which was incurred to finance or refinance such costs
391 and for no other purpose.

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

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

400 (4) The failure of a qualifying utility to apply the proceeds which it receives with respect to
401 an issuance of consumer rate relief bonds in a reasonable, prudent and appropriate manner or
402 otherwise comply with any provision of this section does not invalidate, impair, or affect any
403 financing order, consumer rate relief property, consumer rate relief charges, or consumer rate
404 relief bonds. Subject to the limitations set forth in subsection (g) of this section, nothing in this
405 subdivision prevents or precludes the commission from imposing regulatory sanctions against a
406 qualifying utility for failure to comply with the terms and conditions of a financing order or the
407 requirements of this section.

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

409 (1) A qualifying utility shall file with the commission, and the commission shall approve,
410 with or without such modification as is allowed under this subsection, at least annually, or more
411 frequently as provided in the final financing order, a schedule applying the approved adjustment
412 mechanism to the consumer rate relief charges authorized under the final financing order, based
413 on estimates of demand and consumption for each tariff schedule and special contract customer
414 and other mathematical factors. The qualifying utility shall submit with the schedule a request for
415 approval to make the adjustments to the consumer rate relief charges in accordance with the
416 schedule.

417 (2) On the same day a qualifying utility files with the commission its calculation of the
418 adjustment, it shall cause notice of the filing to be given, in the form specified in the financing
419 order, as a Class I legal advertisement in compliance with the provisions of §59-3-1, *et seq.* of
420 this code in a newspaper of general circulation published each weekday in Kanawha County. This
421 publication is only required if the calculation of the adjustment filed by the utility with the
422 commission would result in an increase in the amount of the consumer rate relief charges.

423 (3) The commission's review of a request for a standard adjustment is limited to a
424 determination of whether there is a mathematical error in the application of the adjustment
425 mechanism to the consumer rate relief charges. No hearing is required for such an adjustment.
426 Each standard adjustment to the consumer rate relief charges, in an amount as calculated by the
427 qualifying utility but incorporating any correction for a mathematical error as determined by the
428 commission, automatically becomes effective 15 days following the date on which the qualifying
429 utility files with the commission its calculation of the standard adjustment.

430 (4) If the commission authorizes a nonstandard adjustment procedure in the financing
431 order, and the qualifying utility files for such an adjustment, the commission shall allow interested
432 parties 30 days from the date the qualifying utility filed the calculation of a nonstandard adjustment
433 to make comments. The commission's review of the total amount required for a nonstandard
434 adjustment shall be limited to the mathematical accuracy of the total adjustment needed to assure

435 the full and timely payment of all debt service costs and related financing costs of the consumer
436 rate relief bonds. The commission may also determine the proper allocation of those costs within
437 and between classes of customers and to special contract customers, the proper design of the
438 consumer rate relief charges and the appropriate application of those charges under the
439 methodology set forth in the formula-based adjustment mechanism approved in the financing
440 order. If the commission determines that a hearing is necessary, the commission shall hold a
441 hearing on the comments within 40 days of the date the qualifying utility filed the calculation of
442 the nonstandard adjustment. The nonstandard adjustment, as modified by the commission, if
443 necessary, shall be approved by the commission within 60 days and the commission may shorten
444 the filing and hearing periods above in the financing order to ensure this result. Any procedure for
445 a nonstandard adjustment must be consistent with assuring the full and timely payment of debt
446 service of the consumer rate relief bonds and associated financing costs.

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

450 (l) *Nonbypassability of consumer rate relief charges.*

451 (1) As long as consumer rate relief bonds issued under a final financing order are
452 outstanding, the consumer rate relief charges authorized under the final financing order are
453 nonbypassable and apply to and must be paid by all existing and future customers that receive
454 electric service within the qualifying utility's geographic service territory notwithstanding any
455 change in West Virginia law regarding the ability of retail customers of an electric utility to choose
456 a provider of generation or transmission service from a party other than the qualifying utility in the
457 future.

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

461 (m) *Utility default.*

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

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

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

479 (n) *Successors to qualifying utility.*

480 A successor to a qualifying utility is bound by the requirements of this section. The
481 successor shall perform and satisfy all obligations of the electric utility under the final financing
482 order in the same manner and to the same extent as the qualifying utility including the obligation
483 to collect and pay consumer rate relief charges to the person(s) entitled to receive them. The
484 successor has the same rights as the qualifying utility under the final financing order in the same
485 manner and to the same extent as the qualifying utility.

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

487 (1) Except as provided in subdivisions (3) through (5) of this subsection, the creation,
488 perfection, priority and, to the extent set forth herein, enforcement of a security interest or lien in
489 consumer rate relief property, including to secure the repayment of the principal of and interest
490 on consumer rate relief bonds, amounts payable under any ancillary agreement and other
491 financing costs, are governed by this section and not §46-9-1, *et seq.* of this code or other law.

492 (2) The description of the consumer rate relief property in a transfer or security agreement
493 and a financing statement is sufficient only if the description refers to this section and the final
494 financing order creating the property. This section applies to all purported transfers of, and all
495 purported grants of liens on or security interests in, that property, regardless of whether the related
496 transfer or security agreement was entered into, or the related financing statement was filed,
497 before or after the effective date of this section.

498 (3) A security interest in consumer rate relief property under a final financing order is
499 created, valid, and binding when the applicable security agreement is executed and delivered and
500 value is received for the consumer rate relief bonds.

501 (4) The security interest attaches without any physical delivery of collateral or other act
502 and upon the filing of the financing statement with the Office of the Secretary of State. The security
503 interest is valid, binding, and perfected against all parties, including those having claims of any
504 kind in tort, contract, or otherwise against the person granting the security interest, regardless of
505 whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the
506 consumer rate relief property is perfected against, absolute and free from the claims of all parties
507 having competing claims of any kind, including claims of other lien creditors or claims of the seller
508 or creditors of the seller, whether or not supported by any prior judicial or other lien, other than
509 creditors holding a prior security interest, ownership interest, or assignment in the property
510 previously perfected in accordance with this subsection.

511 (5) The Secretary of State shall maintain any financing statement filed under this
512 subsection in the same manner that the secretary maintains financing statements filed by utilities

513 under §49-9-1, *et seq.* of this code. The filing of a financing statement under this subsection is
514 governed by the provisions regarding the filing of financing statements in §46-9-1, *et seq.* of this
515 code. However, a person filing a financing statement under this subsection is not required to file
516 any continuation statements to preserve the perfected status of its security interest.

517 (6) A security interest in consumer rate relief property under a final financing order is a
518 continuously perfected security interest and has priority over any other security interest or lien,
519 created by operation of law, contract or otherwise, that may by agreement of the holder of such
520 security interest in consumer rate relief property or otherwise purportedly subsequently attach to
521 that property or those rights or interests, unless the holder of any such security interest has agreed
522 in writing otherwise.

523 (7) The priority of a security interest in consumer rate relief property is not affected by
524 commingling with other amounts, and continues when any consumer rate relief property is
525 collected and deposited in a cash or deposit account of the qualifying utility or other deposit
526 account that contains other funds. Any other security interest that may by agreement of the holder
527 of the security interest in consumer rate relief property apply to such consumer rate relief property
528 shall be terminated when the funds are transferred to a segregated account for an assignee or a
529 financing party with respect to such consumer rate relief property.

530 (8) No application of the adjustment mechanism as described in subsection (k) of this
531 section affects the creation, validity, perfection, or priority of a security interest in or the transfer
532 of consumer rate relief property under the final financing order.

533 (p) *Transfer, sale, or assignment of consumer rate relief property.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

563 (1) The imposition, billing, collection, and receipt of consumer rate relief charges under
564 this section are exempt from state income, sales, franchise, gross receipts, business and

565 occupation, and other taxes or similar charges: *Provided*, That neither this exemption nor any
566 other provision of this subsection shall preclude any municipality from taxing consumer rate relief
567 charges under the authority granted to municipalities pursuant to §8-13-5 and §8-13-5a of this
568 code.

569 (2) Consumer rate relief bonds issued under a final financing order do not constitute a
570 debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality
571 or any other political subdivision of this state. Bondholders have no right to have taxes levied by
572 this state or the taxing authority of any county, municipality, or any other political subdivision of
573 this state for the payment of the principal of or interest on the bonds. The issuance of consumer
574 rate relief bonds does not, directly, indirectly, or contingently, obligate this state or a county,
575 municipality, or political subdivision of this state to levy a tax or make an appropriation for payment
576 of the principal of or interest on the bonds.

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

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

583 (2) Banks and bankers, savings and loan associations, credit unions, trust companies,
584 building and loan associations, savings banks and institutions, deposit guarantee associations,
585 investment companies, insurance companies and associations, and other persons carrying on a
586 banking or insurance business, including domestic for life and domestic not for life insurance
587 companies; and

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

589 This subsection shall not limit other persons authorized to invest in consumer rate relief
590 bonds from making such investments.

591 (s) *Pledge of state.*

592 (1) The state pledges to and agrees with the bondholders, assignees, and financing
593 parties under a final financing order that the state will not take or permit any action that impairs
594 the value of consumer rate relief property under the final financing order or revises the consumer
595 rate relief costs for which recovery is authorized under the final financing order or, except as
596 allowed under subsection (k) of this section, reduce, alter, or impair consumer rate relief charges
597 that are imposed, charged, collected, or remitted for the benefit of the bondholders, assignees
598 and financing parties, until any principal, interest and redemption premium in respect of consumer
599 rate relief bonds, all financing costs and all amounts to be paid to an assignee or financing party
600 under an ancillary agreement are paid or performed in full.

601 (2) A person who issues consumer rate relief bonds is permitted to include the pledge
602 specified in subdivision (1) of this subsection in the consumer rate relief bonds, ancillary
603 agreements, and documentation related to the issuance and marketing of the consumer rate relief
604 bonds.

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

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

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

613 (u) *Severability.*

614 If any provision of this section or the application thereof to any person, circumstance or
615 transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the
616 unconstitutionality or invalidity does not affect the Constitutionality or validity of any other provision

617 of this section or its application or validity to any person, circumstance or transaction, including,
618 without limitation, the irrevocability of a financing order issued pursuant to this section, the validity
619 of the issuance of consumer rate relief bonds, the imposition of consumer rate relief charges, the
620 transfer or assignment of consumer rate relief property or the collection and recovery of consumer
621 rate relief charges. To these ends, the Legislature hereby declares that the provisions of this
622 section are intended to be severable and that the Legislature would have enacted this section
623 even if any provision of this section held to be unconstitutional or invalid had not been included in
624 this section.

625 (v) *Non-utility status.*

626 An assignee or financing party is not a public utility or person providing utility service by
627 virtue of engaging in the transactions with respect to consumer rate relief bonds.

628 (w) *Continuing validity of consumer rate relief bonds issued pursuant to §24-2-4f of this*
629 *code and related matters.*

630 Notwithstanding any provisions of this section to the contrary, all consumer rate relief
631 bonds issued pursuant to §24-2-4f of this code shall remain in full force and effect according to
632 their terms and in accordance with the final financing order pursuant to which such bonds were
633 issued and the laws of this state in existence at the time such bonds were issued. Further, all
634 consumer rate relief charges and consumer rate relief property associated with any consumer
635 rate relief bonds issued pursuant to §24-2-4f of this code shall not be affected by any provision of
636 this section and all such consumer rate relief charges and consumer rate relief property shall be
637 governed by the applicable final financing order pursuant to which the corresponding consumer
638 rate relief bonds were issued and the law of this state in existence at the time such bonds were
639 issued. No provision of this section shall affect any interest in the consumer rate relief property
640 or the continuing validity of a security interest in consumer rate relief property associated with any
641 consumer rate relief bonds issued pursuant to §24-2-4f of this code.

§24-2-21a. Commission authority required when closing an electric generating plant and circumstances of closure in another jurisdiction.

1 (a) A public electric utility may not retire, abandon, close, or otherwise permanently render
2 incapable of operating, any electric generating plant or unit without the prior consent and approval
3 of the commission.

4 (b) If an electric utility serving customers in both West Virginia and in an area not subject
5 to the jurisdiction of the commission is ordered to cease operations of a generating plant or unit
6 by the regulating authority of the other jurisdiction and the costs of the plant or unit had been
7 shared through an allocation process for rate making purposes and after a commission
8 proceeding and determination that a generating plant or unit should continue to operate, then the
9 utility shall recover all of the capital, operating and maintenance costs of the electric generation
10 plant or unit from its West Virginia customers to the extent that such costs are no longer allocable
11 to the other jurisdiction, and all of the associated capacity, energy, and environmental attributes
12 shall be assigned to its customers and operations in West Virginia.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2023.

.....
Governor