WEST VIRGINIA CODE: §24-2-4F

§24-2-4f. Consumer rate relief bonds.

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

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

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

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

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

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

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

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

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

WVLegislature

authorize the issuance of consumer rate relief bonds in a principal amount greater, or the payment or recovery of expanded net energy costs in an amount greater, than that which was authorized in the financing order which established the adjustment mechanism.

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

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

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

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

(6) "Commission" means the Public Service Commission of West Virginia, as it may be constituted from time to time, and any successor agency exercising functions similar in purpose thereto. (7) "Consumer rate relief charges" means the amounts which are authorized by the commission in a financing order to be collected from a qualifying utility's customers in order to pay and secure the debt service payments of consumer rate relief bonds and associated financing costs.

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

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

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

www.legislature

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

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

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

(B) A payment required under an ancillary agreement;

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

(15) "Financing statement" has the same meaning as in section one-hundred-two, article nine, chapter forty-six of this code.(16) "Investment grade" means, with respect to the unsecured debt obligations of a utility at any given time of determination, a rating that is within the top four investment rating categories as published by at least one nationally recognized statistical rating organization as recognized by the United States Securities and Exchange Commission.

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

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

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

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

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

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

WV Legislature

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

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

(c) Application for financing order.

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

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

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

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

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

(d) Information required in application for financing order.

The application shall include all of the following:

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

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

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

WV Legislature

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

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

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

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

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

(9) Other information required by commission rules.

(e) Issuance of financing order.

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

(f) Allowed disposition of consumer rate relief property.

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

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

(3) A transfer, sale, conveyance, assignment, grant of a security interest in or pledge of

WV Legislature

consumer rate relief property by a qualifying utility to an affiliate of the utility, to the extent previously authorized in a financing order, does not require the prior consent and approval of the commission under section twelve of this article.

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

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

(g) Final financing order to remain in effect.

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

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

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

(h) Subsequent commission proceeding.

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

(i) Limits on commission authority.

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

WV Legislature

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

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

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

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

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

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

(j) Duties of qualifying utility.

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

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

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

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

WV Legislature

conditions of a financing order or the requirements of this section.

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

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

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

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

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

WV Legislature

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

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

(l) Nonbypassability of consumer rate relief charges.

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

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

(m) Utility default.

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

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

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

(n) Successors to qualifying utility.

A successor to a qualifying utility is bound by the requirements of this section. The successor shall perform and satisfy all obligations of the electric utility under the final financing order

WV Legislature

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

(o) Security interest in consumer rate relief property.

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

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

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

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

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

(6) A security interest in consumer rate relief property under a final financing order is a continuously perfected security interest and has priority over any other lien, created by

www.Legislature

operation of law or otherwise, that may subsequently attach to that property or those rights or interests unless the holder of any such lien has agreed in writing otherwise.

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

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

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

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

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

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

(C) Value has been received for the property.

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

(s) Pledge of state.

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

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

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

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

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

(u) Severability.

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

WV Legislature

(v) Non-utility status.

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

WV Legislature