

COMMITTEE SUBSTITUTE

FOR

H. B. 4530

(BY DELEGATES WHITE, VARNER, BOGGS, R. PHILLIPS,
ANDES, MORGAN, STOWERS AND POORE)

(Originating in the Committee on Finance)
[February 20, 2012]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-4f, relating to authorizing the Public Service Commission of West Virginia to consider and authorize the recovery of certain expanded net energy costs by certain electric utilities through the issuance of consumer rate relief bonds, providing definitions, providing an application process for the authorization for recovery of costs, providing duties of a qualifying utility that may recover costs, default and successor provisions, taxation of consumer rate relief charges, and responsibility of Public Service Commission with respect to financing order.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4f. Consumer rate relief bonds.

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

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

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

10 (3) That the use of traditional utility financing
11 mechanisms to finance or refinance the recovery of such
12 under-recovery balances and projected costs may result in

13 considerable additional costs to be reflected in the approved
 14 rates of electric utility customers;

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

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

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

32 empower the commission to review and approve alternative
33 financing mechanisms when it determines that such approval
34 is in the public interest, as set forth in this section.

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

36 (1) "Adjustment mechanism" means a formula-based
37 mechanism for making adjustments to consumer rate relief
38 charges to correct for over-collection or under-collection of
39 such charges or otherwise to ensure the timely and complete
40 payment and recovery of such charges and financing costs.

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

51 than that which was authorized in the financing order which
52 established the adjustment mechanism.

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

61 (3) “Assignee” means a person, corporation, limited
62 liability company, trust, partnership or other entity to which
63 an interest in consumer rate relief property is assigned, sold
64 or transferred, other than as security. The term also includes
65 any entity to which an assignee assigns, sells or transfers,
66 other than as security, the assignee’s interest in or right to
67 consumer rate relief property.

68 (4) “Bond” includes debentures, notes, certificates of
69 participation, certificates of beneficial interest, certificates of

70 ownership or other evidences of indebtedness or ownership
71 that are issued by an electric utility or an assignee under a
72 final financing order, the proceeds of which are used directly
73 or indirectly to recover, finance, or refinance expanded net
74 energy costs and that are secured by or payable from
75 revenues from consumer rate relief charges.

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

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

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

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

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

100 (10) “Expanded net energy costs” means historical and,
101 if deemed appropriate by the commission, projected costs,
102 inclusive of carrying charges on under-recovery balances
103 authorized by the commission, including costs incurred prior
104 to the effective date of this statute, adjudicated pursuant to
105 the commission’s expanded net energy cost proceedings,
106 which have been authorized for recovery by an order of the
107 commission, whether or not subject to judicial appeal.

108 (11) “Financing costs” means any of the following:

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

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

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

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

123 (E) Costs incurred by a qualifying utility to obtain
124 modifications of or amendments to an indenture, financing
125 agreement, security agreement, or similar agreement or
126 instrument relating to an existing secured or unsecured
127 obligation of the utility in connection with the issuance of
128 consumer rate relief bonds;

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

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

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

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

145 (12) “Financing order” means an order issued by the
 146 commission under subsection (e) of this section that
 147 authorizes a qualifying utility to issue consumer rate relief

148 bonds and recover consumer rate relief charges. A financing
149 order may set forth conditions or contingencies on the
150 effectiveness of the relief authorized therein and may grant
151 relief that is different from that which was requested in the
152 application.

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

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

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

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

165 (15) “Financing statement” has the same meaning as in
166 section one-hundred-two, article nine, chapter forty-six of
167 this Code.

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

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

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

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

189 (20) “Qualifying utility” means a public utility engaged
190 in the sale of electric service to retail customers in West
191 Virginia which has applied for and received from the
192 commission a final financing order under this section,
193 including an affiliated electric public utility which has
194 applied jointly for and received such an order.

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

199 (22) “Regulatory sanctions” means, under the
200 circumstances presented, a regulatory or ratemaking sanction
201 or penalty that the commission is authorized to impose
202 pursuant to this chapter or any proceeding for the
203 enforcement of any provision of this chapter or any order of
204 the commission that the commission is authorized to pursue

205 or conduct pursuant to this chapter, including without
206 limitation: (i) The initiation of any proceeding in which the
207 utility is required to show cause why it should not be required
208 to comply with the terms and conditions of a financing order
209 or the requirements of this section; (ii) the imposition of
210 penalties pursuant to article four of this chapter; and (iii) a
211 proceeding by mandamus, injunction or other appropriate
212 proceeding as provided in section two of this article.

213 (23) “Successor” means, with respect to an entity, another
214 entity that succeeds by operation of law to the rights and
215 obligations of the first legal entity pursuant to any
216 bankruptcy, reorganization, restructuring, or other insolvency
217 proceeding, any merger, acquisition, or consolidation, or any
218 sale or transfer of assets, regardless of whether any of these
219 occur as a result of a restructuring of the electric power
220 industry or otherwise.

221 (c) *Application for financing order.*

222 (1) If an electric utility or affiliate obtains from the
223 commission an authorization or waiver required by any other

224 provision of this chapter or by commission order with respect
225 to the underlying expanded net energy costs proposed to be
226 financed through the mechanism of consumer rate relief
227 bonds, an electric utility, or two or more affiliated electric
228 utilities engaged in the delivery of electric service to
229 customers in this state, may apply to the commission for a
230 financing order that authorizes the following:

231 (A) The issuance of consumer rate relief bonds, in one or
232 more series, to recover only those expanded net energy costs
233 that resulted in an under-recovery;

234 (B) The imposition, charging and collection of consumer
235 rate relief charges, in accordance with the adjustment
236 mechanism approved by the commission under subparagraph
237 (E), subdivision (6), subsection (e) of this section to recover
238 sufficient amounts to pay and secure the debt service
239 payments of consumer rate relief bonds and associated
240 financing costs; and

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

243 (2) The commission may only consider applications made
244 pursuant to this subsection for the recovery of underlying
245 expanded net energy cost that would be reflected in
246 schedules of rates filed in calendar year 2012.

247 (d) Information required in application for financing
248 order.

249 The application shall include all of the following:

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

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

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

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

260 (5) An estimate of the amount of consumer rate relief
261 charges necessary to recover the consumer rate relief costs

262 set forth in the application and the calculation for that
263 estimate, which calculation shall take into account the
264 estimated date or dates of issuance and the estimated
265 principal amount of each series of consumer rate relief bonds;

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

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

272 (8) A description of the benefits to the qualifying utility's
273 customers that are expected to result from the issuance of the
274 consumer rate relief bonds, including a demonstration that
275 the bonds and their financing costs are just and reasonable
276 and are reasonably expected to achieve the lowest reasonably
277 attainable cost in order to produce cost savings to customers
278 and to mitigate rate impacts on customers, as compared to
279 traditional financing mechanisms or traditional cost-recovery
280 methods available to the electric utility; and

281 (9) Other information required by commission rules.
 282 (e) Issuance of financing order.
 283 (1) Except as otherwise provided in this section,
 284 proceedings on an application submitted by an electric utility
 285 under subsection (c) of this section are governed by the
 286 commission's standard procedural rules. Any party that
 287 participated in a proceeding in which the subject expanded
 288 net energy costs were authorized or approved automatically
 289 has standing to participate in the financing order proceedings
 290 and the commission shall determine the standing or lack of
 291 standing of any other petitioner for party status.
 292 (2) Within thirty days after the filing of an application
 293 under subsection (c) of this section, the commission shall
 294 issue a scheduling order for the proceeding.
 295 (3) At the conclusion of proceedings on an application
 296 submitted by an electric utility under subsection (c) of this
 297 section, the commission shall issue either a financing order,
 298 granting the application, in whole or with modifications, or
 299 an order denying the application.

300 (4) The commission may issue a financing order under
301 this subsection if the commission finds that the issuance of
302 the consumer rate relief bonds and the consumer rate relief
303 charges authorized by the order are just and reasonable and
304 are reasonably expected to achieve the lowest reasonably
305 attainable cost in order to produce cost savings to customers
306 and to mitigate rate impacts on customers, as compared to
307 traditional financing mechanisms or traditional cost-recovery
308 methods available to the electric utility.

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

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

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

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

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

323 (E) A description and approval of the adjustment
 324 mechanism for use in the imposition, charging and collection
 325 of the consumer rate relief charges, including: (i) The
 326 allocation referred to in paragraph (D) of this subdivision and
 327 (ii) any specific requirements for adjusting and reconciling
 328 consumer rate relief charges for standard adjustments that are
 329 limited to relatively stable conditions of operations and
 330 nonstandard adjustments that are necessary to reflect
 331 significant changes from historical conditions of operations,
 332 such as the loss of substantial electrical load, so long as each
 333 and every application of the adjustment mechanism is
 334 designed to assure the full and timely payment of consumer
 335 rate relief bonds and associated financing costs.

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

337 (G) A finding that the issuance of the consumer rate relief
 338 bonds, including financing costs, is just and reasonable and

339 are reasonably expected to achieve the lowest reasonably
340 attainable cost in order to produce cost savings to customers
341 and to mitigate rate impacts on customers, as compared to
342 traditional financing mechanisms or traditional cost-recovery
343 methods available to the electric utility; and

344 (H) Any other provision the commission considers
345 appropriate to ensure the full and timely imposition,
346 charging, collection and adjustment, pursuant to an approved
347 adjustment mechanism, of the consumer rate relief charges.

348 (6) To the extent the commission deems appropriate and
349 compatible with the issuance advice letter procedure under
350 subdivision (9) of this subsection, the commission, in a
351 financing order, shall afford the electric utility flexibility in
352 establishing the terms and conditions for the consumer rate
353 relief bonds to accommodate changes in market conditions,
354 including repayment schedules, interest rates, financing
355 costs, collateral requirements, required debt service and
356 other reserves, and the ability of the qualifying utility, at its
357 option, to effect a series of issuances of consumer rate relief

358 bonds and correlated assignments, sales, pledges or other
359 transfers of consumer rate relief property. Any changes
360 made under this subdivision to terms and conditions for the
361 consumer rate relief bonds shall be in conformance with the
362 financing order.

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

368 (8) The commission, in a financing order, shall require
369 that, after the final terms of each issuance of consumer rate
370 relief bonds have been established, and prior to the issuance
371 of those bonds, the qualifying utility shall determine the
372 resulting initial consumer rate relief charges in accordance
373 with the adjustment mechanism described in the financing
374 order. These consumer rate relief charges shall be final and
375 effective upon the issuance of the consumer rate relief bonds,
376 without further commission action.

377 (9) Because the actual structure and pricing of the
378 consumer rate relief bonds will not be known at the time the
379 financing order is issued, in the case of every securitization
380 approved by the commission, the qualifying utility which
381 intends to cause the issuance of such bonds will provide to
382 the commission and the commission's financial adviser, if
383 any, prior to the issuance of the bonds, an issuance advice
384 letter following the determination of the final terms of the
385 bonds. The issuance advice letter shall indicate the final
386 structure of the consumer rate relief bonds and provide the
387 best available estimate of total ongoing costs. The issuance
388 advice letter should report the initial consumer rate relief
389 charges and other information specific to the consumer rate
390 relief bonds to be issued, as the financing order may require.
391 The qualifying utility may proceed with the issuance of the
392 consumer rate relief bonds unless, prior to noon on the fourth
393 business day after the commission receives the issuance
394 advice letter, the commission issues a disapproval letter
395 directing that the bonds as proposed shall not be issued and

396 the basis for that disapproval. The financing order may
397 provide such additional provisions relating to the issuance
398 advice letter process as the commission deems appropriate.

399 (10) An order of the commission issued pursuant to this
400 subsection is a final order of the commission. Any party
401 aggrieved by the issuance of any such order may petition for
402 suspension and review thereof by the Supreme Court of
403 Appeals pursuant to section one, article five of this chapter.
404 In the case of a petition for suspension and review, the
405 Supreme Court of Appeals shall proceed to hear and
406 determine the action as expeditiously as practicable and give
407 the action precedence over other matters not accorded similar
408 precedence by law.

409 (11) The financing order shall also provide for a
410 procedure requiring the qualifying utility to adjust its rates or
411 provide credits in a manner that would return to customers
412 any overpayments resulting from the securitization for the
413 expanded net energy costs in excess of actual prudently
414 incurred costs as subsequently determined by the

415 commission. The adjustment mechanism may not affect or
416 impair the consumer rate relief property or the right to
417 impose, collect, or adjust the consumer rate relief charges
418 under this section.

419 (12) The commission may require, as a condition to the
420 effectiveness of the financing order but in every circumstance
421 subject to the limitations set forth in subdivision (3),
422 subsection (g) of this section, that the qualifying utility give
423 appropriate assurances to the commission that the qualifying
424 utility and its parent will abide by the following conditions
425 during any period in which any consumer rate relief bonds
426 issued pursuant to the financing order are outstanding, in
427 addition to any other obligation either may have under this
428 code or federal law. Without first obtaining the prior consent
429 and approval of the Commission, the qualifying utility will
430 not:

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

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

435 (13) A financing order may require the qualifying utility
436 to file with the commission a periodic report showing the
437 receipt and disbursement of proceeds of consumer rate relief
438 bonds and consumer rate relief charges. A financing order
439 may authorize the staff of the commission to review and audit
440 the books and records of the qualifying utility relating to the
441 receipt and disbursement of such proceeds. The provisions of
442 this subdivision do not limit the authority of the commission
443 under this chapter to investigate the practices of the
444 qualifying utility or to audit the books and records of the
445 qualifying utility.

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

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

459 (f) Allowed disposition of consumer rate relief property.

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

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

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

473 by a qualifying utility to an affiliate of the utility, to the
474 extent previously authorized in a financing order, does not
475 require the prior consent and approval of the commission
476 under section twelve of this article.

477 (4) The consumer rate relief property constitutes an
478 existing, present property right, notwithstanding any
479 requirement that the imposition, charging, and collection of
480 consumer rate relief charges depend on the qualifying utility
481 continuing to deliver retail electric service or continuing to
482 perform its servicing functions relating to the billing and
483 collection of consumer rate relief charges or on the level of
484 future energy consumption. That property exists regardless
485 of whether the consumer rate relief charges have been billed,
486 have accrued or have been collected and notwithstanding any
487 requirement that the value or amount of the property is
488 dependent on the future provision of service to customers by
489 the qualifying utility.

490 (5) All such consumer rate relief property continues to
491 exist until the consumer rate relief bonds issued under the

492 final financing order are paid in full and all financing costs
493 relating to the bonds have been paid in full.

494 (g) Final financing order to remain in effect.

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

499 (2) A final financing order remains in effect and
500 unabated, notwithstanding the bankruptcy, reorganization or
501 insolvency of the qualifying utility, or any affiliate of the
502 qualifying utility, or the commencement of any judicial or
503 nonjudicial proceeding on the final financing order.

504 (3) A final financing order is irrevocable and the
505 commission may not reduce, impair, postpone or terminate
506 the consumer rate relief charges authorized in the final
507 financing order or impair the property or the collection or
508 recovery of consumer rate relief costs.

509 (h) Subsequent commission proceeding.

510 Upon petition, or upon its own motion, the commission
511 may commence a proceeding and issue a subsequent
512 financing order that provides for retiring and refunding
513 consumer rate relief bonds issued under the final financing
514 order if the commission finds that the subsequent financing
515 order satisfies all of the requirements of subsection (e) of this
516 section. Effective on retirement of the refunded consumer
517 rate relief bonds and the issuance of new consumer rate relief
518 bonds, the commission shall adjust the related consumer rate
519 relief charges accordingly.

520 (i) Limits on commission authority.

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

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

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

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

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

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

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

546 (j) Duties of qualifying utility.

547 (1) A qualifying utility shall cause the proceeds which it
548 receives with respect to consumer rate relief bonds issued
549 pursuant to a financing order to be used for the recovery of
550 the expanded net energy costs which occasioned the issuance
551 of the bonds, including the retirement of debt and/or equity
552 of the qualifying utility which was incurred to finance or
553 refinance such costs and for no other purpose.

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

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

566 (4) The failure of a qualifying utility to apply the
567 proceeds which it receives with respect to an issuance of
568 consumer rate relief bonds in a reasonable, prudent and
569 appropriate manner or otherwise comply with any provision
570 of this section does not invalidate, impair or affect any
571 financing order, consumer rate relief property, consumer rate
572 relief charges or consumer rate relief bonds. Subject to the
573 limitations set forth in subsection (g) of this section, nothing
574 in this subdivision prevents or precludes the commission
575 from imposing regulatory sanctions against a qualifying
576 utility for failure to comply with the terms and conditions of
577 a financing order or the requirements of this section.

578 (k) Application of adjustment mechanism; filing of
579 schedules with commission.

580 (1) A qualifying utility shall file with the commission,
581 and the commission shall approve, with or without such
582 modification as is allowed under this subsection, at least
583 annually, or more frequently as provided in the final
584 financing order, a schedule applying the approved adjustment

585 mechanism to the consumer rate relief charges authorized
586 under the final financing order, based on estimates of demand
587 and consumption for each tariff schedule and special contract
588 customer and other mathematical factors. The qualifying
589 utility shall submit with the schedule a request for approval
590 to make the adjustments to the consumer rate relief charges
591 in accordance with the schedule.

592 (2) On the same day a qualifying utility files with the
593 commission its calculation of the adjustment, it shall cause
594 notice of the filing to be given, in the form specified in the
595 financing order, as a Class I legal advertisement in compliance
596 with the provisions of article three, chapter fifty-nine of this
597 code in a newspaper of general circulation published each
598 weekday in Kanawha County. This publication is only
599 required if the calculation of the adjustment filed by the utility
600 with the commission would result in an increase in the amount
601 of the consumer rate relief charges.

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

604 a mathematical error in the application of the adjustment
605 mechanism to the consumer rate relief charges. No hearing is
606 required for such an adjustment. Each standard adjustment
607 to the consumer rate relief charges, in an amount as
608 calculated by the qualifying utility but incorporating any
609 correction for a mathematical error as determined by the
610 commission, automatically becomes effective fifteen days
611 following the date on which the qualifying utility files with
612 the commission its calculation of the standard adjustment.

613 (4) If the commission authorizes a nonstandard adjustment
614 procedure in the financing order, and the qualifying utility files
615 for such an adjustment, the commission shall allow interested
616 parties thirty days from the date the qualifying utility filed the
617 calculation of a nonstandard adjustment to make comments.
618 The commission's review of the total amount required for a
619 nonstandard adjustment shall be limited to the mathematical
620 accuracy of the total adjustment needed to assure the full and
621 timely payment of all debt service costs and related financing
622 costs of the consumer rate relief bonds. The commission may

623 also determine the proper allocation of those costs within and
624 between classes of customers and to special contract
625 customers, the proper design of the consumer rate relief
626 charges and the appropriate application of those charges
627 under the methodology set forth in the formula-based
628 adjustment mechanism approved in the financing order. If the
629 commission determines that a hearing is necessary, the
630 commission shall hold a hearing on the comments within
631 forty days of the date the qualifying utility filed the
632 calculation of the nonstandard adjustment. The nonstandard
633 adjustment, as modified by the commission, if necessary,
634 shall be approved by the commission within sixty days and
635 the commission may shorten the filing and hearing periods
636 above in the financing order to ensure this result. Any
637 procedure for a nonstandard adjustment must be consistent
638 with assuring the full and timely payment of debt service of
639 the consumer rate relief bonds and associated financing costs.

640 (5) No adjustment approved or deemed approved under
641 this section affects the irrevocability of the final financing

642 order as specified in subdivision (3) of subsection (g) of this
643 section.

644 (l) Nonbypassability of consumer rate relief charges.

645 (1) As long as consumer rate relief bonds issued under a
646 final financing order are outstanding, the consumer rate relief
647 charges authorized under the final financing order are
648 nonbypassable and apply to all existing or future West
649 Virginia retail customers of a qualifying utility or its
650 successors and must be paid by any customer that receives
651 electric delivery service from the utility or its successors.

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

656 (m) Utility default.

657 (1) If a qualifying utility defaults on a required payment
658 of consumer rate relief charges collected, a court, upon
659 application by an interested party, or the commission, upon
660 application to the commission or upon its own motion, and

661 without limiting any other remedies available to the applying
662 party, shall order the sequestration and payment of the
663 consumer rate relief charges collected for the benefit of
664 bondholders, assignees and financing parties. The order
665 remains in full force and effect notwithstanding a bankruptcy,
666 reorganization or other insolvency proceedings with respect
667 to the qualifying utility or any affiliate thereof.

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

674 (3) Consumer rate relief property under a final financing
675 order and the interests of an assignee, bondholder or
676 financing party in that property under a financing agreement
677 are not subject to set off, counterclaim, surcharge or defense
678 by the qualifying utility or other person, including as a result
679 of the qualifying utility's failure to provide past, present, or

680 future services, or in connection with the bankruptcy,
681 reorganization, or other insolvency proceeding of the
682 qualifying utility, any affiliate, or any other entity.

683 (n) Successors to qualifying utility.

684 A successor to a qualifying utility is bound by the
685 requirements of this section. The successor shall perform and
686 satisfy all obligations of the electric utility under the final
687 financing order in the same manner and to the same extent as
688 the qualifying utility including the obligation to collect and
689 pay consumer rate relief charges to the person(s) entitled to
690 receive them. The successor has the same rights as the
691 qualifying utility under the final financing order in the same
692 manner and to the same extent as the qualifying utility.

693 (o) Security interest in consumer rate relief property.

694 (1) Except as provided in subdivisions (3) through (5) of
695 this subsection, the creation, perfection and enforcement of
696 a security interest in consumer rate relief property under a
697 final financing order to secure the repayment of the principal
698 of and interest on consumer rate relief bonds, amounts

699 payable under any ancillary agreement and other financing
700 costs are governed by this section and not article nine of
701 chapter forty-six of this code.

702 (2) The description of the consumer rate relief property
703 in a transfer or security agreement and a financing statement
704 is sufficient only if the description refers to this section and
705 the final financing order creating the property. This section
706 applies to all purported transfers of, and all purported grants
707 of, liens on or security interests in that property, regardless of
708 whether the related transfer or security agreement was
709 entered into or the related financing statement was filed,
710 before or after the effective date of this section.

711 (3) A security interest in consumer rate relief property
712 under a final financing order is created, valid and binding at
713 the latest of the date that the security agreement is executed
714 and delivered or the date that value is received for the
715 consumer rate relief bonds.

716 (4) The security interest attaches without any physical
717 delivery of collateral or other act and upon the filing of the

718 financing statement with the Office of the Secretary of State.
719 The lien of the security interest is valid, binding and
720 perfected against all parties having claims of any kind in tort,
721 contract or otherwise against the person granting the security
722 interest, regardless of whether the parties have notice of the
723 lien. Also upon this filing, a transfer of an interest in the
724 consumer rate relief property is perfected against all parties
725 having claims of any kind, including any judicial lien, or
726 other lien creditors or any claims of the seller or creditors of
727 the seller, other than creditors holding a prior security
728 interest, ownership interest or assignment in the property
729 previously perfected in accordance with this subsection.

730 (5) The Secretary of State shall maintain any financing
731 statement filed under this subsection in the same manner that
732 the secretary maintains financing statements filed by utilities
733 under article nine of chapter forty-six of this code. The filing
734 of a financing statement under this subsection is governed by
735 the provisions regarding the filing of financing statements in
736 article nine of chapter forty-six of this code. However, a

737 person filing a financing statement under this subsection is
738 not required to file any continuation statements to preserve
739 the perfected status of its security interest.

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

746 (7) The priority of a security interest in consumer rate
747 relief property is not affected by the commingling of
748 collected consumer rate relief charges with other amounts.
749 Any pledged or secured party has a perfected security interest
750 in the amount of all consumer rate relief charges collected
751 that are deposited in a cash or deposit account of the
752 qualifying utility in which such collected charges have been
753 commingled with other funds. Any other security interest
754 that may apply to those funds shall be terminated when the
755 funds are transferred to a segregated account for an assignee
756 or a financing party.

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

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

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

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

773 (B) The documents evidencing the transfer of the
774 property have been executed and delivered to the assignee;
775 and

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

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

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

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

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

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

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

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

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

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

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

802 (q) Taxation of consumer rate relief charges; consumer
803 rate relief bonds not debt of governmental entities or a
804 pledge of taxing powers.

805 (1) The imposition, billing, collection and receipt of
806 consumer rate relief charges under this section are exempt
807 from state income, sales, franchise, gross receipts, business
808 and occupation and other taxes or similar charges: *Provided,*
809 *however,* That neither this exemption nor any other provision
810 of this subsection shall preclude any municipality from taxing
811 consumer rate relief charges under the authority granted to
812 municipalities pursuant to sections five and five-a of article
813 thirteen in chapter eight of this code.

814 (2) Consumer rate relief bonds issued under a final
815 financing order do not constitute a debt or a pledge of the
816 faith and credit or taxing power of this state or of any county,
817 municipality or any other political subdivision of this state.
818 Bondholders have no right to have taxes levied by this state
819 or the taxing authority of any county, municipality or any
820 other political subdivision of this state for the payment of the
821 principal of or interest on the bonds. The issuance of
822 consumer rate relief bonds does not, directly, indirectly or
823 contingently, obligate this state or a county, municipality or
824 political subdivision of this state to levy a tax or make an
825 appropriation for payment of the principal of or interest on
826 the bonds.

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

831 (1) The state, the West Virginia Investment Management
832 Board, the West Virginia Housing Development Fund,

833 municipal corporations, political subdivisions, public bodies
834 and public officers except for members of the Public Service
835 Commission;

836 (2) Banks and bankers, savings and loan associations,
837 credit unions, trust companies, building and loan
838 associations, savings banks and institutions, deposit
839 guarantee associations, investment companies, insurance
840 companies and associations and other persons carrying on a
841 banking or insurance business, including domestic for life
842 and domestic not for life insurance companies; and

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

845 (s) Pledge of state.

846 (1) The state pledges to and agrees with the bondholders,
847 assignees and financing parties under a final financing order
848 that the state will not take or permit any action that impairs
849 the value of consumer rate relief property under the final
850 financing order or revises the consumer rate relief costs for
851 which recovery is authorized under the final financing order

852 or, except as allowed under subsection (j) of this section,
853 reduce, alter or impair consumer rate relief charges that are
854 imposed, charged, collected or remitted for the benefit of the
855 bondholders, assignees and financing parties, until any
856 principal, interest and redemption premium in respect of
857 consumer rate relief bonds, all financing costs and all
858 amounts to be paid to an assignee or financing party under an
859 ancillary agreement are paid or performed in full.

860 (2) A person who issues consumer rate relief bonds is
861 permitted to include the pledge specified in subdivision (1)
862 of this subsection in the consumer rate relief bonds, ancillary
863 agreements and documentation related to the issuance and
864 marketing of the consumer rate relief bonds.

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

866 (1) The law governing the validity, enforceability,
867 attachment, perfection, priority and exercise of remedies with
868 respect to the transfer of consumer rate relief property under
869 a final financing order, the creation of a security interest in
870 any such property, consumer rate relief charges or final

871 financing order are the laws of this state as set forth in this
872 section.

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

878 (u) Severability.

879 If any provision of this section or the application thereof
880 to any person, circumstance or transaction is held by a court
881 of competent jurisdiction to be unconstitutional or invalid,
882 the unconstitutionality or invalidity does not affect the
883 constitutionality or validity of any other provision of this
884 section or its application or validity to any person,
885 circumstance or transaction, including, without limitation, the
886 irrevocability of a financing order issued pursuant to this
887 section, the validity of the issuance of consumer rate relief
888 bonds, the imposition of consumer rate relief charges, the
889 transfer or assignment of consumer rate relief property or the

890 collection and recovery of consumer rate relief charges. To
 891 these ends, the Legislature hereby declares that the provisions
 892 of this section are intended to be severable and that the
 893 Legislature would have enacted this section even if any
 894 provision of this section held to be unconstitutional or invalid
 895 had not been included in this section.

896 (v) *Non-utility status.*

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