

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4530**

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

7 [Passed March 7, 2012; in effect from passage.]

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9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §24-2-4f, relating to
12 authorizing the Public Service Commission of West Virginia to
13 consider and authorize the recovery of certain expanded net
14 energy costs by certain electric utilities through the
15 issuance of consumer rate relief bonds; providing definitions;
16 providing application process for financing order authorizing
17 the recovery of certain costs; requiring certain information
18 in application for financing order; providing for issuance of
19 financing order and information contained therein; allowing
20 for disposition of consumer rate relief property; providing
21 for term of financing order; providing for subsequent Public
22 Service Commission proceedings and limits on commission
23 authority; providing for duties of certain electric utilities;
24 providing for application of adjustment mechanism and filing
25 of schedules with commission; providing for nonbypassability
26 of consumer rate relief changes; providing for utility default

1 and successors to certain utilities; providing for security
2 interest in consumer rate relief property and transfer and
3 sale of same; providing for limitation on taxation of consumer
4 rate relief charges and exemption thereto; providing that
5 consumer rate relief bonds are not debt of governmental
6 entities or a pledge of taxing power; providing consumer rate
7 relief bonds as legal investment; providing for certain pledge
8 of state; providing for governing law; and providing for
9 severability and non-utility status.

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

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

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

15 **§24-2-4f. Consumer rate relief bonds.**

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

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

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

25 (3) That the use of traditional utility financing mechanisms

1 to finance or refinance the recovery of such under-recovery
2 balances and projected costs may result in considerable additional
3 costs to be reflected in the approved rates of electric utility
4 customers;

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

9 (5) That alternative financing mechanisms exist which can
10 result in lower costs and mitigate rate impacts to customers and
11 the use of these mechanisms can prove highly beneficial to such
12 customers; and

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

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

25 (1) "Adjustment mechanism" means a formula-based mechanism for
26 making adjustments to consumer rate relief charges to correct for

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

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

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

1 property.

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

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

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

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

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

23 (9) "Consumer rate relief property" means the property,
24 rights, and interests of a qualifying utility or an assignee
25 under a final financing order, including the right to impose,
26 charge, and collect the consumer rate relief charges that shall be

1 used to pay and secure the payment of consumer rate relief bonds
2 and financing costs, and including the right to obtain adjustments
3 to those charges, and any revenues, receipts, collections, rights
4 to payment, payments, moneys, claims, or other proceeds arising
5 from the rights and interests created under the final financing
6 order.

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

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

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

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

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

25 (D) Costs of retiring or refunding an existing debt and equity
26 securities of a qualifying utility in connection with the issuance

1 of consumer rate relief bonds but only to the extent the securities
2 were issued for the purpose of financing expanded net energy costs;

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

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

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

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

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

25 (12) "Financing order" means an order issued by the commission
26 under subsection (e) of this section that authorizes a qualifying

1 utility to issue consumer rate relief bonds and recover consumer
2 rate relief charges. A financing order may set forth conditions or
3 contingencies on the effectiveness of the relief authorized therein
4 and may grant relief that is different from that which was
5 requested in the application.

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

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

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

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

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

20 (16) "Investment grade" means, with respect to the unsecured
21 debt obligations of a utility at any given time of determination,
22 a rating that is within the top four investment rating categories
23 as published by at least one nationally recognized statistical
24 rating organization as recognized by the United States Securities
25 and Exchange Commission.

26 (17) "Nonbypassable" means that the payment of consumer rate

1 relief charges may not be avoided by any West Virginia retail
2 customer of a qualifying utility or its successors and must be
3 paid by any such customer that receives electric delivery service
4 from such utility or its successors for as long as the consumer
5 rate relief bonds are outstanding.

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

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

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

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

24 (22) "Regulatory sanctions" means, under the circumstances
25 presented, a regulatory or ratemaking sanction or penalty that the
26 commission is authorized to impose pursuant to this chapter or any

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

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

18 (c) *Application for financing order.*

19 (1) If an electric utility or affiliate obtains from the
20 commission an authorization or waiver required by any other
21 provision of this chapter or by commission order with respect to
22 the underlying expanded net energy costs proposed to be financed
23 through the mechanism of consumer rate relief bonds, an electric
24 utility, or two or more affiliated electric utilities engaged in
25 the delivery of electric service to customers in this state, may
26 apply to the commission for a financing order that authorizes the

1 following:

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

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

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

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

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

18 The application shall include all of the following:

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

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

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

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

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

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

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

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

24 (9) Other information required by commission rules.

25 (e) *Issuance of financing order.*

26 (1) Except as otherwise provided in this section, proceedings

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

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

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

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

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

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

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

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

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

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

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

26 (G) A finding that the issuance of the consumer rate relief

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

7 (H) Any other provision the commission considers appropriate
8 to ensure the full and timely imposition, charging, collection and
9 adjustment, pursuant to an approved adjustment mechanism, of the
10 consumer rate relief charges.

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

25 (7) A financing order shall provide that the creation of
26 consumer rate relief property shall be simultaneous with the sale

1 of that property to an assignee as provided in the application and
2 the pledge of the property to secure consumer rate relief bonds.

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

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

1 commission issues a disapproval letter directing that the bonds as
2 proposed shall not be issued and the basis for that disapproval.
3 The financing order may provide such additional provisions relating
4 to the issuance advice letter process as the commission deems
5 appropriate.

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

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

24 (12) The commission may require, as a condition to the
25 effectiveness of the financing order but in every circumstance
26 subject to the limitations set forth in subdivision (3), subsection

1 (g) of this section, that the qualifying utility give appropriate
2 assurances to the commission that the qualifying utility and its
3 parent will abide by the following conditions during any period in
4 which any consumer rate relief bonds issued pursuant to the
5 financing order are outstanding, in addition to any other
6 obligation either may have under this code or federal law. Without
7 first obtaining the prior consent and approval of the Commission,
8 the qualifying utility will not:

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

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

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

23 (14) In the case of two or more affiliated utilities that have
24 jointly applied for a financing order as provided in subdivision
25 (1), subsection (c) of this section, a financing order may
26 authorize each affiliated utility to impose consumer rate relief

1 charges on its customers and to cause to be issued consumer rate
2 relief bonds and to receive and use the proceeds which it receives
3 with respect thereto as provided in subdivision (1), subsection (j)
4 of this section.

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

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

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

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

21 (3) A transfer, sale, conveyance, assignment, grant of a
22 security interest in or pledge of consumer rate relief property by
23 a qualifying utility to an affiliate of the utility, to the extent
24 previously authorized in a financing order, does not require the
25 prior consent and approval of the commission under section twelve
26 of this article.

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

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

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

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

22 (2) A final financing order remains in effect and unabated,
23 notwithstanding the bankruptcy, reorganization or insolvency of the
24 qualifying utility, or any affiliate of the qualifying utility, or
25 the commencement of any judicial or nonjudicial proceeding on the
26 final financing order.

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

6 (h) *Subsequent commission proceeding.*

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

16 (i) *Limits on commission authority.*

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

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

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

25 (C) Consider the consumer rate relief costs or financing costs
26 authorized under a final financing order to be costs of the

1 qualifying utility.

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

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

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

14 (j) *Duties of qualifying utility.*

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

22 (2) A qualifying utility shall annually provide a plain-
23 English explanation of the consumer rate relief charges approved in
24 the financing order, as modified by subsequent issuances of
25 consumer rate relief bonds authorized under the financing order, if
26 any, and by application of the adjustment mechanism as provided in

1 subsection (k) of this section. These explanations may be made by
2 bill inserts, website information or other appropriate means as
3 required, or approved if proposed by the qualifying utility, by the
4 commission.

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

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

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

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

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

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

17 (3) The commission's review of a request for a standard
18 adjustment is limited to a determination of whether there is a
19 mathematical error in the application of the adjustment mechanism
20 to the consumer rate relief charges. No hearing is required for
21 such an adjustment. Each standard adjustment to the consumer rate
22 relief charges, in an amount as calculated by the qualifying
23 utility but incorporating any correction for a mathematical error
24 as determined by the commission, automatically becomes effective
25 fifteen days following the date on which the qualifying utility
26 files with the commission its calculation of the standard

1 adjustment.

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

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

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

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

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

16 (m) *Utility default.*

17 (1) If a qualifying utility defaults on a required payment of
18 consumer rate relief charges collected, a court, upon application
19 by an interested party, or the commission, upon application to the
20 commission or upon its own motion, and without limiting any other
21 remedies available to the applying party, shall order the
22 sequestration and payment of the consumer rate relief charges
23 collected for the benefit of bondholders, assignees and financing
24 parties. The order remains in full force and effect notwithstanding
25 a bankruptcy, reorganization or other insolvency proceedings with
26 respect to the qualifying utility or any affiliate thereof.

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

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

16 (n) *Successors to qualifying utility.*

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

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

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

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

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

22 (4) The security interest attaches without any physical
23 delivery of collateral or other act and upon the filing of the
24 financing statement with the Office of the Secretary of State. The
25 lien of the security interest is valid, binding and perfected
26 against all parties having claims of any kind in tort, contract or

1 otherwise against the person granting the security interest,
2 regardless of whether the parties have notice of the lien. Also
3 upon this filing, a transfer of an interest in the consumer rate
4 relief property is perfected against all parties having claims of
5 any kind, including any judicial lien, or other lien creditors or
6 any claims of the seller or creditors of the seller, other than
7 creditors holding a prior security interest, ownership interest or
8 assignment in the property previously perfected in accordance with
9 this subsection.

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

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

26 (7) The priority of a security interest in consumer rate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (q) *Taxation of consumer rate relief charges; consumer rate*

1 *relief bonds not debt of governmental entities or a pledge of*
2 *taxing powers.*

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

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

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

1 relief bonds:

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

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

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

14 (s) *Pledge of state.*

15 (1) The state pledges to and agrees with the bondholders,
16 assignees and financing parties under a final financing order that
17 the state will not take or permit any action that impairs the value
18 of consumer rate relief property under the final financing order or
19 revises the consumer rate relief costs for which recovery is
20 authorized under the final financing order or, except as allowed
21 under subsection (j) of this section, reduce, alter or impair
22 consumer rate relief charges that are imposed, charged, collected
23 or remitted for the benefit of the bondholders, assignees and
24 financing parties, until any principal, interest and redemption
25 premium in respect of consumer rate relief bonds, all financing
26 costs and all amounts to be paid to an assignee or financing party

1 under an ancillary agreement are paid or performed in full.

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

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

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

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

19 (u) *Severability.*

20 If any provision of this section or the application thereof to
21 any person, circumstance or transaction is held by a court of
22 competent jurisdiction to be unconstitutional or invalid, the
23 unconstitutionality or invalidity does not affect the
24 constitutionality or validity of any other provision of this
25 section or its application or validity to any person, circumstance
26 or transaction, including, without limitation, the irrevocability

1 of a financing order issued pursuant to this section, the validity
2 of the issuance of consumer rate relief bonds, the imposition of
3 consumer rate relief charges, the transfer or assignment of
4 consumer rate relief property or the collection and recovery of
5 consumer rate relief charges. To these ends, the Legislature
6 hereby declares that the provisions of this section are intended to
7 be severable and that the Legislature would have enacted this
8 section even if any provision of this section held to be
9 unconstitutional or invalid had not been included in this section.

10 (v) *Non-utility status.*

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