

1 from their customers through the commission's traditional cost
2 recovery mechanisms, which have resulted in unusually large under-
3 recoveries;

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

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

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

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

19 (6) That in order to use such alternative financing
20 mechanisms, the commission must be empowered to adopt a financing
21 order that advances these goals. The Legislature, therefore,
22 determines that it is in the interest of the state and its citizens
23 to encourage and facilitate the use of alternative financing
24 mechanisms that will enable electric utilities to finance or

1 refinance expanded net energy costs at the lowest reasonably
2 practical cost under certain conditions and to empower the
3 commission to review and approve alternative financing mechanisms
4 when it determines that such approval is in the public interest, as
5 set forth in this section.

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

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

22 (2) "Ancillary agreement" means a bond insurance policy letter
23 of credit, reserve account, surety bond, swap arrangement, hedging
24 arrangement, liquidity or credit support arrangement or other

1 similar agreement or arrangement entered into in connection with
2 the issuance of consumer rate relief bonds that is designed to
3 promote the credit quality and marketability of the bonds or to
4 mitigate the risk of an increase in interest rates.

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

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

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

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

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

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

9 (9) "Consumer rate relief property" means the property,
10 rights, and interests of a qualifying utility or an assignee
11 under a final financing order, including the right to impose,
12 charge, and collect the consumer rate relief charges that shall be
13 used to pay and secure the payment of consumer rate relief bonds
14 and financing costs, and including the right to obtain adjustments
15 to those charges, and any revenues, receipts, collections, rights
16 to payment, payments, moneys, claims, or other proceeds arising
17 from the rights and interests created under the final financing
18 order.

19 (10) "Expanded net energy costs" means historical and, if
20 deemed appropriate by the commission, projected costs, inclusive of
21 carrying charges on under-recovery balances authorized by the
22 commission, including costs incurred prior to the effective date of
23 this statute, adjudicated pursuant to the commission's expanded net
24 energy cost proceedings, which have been authorized for recovery by

1 an order of the commission, whether or not subject to judicial
2 appeal.

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

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

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

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

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

17 (E) Costs incurred by a qualifying utility to obtain
18 modifications of or amendments to an indenture, financing
19 agreement, security agreement, or similar agreement or instrument
20 relating to an existing secured or unsecured obligation of the
21 utility in connection with the issuance of consumer rate relief
22 bonds;

23 (F) Costs incurred by a qualifying utility to obtain a
24 consent, release, waiver, or approval from a holder of an

1 obligation described in subparagraph (E) of this subdivision that
2 are necessary to be incurred for the utility to issue or cause the
3 issuance of consumer rate relief bonds;

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

6 (H) Costs related to issuing or servicing consumer rate relief
7 bonds or related to obtaining a financing order, including
8 servicing fees and expenses, trustee fees and expenses, legal fees
9 and expenses, administrative fees, placement fees, underwriting
10 fees, capitalized interest and equity, rating-agency fees and other
11 related costs authorized by the commission in a financing order;
12 and

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

15 (12) "Financing order" means an order issued by the commission
16 under subsection (e) of this section that authorizes a qualifying
17 utility to issue consumer rate relief bonds and recover consumer
18 rate relief charges. A financing order may set forth conditions or
19 contingencies on the effectiveness of the relief authorized therein
20 and may grant relief that is different from that which was
21 requested in the application.

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

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

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

4 (B) A party to an ancillary agreement, the rights and
5 obligations of which relate to or depend upon the existence of
6 consumer rate relief property, the enforcement and priority of a
7 security interest in consumer rate relief property, the timely
8 collection and payment of consumer rate relief charges or a
9 combination of these factors.

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

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

18 (17) "Nonbypassable" means that the payment of consumer rate
19 relief charges may not be avoided by any West Virginia retail
20 customer of a qualifying utility or its successors and must be
21 paid by any such customer that receives electric delivery service
22 from such utility or its successors for as long as the consumer
23 rate relief bonds are outstanding.

24 (18) "Nonutility affiliate" means, with respect to any

1 utility, a person that: (i) Is an affiliate of the utility as
2 defined in 42 U.S.C.§16451(1); and (ii) is not a public utility
3 that provides retail utility service to customers in the state
4 within the meaning of section two, article one of this chapter.

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

8 (20) "Qualifying utility" means a public utility engaged in
9 the sale of electric service to retail customers in West Virginia
10 which has applied for and received from the commission a final
11 financing order under this section, including an affiliated
12 electric public utility which has applied jointly for and received
13 such an order.

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

18 (22) "Regulatory sanctions" means, under the circumstances
19 presented, a regulatory or ratemaking sanction or penalty that the
20 commission is authorized to impose pursuant to this chapter or any
21 proceeding for the enforcement of any provision of this chapter or
22 any order of the commission that the commission is authorized to
23 pursue or conduct pursuant to this chapter, including without
24 limitation: (i) The initiation of any proceeding in which the

1 utility is required to show cause why it should not be required to
2 comply with the terms and conditions of a financing order or the
3 requirements of this section; (ii) the imposition of penalties
4 pursuant to article four of this chapter; and (iii) a proceeding by
5 mandamus, injunction or other appropriate proceeding as provided in
6 section two of this article.

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

14 (c) *Application for financing order.*

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

24 (A) The issuance of consumer rate relief bonds, in one or more

1 series, to recover only those expanded net energy costs that could
2 result in an under-recovery;

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

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

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

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

16 The application shall include all of the following:

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

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

22 (3) The expected term during which the consumer rate relief
23 costs for each series of consumer rate relief bonds are expected
24 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.

1 (e) *Issuance of financing order.*

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

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

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

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

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

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

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

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

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

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

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

1 electrical load, so long as each and every application of the
2 adjustment mechanism is designed to assure the full and timely
3 payment of consumer rate relief bonds and associated financing
4 costs.

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

6 (G) A finding that the issuance of the consumer rate relief
7 bonds, including financing costs, is just and reasonable and are
8 reasonably expected to achieve the lowest reasonably attainable
9 cost in order to produce cost savings to customers and to mitigate
10 rate impacts on customers, as compared to traditional financing
11 mechanisms or traditional cost-recovery methods available to the
12 electric utility; and

13 (H) Any other provision the commission considers appropriate
14 to ensure the full and timely imposition, charging, collection and
15 adjustment, pursuant to an approved adjustment mechanism, of the
16 consumer rate relief charges.

17 (6) To the extent the commission deems appropriate and
18 compatible with the issuance advice letter procedure under
19 subdivision (9) of this subsection, the commission, in a financing
20 order, shall afford the electric utility flexibility in
21 establishing the terms and conditions for the consumer rate relief
22 bonds to accommodate changes in market conditions, including
23 repayment schedules, interest rates, financing costs, collateral
24 requirements, required debt service and other reserves, and the

1 ability of the qualifying utility, at its option, to effect a
2 series of issuances of consumer rate relief bonds and correlated
3 assignments, sales, pledges, or other transfers of consumer rate
4 relief property. Any changes made under this subdivision to terms
5 and conditions for the consumer rate relief bonds shall be in
6 conformance with the financing order.

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

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

19 (9) Because the actual structure and pricing of the consumer
20 rate relief bonds will not be known at the time the financing order
21 is issued, in the case of every securitization approved by the
22 commission, the qualifying utility which intends to cause the
23 issuance of such bonds will provide to the commission and the
24 commission's financial adviser, if any, prior to the issuance of

1 the bonds, an issuance advice letter following the determination of
2 the final terms of the bonds. The issuance advice letter shall
3 indicate the final structure of the consumer rate relief bonds and
4 provide the best available estimate of total ongoing costs. The
5 issuance advice letter should report the initial consumer rate
6 relief charges and other information specific to the consumer rate
7 relief bonds to be issued, as the financing order may require. The
8 qualifying utility may proceed with the issuance of the consumer
9 rate relief bonds unless, prior to noon on the fourth business day
10 after the commission receives the issuance advice letter, the
11 commission issues a disapproval letter directing that the bonds as
12 proposed shall not be issued and the basis for that disapproval.
13 The financing order may provide such additional provisions relating
14 to the issuance advice letter process as the commission deems
15 appropriate.

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

1 (11) The financing order shall also provide for a procedure
2 requiring the qualifying utility to adjust its rates or provide
3 credits in a manner that would return to customers any overpayments
4 resulting from the securitization for the expanded net energy costs
5 in excess of actual prudently incurred costs as subsequently
6 determined by the commission. The adjustment mechanism may not
7 affect or impair the consumer rate relief property or the right to
8 impose, collect, or adjust the consumer rate relief charges under
9 this section.

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

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

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

1 (13) A financing order may require the qualifying utility to
2 file with the commission a periodic report showing the receipt and
3 disbursement of proceeds of consumer rate relief bonds and consumer
4 rate relief charges. A financing order may authorize the staff of
5 the commission to review and audit the books and records of the
6 qualifying utility relating to the receipt and disbursement of such
7 proceeds. The provisions of this subdivision do not limit the
8 authority of the commission under this chapter to investigate the
9 practices of the qualifying utility or to audit the books and
10 records of the qualifying utility.

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

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

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

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

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

11 (3) A transfer, sale, conveyance, assignment, grant of a
12 security interest in or pledge of consumer rate relief property by
13 a qualifying utility to an affiliate of the utility, to the extent
14 previously authorized in a financing order, does not require the
15 prior consent and approval of the commission under section twelve
16 of this article.

17 (4) The consumer rate relief property constitutes an existing,
18 present property right, notwithstanding any requirement that the
19 imposition, charging, and collection of consumer rate relief
20 charges depend on the qualifying utility continuing to deliver
21 retail electric service or continuing to perform its servicing
22 functions relating to the billing and collection of consumer rate
23 relief charges or on the level of future energy consumption. That
24 property exists regardless of whether the consumer rate relief

1 charges have been billed, have accrued or have been collected and
2 notwithstanding any requirement that the value or amount of the
3 property is dependent on the future provision of service to
4 customers by the qualifying utility.

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

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

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

14 (2) A final financing order remains in effect and unabated,
15 notwithstanding the bankruptcy, reorganization or insolvency of the
16 qualifying utility, or any affiliate of the qualifying utility, or
17 the commencement of any judicial or nonjudicial proceeding on the
18 final financing order.

19 (3) A final financing order is irrevocable and the commission
20 may not reduce, impair, postpone or terminate the consumer rate
21 relief charges authorized in the final financing order or impair
22 the property or the collection or recovery of consumer rate relief
23 costs.

24 (h) *Subsequent commission proceeding.*

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

10 *(i) Limits on commission authority.*

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

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

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

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

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

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

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

10 (j) *Duties of qualifying utility.*

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

18 (2) A qualifying utility shall annually provide a plain-
19 English explanation of the consumer rate relief charges approved in
20 the financing order, as modified by subsequent issuances of
21 consumer rate relief bonds authorized under the financing order, if
22 any, and by application of the adjustment mechanism as provided in
23 subsection (k) of this section. These explanations may be made by
24 bill inserts, website information or other appropriate means as

1 required, or approved if proposed by the qualifying utility, by the
2 commission.

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

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

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

20 (1) A qualifying utility shall file with the commission, and
21 the commission shall approve, with or without such modification as
22 is allowed under this subsection, at least annually, or more
23 frequently as provided in the final financing order, a schedule
24 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

1 fifteen days following the date on which the qualifying utility
2 files with the commission its calculation of the standard
3 adjustment.

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

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

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

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

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

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

20 (m) *Utility default.*

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

1 remedies available to the applying party, shall order the
2 sequestration and payment of the consumer rate relief charges
3 collected for the benefit of bondholders, assignees and financing
4 parties. The order remains in full force and effect notwithstanding
5 a bankruptcy, reorganization or other insolvency proceedings with
6 respect to the qualifying utility or any affiliate thereof.

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

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

22 (n) *Successors to qualifying utility.*

23 A successor to a qualifying utility is bound by the
24 requirements of this section. The successor shall perform and

1 satisfy all obligations of the electric utility under the final
2 financing order in the same manner and to the same extent as the
3 qualifying utility including the obligation to collect and pay
4 consumer rate relief charges to the person(s) entitled to receive
5 them. The successor has the same rights as the qualifying utility
6 under the final financing order in the same manner and to the same
7 extent as the qualifying utility.

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

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

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

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

6 (4) The security interest attaches without any physical
7 delivery of collateral or other act and upon the filing of the
8 financing statement with the Office of the Secretary of State. The
9 lien of the security interest is valid, binding and perfected
10 against all parties having claims of any kind in tort, contract or
11 otherwise against the person granting the security interest,
12 regardless of whether the parties have notice of the lien. Also
13 upon this filing, a transfer of an interest in the consumer rate
14 relief property is perfected against all parties having claims of
15 any kind, including any judicial lien, or other lien creditors or
16 any claims of the seller or creditors of the seller, other than
17 creditors holding a prior security interest, ownership interest or
18 assignment in the property previously perfected in accordance with
19 this subsection.

20 (5) The Secretary of State shall maintain any financing
21 statement filed under this subsection in the same manner that the
22 secretary maintains financing statements filed by utilities under
23 article nine of chapter forty-six of this code. The filing of a
24 financing statement under this subsection is governed by the

1 provisions regarding the filing of financing statements in article
2 nine of chapter forty-six of this code. However, a person filing
3 a financing statement under this subsection is not required to file
4 any continuation statements to preserve the perfected status of its
5 security interest.

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

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

22 (8) No application of the adjustment mechanism as described in
23 subsection (j) of this section affects the validity, perfection or
24 priority of a security interest in or the transfer of consumer rate

1 relief property under the final financing order.

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

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

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

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

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

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

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

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

24 (i) A partial or residual interest, including an equity

1 interest, in the consumer rate relief property, whether direct or
2 indirect, or whether subordinate or otherwise;

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

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

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

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

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

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

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

19 (1) The imposition, billing, collection and receipt of
20 consumer rate relief charges under this section are exempt from
21 state income, sales, franchise, gross receipts, business and
22 occupation and other taxes or similar charges: *Provided*, That
23 neither this exemption nor any other provision of this subsection
24 shall preclude any municipality from taxing consumer rate relief

1 charges under the authority granted to municipalities pursuant to
2 sections five and five-a of article thirteen in chapter eight of
3 this code.

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

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

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

24 (2) Banks and bankers, savings and loan associations, credit

1 unions, trust companies, building and loan associations, savings
2 banks and institutions, deposit guarantee associations, investment
3 companies, insurance companies and associations and other persons
4 carrying on a banking or insurance business, including domestic for
5 life and domestic not for life insurance companies; and

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

8 (s) *Pledge of state.*

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

22 (2) A person who issues consumer rate relief bonds is
23 permitted to include the pledge specified in subdivision (1) of
24 this subsection in the consumer rate relief bonds, ancillary

1 agreements and documentation related to the issuance and marketing
2 of the consumer rate relief bonds.

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

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

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

15 (u) *Severability.*

16 If any provision of this section or the application thereof to
17 any person, circumstance or transaction is held by a court of
18 competent jurisdiction to be unconstitutional or invalid, the
19 unconstitutionality or invalidity does not affect the
20 Constitutionality or validity of any other provision of this
21 section or its application or validity to any person, circumstance
22 or transaction, including, without limitation, the irrevocability
23 of a financing order issued pursuant to this section, the validity
24 of the issuance of consumer rate relief bonds, the imposition of

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

8 (v) *Nonutility status.*

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

NOTE: The purpose of this bill is to correct an internal reference to clarify that the rate adjustment mechanism under subsection (k) is the exception to the state's pledge not to reduce, alter or impair consumer rate relief charges until all amounts to be paid to an assignee or financing party are paid or performed in full.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.