WEST VIRGINIA CODE CHAPTER 24 ARTICLE 2

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§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission extends to all public utilities in this state and includes any utility engaged in any of the following public services:

(1) Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air;

(2) Transportation of oil, gas, or water by pipeline;

(3) Transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline;

(4) Sleeping car or parlor car services;

(5) Transmission of messages by telephone, telegraph, or radio;

(6) Generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility;

(7) Supplying water, gas, or electricity by municipalities or others: *Provided*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service: *Provided, however*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise authority as the commission may consider appropriate over the operation, rates, and charges of the producer and for the length of time determined proper by the commission: *Provided further*, That the provision of a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement (PPAs) with the retail electric customer, shall not constitute a public service, subject to the following conditions and limitations:

(i) PPAs must be 11 point font or larger;

(ii) The aggregate of all PPAs and net metering arrangements in the state for any utility shall not exceed three percent of the utility's aggregate customer peak demand in the state during the previous year;

(iii) There shall be individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and which in no case shall exceed 50kW for residential customers, 1,000 kW for commercial customers, and 2,000 kW for industrial customers;

(iv) Customers who enter into PPAs relating to photovoltaic facilities are to notify the utility of its intent to enter into a transaction. In response, the utility shall notify within 30 days if

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any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and

(v) The Public Service Commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for the arrangements between the on-site generator and the customer;

(8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission, regardless of the number of customers served by the innovative, alternative method;

(9) Any public service district created under the provisions of §16-13A-1 *et seq*. of this code, except that the Public Service Commission has no jurisdiction over the provision of stormwater services by a public service district;

(10) Toll bridges located more than five miles from a toll-free bridge which crosses the same body of water or obstacle, wharves, ferries; solid waste facilities; and

(11) Any other public service.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least 4,500 customers and annual combined gross revenues of $3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

(2) Regulation of measurements, practices, acts, or services, as granted and described in §24-2-7 of this code;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;

(4) Submission of information to the commission regarding rates, tolls, charges, or practices, as granted and described in §24-2-9 of this code;

(5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to,

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rates, fees, and charges, service areas and contested utility combinations: *Provided*, That any request for an investigation related to a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information required by the commission is filed: *Provided, however*, That the disputed rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints: *Provided*, That any formal complaint filed under this section that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the matter complained of is filed by the political subdivision: *Provided, however*, That whenever the commission finds any regulations, measurements, practices, acts, or service to be unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate, or otherwise in violation of this chapter, and shall make an order that is just and reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(8) If a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for any redress that will bring the accounts to current status or otherwise resolve the breached covenant. The commission has jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) The area can be provided with utility service by a utility which operates in a state

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adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility may charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, for which the facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be designated prior to commercial operation of the facility, for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to the jurisdiction of the commission or to the provisions of this chapter with

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respect to the facility, regardless of whether the facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: *Provided*, That the owner or operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or constructed.

(4) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to §24-2-11 of this code, to construct an electric generating facility described in this subsection or to make or construct a material modification of the electric generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection do not affect or limit the commission’s jurisdiction over contracts or arrangements between the owner or operator of the facility and any affiliated public utility subject to the provisions of this chapter.

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(e) The commission does not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) "Internet protocol-enabled service" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

(2) "Voice-over Internet protocol service" means any service that:

(i) Enables real-time, two-way voice communications that originate or terminate from the user’s location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user’s location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission does not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission does not have jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.

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§24-2-1a. Authority of commission to enter and inspect railroad property.

The commission or its duly authorized representatives are hereby authorized and empowered to enter and inspect any property, premise or place, owned or operated by a railroad, whether fixed facilities or rolling stock, including, but not limited to, locomotives, cars and cabooses, stationary or in motion, at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules and regulations in force pursuant thereto. No person shall refuse entry or access to the commission or any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

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§24-2-1b. Additional jurisdiction of commission.

(a) Effective July 1, 1988, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in section two, article fifteen, chapter twenty-two of this code, that are owned or under the direct control of persons or entities who are regulated under section five, article two, chapter twenty-four-a of this code. The commission shall establish, prescribe and enforce rules providing for the safe transportation of solid waste in the state. The commission shall establish rules for the collection of waste tires by private commercial carriers of solid waste.

(b) The Public Service Commission shall study the feasibility of incorporating and adopting guidelines for solid waste collection fees that are based upon the volume of solid waste generated by any person. This report shall be submitted to the Governor and the members of the Legislature on or before January 1, 1993.

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§24-2-1c. Certificates of need required for solid waste facilities.

(a) Any person applying for a permit to construct, operate or expand a commercial solid waste facility as defined in section two, article fifteen, chapter twenty-two of this code, or any person seeking a major permit modification for a commercial solid waste facility from the Division of Environmental Protection first shall obtain a certificate of need from the Public Service Commission. Application for such certificate shall be submitted on forms prescribed by the commission. The commission shall grant or deny a certificate of need, in accordance with provisions set forth in this chapter. If the commission grants a certificate of need, the commission may include conditions not inconsistent with the criteria set forth in this section.

(b) For purposes of subsection (a) of this section, a complete application consists of the following and notwithstanding any other provision of this chapter to the contrary, such information contained in the application provided by the applicant is not confidential and may be disclosed pursuant to the provisions of chapter twenty-nine-b of this code:

(1) The names of the owners or operators of the facility including any officer, director, manager, person owning five percent or more interest or other person conducting or managing the affairs of the applicant as to the proposed facility;

(2) The location of the facility;

(3) A description of the geographic area to be served by the facility;

(4) The anticipated total number of citizens to be served by the facility;

(5) The average monthly tonnage of solid waste anticipated to be disposed of by the facility;

(6) The total monthly tonnage of solid waste for which the facility is seeking a permit from the Division of Environmental Protection;

(7) The anticipated life span and closure date of the facility; and

(8) Any other information requested on the forms prescribed by the commission.

(c) In considering whether to grant a certificate of need the commission shall consider, but is not limited to considering, the following factors:

(1) The total tonnage of solid waste, regardless of geographic origin, that is likely to be delivered each month to the facility if the certificate is granted;

(2) The current capacity and life-span of other solid waste facilities that are likely to compete with the applicant's facility;

(3) The life span of the proposed or existing facility;

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(4) The cost of transporting solid waste from the points of generation to the disposal facility;

(5) The impact of the proposed or existing facility on needs and criteria contained in the statewide solid waste management plan; and

(6) Any other criteria which the commission regularly utilizes in making such determinations.

(d) The Public Service Commission shall deny a certificate of need upon one or more of the following findings:

(1) The proposed capacity is unreasonable in light of the total tonnage of solid waste that is likely to be delivered each month to the facility if the certificate is granted;

(2) The location of the facility is inconsistent with the statewide solid waste management plan;

(3) The location of the facility is inconsistent with any applicable county or regional solid waste management plan;

(4) The proposed facility is not reasonably cost effective in light of alternative disposal sites;

(5) The proposal, taken as a whole, is inconsistent with the needs and criteria contained in the statewide solid waste management plan; or

(6) The proposal, taken as a whole, is inconsistent with the public convenience and necessity.

(e) An application for a certificate of need shall be submitted prior to submitting an application for certificate of site approval in accordance with section twenty-four, article four, chapter twenty-two-c of this code. Upon the decision of the commission to grant or deny a certificate of need, the commission shall immediately notify the solid waste management board and the Division of Environmental Protection.

(f) Any party aggrieved by a decision of the commission granting or denying a certificate of need may obtain judicial review thereof in the same manner provided in section one, article five of this chapter.

(g) No person may sell, lease or transfer a certificate of need without first obtaining the consent and approval of the commission pursuant to the provisions of section twelve, article two of this chapter.

(h) The commission shall promulgate rules relating to the types of commercial solid waste facility modification or construction that require certificates of need.

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§24-2-1d. Future electric generating capacity requirements.

(a) In order to maximize the use of electricity generated within the state by using coal or natural gas produced within the state, the Public Service Commission shall by order, no later than December 31, 1989, establish the schedule and amount of future electric generating capacity additions required by each West Virginia electric utility, for the next ten years, taking into account: (i) Projected load growth; (ii) existing generating capacity; (iii) existing contractual commitments to sell or purchase capacity; (iv) planned retirement and life extensions of existing capacity; (v) planned construction of capacity; (vi) availability of capacity from generating units of affiliated companies; (vii) capacity factors for existing generation; and (viii) such other reasonable factors as the commission may deem relevant and appropriate to consider. For purposes of this section, "capacity factor" shall mean the ratio of the actual energy produced by a power plant over a specific period to the maximum possible energy it could have produced if running at full capacity during that same period.

(b) If the commission determines after considering all such named and other relevant and appropriate factors that a utility will be required to purchase electric generating capacity beyond those agreements approved by the Federal Energy Regulatory Commission or the West Virginia Public Service Commission in order to serve its West Virginia customers, the amount of such required additional purchased capacity so identified by the commission will for purposes of this section be referred to as the utility's "projected deficient capacity": *Provided*, That this subsection shall not include power generating facilities whose total production of electricity is sold outside the State of West Virginia.

(c) In the interests of: Keeping utility rates of residential customers as low as possible; keeping utility rates for commercial and industrial customers competitive with those of other states; attracting new industry for which electric power costs are a major factor in location determinations; and of not placing any greater cost burden on government than is absolutely necessary for its electric power needs, each utility shall acquire, if reasonable, its projected deficient capacity from electric generation situated in West Virginia which burns coal or gas produced in West Virginia and which will provide the most reliable supply of capacity and energy at the least cost to those customers of the utility who will be served by such electric generation: *Provided*, That all power purchase contracts executed prior to the effective date of this section which satisfy the following requirements, regardless of location, shall be considered, for the purposes of this subsection, as electric generation situated in West Virginia: (1) Said contracts were negotiated in accordance with procedures and priced according to methodologies of other contracts which the commission has ordered approved; (2) said contracts either guarantee or are substantially amended to guarantee for the life of the contract the use of an amount of West Virginia fuel which equals or exceeds the amount which would be required, on a percentage of output basis, to produce the amount of electric power to be consumed in West Virginia; and (3) said contracts meet the requirements for a qualifying facility established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978.

(d) The commission shall evaluate each capacity auction conducted by PJM Interconnection,

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LLC, or its successor and, to the maximum extent permitted by law, encourage the coordination of the voluntary participation of every electric generating unit in the state in each capacity auction for the benefit of ratepayers in the state.

(e) In order to ensure the state's existing generating units can continue to meet future generation needs, the commission shall conduct a review of each generating unit's current consumer economic dispatch. Factors to be considered by the commission in reviewing consumer economic dispatch shall include, but not be limited to: (1) current capacity factors; (2) management of fuel supplies and contracts; (3) overall plant operation and maintenance; (4) placement of bids in the PJM Interconnection, LLC, or its successor's day-ahead and real-time energy markets; (5) utilization of the PJM Interconnection, LLC, or its successor's Reliability Pricing Model (RPM) or Fixed Resource Requirement (FRR); and (6) the utilization of automatic adjustment clauses, price indexes, or fuel adjustment clauses by the utilities. For purposes of this section, "consumer economic dispatch" shall mean the process of operating generation facilities to produce electricity at the lowest cost while reliably meeting consumer demand, considering the operational limits of generation and transmission facilities.

(f) Electric utilities shall be prepared to maximize the production of electricity from their generating units when such self-generation will result in reduced energy costs for West Virginia ratepayers. The commission shall require the utilities to maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty-nine percent capacity factor. Nothing herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule. The commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to carry out its duties and obligations as set forth herein.

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§24-2-1e. Rate recovery for construction of electric transmission facilities.

In order to encourage the construction of transmission facilities necessary to transmit electric power from generating facilities located in this state to areas where such power can be economically marketed, the commission may allow an electric utility accelerated rate recovery for transmission facilities constructed or upgraded for the purpose of increasing the capacity to transmit electric power to areas outside the utility's service territory where such power can be economically marketed. In allowing accelerated rate recovery, the commission shall include the impact of the investment in transmission facilities on any investment equalization agreement in which the utilities participate.

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§24-2-1f. Jurisdiction of commission over solid waste facilities.

Effective July 1, 1989, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in subsection (b), section two, article four, chapter twenty-two-c of this code.

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§24-2-1g. Rate incentives for utility investment in qualified clean coal and clean air control technology facilities.

(a) The Legislature hereby finds and declares that the State of West Virginia has been a major supplier of coal to the electric power industry both within and outside of the State of West Virginia; the congress of the United States is currently considering legislation to limit the emissions of oxides of sulfur and nitrogen from coal fired electric generating plants; the continued use of coal for generating electrical energy can be accomplished in an environmentally acceptable manner through the use of current state of the art and emerging clean coal and clean air technology; it is in the interest of the economy of West Virginia to encourage the use of such technologies for the production of electricity and steam; revenues from the continued production of coal are important to the State of West Virginia and are necessary for the funding of education and other vital state services; the construction of electric utility generation and transmission facilities may continue for many years following the finalization of plans for such facilities; and the prudence of the construction of such facilities may be affected by changing conditions during the extended interval between finalization of plans and completion of construction.

(b) Upon a finding that it is in the public interest of this state, as provided in section one, article one of this chapter, the Public Service Commission shall authorize rate-making allowances for electric utility investment in clean coal and clean air technology facilities or electric utility purchases of power from clean coal technology facilities located in West Virginia which shall provide an incentive to encourage investments in such technology.

(c) For purposes of this section a qualified clean coal or clean air technology facility must use coal produced in West Virginia for no less than seventy-five percent of its fuel requirements.

(d) The Public Service Commission shall determine, at such time and in such proceeding, form and manner as is considered appropriate by the commission, the extent to which any electric utility investment or purchases of power qualify for incentive rate-making pursuant to this section.

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§24-2-1h. Additional powers and duties of commission to control flow of solid waste.

(a) Upon the petition of any county or regional solid waste authority, motor carrier or solid waste facility, or upon the commission's own motion, the commission may issue an order that solid waste generated in the surrounding geographical area of a solid waste facility and transported for processing or disposal by solid waste collectors and haulers who are "motor carriers", as defined in chapter twenty-four-a of this code, be processed or disposed of at a designated solid waste facility or facilities: Provided, That such order shall not include:

(1) Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; or

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated pursuant to the provisions of section seven, article fifteen, chapter twenty-two of this code.

(b) In determining whether to issue an order establishing flow control to a solid waste facility, the commission shall consider, but is not limited to considering, the nature and composition of the solid waste, the environmental impact of controlling the flow of solid waste, the efficient disposal of solid waste, financial feasibility of proposed or existing solid waste facilities, the county or region solid waste control plan, the statewide solid waste control plan and the public convenience and necessity.

(c) The Public Service Commission shall promulgate rules providing standards and criteria to effectuate the purposes of this section.

(d) Notwithstanding any provision of this code to the contrary, excepting rules of the Public Service Commission from legislative rule-making review, the Public Service Commission shall propose a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall mandate that motor carriers transport source-separated recyclable materials to a recycling facility. Such legislative rule shall provide, at a minimum, for a separate rate for the transportation of such materials or that such motor carriers may contract with a customer to waive the charge for transporting such materials in exchange for the value of such materials.

(e) Notwithstanding any provision of this code to the contrary, the Public Service Commission is hereby authorized to employ ten persons, who shall be in the classified exempt service, in addition to any personnel positions otherwise authorized or allocated to the commission as of the effective date of this section to facilitate enforcement of duties imposed upon the commission in the regulation of solid waste disposal during the second extraordinary session of the Legislature, one thousand nine hundred ninety-one.

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§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; Division of Environmental Protection to modify facility permit; criteria for emergency certificates.

(a) Notwithstanding any provision of this article, or any provision of article five-f or nine, chapter twenty, or any other provision of this code, upon the application of any commercial solid waste facility, the commission may grant to a commercial solid waste facility an emergency certificate of need to increase the maximum monthly solid waste disposal tonnage for a period not to exceed one year, to the extent deemed necessary to prevent any disruption of solid waste disposal services in any county or wasteshed of the state resulting from the closure of an existing landfill in said county or wasteshed: Provided, That the commission is not required to make any determination of need, necessity or reasonableness when acting on any application filed pursuant to this article regarding an existing commercial solid waste disposal facility, which is owned or operated by a county government or by an agency, board or entity thereof, and which has previously been denied a certificate of need prior to the effective date of this section. The authority granted to the commission under this section shall expire after September 30, 1993. No temporary certificate issued pursuant to this section shall extend beyond September 30, 1994. The director of the Division of Environmental Protection shall modify any commercial solid waste facility permit, issued under article five-f, chapter twenty of this code, to conform with the maximum monthly solid waste disposal tonnage and any other terms and conditions set forth in a temporary certificate issued under this section.

(b) If the net tonnage increase under a temporary certificate application made pursuant to subsection (a) of this section would cause the gross monthly solid waste disposal tonnage of such facility to exceed ten thousand tons, a temporary certificate shall be issued only if the solid waste facility has: (1) Obtained from the county or regional solid waste authority for the county or counties in which the facility is located a certificate of site approval or approval for conversion from a Class B facility to a Class A facility; and (2) obtained from the county or regional solid waste authority for the county or counties in which the facility is located approval to increase the maximum monthly tonnage disposed at the facility; and (3) obtained from the county commission for the county or counties in which the landfill is located approval to operate as a Class A facility; and (4) has a certificate of need application pending before the Public Service Commission; and (5) has installed a composite liner system in compliance with the requirements set forth in the solid waste management rules promulgated by the Division of Environmental Protection or its predecessor. Such emergency certificate shall not authorize an increase in the maximum monthly solid waste disposal tonnage in an amount greater than that approved by the county or regional solid waste authority for the county or counties in which the landfill is located.

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§24-2-1j. Special rates for energy intensive industrial consumers of electric power.

(a) The Legislature hereby finds that:

(1) West Virginia enjoys relatively low cost electric power rates for residential customers, business and industry and these relatively low rates constitute a competitive economic advantage for West Virginia;

(2) West Virginia has many energy intensive industrial consumers of electric power, and has the ability to retain its existing energy intensive industrial consumers of electric power and attract additional energy intensive industrial consumers of electric power in the future, through the adoption of policies and the establishment of rates that enhance and preserve the attractiveness of West Virginia as a place for energy intensive industrial consumers to do business;

(3) Energy intensive industrial consumers of electric power create jobs, provide a substantial tax base and enhance the productive capacity, competitiveness and economic opportunities of West Virginia and all of its citizens;

(4) Energy intensive industrial consumers of electric power help keep power rates low for all consumers of electric power, including residential customers, by providing a large consumption base over which the cost of producing electric power may be spread from time to time;

(5) It is in the best interests of West Virginia, the citizens of West Virginia, electric public utilities in West Virginia, and all consumers of electric power in West Virginia, including residential customers, to encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, thereby increasing the creation, preservation and retention of jobs, expanding the tax base, helping keep power rates low for all consumers of electric power, and enhancing the productive capacity, competitiveness and economic opportunities of all citizens of West Virginia;

(6) To encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, the commission may establish special rates under this section that in its judgment are necessary or appropriate for the continued, new or expanded operation of energy intensive industrial consumers and that can reasonably be expected to support the long-term operation of energy intensive industrial consumers, and that do not impose an unreasonable burden upon electric public utilities or their other customers; and

(7) To assist the commission in the exercise of its authority to establish special rates under this section, the Legislature creates in article thirteen-cc, chapter eleven of this code a tax credit mechanism to provide a source of funding to support special rates of which the commission may avail itself in exercising said authority in certain circumstances.

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(b) As used in this section:

(1) "Energy intensive industrial consumer" means an industrial facility, plant or enterprise that has a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions.

(2) "Special rate" means a rate set for an energy intensive industrial consumer pursuant to this section.

(c) In addition to any authority of the commission to allow special rates or contracts under any other provision of the code or rule, and in addition to all other factors which the commission may consider in setting rates for consumers of electric power, including, but not limited to, the commission's responsibilities under subsection (b), section one, article one of this chapter, and notwithstanding any other provisions of this code to the contrary, in setting a special rate the commission may take into consideration fluctuations in market prices for the goods or products produced by the energy intensive industrial consumer of electric power, or other variables or factors which may be relevant to or affect the continuing vitality of the energy intensive industrial consumer of electric power in dynamic markets. In setting a special rate by reference to fluctuations in market prices for the goods and products produced by an energy intensive industrial consumer of electric power, the commission may establish variable rates including, but not limited to, ceilings and floors on the special rate, banking or crediting mechanisms, caps, limits or other similar types of safeguards that are intended by the commission, in its reasonable judgment, to provide appropriate flexibility and predictability in the special rate over time, to permit the energy intensive industrial customer the ability to make the capital investments and other commitments necessary to support the continued operation of the facility.

(d) An energy intensive industrial consumer wishing to apply for a special rate shall first enter into negotiations with the utility that provides it with electric power, regarding the terms and conditions of a mutually agreeable special rate. If the negotiations result in an agreement between the energy intensive industrial consumer and the utility, the energy intensive industrial consumer and the utility shall make a joint filing with the commission seeking approval of the proposed special rate. If the negotiations are unsuccessful, the energy intensive industrial consumer may file a petition with the commission to consider establishing a special rate. The commission shall have the authority to establish a special rate upon the filing of either a joint filing or a petition pursuant to this section.

(e) In order to qualify for a special rate, an energy intensive industrial consumer shall:

(1) Have a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions;

(2) Create or retain at least twenty-five full-time jobs in West Virginia;

(3) Have invested not less than $500,000 in fixed assets, including machinery and

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equipment, in West Virginia;

(4) Provide reasonable evidence that due to market conditions in the industry in which the energy intensive industrial consumer operates, or other factors bearing on investment in and operation of the industrial facility or facilities, without the special rate the operation or continued operation of the industrial facility or facilities is threatened or not economically viable under reasonable assumptions and projections regarding the market and the operation of the industrial facility or facilities;

(5) Provide reasonable evidence that, with the special rate, the energy intensive industrial consumer intends to operate the industrial facility or facilities in West Virginia for an extended period of time, and that the operation or continued operation of the industrial facility or facilities for an extended period of time appears economically viable, under reasonable assumptions and projections regarding the market in which the energy intensive industrial consumer operates and regarding the operation of the industrial facility or facilities; and

(6) Provide information and data setting forth how the energy intensive industrial consumer meets the qualifications of this section, and how the special rate advances the policy goals set forth in subsection (a) of this section.

(f) The commission shall determine whether any excess revenue or revenue shortfall created by a special rate authorized pursuant to this section should be allocated among any other customers of the utility. In making that determination, the commission shall consider all relevant factors, including whether such allocation is just, reasonable, and fairly balances the interests of other customers, the utility, and the customer receiving the special rate.

(g) If the commission determines that: (1) A special rate is necessary for the creation, preservation or retention of jobs by the energy intensive industrial consumer; (2) in connection with the initial special rate that is authorized by the commission for an energy intensive industrial consumer, the energy intensive industrial consumer will increase the number of persons it employs, including both persons who have been previously employed by the energy intensive industrial consumer and persons not previously employed by the energy intensive industrial consumer, by at least one hundred fifty persons as a result of the special rate; (3) the energy intensive industrial consumer will employ no fewer than three hundred persons, which number may include, but is not limited to, the persons newly hired or rehired pursuant to the preceding clause in this subsection; (4) the energy intensive industrial consumer has a contract demand of at least two hundred fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions; and (5) a special rate for an energy intensive industrial consumer of electric power would create a revenue shortfall, the commission shall, prior to determining whether it is reasonable to allocate all or a portion of the revenue shortfall amount among a public utility's other customers, first consider the availability of tax credits and payments required to be made to public utilities pursuant to article thirteen-cc, chapter eleven of this code to reduce or eliminate a revenue shortfall. The commission shall identify in each proceeding in which it

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establishes a special rate for an eligible energy intensive industrial consumer the amount of any unallocated revenue shortfall in need of funding pursuant to article thirteen-cc, chapter eleven of this code to defray it and shall project the amount of the gross tax credits needed for that purpose after taking into consideration the net amounts of credits that are required to be paid to utilities pursuant to subsection (a), section four, article thirteen-cc, chapter eleven of this code and the limits specified in section three, article thirteen-cc, chapter eleven of this code. Tax credits authorized under this section may be designated by the commission only in respect of periods of time during which the eligible energy intensive industrial consumer employs at least three hundred persons. The commission's determination as to the amount of tax credits on which it relies in establishing a given special rate, shall constitute an authorization for each supplier of West Virginia coal to the utility offering that special rate to claim its allocated share of the total amount of tax credits. The allocated share shall be calculated by the affected public utility, subject to the approval of the commission.

(h) The commission shall include in the annual report to the Legislature which it makes pursuant to subsection (d), section one, article one of this chapter a report on the tax credits being employed pursuant to article thirteen-cc, chapter eleven of this code to help fund special rates created under this section.

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§24-2-1k. Natural gas infrastructure expansion, development, improvement and job creation; findings; expedited process; requirements; rulemaking.

(a) The Legislature hereby finds that:

(1) West Virginia is rich in energy resources, which provide many advantages to the state, its economy and its citizens;

(2) West Virginia is experiencing significant growth in the natural gas industry with the development of the Marcellus and Utica shale;

(3) West Virginia's abundant natural gas reserves have created, and will continue to create, many benefits to the state and its citizens;

(4) Growth in the natural gas industry and its accompanying benefits require West Virginia to be proactive and increase the focus on the natural gas infrastructure in this state in order for those benefits to flow to the state and its citizens, including those citizens in areas unserved or underserved by natural gas utilities;

(5) A comprehensive program of replacing, upgrading and expanding infrastructure by natural gas utilities at reasonable cost to ratepayers will benefit the customers of the natural gas utilities, the public in West Virginia and the economy of the state, as a whole;

(6) A natural gas utility infrastructure program will create jobs, provide for continued and enhanced safety and reliability of aging natural gas infrastructure, provide for more economic natural gas utility service, and provide natural gas utility service to new customers in areas of the state that are unserved or underserved; and

(7) Natural gas utility infrastructure programs involve the investment of capital and the incurrence of associated incremental costs. Accordingly, in order for the natural gas utility undertaking those infrastructure programs to attract the necessary capital, the natural gas utility should be permitted to recover the incremental rate of return, related income taxes, depreciation and property taxes associated with the infrastructure programs commencing with the implementation of an infrastructure program approved by the commission without waiting for a full base rate tariff filing as more fully described in subsection (f) of this section.

(b) Natural gas utilities may file with the commission an application for a multi-year comprehensive plan for infrastructure replacements, upgrades and extensions. Subject to commission review and approval, a plan may be amended and updated by the natural gas utility as circumstances warrant. The recovery of costs in support of the plans shall be allowed in the manner set forth in this section if the proposed plans have been found to be prudent and useful.

(c) The application is in lieu of a proceeding pursuant to section eleven of this article and shall contain the following:

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(1) A description of the infrastructure program, in such detail as the commission prescribes, and the projected annual amount (in approximate line sizes and feet), general location, type, and projected installation timing of the facilities that the applicant proposes to replace, construct and/or improve;

(2) The projected net cost, on an annual basis, of the replacement, construction or improvements;

(3) The projected starting date for the infrastructure program;

(4) The projected numbers of potential new customers, if any, that may be served by the infrastructure program and the projected annual load of the customers;

(5) The projected cost of debt for the infrastructure program funding and the projected capital structure for infrastructure program funding;

(6) Testimony, exhibits or other evidence that demonstrates the need for the replacement, construction or improvement of facilities in order to provide and maintain adequate, efficient, safe, reliable and reasonable natural gas service;

(7) A proposed cost recovery mechanism consistent with this section; and

(8) Other information the applicant considers relevant or the commission requires.

(d) Upon filing of the application, the applicant shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area to be each county in which service is provided by the natural gas utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within ninety days of the notice; unless no opposition to the rate change is received by the Public Service Commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within one hundred fifty days of the application filing date. However, if the proposed infrastructure program includes a request for extension of infrastructure into an unserved area and another natural gas utility files to extend service to the same area, the commission may move that extension request of each natural gas utility into separate proceedings to be considered concurrently and extend the time period for issuing a final order on that portion of the proposed programs beyond the one hundred fifty days.

(e) Upon notice and hearing, if required by the commission, the commission shall approve the infrastructure program and allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just, reasonable, not contrary to the public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and

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reasonably priced natural gas service.

(f) Upon commission approval, natural gas utilities will be authorized to implement the infrastructure programs and to recover related incremental costs, net of contributions to recovery of return and depreciation and property tax expenses directly attributable to the infrastructure program provided by new customers served by the infrastructure program investments, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the infrastructure program for the coming year, considering the projected amount and timing of expenditures under the infrastructure program plus any expenditures in previous years of the infrastructure program. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the natural gas utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the natural gas utility's debt during the period of the infrastructure program to determine the weighted cost of capital based upon the natural gas utility's capital structure.

(2) Income taxes applicable to the return allowed on the infrastructure program shall be calculated for inclusion in rates.

(3) Incremental depreciation and property tax expenses directly attributable to the infrastructure program shall be estimated for the upcoming year.

(4) Following commission approval of its infrastructure program, a natural gas utility shall place into effect rates that include an increment that recovers the allowance for return, related income taxes, depreciation and property tax expenses associated with the natural gas utility's estimated infrastructure program investments for the upcoming year, net of contributions to recovery of those incremental costs provided by new customers served by the infrastructure program investments, if any, ("incremental cost recovery increment"). In each year subsequent to the order approving the infrastructure program and an incremental cost recovery increment, the natural gas utility shall file a petition with the commission setting forth a new proposed incremental cost recovery increment based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the infrastructure program investments, for the preceding year.

(g) The natural gas utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual incremental costs incurred and costs recovered through the rate mechanism are tracked.

(h) Natural gas utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the natural gas utility's last rate case proceeding and not included in the natural gas utility's current

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base rates. In a future rate case, the commission may allow recovery of the deferred costs amortized over a reasonable period of time to be determined by the commission provided the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.

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§24-2-1l. Modernization and improvement of coal-fired boilers at electric power plants; findings; expedited process; requirements; rulemaking.

(a) The Legislature hereby finds that:

(1) West Virginia is rich in energy resources, which provide many advantages to the state, its economy and its citizens;

(2) West Virginia's abundant coal reserves have created, and will continue to create, many benefits to the state and its citizens;

(3) West Virginia is experiencing a significant downturn in the coal industry as a result of increasing environmental regulation and increased competition from natural gas and oil;

(4) Stabilization of the coal industry to maintain its accompanying benefits to the state and its citizens requires West Virginia to be proactive and focus on the modernization and improvement of coal-fired boilers used by electric utilities in this state to allow the more efficient use of coal in the generation of electricity with reduced environmental impact;

(5) A comprehensive program of modernizing, upgrading and improving coal-fired boilers at existing West Virginia power plants owned by electric utilities at reasonable cost to ratepayers, will benefit the customers of the electric utilities, the public in West Virginia and the economy of the state as a whole;

(6) A coal-fired boiler modernization and improvement program will create jobs, provide for continued and enhanced safety and reliability of aging electrical generation infrastructure, and provide for more economical generation of electricity from coal, all of which will benefit customers located throughout the state; and

(7) Efforts to modernize and improve coal-fired boilers owned by electric utilities and used to generate electricity in this state involve the investment of capital and the incurrence of associated incremental costs. Accordingly, in order for the electric utility undertaking those coal-fired boiler modernization and improvement programs to attract the necessary capital, the electric utility should be permitted to recover the incremental rate of return, related income taxes, depreciation and property taxes associated with the coal-fired boiler modernization and improvement programs commencing with the implementation of a coal-fired boiler modernization and improvement program approved by the commission without waiting for a full base rate tariff filing, as more fully described in subsection (f) of this section.

(b) Electric utilities may file with the commission an application for a multiyear comprehensive program for modernizing and improving coal-fired boilers at power plants located in this state and owned, in whole or in part, by the electric utility. Subject to commission review and approval, a program may be amended and updated by the electric utility as circumstances warrant. The recovery of costs in support of the program shall be

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allowed in the manner set forth in this section if the proposed program and related rates are found to be just, reasonable, and based on prudent investments that are used and useful to the utilities' West Virginia ratepayers.

(c) The application is in lieu of a proceeding pursuant to section eleven of this article and shall contain the following:

(1) A description of the coal-fired boiler modernization and improvement program, in such detail as the commission prescribes, which may include costs associated with or incidental to the reduction of emissions or compliance with environmental requirements, the projected cost, and timing of the installation of equipment and facilities that the applicant proposes to replace, construct, modernize and/or improve;

(2) The projected net cost, on an annual basis, of the replacement, construction or improvements;

(3) The projected starting and completion dates for the modernization and improvement program;

(4) The projected cost of debt for the coal-fired boiler modernization and improvement program funding and the projected capital structure for coal-fired boiler modernization and improvement program funding;

(5) Testimony, exhibits or other evidence that demonstrates the need for the modernization and improvement of coal-fired boilers in order to provide and maintain adequate, efficient, safe, reliable and reasonably priced electrical generation;

(6) A proposed cost recovery mechanism consistent with this section; and

(7) Other information the applicant considers relevant or the commission requires.

(d) Upon filing of the application, the applicant shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area to be each county in which service is provided by the electrical utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within one-hundred eighty days of the notice; unless no opposition to the application is received by the Public Service Commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within two-hundred seventy days of the application filing date.

(e) Upon notice and hearing, if required by the commission, the commission shall approve the coal-fired boiler modernization and improvement program and allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just,

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reasonable, prudent, not contrary to the West Virginia public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced electricity generated from coal.

(f) Upon commission approval, electric utilities will be authorized to implement the coal-fired boiler modernization and improvement programs and to recover related incremental capital and operation and maintenance costs, net of contributions to recovery of return and depreciation and property tax expenses directly attributable to the coal-fired boiler modernization and improvement program provided by electric utility’s customers, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the coal-fired boiler modernization and improvement program for the coming year, considering the projected amount and timing of expenditures under the coal-fired boiler modernization and improvement program plus any expenditures in previous years of the program. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the electric utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the electric utility's debt during the period of the coal-fired boiler modernization and improvement program to determine the weighted cost of capital based upon the electric utility's capital structure.

(2) Income taxes at the corporate statutory income rates applicable to the return allowed on the coal-fired boiler modernization and improvement program shall be calculated for inclusion in rates.

(3) Incremental depreciation and property tax expenses directly attributable to the coal-fired boiler modernization and improvement program shall be estimated for the upcoming year.

(4) Following commission approval of its coal-fired boiler modernization and improvement program, an electric utility shall place into effect rates that include an increment that recovers the allowance for return, operation and maintenance expense, related income taxes, depreciation and property tax expenses associated with the electric utility's estimated coal-fired boiler modernization and improvement program investments for the upcoming year, net of contributions to recovery of those incremental costs provided by the electric utility’s customers, if any, ("incremental cost recovery increment"). In each year subsequent to the order approving the coal-fired boiler modernization and improvement program and an incremental cost recovery increment, the electric utility shall file a petition with the commission setting forth a new proposed incremental cost recovery increment based on investments and expenses to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the coal-fired boiler modernization and improvement program investments, for the preceding year.

(g) The electric utility may make any accounting accruals necessary to establish a regulatory

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asset or liability through which actual incremental costs incurred and costs recovered through the rate mechanism are tracked.

(h) Electric utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the electric utility's last rate case proceeding and not included in the electric utility's current base rates. In a future rate case, the commission shall allow recovery of the deferred costs amortized over a reasonable period of time to be determined by the commission if the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.

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§24-2-1m. Commission jurisdiction does not extend to materials recovery facilities, mixed waste processing facilities, and certain mixed waste processing and resource recovery facilities.

Notwithstanding any other provision of this code, the jurisdiction of the commission does not extend to materials recovery facilities or mixed waste processing facilities as defined by §22-15-2 of this code, except within a 35-mile radius of a facility sited in a county that is, in whole or in part, within a karst region as determined by the West Virginia Geologic and Economic Survey that has been permitted and classified by the West Virginia Department of Environmental Protection as a mixed waste processing resource recovery facility and has received a certificate of need by July 1, 2016: *Provided*, That nothing in this section shall affect the requirements of §24A-2-5 and §24A-3-3 of this code: Provided, however, That the jurisdiction of the commission does not extend to any mixed waste processing and resource recovery facility that processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis.

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§24-2-1n. West Virginia Business Ready Sites Program.

(a) The Legislature finds and declares that:

(1) Presently, West Virginia's available industrial sites lack competitiveness with industrial sites in surrounding states due in part to the lack of presently constructed, adequate utility infrastructure serving sites having industrial potential;

(2) Having construction-ready industrial sites with adequately developed utility infrastructure will increase the state's potential to attract new industrial projects to the state and advance the state's economic development efforts;

(3) Incentivizing utilities to construct adequate public utility infrastructure and provide services to sites identified as having industrial potential will increase the likelihood that such sites are developed; and

(4) Responsibly increasing the number of industrial sites with adequate and fully developed utility services is in the public interest of the state.

(b) Definitions. – For the purpose of this section:

"Industrial Development Agency" means any individual, incorporated organization, foundation, association, private incorporated entity, or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement, and development of industrial, commercial, manufacturing, and tourist enterprises or projects in this state;

"Industrial Development Site" means a land development containing a minimum of 50 contiguous acres that is identified by the secretary as having potential for industrial development and that does not currently have adequate public utility services from one or more public utilities regulated by the Public Service Commission;

"Secretary" means the Secretary of the Department of Commerce; and

"Utility" means electricity, natural gas, water, or sewage service provided by a public utility regulated by the Public Service Commission.

(c) The secretary shall administer a program known hereafter as "The West Virginia Business Ready Sites Program" for the purpose of promoting economic development in certain areas of the state by facilitating the construction of utility infrastructure necessary to increase the attractiveness of such sites for industrial development within the state.

(d) An industrial development agency may identify a potential industrial development site and apply to the secretary for approval of the site as an industrial development site, including recommendations as to any required criteria for utility service to the site.

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(e) Upon receipt of the application, the secretary shall determine whether the potential industrial development site has the attributes to accomplish the public purposes of this section; and, upon determining that the site has such attributes, the secretary may certify the site as an industrial development site subject to, at his or her discretion, all or some of the identified required criteria for utility service and communicate such certification to the Public Service Commission.

(f) After the Public Service Commission receives the certification described in subsection (e) of this section, public utilities that are able to meet the required criteria, if any, may file with the Public Service Commission an application for a multi-year comprehensive plan for infrastructure development to construct public utility infrastructure and provide services to industrial development sites. Subject to commission review and approval, a plan may be amended and updated by the public utility as circumstances warrant. The recovery of costs in support of the plans shall be allowed in the manner set forth in this section if the proposed plans have been found to be prudent and useful.

(g) The application submitted to the Public Service Commission under subsection (e) of this section is in lieu of a proceeding, pursuant to §24-2-11 of this code, and shall contain the following:

(1) A description of the infrastructure program, in such detail as the Public Service Commission prescribes, and the projected annual amount in approximate line sizes and feet, general location, type, and projected installation timing of the facilities that the applicant proposes to replace, construct, or improve;

(2) The projected net cost, on an annual basis, of the replacement, construction, or improvements;

(3) The projected start date for the infrastructure program;

(4) The projected numbers of potential new customers that may be served by the infrastructure program and the projected annual demand for public utility services of the customers;

(5) The projected debt for the infrastructure program funding and the projected capital structure for infrastructure program funding;

(6) A proposed full and timely cost recovery mechanism consistent with this section; and

(7) Other information the applicant considers relevant, or the Public Service Commission requires.

(h) Upon filing of the application, the applicant shall publish, in the form the Public Service Commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the

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provisions of §59-3-1 *et seq*. of this code, the publication area to be each county in which service is provided by the public utility, a notice of the filing of the application, and that the commission shall hold a hearing on the application within 90 days of the notice; unless no substantial opposition to the rate change is received by the commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within 150 days of the application filing date.

(i) Upon notice and hearing, if required by the Public Service Commission, the commission shall approve the infrastructure program and allow expedited recovery of costs related to the expenditures, as provided in subsection (i) of this section, if the commission finds that the expenditures and the associated rate requirements are just, reasonable, and are not contrary to the public interest.

(j) Upon Public Service Commission approval, utilities will be authorized to implement the infrastructure programs and to recover related incremental costs, net of contributions to recovery of return, operation, and maintenance, depreciation and tax expenses directly attributable to the infrastructure program served by the infrastructure program investments, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the infrastructure program for the coming year, considering the projected amount and timing of expenditures under the infrastructure program plus any expenditures in previous years of the infrastructure program. The rate of return shall be determined by utilizing the rate of return on equity authorized by the Public Service Commission in the public utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the public utility's debt during the period of the infrastructure program to determine the weighted cost of capital based upon the public utility's capital structure.

(2) Income taxes applicable to the return allowed on the infrastructure program shall be calculated at the statutory tax rate for inclusion in rates.

(3) Incremental operation and maintenance, depreciation, and property tax expenses directly attributable to the infrastructure program shall be estimated for the upcoming year.

(4) Following Public Service Commission approval of its infrastructure program, a public utility shall place into effect rates that include an increment that recovers the allowance for return, related income taxes at the statutory rate, operation and maintenance, depreciation, and property tax expenses associated with the public utility's estimated infrastructure program investments for the upcoming year, net of contributions to recovery of those incremental costs provided by new customers served by the infrastructure program investments, if any. In each year subsequent to the order approving the infrastructure program and the incremental cost recovery increment, the public utility shall file a petition with the Public Service Commission setting forth a new proposed incremental cost recovery

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increment based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the infrastructure program investments, for the preceding year.

(5) The facilities installed in an application approved by the Public Service Commission shall be considered used and useful as of the date of construction expenditure for rate recovery.

(k) The public utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual incremental costs incurred and costs recovered through the rate mechanism are tracked.

(l) Utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the public utility's last rate case proceeding and not included in the public utility's current rates. In a future rate case, the Public Service Commission may allow recovery of the deferred costs amortized over a reasonable period of time to be determined by the commission provided the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.

(m) Notwithstanding any provision of this code to the contrary, sites covered by the provisions of this section are eligible for the disbursement of funds from the Certified Sites and Development Readiness Program, as delineated in §5B-2-19 of this code: *Provided*, That the Department of Commerce approves each such application for funding.

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§24-2-1o. Renewable energy facilities program.

(a) The Legislature finds and declares that:

(1) West Virginia is rich in energy resources, which provide many advantages to the state, its economy and its citizens;

(2) West Virginia's abundant mineral reserves have created, and will continue to create, many benefits to the state and its citizens, including thousands of jobs, a strong tax base and a low-cost, reliable source of electricity;

(3) Coal-fired plants currently supply over 90 percent of electricity generation to the citizens and businesses of this state;

(4) Businesses that may otherwise locate or expand facilities in this state often require that a portion of the electricity that they purchase be generated via renewable sources;

(5) Creating a program for the development of certain renewable sources of electricity by electric utilities will result in increased economic development opportunities in the state, create jobs and enhance the use of the state's electricity generation; and

(6) Creating a program to authorize electric utilities to provide a portion of the state's electricity needs through a process that allows them to plan, design, construct, purchase, own and operate renewable electric-generating facilities, energy storage resources, or both, pursuant to this section is in the public interest of the state.

(b) *Definitions* – For the purpose of the section:

"Capital investments" include, but are not limited to, costs related to the planning, design, construction, purchase, and ownership of renewable electric-generating facilities, energy storage resources, and interconnections with transmission and distribution facilities.

"Commission" or "Public Service Commission" means the Public Service Commission of West Virginia.

"Electric utility" means any electric distribution company that sells electricity to retail customers in this state under rates regulated by the commission. Unless specifically provided for otherwise, for the purposes of this section, the term "electric utility" may not include rural electric cooperatives, municipally owned electric facilities or utilities serving less than 30,000 residential electric customers in West Virginia.

"Eligible site" means any site in this state that has been previously used in electric generation, industrial, manufacturing or mining operations, including, but not limited to, brownfields, closed landfills, hazardous waste sites, former industrial sites, and former mining sites. In the event that there is no available site that has been previously used in electric generation, industrial, manufacturing or mining operations in the area to be served

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by a renewable electric facilities program, an eligible site may include any suitable site in this state approved for use in connection with a renewable electric facilities program by the Secretary of the Department of Commerce.

"Energy storage resource" means infrastructure located on an eligible site that allows for the energy absorption and release of electrical energy into the electric grid.

"Renewable electric facilities program" means a program proposed by an electric utility to plan, design, construct, purchase, own, and operate renewable electric-generating facilities, energy storage resources, or both, pursuant to this section: *Provided*, That a renewable electric facilities program may not consist solely of energy storage resources.

"Renewable electric-generating facility" means infrastructure located on an eligible site that generates electricity solely through solar photovoltaic methods or other solar methods.

(c) Electric utilities may file with the commission an application for a multiyear comprehensive renewable energy facilities program that complies with the provisions of this section for planning, designing, constructing, purchasing, owning, and operating renewable electric-generating facilities, energy storage resources, or both, by the electric utility. Subject to commission review and approval, a renewable energy facilities program may be amended and updated by the electric utility. The recovery of costs in support of the renewable energy facilities program shall be allowed in the manner set forth in this section.

(d) Any renewable energy facilities program shall comply with the following requirements:

(1) An electric utility may purchase each renewable electric-generating facility and each energy storage resource from a developer of renewable electric-generating facilities or energy storage resources or construct such facilities on its own, as applicable. Any purchase of a renewable electric-generating facility or energy storage resources shall be subject to a competitive procurement administered by the electric utility. An electric utility may select to purchase a renewable electric-generating facility, energy storage resource, or both, based on a myriad of factors, including, but not limited to, price and nonprice criteria, which shall include, but not be limited to, geographic distribution of generating capacity, areas of higher employment, or regional economic development.

(2) An electric utility may elect to petition the commission, outside of a base rate case proceeding, at any time for a prudency determination with respect to the purchase, construction, and ownership by the electric utility of one or more renewable electric-generating facilities, energy storage resources, or both. The commission's final order regarding any such petition shall be entered by the commission within 150 days after the date of the filing of such petition.

(3) No renewable electric-generating facility shall have a generating capacity greater than 50 megawatts until such time as 85 percent of that renewable electric-generating facility's annual energy output is being sold or is contracted to be sold to residential, commercial, or

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industrial customers pursuant to a renewable special contract or renewable tariff, and, thereafter, any expansion of that or another renewable energy-generating facility's generating capacity shall proceed in increments of up to 50 megawatts each until such time as 85 percent or more of all renewable energy-generating facility's aggregate, annual energy output is being sold or is contracted to be sold to customers pursuant to a renewable special contract or renewable tariff;

(4) No single renewable electric-generating facility shall have a generating capacity greater than 200 megawatts;

(5) The cumulative generating capacity of all renewable electric-generating facilities operating at any given time, and for which rate recovery is provided by the commission under this section, shall not exceed 400 megawatts among all investor-owned electric utilities in this state: *Provided*, That the cumulative generating capacity of all renewable electric-generating facilities operating at any one time, and for which rate recovery is provided by the commission under this section, shall not exceed 200 megawatts for all electric utilities within the state owned by the same corporate parent company;

(6) The calculation of maximum megawatts of generating capacity for renewable electric-generating facilities established in this subsection shall not include the storage capacity of energy storage resources;

(7) As part of the renewable energy facilities program, the electric utilities must offer the energy output for sale to customers from all classes of service.

(e) Applications made under this section are in lieu of an application for a certificate of public convenience and necessity pursuant to §24-2-11 of this code and shall contain the following:

(1) A description of the renewable electric-generating facilities, energy storage resources, or both, in such detail as the commission prescribes, including, but not limited to, the generating capacity and location of the facilities and a description of the competitive purchase procurement process administered by the electric utility that is required under this section;

(2) A proposed concurrent cost-recovery mechanism for actual and projected capital investments in the renewable electric-generating facilities, energy storage resources, or both, and for operation and maintenance expenses and taxes associated with such facilities; and

(3) Other information that the applicant considers relevant or the commission requires.

(f) Upon filing of an application, the applicant shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within

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a class of service, as a Class I legal advertisement in compliance with §59-3-1 *et seq.*, of this code, the publication area to be each county in which service is provided by the electric utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within 90 days of the notice; unless no opposition to the rate change is received by the commission within one week of the proposed hearing date, in which case the hearing can be waived, and the commission shall issue a final order within 150 days of the application filing date.

(g) The planning, design, construction, purchase, ownership, and operation of renewable electric-generating facilities, energy storage resources, or both, pursuant to this section is in the public interest, and the commission shall so find when considering applications for renewable energy facilities programs submitted by an electric utility pursuant to this section.

(h) Upon notice and hearing, if required by the commission, the commission shall approve the applications made under this section and allow concurrent recovery of costs related to the expenditures, as provided in subsection (i) of this section, if the commission finds that the expenditures and the associated rate requirements are just and reasonable and that the applications comply with the requirements of this section.

(i) Upon commission approval, electric utilities shall be authorized to implement renewable electric facilities programs and to concurrently recover their costs, including a return on capital investments, operation and maintenance, depreciation, and tax expenses directly attributable to the renewable electric facilities program capital investments, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the renewable electric facilities program for the coming year, considering the projected amount and timing of capital investments under the renewable electric facilities program plus any capital investments in previous years of the program. The rate of return shall be determined by utilizing the rate of return on equity and the capital structure authorized by the commission in the electric utility's most recent base rate case proceeding or in the case of a settled base rate case, a rate of return on equity set forth in or associated with such settlement or, if neither is set forth in or associated with such settlement, a rate of return on equity and a capital structure determined by the commission to be reasonable, and the projected average weighted cost of the electric utility's debt during the period of the renewable electric facilities program to determine the weighted cost of capital based upon the electric utility's capital structure determined as specified above.

(2) Income taxes applicable to the return allowed on the renewable electric facilities program shall be calculated at the statutory rate for inclusion in rates.

(3) Incremental operation and maintenance, depreciation, and property tax expenses directly attributable to the renewable electric facilities program shall be estimated for the upcoming

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year.

(4) Following commission approval of its application made under this section, an electric utility shall place into effect rates that include an increment for concurrent cost recovery that recovers the allowance for return, related income taxes at the statutory rate, operation and maintenance, depreciation, and property tax expenses associated with the electric utility's actual and projected capital investments under the renewable electric facilities program for the upcoming year, net of contributions to recovery of those incremental costs provided by customers who have executed renewable special contracts, or who are taking power under renewable tariffs and are served by the renewable electric facilities program investments, if any, ("incremental cost-recovery increment"). In each year subsequent to the order approving the renewable electric facilities program and the incremental cost-recovery increment, the electric utility shall file an application with the commission setting forth a new proposed incremental cost recovery increment for concurrent cost recovery of forecasted costs to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the renewable electric facilities program, for the preceding year.

(5) The renewable electric-generating facilities, energy storage resources, or both, constructed, purchased, contracted, owned, installed, and in service pursuant to an application approved by the commission shall be considered used and useful for rate recovery purposes. Any concurrent cost recovery mechanism approved by the commission shall limit the amount of cost to be recovered from any individual customer of the electric utility to a maximum of $1,000 per month: *Provided,* That this limitation shall not impact the electric utility's ability to recover all costs incurred pursuant to this section from other customers. Customers who have executed renewable special contracts or are taking power under renewable tariffs pursuant to an approved renewable electric facilities program are not subject to any such limits imposed by the commission.

(6) If an electric utility serves customers in more than one jurisdiction, and a jurisdiction other than this state denies the electric utility recovery of the costs incurred pursuant to a renewable electric facilities program approved by the commission and allocated to that jurisdiction, the electric utility shall recover all of the costs of the renewable electric facilities program from its West Virginia jurisdictional customers if the commission finds that the expenditures and the associated rate requirements are just and reasonable, and all attributes of the renewable electric facilities program, including energy, capacity, and renewable energy credits shall be assigned to this state.

(j) The electric utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual incremental costs incurred and costs recovered through the rate mechanism are tracked.

(k) With respect to renewable electric facilities programs, electric utilities may defer incremental operation and maintenance expenses attributable to regulatory and compliance-related requirements introduced after the electric utility's last base rate case proceeding

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and not included in the electric utility's current base rates or incremental cost-recovery increment in lieu of current recovery. In a future base rate case, the commission shall allow recovery of such deferred costs amortized over a reasonable period of time to be determined by the commission provided the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior base rate cases.

(l) The provisions of this section shall expire on December 31, 2025. The expiration of this section shall not affect the full and timely cost recovery associated with a renewable energy facilities program for which an application has been filed with the commission pursuant to this section on or before December 31, 2025, nor for any projects previously approved by the commission pursuant to this section.

(m) Notwithstanding any provision of this article to the contrary, no provision herein this section shall displace any current levels of coal-fired generation capacity.

(n) Notwithstanding the provisions of §24-2-11c of this code, any person or entity: (1) Who is not an electric utility; (2) who intends to purchase or construct and operate an electric generating facility as an exempt wholesale generator under federal law; (3) who will generate electricity solely through solar photovoltaic or other solar methods; and (4) who, if desired, intends to purchase or construct and operate energy storage for such electricity may file an application with the Public Service Commission under this section in such detail and with such publication requirements as the commission may prescribe; and the commission shall hold a hearing, unless waived, within 90 days of publication and issue a final order on a siting certificate or modification thereof within 150 days of the application filing date. No other provision of this section shall apply to these exempt wholesale generators.

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§24-2-1p. Middle-Mile Fiber Broadband Infrastructure Expansion Program.

(a) Legislative findings. The Legislature finds:

(1) That access to broadband services is of critical importance to and a necessary prerequisite for enabling economic development in the state and for improving education, health care, public safety and government services, among other benefits to its citizens;

(2) That broadband expansion into unserved rural areas of the state continues to be an issue of importance to the Legislature, and progress is hindered by lack of full development of middle-mile broadband fiber infrastructure within the state;

(3) That the issues which have hindered the provision of broadband access to rural areas of the state especially disadvantage the elderly and low-income households;

(4) That it continues to be a primary goal of the Legislature to make every municipality, community, and rural area in this state accessible to Internet communications through the expansion, extension, and general availability of broadband services and technology;

(5) That regulated electric utilities have existing distribution infrastructure in place throughout the state, and that their existing and new infrastructure could be utilized in connection with construction of middle-mile broadband fiber assets;

(6) That it is in the public interest to expedite construction of middle-mile broadband fiber infrastructure to provide the necessary architecture to facilitate additional broadband Internet access to individuals and institutions in unserved areas of the state; and

(7) That it is appropriate to establish a program to allow electric utilities to construct middle-mile fiber broadband assets within the power supply zone utilizing existing and new electric utility distribution assets in a manner that addresses the needs of the public and is consistent with the operational concerns of the electric utilities that may participate in this program.

(b) *Definitions*. For purposes of this section:

“Commission” means the Public Service Commission of West Virginia.

“Council” means the Broadband Enhancement Council, as defined in §31G-1-1, *et seq.* of this code.

“Electric utility” means any electric utility operating within this state that is regulated by the commission: *Provided,* That an electric utility that has installed middle-mile fiber broadband infrastructure pursuant to this section shall not be considered a public utility engaged in the transmission of messages by telephone, telegraph or radio for purposes of §24-2-1(a) of this code.

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"Program" means the Middle-mile fiber Broadband Expansion Program established pursuant to subsection (c) of this section.

"Project" means one or more middle-mile fiber infrastructure expansion projects, including any portion of such projects to be used for the electric utility's communication needs, proposed by an electric utility and approved by the commission pursuant to subsection (e) of this section as part of the program.

"Served" means any area with broadband service as defined in §31G-1-2 of this code.

"Unserved" means any area without broadband service as defined in §31G-1-2 of this code.

(c) *Establishment of program*. Commencing July 1, 2020, the Middle-Mile Fiber Broadband Infrastructure Expansion Program is hereby authorized and established.

(d) *Authorizing participation*. An electric utility having distribution infrastructure in this state may participate in the program pursuant to the provisions of this section.

(e) *Powers and duties of Public Service Commission to act on written plans and amendments to written plans*. The commission shall have the following powers and duties in connection with the program:

(1) Review, approve, or reject each written plan submitted by an electric utility pursuant to subsection (f) of this section. A written plan shall be approved if the commission determines that the proposed plan is reasonable, prudent, useful, and is not contrary to the public interests, considering the interests of the potential broadband users and the electric utility customers.

(2) Review, approve, or reject amendments to written plans submitted by an electric utility pursuant to subsection (f) of this section. Amendments to a written plan shall be approved if the commission determines that the proposed amendments to a written plan are reasonable, prudent, useful and not contrary to the public interest considering the interests of the potential broadband users and the electric utility customers.

(3) Perform any other duties necessary to effectuate the provisions of this section.

(f) *Written plan*. Following the council's determination that construction, installation, operation, and repair of a middle-mile broadband infrastructure expansion project by an electric utility is feasible pursuant to §31G-4-5 of this code, the electric utility shall file a written plan and application seeking the commission's approval of the project and its associated cost recovery. The written plan and application is in lieu of a proceeding pursuant to §24-2-11 of this code and shall contain the following:

(1) The route of the middle-mile fiber infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle-mile, the location of the electric utility's distribution infrastructure that

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will be utilized in connection with the proposed project, the capacity or number of fiber strands of the middle-mile that will be available to lease to non-governmental last-mile broadband Internet providers and other third parties upon completion of the proposed project, and the commitment of at least one non-governmental last-mile broadband Internet provider that will lease access to the middle-mile fiber assets constructed as part of the proposed project, and an estimate of potential broadband customers, determined in consultation with the council, that would be served by the middle-mile infrastructure;

(2) The estimated cost of the proposed project, including, but not limited to, engineering costs, construction costs, permitting costs, right of way costs and a reasonable allowance for funds used during construction;

(3) Proposed schedule of construction of the proposed project;

(4) Method of attachment and connection of the middle-mile broadband fiber assets to the electric utility's distribution infrastructure;

(5) Testimony, exhibits or other evidence that demonstrates the project is reasonable, prudent, useful and not contrary to the public interest;

(6) A cost recovery mechanism that allocates all net costs to be recovered under this section on a distribution-level basis; and

(7) Other information the applicant considers relevant or the commission requires.

(g) The electric utility shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated monthly and yearly electric rate increase, if any, and actual rates under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, the publication area to be each county in which service is provided by the electric utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within 90 days of the notice; unless no opposition to the plan or the rate change is received by the commission within the time limits established by the commission, in which case the hearing can be waived, and the commission shall issue a final order within 150 days of the application filing date: *Provided,* That upon the request of any interested person or entity, the commission shall allow for the submission of comments on the feasibility of the plan.

(h) Upon notice and hearing, if required by the commission, the commission shall approve the plan and allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just, reasonable, not contrary to the public interest, and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced middle-mile fiber broadband service.

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(i) The council or the commission may not act to limit the number of last-mile broadband Internet providers eligible to be contracted to utilize the middle-mile fiber infrastructure constructed as part of a project proposed pursuant to this section. No board, commission, agency, or other governmental body may regulate the costs extended to a broadband customer from any last-mile broadband Internet service provider. Nothing in this subsection shall prevent the commission from reviewing, modifying, and approving or denying the cost or means of providing a middle-mile fiber proposed project pursuant to this section.

(j) Upon commission approval, an electric utility will be authorized to implement the plan and to recover related project costs, net of any middle-mile broadband revenues or contributions in aid of construction, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the planned net incremental increase to rate base attributable to the project for the coming year, considering the projected amount and timing of expenditures under the project, plus any expenditures in previous years of the project. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the electric utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the electric utility's debt during the period of the project to determine the weighted cost of capital based upon the electric utility's capital structure.

(2) Income taxes applicable to the return allowed on the project shall be calculated for inclusion in rates at the federal and state statutory rates.

(3) Depreciation and property tax expenses directly attributable to the project shall be estimated for the upcoming year.

(4) Operation and maintenance expense specifically and directly related to operation and maintenance of the middle-mile fiber broadband facilities.

(5) Following commission approval of the project and related cost recovery mechanism, an electric utility shall place into effect a commission approved reconcilable rate surcharge that recovers the revenue requirement of the allowance for return, related income taxes, operation and maintenance expenses, depreciation, property tax expenses associated with the electric utility's estimated project investments for the upcoming year, net of middle-mile revenue or contributions in aid of construction recovery of those costs provided by last mile broadband Internet providers upon completion of the project, if any ("middle-mile cost recovery rates"). In each year subsequent to the order approving the project and middle-mile cost recovery rates, the electric utility shall file a petition with the commission setting forth new proposed middle-mile cost recovery rates that recover the revenue requirement of the project investments previously installed and projected costs of the project based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual costs attributable to the project, for the preceding year.

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(k) The electric utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual costs incurred and costs recovered through the rate mechanism are tracked.

(l) *Construction, installation, operation, maintenance, and repair of middle-mile fiber expansion projects*. Subject to continuing authority of the commission to determine the reasonableness of acts and practices, for all projects contained in a written plan approved by the commission pursuant to subsection (e) of this section, and constructed, installed, operated, maintained, and repaired by an electric utility pursuant to this section, the electric utility shall have control of the scope, scheduling and execution of the project to construct, install, operate, maintain and repair middle-mile fiber assets, including fiber build route selection and build and splice schedules. The electric utility shall be entitled to reestablish electric service and assure safety of its workers prior to restoration of middle-mile fiber broadband service in order to ensure operational safety matters of the shared infrastructure. Additionally, the electric utility shall be entitled to use contractors chosen and approved by the electric utility to construct, install, operate, maintain, and repair middle-mile fiber assets pursuant to this section because of its or electric utility's knowledge of hazards in the power supply zone and the associated controls to reduce the risks involved. Nothing in this section confers any rights to work in the power supply space except by the electric utility and its designated contractors.

(m) *Attachment and connection of middle-mile fiber assets*. An electric utility participating in the program shall have sole control of the location and method of attachment and connection of middle-mile fiber assets to the electric utility's distribution infrastructure, unless otherwise ordered by the commission.

(n) *Management of fiber projects*. In order to manage operations, an electric utility participating in the program shall manage and document the entities that lease middle-mile fiber assets for last-mile operations, including, but not limited to, outage notification and management.

(o) Notwithstanding anything in this code or in the articles of incorporation of an electric utility to the contrary, an electric utility may, either directly or indirectly or through an affiliate or subsidiary, pursuant to a written plan approved by the commission:

(1) Own, manage or control any broadband capacity, number of fiber strands, equipment and electronics, including any plant, works, system, lines, facilities or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the provisions and extension of such broadband services;

(2) Lease such broadband capacity, number of fiber strands, equipment, or electronics to non-governmental Internet service providers and other third parties, on a nonexclusive basis; and

(3) Provide access points that are outside the electric utility's power supply zone to allow

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connection between the electric utility's broadband capacity system or fiber strands, and any non-governmental Internet service provider's or other third party's system.

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§24-2-1q. Base fuel coal supply requirements for electric grid resiliency.

Recognizing that coal inventories at coal-fired power plants may increase and decrease over time, in order to ensure grid resiliency and homeland security, each generating public utility shall plan incoming and outgoing coal so as to maintain an average annual minimum 30-day aggregate coal supply on site at each coal-fired power plant. The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to carry out its duties and obligations as set forth herein.

WV Legislature

§24-2-1r. Authority of commission to adopt and enforce water hydrant practices.

The Legislature finds that it is in the public interest of the citizens of West Virginia for public water utilities to follow the National Fire Protection Association's Recommended Practice for Fire Flow Testing and Marking of Hydrants (Standard 291) and the American Water Works Association's Fire Hydrants, Installation, Field Testing and Maintenance (Manual M17) to ensure that all installed fire hydrants are working properly and to follow the provisions of 64 WV CSR 77, Public Water Systems Design Standards, to ensure proper design and placement of water systems generally, including hydrants. Therefore, those standards are hereby adopted, and the Public Service Commission may promulgate rules in accordance with the provisions of §29A-1-3 *et seq*. of this code on the inspection, flushing, flow testing, and marking of fire hydrants owned by public water utilities as set forth in those standards. In instances where the Public Service Commission determines that any provision of Standard 291, Manual M17, or 64 WV CSR 77 are in conflict or where, to promote the proper functioning of fire hydrants and the operation of the utilities, the adoption of either Standard 291, Manual M17, or 64 WV CSR 77 in preference to another is in the public interest, the Public Service Commission may do so.

All public water utilities shall comply with these standards and any rules the commission may promulgate. A public water utility may use its cash working capital reserve for inspection, testing, maintenance, or replacement of fire hydrants to comply with the standards and rules adopted in this section.

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§24-2-2. General power of commission to regulate public utilities.

(a) The commission may investigate all rates, methods, and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules, and timetables in effect and used by the public utility or other person to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in the form and detail as the commission prescribes. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals directly, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge, or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated, by or pursuant to, an act of Congress and may prescribe a rate, charge, or toll that is just and reasonable, and change or prohibit any practice, device, or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case may the rate, toll, or charge be more than the service is reasonably worth, considering the cost of the service. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, modified, or revoked by order or decree of a court of competent jurisdiction: Provided, That in the case of utilities used by emergency shelter providers, the commission shall prescribe rates, charges or tolls that are the lowest available. “Emergency shelter provider” means any nonprofit entity which provides temporary emergency housing and services to the homeless or to victims of domestic violence or other abuse.

(b) Notwithstanding any other provision of this code to the contrary, rates are not discriminatory if, when considering the debt costs associated with a future water or sewer project which would not benefit existing customers, the commission establishes rates which ensure that the future customers to be served by the new project are solely responsible for the debt costs associated with the project.

(c) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state providing a separate or combined services and having at least 4,500 customers and annual combined gross revenues of $3 million or more is limited to those powers enumerated in §24-2-1(b) of this code.

(d) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission does not extend over the setting or adjustment of rates, fees, and charges of municipal power systems. The rates, fees, charges and rate-making process of municipal

power systems is governed by the provisions of §8-19-2a of this code.

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§24-2-3. General power of commission with respect to rates.

(a) The commission may enforce, originate, establish, change, and promulgate tariffs, rates, joint rates, tolls, and schedules for all public utilities except for municipal power systems and water and/or sewer utilities that are political subdivisions of this state providing a separate or combined services and having at least 4,500 customers and annual combined gross revenues of $3 million or more: Provided, That the commission may exercise such rate authority over municipally owned natural gas utilities or a municipally owned water and/or sewer utility having less than 4,500 customers or annual combined gross revenues of less than $3 million only under the circumstances and limitations set forth in §24-2-4b of this code, and subject to the provisions set forth in §24-2-3(b) of this code. And whenever the commission, after hearing, finds any existing rates, tolls, tariffs, joint rates, or schedules enacted or maintained by a utility regulated under the provisions of this section to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provisions of law, and the commission, in fixing the rate of any railroad company, may fix a fair, reasonable, and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of that railroad.

(b) Any complaint filed with the commission by a resale or wholesale customer of a municipally owned water and/or sewer utility having less than 4,500 customers or annual combined gross revenue of less than $3 million concerning rates, fees, or charges applicable to such resale or wholesale customer shall be filed within 30 days of the enactment by the governing body of the political subdivision of an ordinance changing rates, fees, or charges for such service. The commission shall resolve said complaint within 120 days of filing. The 120-day period for resolution of the complaint may be tolled by the commission until the necessary information showing the basis of the rates, fees, charges, and other information as the commission considers necessary is filed: Provided, That rates, fees, and charges so fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future: Provided, however, That the commission shall have no authority to order refunds for amounts collected during the pendency of the complaint proceeding unless the rates, fees, or charges so enacted by the governing body were enacted subject to refund under the provisions of §24-2-4b(d)(2) or §24-2-4b(g) of this code.

(c) In determining just and reasonable rates, the commission may audit and investigate management practices and policies, or have performed an audit and investigation of such practices and policies, in order to determine whether the utility is operating with efficiency and is utilizing sound management practices. The commission shall adopt rules and regulations setting forth the scope, frequency, and application of such audits and investigations to the various utilities subject to its jurisdiction. The commission may include the cost of conducting the management audit in the cost of service of the utility.

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(d) In determining just and reasonable rates, the commission shall investigate and review transactions between utilities and affiliates. The commission shall limit the total return of the utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.

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§24-2-3a. Advance notice of filing of general rate case required.

All public utilities subject to the provisions of section four or four-a of this article, intending to institute a general rate case, shall give the commission not less than thirty days' notice before proceeding under the provision of those sections unless the commission modifies or waives such notice requirement.

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§24-2-3b. Transitional suspension of schedule; legislative findings; procedure.

The Legislature finds that in anticipation of the operative date of the provisions of section four-a of this article, certain regulated utilities have presented to the Public Service Commission a large number of proceedings pursuant to section four of this article. In the public interest, the commission should be granted sufficient authority to make disposition of those cases in an orderly and just manner, consistent with the duties of the commission requiring conversion of its procedure from that provided in section four of this article to that provided in section four-a. In view of the increased demands upon the commission, it is in the public interest to grant to the Public Service Commission additional authority for the suspension of rates in cases filed pursuant to section four of this article.

In any proceeding commenced pursuant to the provisions of section four of this article which is pending on the effective date of this section or is thereafter commenced, the commission may at the commencement of, or during the pendency of, any period of suspension provided for in section four, further suspend the operation of any such schedule and defer the use of such rate, charge, classification, regulation or practice for a further and additional period of one hundred fifty days or such shorter further and additional period as the commission may order. The total period of suspension including the original suspension and the suspension resulting from the application of this section shall not exceed a period equal to the maximum suspension prescribed for the public utility as it is classified in section four-a of this article, according to the number of customers. The statement of reasons adopted pursuant to section four of this article shall be a sufficient statement of reasons for such further and additional period under this section. Any such order for a further and additional period of suspension shall be effective upon its service upon the utility affected thereby, and may make provision for interim rate relief or may provide only for such rates as have been fully approved previously. At the expiration of any such additional period of suspension, the commission shall authorize rates under bond under the provisions of section four of this article, or shall make a final order: Provided, That proceedings in which such further and additional period of suspension have commenced but not expired on July 1, 1981, shall not be treated as filed anew on July 1, 1981, pursuant to section four of this article.

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§24-2-3c. Cessation of jurisdiction over rates for certain services subject to competition.

(a) Upon the application of any telephone utility, the commission shall, unless it finds that the continued availability of adequate, economical and reliable local exchange telephone service will be adversely affected thereby, permanently cease its regulation of the rates charged by the telephone utility for any commodity or service, except carrier access service, which the commission determines to be subject to workable competition: Provided, That if any such commodity or service thereafter ceases being subject to workable competition by reason of lawful governmental action, or, if the market forces fail to constrain monopolistic practices or anticompetitive behavior, the commission shall upon notice and hearing, reinstitute its regulation of the rates charged for such commodity or service. Evidence of ease of market entry, the presence of other competitors and the availability of like or substitute services shall, for purposes of this section, be sufficient to show that a commodity or service is subject to workable competition. In making its determination, the commission shall not be bound by any previous determination of competitiveness for any other purpose. The furnishing of all such commodities and services shall in all other respects remain fully subject to the commission's jurisdiction.

(b) The commission shall ensure through such accounting system as it deems appropriate that the costs and revenues associated with the furnishing of those commodities and services that the commission determines to be subject to workable competition are not charged against or credited to the utility's cost of furnishing other services; except, however, that the commission may, in connection with any general increase in local exchange telephone rates proposed by the telephone utility within ten years from the effective date of this section, credit to the utility's cost of furnishing local exchange telephone service the contribution, if any, then being yielded by those competitive commodities or services that such utility was offering as of the effective date of this section: Provided, That if the contribution from such competitive commodities or services is less than the contribution that was being yielded by those commodities or services during the year preceding the year in which such commodities or services were determined to be subject to workable competition, the commission may, in order to eliminate such deficiency, further credit to the cost of furnishing local exchange telephone service any contribution that is then being yielded by those competitive commodities or services that were not being offered by the utility as of the effective date of this section. In no case, however, shall the additional contribution so credited exceed the contribution that is actually being yielded by such new commodities or services, nor shall the commission, in connection with the crediting of any contribution under the provisions of this subsection, credit any amount of contribution that exceeds that which is reasonably necessary to the continued availability of adequate, economical, and reliable local exchange telephone service. Contribution shall be defined to mean the excess of revenues over costs.

(c) The application of the telephone utility shall be in such form as the commission may prescribe and shall contain:

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(1) A designation of the commodities or services that are the subject of the application;

(2) A statement explaining why the applicant believes that each commodity or service so designated is subject to workable competition; and

(3) Such other information as the applicant may deem relevant or the commission may require.

(d) Within sixty days after the filing of the application, or if hearing shall be held thereon, within ninety days after final submission upon oral argument or brief, but in no event longer than one hundred eighty days after the filing of the application, the commission shall enter a final order granting, in whole or in part, or denying the application.

(e) Nothing in this section limits the commission's power to require telephone utilities to maintain uniform, statewide toll rates, or to require that public and multipublic coin telephone service be offered at a flat per message rate. Nothing in this section limits the commission's power to continue to engage in incentive or other innovative forms of ratemaking in connection with its regulation of those services which it has not determined to be subject to workable competition.

Nothing in this section limits the power or right of the consumer advocate division to petition to decrease rates and tariffs in the event of decreases in costs of service.

(f) The provisions of this section do not go into effect until January 1, 1991.

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§24-2-4. Procedure for changing rates.

No public utility subject to this chapter, except those utilities subject to the provisions of section four-b of this article, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission shall have authority, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decision thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: Provided, That if any such hearing and decision thereon cannot be concluded within the period of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned for the refund to the persons or parties entitled thereto of the amount of the excess, plus interest at the rate of not less than seven percent per annum, as may be specified by the commission, if such rate so put into effect is subsequently determined to be higher than those finally fixed for such utility. In specifying the applicable interest rate, the commission shall be guided by the interest rate which such public utility would in all probability have to agree to pay if such public utility at that time borrowed in the marketplace a sum of money equivalent to the amount of money the commission estimates the increase in rates will produce between the effective date of such increase and the

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anticipated date the rates will be finally fixed for such public utility, it being intended that a public utility should be discouraged from imposing higher rates than it should reasonably anticipate will be finally fixed as a means in effect of borrowing money at a rate of interest less than such public utility would have to agree to pay if it borrowed money in the marketplace. No such accrued interest paid on any such refund shall be deemed part of the cost of doing business in a subsequent application for changing rates or any decision thereon. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state. The provisions of this section shall expire on and be of no further force and effect after June 30, 1981, except that as to any case pending on said date in which the suspension period has expired and rates are in effect under bond such case shall be proceeded with in accordance with this section; as to any other case pending on said date, the commission shall treat the case as filed anew on July 1, 1981, except that it shall not be necessary for any new process or notice to be served or published.

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§24-2-4a. Procedure for changing rates after June 30, 1981.

NOTE: West Virginia Code §24-2-4a was amended by two bills passed during the 2020 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, both versions of this section are set out below.

House Bill 4587 (passed last on March 7, 2020) amended West Virginia Code §24-2-4a to read as follows:

(a) After June 30, 1981, no public utility subject to this chapter, except for those entities subject to the provisions of §24A-5-2a of this code and water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having at least 4,500 customers and annual gross revenue of $3 million or more from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may, either upon complaint or upon its own initiative without complaint, enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decisions thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than two hundred seventy days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided*, That in the case of a public utility having two thousand five hundred customers or less and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred twenty days beyond the time when such rate, charge, classification, regulation

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or practice would otherwise go into effect; and in the case of a public utility having more than two thousand five hundred customers, but not more than five thousand customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than five thousand customers, but not more than seven thousand five hundred customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred eighty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided, however*, That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. Notwithstanding the provisions of subsection (e) of this section, the public service district shall provide notice by Class I legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: *Provided further*, That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not subject to refund: *And provided further*, That if any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be

deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the of the suspension period are prospective in effect.

(c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

(d) Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

(e) Other than as provided in subsection (b) of this section relating to public service districts, where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the

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discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

(g) No utility regulated under the provisions of this section may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this subsection shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeal.

Senate Bill 739 (passed last on March 7, 2020) amended West Virginia Code §24-2-4a to read as follows:

(a) After June 30, 1981, no public utility subject to this chapter, except for water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having at least 4,500 customers and annual gross revenue of $3 million or more from its separate or combined services, shall change, suspend, or annul any rate, joint rate, charge, rental, or classification except after 30 days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) Whenever there is filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may, either upon complaint or upon its own initiative without complaint, enter upon a hearing concerning the propriety of the rate, charge, classification, regulation, or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending the hearing and the decisions thereon, the commission, upon filing with the schedule and delivering to the public utility affected thereby a statement in writing of its reasons for the

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suspension, may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a longer period than 270 days beyond the time when the rate, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the commission may make the order in reference to the rate, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation, or practice had become effective: *Provided,* That in the case of a public utility having 2,500 customers or less and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a longer period than 120 days beyond the time when the rate, charge, classification, regulation, or practice would otherwise go into effect; and in the case of a public utility having more than 2,500 customers, but not more than 5,000 customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a longer period than 150 days beyond the time when the rate, charge, classification, regulation, or practice would otherwise go into effect; and in the case of a public utility having more than 5,000 customers, but not more than 7,500 customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a longer period than 180 days beyond the time when the rate, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the commission may make the order in reference to the rate, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation, or practice had become effective: *Provided, however,* That, in the case of rates established or proposed that increase by less than 25 percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to §16-13A-9 of this code and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than 25 percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. Notwithstanding the provisions of subsection (e) of this section, the public service district shall provide notice by Class I legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least 14 days prior to the effective date of the increased rates. Any refund determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer’s account for a

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period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: *Provided further,* That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, the rate, charge, classification, regulation, or practice shall go into effect at the end of the period not subject to refund: *And provided further*, That if any such rate, charge, classification, regulation, or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce, or modify any such proposed rate, charge, classification, regulation, or practice, in whole or in part, but any such disapproval, reduction, or modification shall not be deemed to require a refund to the customers of the utility as to any rate, charge, classification, regulation, or practice so disapproved, reduced, or modified. The fact of any rate, charge, classification, regulation, or practice going into effect by reason of the commission's failure to act thereon does not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation, or practice. Any rate, charge, classification, regulation, or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified, or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations, or practices which have gone into effect automatically at the end of the of the suspension period are prospective in effect.

(c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation, or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation, or practice shall be upon the public utility making application for the change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for the increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

(d) Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design, and conservation as reported by the commission under §24-1-1(c) of this code as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in the case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation, or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

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(e) Other than as provided in subsection (b) of this section relating to public service districts, where more than 20 members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if the notice is published as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code and the publication area for the publication shall be the community where the majority of the resident members of the public affected by the change reside or, in case of nonresidents, have their principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In that case the commission may require the public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if the rates so put into effect are subsequently determined to be higher than those finally fixed for the utility.

(g) No utility regulated under the provisions of this section may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this subsection shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

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§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives, and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipal water and/or sewer utilities that are political subdivisions of the state having less than 4,500 customers or annual combined gross revenues of less than $3 million, except for municipally operated commercial solid waste facilities as defined in §22-15-2 of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of §24-2-4 or §24-2-4a of this code, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives, and municipally operated public utilities that are political subdivisions of the state providing water, sewer, and/or natural gas services that are subject to the provisions of this section and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination between or preference for any customer or class of customer and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The rates and charges shall be adopted by the electric, natural gas, telephone cooperative, or political subdivision's governing board or body and, in the case of the municipally operated public utility, by municipal ordinance to be effective not sooner than 45 days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective and the utility governing body shall give its customers and, in the case of a cooperative, its customers, members, and stockholders, other reasonable notices as will allow filing of timely objections to the proposed rate change and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in §24-2-4b(c)(1), §24-2-4b(c)(2), or §24-2-4b(c)(3) of this code, is received and the electric cooperative, natural gas cooperative, or telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period

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limitation of 120 days and the 100-day period limitation for issuance of an order by a hearing examiner, as contained in §24-2-4b(d) and §24-2-4b(e) of this code, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify the rates and charges of electric cooperatives, natural gas cooperatives, telephone cooperatives, or municipal natural gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of the state and having less than 4,500 customers or annual combined revenues of less than $3 million upon the filing of a petition within 30 days of the adoption of the ordinance or resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than 25 percent of the customers served by the municipally operated natural gas public utility or municipally owned water and/or sewer utility or 25 percent of the membership of the electric, natural gas, or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally owned natural gas public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers of the municipally owned natural gas public utility who is affected by the change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between a customer or group of customers and other customers of the municipal utility. The petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than 25 percent of the customers served by the municipally owned natural gas public utility or a municipally owned water and/or sewer utility having less than 4,500 customers or annual combined gross revenues of less than $3 million or 25 percent of the membership of the electric, natural gas, or telephone cooperative residing within the state under §24-2-4b(c) of this code shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of 120 days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under §24-2-4b(c)(2) or §24-2-4b(c)(3) of this code, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of 120 days from the date the rates or charges would otherwise go into effect or until an order is issued as

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provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or state code that establishes or proposes a rate increase that results in an increase of less than 25 percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to go into effect, subject to refund, upon the date stated in that ordinance. Any refund determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check. In the case of rates established or proposed that increase by more than 25 percent of the gross revenue of the municipally operated public utility, the utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall, within 100 days from the date the rates or charges would otherwise go into effect, unless otherwise tolled as provided in §24-2-4b(b) of this code, issue an order approving, disapproving, or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas, or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of §24-2-4b(c) of this code, the commission may exercise the power granted to it under the provisions of §24-2-3 of this code, consistent with the applicable rate provisions of §8-19-4 of this code and §16-13-16 of this code. The commission may determine the method by which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas, or telephone cooperative or municipality requests a hearing.

(g) The commission may, upon petition by an electric, natural gas, or telephone cooperative or municipal natural gas public utility or a municipally owned water and/or sewer utility, having less than 4,500 customers or annual combined gross revenues of less than $3 million allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission shall waive the 45-day waiting period provided for in §24-2-4b(b) of this code and the 120-day suspension period provided for in §24-2-4b(d) of this code.

(h) The commission shall, upon written request of the governing body of a political subdivision, provide technical assistance to the governing body in its deliberations regarding a proposed rate increase.

(i) Notwithstanding any other provision, the commission has no authority or responsibility

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with regard to the regulation of rates, income, services, or contracts by municipally operated public utilities for services which are transmitted and sold outside of the State of West Virginia.

(j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state and having at least 4,500 customers and annual gross combined revenues of $3 million or more shall be limited to those powers enumerated in §24-2-1(b) of this code.

(k) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission does not extend over the setting and adjustment of the rates, fees, and charges of municipal power systems. The rates, fees, charges, and rate-making process of municipal power systems shall be governed by the provisions of §8-19-2a of this code.

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§24-2-4c. Rate increases for natural gas public utilities relating to purchase of natural gas from suppliers; obtaining new supplies of natural gas to meet obligations.

(a) Before granting any rate increase to a natural gas public utility the commission must determine that dependable lower-priced supplies of natural gas are not readily available to the applicant from other sources.

(b) At any hearing involving a rate increase for a natural gas public utility, the burden of proof to demonstrate that dependable lower-priced supplies of natural gas are not readily available from other sources and that contracts between the public utility and its suppliers for purchase of natural gas are negotiated at arm's length and are not detrimental to the customers of the utility's services shall be upon the public utility making application for such change. Should the applying public utility not satisfactorily meet this burden, then the commission may not authorize an increase greater than that which reflects the reasonable cost of natural gas which is determined to be readily available.

(c) If a gas utility purchases from an affiliate more than 50 percent of its gas supplied to its customers, any purchase cost adjustment increase shall be based on actual costs and may be subject to the general rate case requirements and review of section four-a of this article.

(d) Before January 1, 1984, the commission shall promulgate rules and regulations detailing what an applying natural gas utility must show in providing that dependable, lower-priced supplies of natural gas are not readily available to the applicant from other sources. Such rules and regulations shall include a requirement that each such utility let out bids for the purchase of a substantial quantity of natural gas supplied to its customers and that each such public utility present evidence demonstrating that all available sources of gas have been thoroughly investigated and that the utility's purchases were at the lowest available price among reliable sources at the time of the purchase. Such evidence shall include a list of all persons, firms and corporations which were investigated as sources of gas; the price per thousand cubic feet at which each investigated person, firm or corporation offered gas for sale; the availability and cost of transporting such gas and the amount of gas potentially available each month by such person, firm or corporation. Such list shall also include the same information resulting from investigation of all "shut-in" wells.

(e) A gas utility may seek proposals for drilling new natural gas wells and proposals for increasing production from existing natural gas wells and may create a process for identifying the cost to procure dependable supplies of natural gas to serve certain gas utility customers when dependable, lower-priced supplies of natural gas are not readily available to serve those customers. A gas utility may petition the commission for approval of the related costs to serve such customers. Upon a finding by the commission that: (1) The process of determining the costs and expected additional natural gas supply is reasonable; (2) the expected additional supply is dependable; and (3) the costs of the additional supply are reasonable and not contrary to the public interest; the commission may approve the petition. The gas utility shall recover those costs pursuant to its annual purchased gas costs

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adjustment filings with the commission under this section and the above-referenced rules of the commission.

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§24-2-4d. Procedures for intrastate rail carrier rate-making and compliants.

Inasmuch as the commission retains authority over intrastate rail rates and complaints pursuant to 49 United States Code §11501 and other federal law, and inasmuch as the commission's procedures are subject to periodic review and certification by the interstate commerce commission for compliance with federal standards, the general rate-making procedures set forth in section four-a, article two, chapter twenty-four of this code, shall not be applied to intrastate railroad rates. The commission shall promulgate its rules and regulations for the government of intrastate rail rates. Such rules shall contain notice requirements, grounds for rate suspension and the permitted suspension period, procedures for protest, standards for determining market dominance and rate reasonableness, burdens of proof, refund provisions, contract rate procedures and trackage rights. These rules shall also contain procedures for complaints and filing of contract rates. All final orders of the commission concerning intrastate rail rates shall be appealable to the interstate commerce commission in conformance with federally established standards of review.

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§24-2-4e. Environmental control bonds.

(a) Legislative findings. -- The Legislature hereby finds and declares: (i) That electric utilities in the state face the need to install and construct emission control equipment at existing generating facilities in the state in order to meet the requirements of existing and anticipated environmental laws and regulations and otherwise to reduce emissions from those electric generating facilities; (ii) that the capital costs associated with the installation and construction of emission control equipment are considerable; (iii) that the financial condition of some electric utilities may make the use of traditional utility financing mechanisms to finance the construction and installation of emission control equipment difficult or impossible and that this situation may cause such utilities to defer the installation of emission control equipment, to incur higher financing costs, to minimize or eliminate their use of high-sulfur coal mined in the state or to use other financing alternatives that are less favorable to the state and its citizens; (iv) that the construction and installation of emission control equipment by utilities will create public health and economic benefits to the state and its citizens, including, without limitation, emissions reductions, economic development, job growth and retention and the increased use of high-sulfur coal mined in the state; (v) that customers of electric utilities in the state have an interest in the construction and installation of emission control equipment at electric-generating facilities in the state at a lower cost than would be afforded by traditional utility financing mechanisms; (vi) that alternative financing mechanisms exist which can result in lower costs to customers and the use of these mechanisms can ensure that only those costs associated with the construction and installation of emission control equipment at electric-generating facilities located in the state that generate electric energy for their ultimate use will be included in customer rates; and (vii) 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, finds 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 certain utilities to finance the construction and installation of emission control equipment at electric-generating facilities in the state under certain conditions and to empower the Commission to review and approve alternative financing mechanisms as being consistent with 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 any adjustments to the amount of the environmental control charges that are necessary to correct for any over-collection or under-collection of the environmental control charges or otherwise to ensure the timely and complete payment and recovery of environmental control costs and financing costs. The adjustment mechanism is not to be used as a means to authorize the issuance of environmental control bonds in a principal amount greater, or the payment or recovery of environmental control costs in an amount greater, than that which was authorized in the financing order which established the adjustment mechanism.

(2) "Ancillary agreement" means any 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 environmental control 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 any person or legal entity to which an interest in environmental control property is sold, assigned, transferred or conveyed (other than as security) and any successor to or subsequent assignee of such a person or legal entity.

(4) "Bondholder" means any holder or owner of an environmental control bond.

(5) "Environmental control activity" means any of the following:

(A) The construction, installation and placing in operation of environmental control equipment at a qualifying generating facility.

(B) The shutdown or retirement of any existing plant, facility, unit or other property at a qualifying generating facility to reduce, control or eliminate environmental emissions.

(6) "Environmental control bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by a qualifying utility or an assignee, the proceeds of which are used directly or indirectly to recover, finance, or refinance environmental control costs and financing costs, and that are secured by or payable from environmental control revenues.

(7) "Environmental control charge" means a nonbypassable charge paid by a customer of a qualifying utility for the recovery of environmental control costs and financing costs.

(8) "Environmental control cost" means any cost, including capitalized cost relating to regulatory assets and capitalized cost associated with design and engineering work, incurred or expected to be incurred by a qualifying utility in undertaking an environmental control activity and, with respect to an environmental control activity, includes the unrecovered value of property that is retired, together with any demolition or similar cost that exceeds the salvage value of the property. "Environmental control cost" includes preliminary expenses and investments associated with environmental control activity that are incurred prior to the issuance of a financing order and that are to be reimbursed from the proceeds of environmental control bonds. "Environmental control cost" does not include any monetary penalty, fine or forfeiture assessed against a qualifying utility by a government agency or court under a federal or state environmental statute, rule or regulation.

(9) "Environmental control equipment" means any device, equipment, structure, process, facility or technology that is designed for the primary purpose of preventing, reducing or remediating environmental emissions and that has been or is to be constructed or installed

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at a qualifying generating facility.

(10) "Environmental control property" means all of the following:

(A) The rights and interests of a qualifying utility or an assignee under a financing order, including the right to impose, charge, collect and receive environmental control charges in the amount necessary to provide for the full payment and recovery of all environmental control costs and financing costs determined to be recoverable in the financing order and to obtain adjustments to the charges as provided in this section and any interest in the rights and interests.

(B) All revenues, receipts, collections, rights to payment, payments, moneys, claims or other proceeds arising from the rights and interests specified in paragraph (A) of this subdivision.

(11) "Environmental control revenues" means all revenues, receipts, collections, payments, moneys, claims or other proceeds arising from environmental control property.

(12) "Environmental emissions" means the discharge or release of emissions from electric generating facilities into the air, land or waters of the state.

(13) "Equity ratio" means, as of any given time of determination, the common equity of a qualifying utility as calculated pursuant to the uniform system of accounts required to be used in the filings of the qualifying utility with the federal Energy Regulatory Commission. "Equity ratio" shall be calculated excluding the effect of the issuance of environmental control bonds or the write down of discontinued operations.

(14) "Financing cost" means the costs to issue, service, repay, or refinance environmental control bonds, whether incurred or paid upon issuance of the bonds or over the life of the bonds, and approved for recovery by the Commission in a financing order. "Financing cost" may include any of the following:

(A) Principal, interest and redemption premiums that are payable on environmental control bonds.

(B) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the environmental control bonds.

(C) The cost of retiring or refunding any existing debt and equity securities of a qualifying utility in connection with the issuance of environmental control bonds, but only to the extent the securities were issued for the purpose of financing environmental control costs.

(D) Any costs incurred by or on behalf of or allocated to a qualifying utility to obtain modifications of or amendments to any indenture, financing agreement, security agreement or similar agreement or instrument relating to any existing secured or unsecured obligation of a qualifying utility or an affiliate of a qualifying utility, or any costs incurred by or

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allocated to a qualifying utility to obtain any consent, release, waiver or approval from any holder of such an obligation, that are necessary to be incurred to permit a qualifying utility to issue or cause the issuance of environmental control bonds.

(E) Any taxes, franchise fees or license fees imposed on environmental control revenues.

(F) Any cost related to issuing and servicing environmental control bonds or the application for a financing order, including, without limitation, servicing fees and expenses, trustee fees and expenses, legal fees and expenses, administrative fees, placement fees, capitalized interest, rating agency fees and any other related cost that is approved for recovery in the financing order.

(15) "Financing order" means an order of the Commission pursuant to subsection (d) of this section that grants, in whole or in part, an application filed pursuant to subsection (c) of this section and that authorizes the construction and installation of environmental control equipment, the issuance of environmental control bonds in one or more series, the imposition, charging and collection of environmental control charges, and the creation of environmental control property. 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.

(16) "Financing parties" means:

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

(B) Any party to an ancillary agreement the rights and obligations of which relate to or depend upon the existence of environmental control property, the enforcement and priority of a security interest in environmental control property, the timely collection and payment of environmental control revenues or a combination of these factors.

(17) "Financing statement" means a financing statement as defined in subdivision (39), subsection (a), section one hundred two, article nine, chapter forty-six of this code.

(18) "Investment grade" means, with respect to the unsecured debt obligations of a qualifying 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.

(19) "Nonbypassable" means that the payment of an environmental control charge may not be avoided by any electric service customer located within a utility service area, and must be paid by any such customer that receives electric delivery service from the qualifying utility for as long as the environmental control bonds are outstanding.

(20) "Nonutility affiliate" means, with respect to any qualifying utility, a person that: (i) Is an affiliate of the qualifying utility as defined in 15 U.S.C. §79b(a)(11); and (ii) is not a public

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utility that provides retail utility service to customers in the state within the meaning of section two, article one of this chapter.

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

(22) "Qualifying generating facility" means any electric generating facility that: (i) Has generated electric energy for ultimate sale to customers in the state before the effective date of this section; and (ii) is owned by a qualifying utility or, on the expected date of issuance of the environmental control bonds authorized in a financing order, will be owned by a qualifying utility.

(23) "Qualifying utility" means:

(A) Any public utility that is: (i) Engaged in the delivery of electric energy to customers in this state; and (ii) at any time between the date which is two years immediately preceding the effective date of this section and the date on which an application for a financing order is made, has or had a credit rating on its unsecured debt obligations that is below investment grade.

(B) For so long as environmental control bonds issued pursuant to a financing order are outstanding and the related environmental control costs and financing costs have not been paid in full, the public utility to which the financing order was issued and its successors.

(24) "Registered holding company" means, with respect to a qualifying utility, a person that is: (i) A registered holding company as defined in 15 U.S.C. §79b(a)(12); and (ii) an affiliate of the qualifying utility as defined in 15 U.S.C. §79b(a)(11).

(25) "Regulatory sanctions" means, under the circumstances presented, any 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 qualifying utility 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 civil penalties pursuant to section three, article four of this chapter and the imposition of criminal penalties pursuant to section four of said article, in either case with reference to the provisions of section eight of said article; and (iii) a proceeding by mandamus or injunction as provided in section two of this article.

(26) "Successor" means, with respect to any legal entity, another legal 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, whether any of these occur as

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a result of a restructuring of the electric power industry or otherwise.

(27) "Utility service area" means: (i) The geographic area of the state in which a qualifying utility provides electric delivery service to customers at the time of issuance of a financing order; and (ii) for as long as environmental control bonds issued pursuant to a financing order are outstanding, any additions to or enlargements of said geographic area, whether or not approved by the Commission in a formal proceeding.

(c) Application for financing order. --

(1) A qualifying utility, or two or more affiliated qualifying utilities, may apply to the Commission for a financing order under this section.

(2) An application for a financing order under this section shall be filed only as provided in this subdivision.

(A) An application for a financing order under this section shall be filed as part of the application of the qualifying utility or qualifying utilities under section eleven of this article for a certificate of public convenience and necessity to engage in environmental control activities.

(B) If a qualifying utility or qualifying utilities have an application for a certificate of public convenience and necessity to engage in environmental control activities pending before the Commission on the effective date of this section, the qualifying utility or qualifying utilities may file a separate application for a financing order and the Commission shall join or consolidate the application for a financing order with the pending application for a certificate of public convenience and necessity. Notwithstanding any provision of section eleven of this article to the contrary or the total project cost of the proposed environmental control activities, the Commission shall render its final decision on any joined or consolidated proceeding for a certificate of public convenience and necessity and a financing order as described in this paragraph within two hundred seventy days of the filing of the application for the financing order and within ninety days after final submission of the joined or consolidated application for decision following a hearing.

(3) In addition to any other information required by the Commission, an application for a financing order shall include the following information:

(A) Evidence that the applicant is a qualifying utility;

(B) A description of the environmental control activities that the qualifying utility proposes to undertake, including a detailed description of the environmental control equipment to be constructed or installed at one or more qualifying generation facilities;

(C) An explanation why the environmental control activities described in the application are necessary in the context of the qualifying utility's operations, current and anticipated environmental regulations, the prospect of enforcement proceedings or litigation against the

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qualifying utility if the environmental control activities are not undertaken and the utility's long-range environmental compliance plans;

(D) A description of any alternatives to the environmental control activities described in the application that the qualifying utility considered and an explanation of why each alternative either is not feasible or was not selected;

(E) An estimate of the environmental control costs associated with the environmental control activities described in the application, including the estimated cost of the environmental control equipment proposed to be installed;

(F) An estimated schedule for the construction or installation of the environmental control equipment;

(G) An estimate of the date on which the environmental control bonds are expected to be issued and the expected term over which the financing costs associated with the issuance are expected to be recovered, or if the bonds are expected to be issued in more than one series, the estimated issuance date and expected term for each bond issuance;

(H) The portion of the environmental control costs the qualifying utility proposes to finance through the issuance of one or more series of environmental control bonds;

(I) An estimate of the financing costs associated with each series of environmental control bonds proposed to be issued;

(J) An estimate of the amount of the environmental control charges necessary to recover the environmental control costs and financing costs estimated in the application and the proposed calculation thereof, which estimate and calculation should take into account the estimated date of issuance and estimated principal amount of each series of environmental control bonds proposed to be issued;

(K) A proposed methodology for allocating financing costs among customer classes;

(L) A description of the proposed adjustment mechanism; and

(M) A description of the benefits to the customers of the qualifying utility and the state that are expected to result from the financing of the environmental control costs with environmental control bonds as opposed to the use of traditional utility financing mechanisms.

(4) An application for a financing order may restate or incorporate by reference any information required pursuant to subdivision (3) of this subsection that the qualifying utility previously filed with the Commission in connection with an application for a certificate of public convenience and necessity under section eleven of this article as described in paragraph (B), subdivision (2) of this subsection.

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(d) Issuance of financing order. --

(1) Notice of an application for a financing order shall be given as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, with the publication area being each county in which the environmental control activities are to be undertaken and each county in the state in which the qualifying utility provides service to customers. If no substantial protest is received within thirty days after the publication of notice, the Commission may waive formal hearing on the application.

(2) The Commission shall issue a financing order, or an order rejecting the application for a financing order, as part of its final order on the application of the qualifying utility or qualifying utilities for a certificate of public convenience and necessity to engage in environmental control activities as described in subdivision (2), subsection (c) of this section.

(3) The Commission shall issue a financing order if the Commission finds all of the following:

(A) That the applicant is a qualifying utility;

(B) That the environmental control activities, including the environmental control equipment to be constructed or installed at one or more qualifying generation facilities, are necessary and prudent under the circumstances and are preferable to any alternatives available to the qualifying utility;

(C) That the cost of the environmental control activities, including the environmental control equipment to be constructed or installed at one or more qualifying generation facilities, is reasonable;

(D) That the proposed issuance of environmental control bonds will result in overall costs to customers of the qualifying utility that: (1) Are lower than would result from the use of traditional utility financing mechanisms; and (2) are just and reasonable;

(E) That the financing of the environmental control costs with environmental control bonds will result in benefits to the customers of the qualifying utility and the state; and

(F) That the proposed issuance of environmental control bonds, together with the imposition and collection of the environmental control charges on customers of the qualifying utility, are just and reasonable and are otherwise consistent with the public interest and constitute a prudent, reasonable and appropriate mechanism for the financing of the environmental control activities described in the application.

(4) The Commission shall include the following findings and requirements in a financing order:

(A) A determination of the maximum amount of environmental control costs that may be financed from proceeds of environmental control bonds authorized to be issued in the financing order;

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(B) A description of the financing costs that may be recovered through environmental control charges and the period over which the costs may be recovered, subject to the application of the adjustment mechanism as provided in subsection (e) of this section. As part of this description, the Commission may include qualitative or quantitative limitations on the financing costs authorized in the financing order;

(C) A description of the adjustment mechanism and a finding that it is just and reasonable; and

(D) A description of the environmental control property that is created and that may be used to pay, and secure the payment of, the environmental control bonds and financing costs authorized to be issued in the financing order.

(5) A financing order may provide that the creation of environmental control property shall be simultaneous with the sale of the environmental control property to an assignee as provided in the application and the pledge of the environmental control property to secure environmental control bonds.

(6) A financing order may authorize the qualifying utility to conduct environmental control activities, including the construction or installation of environmental control equipment, on an estimated schedule approved in the financing order and through the issuance of more than one series of environmental control bonds. In this case, the qualifying utility will not subsequently be required to secure a separate financing order for each issuance of environmental control bonds or for each scheduled phase of the construction or installation of environmental control equipment approved in the financing order.

(7) 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 (1), subsection (f) 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 environmental control bonds issued pursuant to the financing order are outstanding, in addition to any other obligation either may have under this code or federal law:

(A) Without first obtaining the prior consent and approval of the Commission, the qualifying utility will not:

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

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

(B) If: (i) For a period of twelve consecutive months immediately preceding the date of determination, the qualifying utility has had an equity ratio of below thirty percent and neither the qualifying utility nor its parent has had a credit rating on its unsecured debt

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obligations that is investment grade; and (ii) the Commission determines that the present ability of the qualifying utility to meet its public service obligations would be impaired by the payment of dividends, the Commission may order the qualifying utility to limit or cease the payment of dividends for a period not exceeding one hundred eighty days from the date of determination, which order may be extended for one or more additional periods not to exceed one hundred eighty days each if the Commission determines that the conditions set forth in this paragraph continue to exist as of the date of each such determination.

(C) Neither the parent nor a nonutility affiliate will direct or require the qualifying utility to file a voluntary petition in bankruptcy: Provided, That nothing in this paragraph shall preclude the qualifying utility from filing a voluntary petition in bankruptcy if in the determination of the board of directors of the qualifying utility in the exercise of its fiduciary duty, the filing of its own voluntary petition in bankruptcy would be proper under applicable federal statutory and common law.

(8) A financing order may require the qualifying utility to file with the Commission a periodic report showing the receipt and disbursement of proceeds of environmental control bonds. 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 proceeds of environmental control bonds. The provisions of this subdivision shall not be construed to 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.

(9) In the case of two or more affiliated qualifying 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 qualifying utility:

(A) to impose environmental control charges on its customers, notwithstanding the fact that the qualifying generating facility at which the environmental control activities are to be conducted is owned, or on the expected date of issuance of the environmental control bonds authorized in the financing order will be owned, by fewer than all of the affiliated qualifying utilities; and

(B) To issue environmental control bonds and to receive and use the proceeds thereof as provided in subdivision (1), subsection (j) of this section, notwithstanding the fact that all or a portion of the proceeds are expected to be used for environmental control activities to be conducted at a qualifying generating facility the ownership of which is as specified in paragraph (A) of this subdivision.

(e) Application of adjustment mechanism. --

(1) If the Commission issues a financing order, the Commission shall periodically approve the application of the adjustment mechanism specified in the financing order to correct for any over-collection or under-collection of the environmental control charges and to provide for timely payment of scheduled principal of and interest on the environmental control bonds

and the payment and recovery of other financing costs in accordance with the financing order. Application of the adjustment mechanism shall occur at least annually or more frequently as provided in the financing order.

(2) On the same day the 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 statewide circulation published each weekday in Kanawha County: Provided, That this publication shall be made only if the calculation of the adjustment filed by the qualifying utility with the Commission would result in an increase in the amount of the environmental control charge.

(3) The Commission shall allow interested parties thirty days from the date the qualifying utility filed the calculation of the adjustment within which to make comments, which shall be limited to the mathematical accuracy of the calculation and of the amount of the adjustment. 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 adjustment.

(4) Each adjustment to the environmental control charge, in an amount as calculated by the qualifying utility but incorporating any correction for mathematical inaccuracy as determined by the Commission at or after the hearing, shall automatically become effective: (i) Sixty days following the date on which the qualifying utility files with the Commission its calculation of the adjustment; or (ii) on any earlier date specified in an order of the Commission approving the application of the adjustment.

(5) No adjustment pursuant to this subsection, and no proceeding held pursuant to this subsection, shall in any way affect the irrevocability of the financing order as specified in subsection (f) of this section.

(f) Irrevocability of financing order. --

(1) A financing order is irrevocable and the Commission may not reduce, impair, postpone or terminate the environmental control charges approved in the financing order or impair the environmental control property or the collection or recovery of environmental control revenues.

(2) A financing order may be subsequently amended on or after the date of issuance of environmental control bonds authorized thereunder only: (A) At the request of the qualifying utility; (B) in accordance with any restrictions and limitations on amendment set forth in the financing order; and (C) subject to the limitations set forth in subdivision (1) of this subsection.

(3) No change in the credit rating on the unsecured obligations of a qualifying utility from the credit rating that supported the determination by the Commission required in paragraph

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(A), subdivision (3), subsection (d) of this section shall impair the irrevocability of the financing order specified in subdivision (1) of this subsection.

(g) Judicial review. -– An order of the Commission issued pursuant to subdivision (2), subsection (d) of this section 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 any 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.

(h) Effect of financing order. --

(1) A financing order shall remain in effect until the environmental control bonds issued pursuant to the financing order have been paid in full and all financing costs relating to the environmental control bonds have been paid in full.

(2) A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility or any affiliate thereof or the commencement of any judicial or nonjudicial proceeding therefor.

(3) For so long as environmental control bonds issued pursuant to a financing order are outstanding and the related environmental control costs and financing costs have not been paid in full, the environmental control charges authorized to be imposed in the financing order shall be nonbypassable and shall apply to:

(A) All customers of the qualifying utility located within the utility service area, whether or not the customers may become entitled by law to purchase electric generation services from a provider of electric generation services other than a qualifying utility; and

(B) Any person or legal entity located within the utility service area that may subsequently receive electric delivery service from another public utility operating in the same service area.

(i) Limitations on jurisdiction of Commission. --

(1) If the Commission issues a financing order, the Commission may not, in exercising its powers and carrying out its duties regarding regulation and ratemaking, consider environmental control bonds issued pursuant to the financing order to be the debt of the qualifying utility, the environmental control charges paid under the financing order to be revenue of the qualifying utility, or the environmental control costs or financing costs specified in the financing order to be the costs of the qualifying utility, nor may the Commission determine that any action taken by a qualifying utility that is consistent with the financing order is unjust or unreasonable from a regulatory or ratemaking perspective: Provided, That subject to the limitations set forth in subsection (f) of this section, nothing in

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this subdivision shall: (i) Affect the authority of the Commission to apply the adjustment mechanism as provided in subsection (e) of this section; (ii) prevent or preclude the Commission from investigating the compliance of a qualifying utility with the terms and conditions of a financing order and requiring compliance therewith; or (iii) prevent or preclude the Commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of this section.

(2) The Commission may not order or otherwise require, directly or indirectly, any public utility to use environmental control bonds to finance any project, addition, plant, facility, extension, capital improvement, environmental control equipment or any other expenditure.

(3) The Commission may not refuse to allow the recovery of any costs associated with the performance of environmental control activities by a public utility solely because the public utility has elected or may elect to finance the performance of those activities through a financing mechanism other than the issuance of environmental control bonds.

(j) Duties of qualifying utility. --

(1) A qualifying utility for which a financing order has been issued shall cause the proceeds of any environmental control bonds issued pursuant to a financing order to be placed in a separate account. A qualifying utility may use the proceeds of the issuance of environmental control bonds for paying environmental control costs and financing costs and for no other purpose.

(2) A qualifying utility for which a financing order has been issued shall annually provide to its customers a concise explanation of the environmental control charges approved in a financing order, as modified by subsequent issuances of environmental control bonds authorized under a financing order, if any, and by application of the adjustment mechanism as provided in subsection (e) of this section. These explanations may be made by bill inserts, website information or other appropriate means.

(3) Environmental control revenues shall be applied solely to the repayment of environmental control bonds and other financing costs.

(4) The failure of a qualifying utility to apply the proceeds of an issuance of environmental control bonds in a reasonable, prudent and appropriate manner or otherwise comply with any provision of this section shall not invalidate, impair or affect any financing order, environmental control property, environmental control charge or environmental control bonds: Provided, That subject to the limitations set forth in subsection (f) of this section, nothing in this subdivision shall prevent or preclude the Commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of this section.

(k) Environmental control property. --

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(1) Environmental control property that is specified in a financing order shall constitute an existing, present property right, notwithstanding the fact that the imposition and collection of environmental control charges depend on the qualifying utility continuing to provide electric energy or continuing to perform its servicing functions relating to the collection of environmental control charges or on the level of future energy consumption. Environmental control property shall exist whether or not the environmental control revenues have been billed, have accrued or have been collected and notwithstanding the fact that the value or amount of the environmental control property is dependent on the future provision of service to customers by the qualifying utility. (2) All environmental control property specified in a financing order shall continue to exist until the environmental control bonds issued pursuant to a financing order are paid in full and all financing costs relating to the bonds have been paid in full.

(3) All or any portion of environmental control property may be transferred, sold, conveyed or assigned to any person or entity not affiliated with the qualifying utility or to any affiliate of the qualifying utility created for the limited purposes of acquiring, owning or administering environmental control property or issuing environmental control bonds under the financing order or a combination of these purposes. All or any portion of environmental control property may be pledged to secure the payment of environmental control bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of environmental control property by a qualifying utility or affiliate of a qualifying utility to an affiliate of the qualifying 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) If a qualifying utility defaults on any required payment of environmental control revenues, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the environmental control revenues for the benefit of bondholders, any assignee and any financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the qualifying utility or any affiliate thereof.

(5) Environmental control property and environmental control revenues, and the interests of an assignee, bondholder or financing party in environmental control property and environmental control revenues, are not subject to setoff, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency proceeding of the qualifying utility, any affiliate thereof or any other entity.

(6) Any successor to a qualifying utility shall be bound by the requirements of this section and shall perform and satisfy all obligations of, and have the same rights under a financing order as, the qualifying utility under the financing order in the same manner and to the same extent as the qualifying utility, including, without limitation, the obligation to collect and pay

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to the person entitled to receive them environmental control revenues.

(l) Security interests. -– Except as otherwise provided in this subsection, the creation, perfection and enforcement of any security interest in environmental control property to secure the repayment of the principal of and interest on environmental control bonds, amounts payable under any ancillary agreement and other financing costs are governed by this subsection and not the provisions of chapter forty-six of this code. All of the following shall apply:

(1) The description or indication of environmental control property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to this section and the financing order creating the environmental control property. This subdivision applies to all purported transfers of, and all purported grants of liens on or security interests in, environmental control 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.

(2) A security interest in environmental control property is created, valid, and binding at the later of the time: (i) The financing order is issued; (ii) a security agreement is executed and delivered; and (iii) value is received for the environmental control bonds. The security interest attaches without any physical delivery of collateral or other act and the lien of the security interest shall be 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 such parties have notice of the lien, upon the filing of a financing statement with the office of the Secretary of State. The office of the Secretary of State shall maintain any such financing statement in the same manner and in the same record-keeping system it maintains for financing statements filed pursuant to article nine, chapter forty-six of this code. The filing of any financing statement under this subdivision shall be governed by the provisions regarding the filing of financing statements in said article.

(3) A security interest in environmental control property is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, which may subsequently attach to the environmental control property unless the holder of any such lien has agreed in writing otherwise.

(4) The priority of a security interest in environmental control property is not affected by the commingling of environmental control revenues with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all environmental control revenues that are deposited in any cash or deposit account of the qualifying utility in which environmental control revenues have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

(5) No subsequent order of the Commission amending a financing order pursuant to subdivision (2), subsection (f) of this section, and no application of the adjustment

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mechanism as provided in subsection (e) of this section, will affect the validity, perfection or priority of a security interest in or transfer of environmental control property.

(m) Sales of environmental control property. --

(1) Any sale, assignment or transfer of environmental control property shall be 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 environmental control 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 environmental control property may be created only when all of the following have occurred: (i) The financing order creating the environmental control property has become effective; (ii) the documents evidencing the transfer of environmental control property have been executed and delivered to the assignee; and (iii) value is received. Upon the filing of a financing statement with the office of the Secretary of State, a transfer of an interest in environmental control property shall be perfected against all third persons, 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 environmental control property previously perfected in accordance with this subdivision or subdivision (2), subsection (l) of this section. The office of the Secretary of State shall maintain any such financing statement in the same manner and in the same record-keeping system it maintains for financing statements filed pursuant to article nine, chapter forty-six of this code.

(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 not be affected or impaired by, among other things, the occurrence of any of the following factors:

(A) Commingling of environmental control revenues with other amounts;

(B) The retention by the seller of: (i) A partial or residual interest, including an equity interest, in the environmental control property, whether direct or indirect, or whether subordinate or otherwise; or (ii) the right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of environmental control revenues;

(C) Any recourse that the purchaser may have against the seller;

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

(E) The obligation of the seller to collect environmental control revenues on behalf of an assignee;

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

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(G) Any subsequent order of the Commission amending a financing order pursuant to subdivision (2), subsection (f) of this section; or

(H) Any application of the adjustment mechanism as provided in subsection (e) of this section.

(n) Exemption from municipal taxation. -– The imposition, collection and receipt of environmental control revenues are not subject to taxation by any municipality of the state under the authority granted to municipalities in sections five and five-a, article thirteen, chapter eight of this code.

(o) Environmental control bonds not public debt. -– Environmental control bonds issued pursuant to a financing order and the provisions of this section shall 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 shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The issuance of environmental control bonds does not, directly or indirectly or contingently, obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the principal of or interest on the bonds.

(p) Environmental control 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 environmental control 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

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

(q) State pledge. -–

(1) The state pledges to and agrees with the bondholders, any assignee and any financing parties that the state will not take or permit any action that impairs the value of environmental control property or, except as allowed under subsection (e) of this section, reduce, alter or impair environmental control charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee, and any financing parties, until any principal, interest and redemption premium in respect of environmental control bonds,

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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) Any person who issues environmental control bonds is permitted to include the pledge specified in subdivision (1) of this subsection in the environmental control bonds, ancillary agreements and documentation related to the issuance and marketing of the environmental control bonds.

(r) Choice of law. -- The law governing the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in any environmental control property, environmental control charge or financing order shall be the laws of the State of West Virginia as set forth in this section and article nine, chapter forty-six of this code.

(s) Conflicts. -- In the event of conflict between this section and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any security interest in or transfer of environmental control property, this section shall govern to the extent of the conflict.

(t) Effect of invalidity on actions. -- Effective on the date that environmental control bonds are first issued under this section, if any provision of this section is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this section that is taken by the Commission, a qualifying utility, an assignee, a collection agent, a financing party, a bondholder, or a party to an ancillary agreement and any such action shall remain in full force and effect.

(u) Effectiveness of section. -- No qualifying utility may make initial application for a financing order after the date which is five years after the effective date of this section. This subsection shall not be construed to preclude any qualifying utility for which the Commission has initially issued a financing order from applying to the Commission: (i) For a subsequent order amending the financing order pursuant to subdivision (2), subsection (f) of this section; or (ii) for approval of the issuance of environmental control bonds to refund all or a portion of an outstanding series of environmental control bonds.

(v) Severability. -- If any subsection, subdivision, paragraph or subparagraph 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 shall not affect the Constitutionality or validity of any other subsection, subdivision, paragraph or subparagraph 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 environmental control bonds, the imposition of environmental control charges, the transfer or assignment of environmental control property or the collection and recovery of environmental control revenues. 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

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any subsection, subdivision, paragraph or subparagraph of this section held to be unconstitutional or invalid had not been included in this section.

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§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 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.

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(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 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.

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(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.

(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.

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(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 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

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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;

(4) An estimate of the financing costs associated with the issuance of each series of

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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.

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

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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 assignments, sales, pledges, or other transfers of consumer rate relief property. Any changes

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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.

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(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

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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:

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(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

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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

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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

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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

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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;

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(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

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(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.

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(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.

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§24-2-4g. Establishing the value of utility assets in the context of the acquisition of a utility or utility assets and providing for the combination or allocation of water and wastewater revenue requirements.

(a) The Legislature finds that:

(1) Many West Virginia publicly owned municipal, public service district-owned, and investor-owned water and wastewater utilities face substantial capital investment needs to replace aging utility infrastructure and to maintain compliance with regulatory requirements, and many municipalities that own and operate utility systems are confronted with additional financial challenges arising from diminishing tax bases, the need to repair streets and other municipally owned facilities, and unfunded or underfunded liabilities for pension and other post-employment benefit programs;

(2) Given these challenges, some of these utilities may be unable to continue to provide acceptable levels of utility service at reasonable rates, and may wish to consider the sale of their utility assets, and this decision will require those utilities to consider the expected valuation of their utility assets, the manner in which the post-acquisition rates of their customers will be established and moderated, and the purposes to which the proceeds of any sale of utility assets by a municipality may be devoted under state law;

(3) For utilities considering the sale of their utility assets, a valuation of the utility assets that is primarily based on the original cost of those assets less depreciation and less the value of contributed property will: (A) Understate the actual fair value of those assets to an acquiring party; (B) fail to account for potential income that could be generated from those assets; (C) reduce the financial benefit to utilities considering selling those assets; and (D) thereby disincentivize those utilities from selling those assets;

(4) To assist utilities considering the sale of their utility assets in making informed decisions on whether to sell their utility assets, the commission will permit acquiring and selling parties to negotiate a value for those assets, permit the acquiring party to include the negotiated sale price of the assets in post-acquisition rate base for rate-making purposes, and make its post-acquisition rate-base determination based on the valuation approach specified in this section;

(5) To assist utilities that provide both water and wastewater utility service in moderating the rate impact of wastewater service investment on wastewater system customers, it is appropriate to authorize the combination of water and wastewater revenue requirements or the allocation of a portion of a wastewater revenue requirement to water customers if such a combination or allocation is just and reasonable and results in water and wastewater rates that are based primarily on the cost of providing service;

(6) Expanding the permissible uses by a municipality of the proceeds of a sale of utility assets as provided for in §8-12-17 of this code will also facilitate and encourage a municipality’s ability to sell its utility assets, should it choose to do so; and

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(7) The enactment of these regulatory improvements will facilitate the repair and replacement of utility infrastructure by improving access to investment capital and moderating the rate impact to customers of investments in utility infrastructure, and thereby enhancing the state of water and wastewater utility infrastructure assets and the service provided by those assets, all of which are in the best interest of West Virginia and its citizens.

(b) *Value of utility assets; rate-base addition; ancillary approvals*. —

(1) In any case filed pursuant to §24-2-12 of this code seeking the commission's prior consent and approval of the acquisition by an acquiring utility of the utility assets of a selling utility, the applicants may propose a negotiated sale price for the utility assets that is in accordance with utility asset valuation methodologies, such as depreciated original cost, or reproduction cost new less depreciation, or other industry standard utility asset valuation methods, excluding the use of fair market appraisal valuation methods: *Provided,* That the applicants will present evidence of those asset values in the application: *Provided*, *however*, That the utility asset valuation methodologies and definitions referenced in §24-2-4g(d) of this code apply solely to cases filed pursuant to chapter 24 of this code.

(2) If the commission finds that the proposed acquisition, including the negotiated sale price, satisfies the requirements for approval in §24-2-12 of this code, including a finding that the terms and conditions of the acquisition are reasonable and that neither party thereto is given an undue advantage over the other, and does not adversely affect the public in this state, then the commission will establish the rate based addition at the negotiated sale price, as determined and in accordance with subdivision (1) of this subsection.

(3) In its order granting, denying, or modifying the relief requested in an application described in subdivision (1) of this subsection, the commission may also approve any rate stabilization plan, tariff change or provision, or surcharge mechanism proposed by the applicants and that the commission finds reasonable in view of the proposed transaction and the acquiring utility's proposed post-acquisition improvements to the utility assets.

(4) In any application described in subdivision (1) of this subsection, the commission will issue a final order granting, denying, or granting in part and denying in part the relief requested in the application.

(5) Nothing in this section or §24-2-12 of this code requires an acquiring utility or a selling utility to obtain the prior consent and approval of the commission to enter into agreements or undertake commitments incident to the negotiation, due diligence, or finalization of an agreement to purchase and sell utility assets, including, without limitation, agreements and commitments relating to:

(A) The exclusivity of negotiations for a defined period;

(B) The confidentiality of negotiations and nondisclosure of facts relevant to the

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negotiations;

(C) The payment of transaction costs as between the parties, the reimbursement of those costs upon closing of an acquisition of utility assets, or the allocation of costs in the event the acquisition is not consummated;

(D) The acquiring utility's completion of post-acquisition additions or improvements to the utility assets or its commitments as to post-acquisition rates and charges for utility service; or

(E) Any other commercial term reasonably necessary to facilitate the negotiation, due diligence, or finalization of the purchase and sale agreement.

(c) *Request for revenue requirement combination or allocation*. —

(1) A single utility that provides both water and wastewater utility services may request a combination of the revenue requirements of the water and wastewater utility services or an allocation of a portion of the wastewater revenue requirement to water customers. Such a request may be made as a separate filing with the commission or as part of a base rate case, a tariff filing, a statutory consent case under §24-2-12 of this code, or another proceeding before the commission.

(2) If the commission finds that a combination or allocation requested under subdivision (1) of this subsection: (A) Will enable the acquisition and construction of wastewater infrastructure improvements or compliance with regulatory requirements at a more moderate rate impact for wastewater customers; and (B) will result in a combined water and wastewater rate, or separate water and wastewater rates that are just, reasonable, and based primarily on the cost of providing service, then the commission may authorize the utility to implement the combination or allocation, subject to such modifications as the commission may determine to be appropriate.

(d) *Definitions*. — The following words and phrases when used in this section will have the meanings given to them in this section unless the context clearly indicates otherwise: (1) "Acquiring utility" means: (A) A water, sewer, or stormwater utility subject to the provisions of this chapter that has entered into an agreement with a selling utility to acquire utility assets of the selling utility; or (B) any person or business entity that has entered into such an agreement and that, upon commission approval of the acquisition of those utility assets, will become a water, sewer, or stormwater utility subject to the provisions of this chapter.

(2) "Depreciated original cost" means the original cost of utility assets net of accumulated depreciation.

(3) "Negotiated sale price" means the purchase price of utility assets that the acquiring utility and the selling utility agree upon through voluntary, arm's-length negotiations.

(4) "Original sources of funding" means all methods used to fund the utility assets, including,

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but not limited to, loan funding, grant funding, and property otherwise contributed to the utility.

(5) “Rate-base addition” means the dollar amount of utility rate base associated with the utility assets that the acquiring utility may include in the calculation of its post-acquisition rate base for rate-making purposes.

(6) “Reproduction cost new less depreciation” means an estimate of the cost to construct, at current prices, an exact duplicate or replica of the utility assets, without regard to the original sources of funding for those assets, using the same materials, construction standards, design, layout, and quality without adjustment for deficiencies, super-adequacies, and obsolescence of those assets, net of depreciation.

(7) “Selling utility” means a water, sewer, or stormwater utility subject to the provisions of this chapter that has entered into an agreement to sell utility assets to an acquiring utility.

(8) “Utility assets” or “assets” mean all or substantially all of the tangible and intangible assets of a selling utility that: (A) The selling utility has used in the provision of utility service or held for the future provision of such service; and (B) the acquiring utility will reasonably require to provide utility service after the acquisition to facilitate its plans for the provision of utility service after the acquisition.

(9) “Utility asset valuation” means industry standard valuation methods of determining the value of utility assets, regardless of original sources of funding.

(e) This section, together with the amendments to §8-12-17 of this code, made during the 2020 regular session of the West Virginia Legislature, shall be known and referred to as the Water and Wastewater Investment Facilitation Act.

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

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

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

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

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

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

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

(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 authorize the issuance of consumer rate relief bonds in a principal amount greater, or the payment or recovery of eligible costs to be securitized 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

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

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terms are defined in this section.

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

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

(13) "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 eligible costs to be securitized;

(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 paragraph (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

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consumer rate relief bonds.

(14) "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.

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

(16) "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.

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

(18) "Nonbypassable" means that the payment of consumer rate relief charges as authorized by the commission for each customer, customer class, and special contract customer 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 service from such utility or its successors for as long as the consumer rate relief bonds are outstanding.

(19) "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 §24-1-2 of this code.

(20) "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.

(21) "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 utility which has applied jointly for and received such an order.

(22) "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).

(23) "Regulatory sanctions" means, under the circumstances presented, a regulatory or ratemaking sanction or penalty that the commission is authorized to impose pursuant to this

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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 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 §24-4-1, *et seq*. of this code; and (iii) a proceeding by mandamus, injunction, or other appropriate proceeding as provided in §24-2-2 of this code.

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

(25) "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.

(26) "Undepreciated generation utility plant balances" means any unrecovered capitalized costs of or undepreciated investments in one or more fossil-fired electric generating plants having nameplate capacity in excess of 1,000 megawatts each, and related supply, transmission, equipment, and fixtures. Undepreciated generation utility plant balances shall include (i) the net book value of assets on the qualifying utility's balance sheet related to such generating plants and related infrastructure, and (ii) carrying costs authorized by the commission: *Provided*, That (A) all costs of removing retired generating plant assets; (B) all capitalized costs and investments in fossil-fired electric generating plants and related supply, transmission, equipment, and fixtures incurred or made by a qualifying utility on or after December 31, 2022; and (C) all non-cash asset retirement obligation assets and related accumulated depreciation, shall each be specifically excluded from the calculation of undepreciated generation utility plant balances.

(c) Application for financing order.

(1) If a public 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 eligible costs to be securitized, a utility, or two or more affiliated utilities engaged in the delivery of utility 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 eligible costs to be securitized;

(B) The imposition, charging, and collection of consumer rate relief charges, in accordance

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with the adjustment mechanism approved by the commission under §24-2-4h(e)(5)(E) of this code, 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) No utility shall be required to file an application for a financing order under this section or otherwise utilize the alternative financing mechanisms authorized by this section.

(d) Information required in application for financing order.

The application shall include all of the following:

(1) A description and quantification of the eligible costs to be securitized that the 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;

(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 qualifying utility; and

(9) Other information required by commission rules.

(e) Issuance of financing order.

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(1) Except as otherwise provided in this section, proceedings on an application submitted by a 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 eligible costs to be securitized 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 30 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 a 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 qualifying utility.

(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 eligible costs to be securitized 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 utility 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

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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 qualifying 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, including, if applicable, rate adjustments or sur-credits, effective with the implementation of consumer rate relief charges, to reduce tariff rates by the amounts of revenue requirements related to securitized costs that are recovered in current tariff rates but which will be recovered through the securitization approved by the commission.

(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 qualifying 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 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) If a qualified utility issues consumer rate relief bonds pursuant to a financing order from the commission, any determination of the commission made in connection with such financing order issued pursuant to this subsection, including a determination that certain costs constitute eligible costs to be securitized, is binding and 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, but only pursuant to §24-5-1, *et seq*. of this code. 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 eligible costs to be securitized in excess of actual prudently incurred costs as subsequently determined by the commission. However, 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.

(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 a 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

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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 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 §24-2-12 of this code.

(4) The consumer rate relief property constitutes an existing, present property right, notwithstanding that the imposition, charging, and collection of consumer rate relief charges occurs in the future or depends on the qualifying utility or successors continuing to deliver retail electric service or continuing to perform servicing functions relating to the billing and collection of consumer rate relief charges or that the level of future energy consumption may change. 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

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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 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 and does not violate the terms of the consumer rate relief bonds issued under the prior financing order. 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:

(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, a qualifying utility to use consumer rate relief bonds to finance the recovery of eligible costs to be securitized.

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(3) The commission may not refuse to allow the recovery of eligible costs to be securitized solely because a 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 may be recovered as authorized by the commission previously or in subsequent proceedings: *Provided*, That previous findings and determinations made by the commission in a financing order related to those costs are not binding on the commission in such subsequent proceeding.

(5) Notwithstanding the foregoing, but without limiting the final and binding nature of any financing order of the commission issued pursuant to this subsection, nothing herein restricts the authority of the commission to limit cost recovery to just and reasonable costs that are prudently incurred, to require deferral of regulatory assets, and/or to determine capital structure and costs as the commission determines are prudent, just, and reasonable.

(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 eligible costs to be securitized 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 as 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 conditions of a financing order or the requirements of this section.

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

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(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 §59-3-1, *et seq*. 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 15 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 30 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 40 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 60 days and the commission may shorten the filing 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.

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(5) No adjustment approved or deemed approved under this section affects the irrevocability of the final financing order as specified in subdivision (3), 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 and must be paid by all existing and future customers that receive electric service within the qualifying utility's geographic service territory notwithstanding any change in West Virginia law regarding the ability of retail customers of an electric utility to choose a provider of generation or transmission service from a party other than the qualifying utility in the future.

(2) The consumer rate relief charges shall be collected by the qualifying utility or the qualifying utility's successors, 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 in the same manner and to the same extent as the qualifying utility including the obligation

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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, priority and, to the extent set forth herein, enforcement of a security interest or lien in consumer rate relief property, including 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 §46-9-1, *et seq*. of this code or other law.

(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 when the applicable security agreement is executed and delivered and 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 security interest is valid, binding, and perfected against all parties, including those 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, absolute and free from the claims of all parties having competing claims of any kind, including claims of other lien creditors or claims of the seller or creditors of the seller, whether or not supported by any prior judicial or other lien, 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 §49-9-1, *et seq*. of this code. The filing of a financing statement under this subsection is governed by the provisions regarding the filing of financing statements in §46-9-1, *et seq*. 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

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continuously perfected security interest and has priority over any other security interest or lien, created by operation of law, contract or otherwise, that may by agreement of the holder of such security interest in consumer rate relief property or otherwise purportedly subsequently attach to that property or those rights or interests, unless the holder of any such security interest has agreed in writing otherwise.

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

(8) No application of the adjustment mechanism as described in subsection (k) of this section affects the creation, 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, or assignment 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;

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

(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 §8-13-5 and §8-13-5a 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

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persons carrying on a banking or insurance business, including domestic for life and domestic not for life insurance companies; and

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

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

(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

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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.

(v) Non-utility status.

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

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

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

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§24-2-5. Supervision of public utilities licensed by municipalities, county courts or otherwise; right to enter premises, inspect and correct meters.

The commission shall have general supervision of all public utilities having authority under any charter or franchise of any city, town or municipality, county court, or tribunal in lieu thereof, or otherwise, to lay down and maintain wires, pipes, conduits, ducts or other fixtures in, over or under streets, highways or public places for the purpose of furnishing and distributing gas, or for furnishing and transmitting electricity for light, heat or power, or maintaining underground conduits, or ducts for electrical conductors, or for telegraph or telephone purposes, and for the purpose of furnishing water, either for domestic or power purposes, and shall have general supervision of oil and gas pipelines, and shall have general supervision over any utility engaged in the transportation of coal and its derivatives and all mixtures and combinations thereof with any substance by pipelines.

The commission may ascertain the quality and quantity of water, or the quality and quantity of gas or electricity supplied by such utilities and examine the methods employed, and shall have power to order such improvements as will best promote the public interests. In ascertaining and regulating the quality of water, the commission shall use the quality standards established by the state board of health Should this be Secretary of the Department of Health and by regulations governing public water supplies.

The commission shall have power, through its members, inspectors, or employees to enter in, upon and to inspect the property, buildings, plants, fixtures, powerhouses and offices of any such utilities or municipalities, and shall have power to examine the books and affairs to be investigated by it. The commission shall, when and as necessary, appoint inspectors of gas, electric and water meters. And, when such inspectors are required to act, it shall be their duty to inspect, examine, prove and ascertain the accuracy of any gas, electric, or water meters used or intended to be used for measuring or ascertaining the quantity of gas, electricity or water furnished to, by or for the use of any person, firm or corporation, and, when found to be correct, or made correct, the inspector shall stamp or mark each of such meters with some suitable device, which device shall be recorded in the office of the commission. No public utility shall furnish or put in use any gas, electric or water meter which shall not have been inspected, proved and stamped or marked by an inspector of the commission: Provided, That in cases of emergency, gas, electric or water meters may be installed and used before being inspected, but notice thereof shall be immediately given to the Public Service Commission by the public utility installing the same, and such meters shall be inspected, proved and stamped or marked, as soon thereafter as practicable. Every gas, electric and water utility shall provide and keep in and upon its premises suitable and proper apparatus, to be approved and stamped or marked by the commission, for testing and proving the accuracy of gas, electric and water meters furnished for use by it and by which apparatus every meter may and shall be tested on the written request of the consumer to whom the same shall be furnished, and in his presence if he so desires.

If any person, firm or corporation to or by whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same

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inspected and tested. If the same on being tested shall be found to be two percent from being correct, or shall be found to be to the prejudice of the user, the inspector shall order the owner of such meter forthwith to remove the same and to place instead thereof a correct meter. The expense of such inspecting and testing shall be borne by the owner if such meter be found to be incorrect by two percent or more. If the meter, on being so tested, shall be found to be correct or within two percent of being correct, the expense of such inspection and testing shall be borne by the user. A uniform charge and rule shall be fixed by the commission for this service: Provided, That nothing in this chapter shall prevent the commission from changing and modifying the method of inspecting meters and adopting such rules and regulations therefor as to the commission may seem just and proper.

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§24-2-6. Power as to connecting telephone and telegraph services.

Whenever, after hearing, upon notice, the Public Service Commission shall determine that public convenience or necessity requires that conduits, subways, poles or other equipment on, over or under any street or highway belonging to or used by any public utility should be used in part by another public utility for the operation of its property in any locality not reached by the lines or connections of one of such utilities, or a municipality, the Public Service Commission may, by order, fix the just and reasonable terms and conditions of such use, and prescribe the compensation to be paid therefor. And, whenever, after hearing, upon notice, the Public Service Commission shall determine that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between any two or more public utilities regularly engaged in the conveyance of telephone or telegraph messages, for the conveyance of such messages between different localities, which are not reached by the lines or connections of one of such utilities, the Public Service Commission, may, by order, ascertain, determine and fix the just and reasonable terms and conditions of such physical connection, including just and reasonable rules and regulations and the just and reasonable charge that shall be made to the public for the use of such continuous line between such localities and the division of the charge between such two or more public utilities, and the apportionment of the cost of making such physical connection between such public utilities, and it shall be the duty of such public utility thereafter to conform to such order of the Public Service Commission. But no order shall be made by the Public Service Commission under this section to apply where such use or physical connection will prevent those owning, operating, managing or controlling any part of such conduits, subways, poles or other equipment, or such proposed continuous lines of communication, from performing their public duties, nor result in serious injury to those owning, operating, managing or controlling any part of such conduits, subways, poles or other equipment, or of the proposed continuous lines of communication.

Such use so ordered shall be permitted and such physical connection or connections so ordered shall be made; and the terms, conditions and compensation so prescribed for such use and such physical connections shall be the lawful conditions and compensation for such use and physical connection, and the lawful terms and conditions upon which such use and physical connections shall be had and made. Any such order may be from time to time revised by the commission upon application of any interested party or upon its own motion.

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§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.

(a) Whenever, under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable.

(b) If the Public Service Commission shall determine that any utility is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers, the commission may petition to the circuit court of any county wherein the utility does business for an order attaching the assets of the utility and placing such utility under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, that the allegations contained in the petition are true, it shall grant the same and shall order that the utility be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission, shall appoint a receiver who shall be a responsible individual, partnership or corporation knowledgeable in public utility affairs and who shall maintain control and responsibility for the running and management of the affairs of the utility. In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of said utility in an amount to be determined by the court.

(c) Control of and responsibility for said utility shall remain in the receiver until the same can, in the best interest of the customers, be returned to the owners, transferred to other owners or assumed by another utility or public service corporation: Provided, That if the court after hearing, determines that control of and responsibility for the affairs of the utility should not, in the best interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets of the utility in the manner provided by law.

(d) The laws generally applicable to receivership shall govern receiverships created pursuant to this section.

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§24-2-8. System of accounts to be kept by public utilities; uniform accounting system for public service districts and municipally owned public utilities.

(a) The commission may establish a system of accounts to be kept by public utilities or classify public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic as well as the receipt and expenditure of moneys, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this chapter. In the case of utilities subject to the provisions of the act of Congress entitled "An act to regulate commerce," approved February four, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplemental thereto, the system of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent with the systems and forms from time to time established for such utilities by the interstate commerce commission. But nothing herein contained shall affect the power of the commission to prescribe forms of accounts, records and memoranda covering information in addition to that required by the interstate commerce commission. The commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

(b) The commission shall, on or before December 31, 1979, adopt rules and regulations prescribing and establishing a uniform system of accounts and accounting to be kept by all public service districts and municipally owned public utilities, and, in so doing, the commission shall confer with and seek the assistance of the Tax Commissioner in order to coordinate any such accounting systems and procedures with any such procedures or systems adopted by the State Tax Department governing the fiscal affairs of municipalities. Such rules and regulations shall establish a date by which all utilities are to conform with any such accounting procedures and systems adopted by the commission. Any such rules and regulations prescribing a system or procedure of accounting to be kept by such public utilities may classify such utilities and establish a system or procedure of accounts for each class and prescribe the manner of keeping such accounts. The commission may also ascertain, determine and prescribe what are proper and adequate charges for depreciation of the several classes of property for each utility and may prescribe such changes as it may deem appropriate in charges made for depreciation as it finds necessary.

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§24-2-9. Information concerning rates, etc., of public utilities may be required and published by commission.

The commission may at any time require persons, firms, companies, associations, corporations or municipalities, subject to the provisions of this chapter, to furnish any information which may be in their possession, respecting rates, tolls, charges or practices in conducting their service, and to furnish the commission at all times for inspection any books or papers or reports and statements, which reports and statements shall be under oath, when so required by the commission, and the form of all reports required under this chapter shall be prescribed by the commission (except as provided in section five, article three of this chapter). The commission shall collect, receive and preserve the same, and shall annually tabulate and publish the same in statistical form.

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§24-2-10. Power to subpoena witnesses, take testimony and administer oaths; contempt; self-incrimination.

The commission shall have power, either as a commission or by any of its members, to subpoena witnesses and take testimony, and administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the commission the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents. And such court, in case of refusal to obey the subpoena issued to any person or to any public utility subject to the provisions of this chapter, shall issue an order requiring such public utility or any person to appear before such commission and produce all books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to criminate the person giving the same shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify.

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§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person, or corporation other than a political subdivision of the state providing water or sewer services and having at least 4,500 customers and annual gross combined revenues of $3 million or more may not begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in §24-2-1 of this code, nor apply for, nor obtain any franchise, license, or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing the construction franchise, license, or permit: *Provided*, That the requirement to obtain a certificate of public convenience and necessity shall be waived for projects that have been reviewed and determined to be technically feasible and approved by the Infrastructure and Jobs Development Council.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no substantial protest is received within 30 days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within 30 days, to the application. The notice shall be published as a Class I legal advertisement in compliance with §59-3-1 *et seq*. of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person, or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having at least 4,500 customers and combined annual gross revenue of $3 million dollars or more shall give the commission at least 30 days' notice of the filing of any application for a certificate of public convenience and necessity under this section: *Provided*, That the commission may modify or waive the 30-day notice requirement and shall waive the 30-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or §24-2-11a of this code within 270 days of the filing of the application and within 90 days after final submission of any such application for decision following a hearing: *Provided*, That if the application is for authority to construct a water and sewer project and the projected total cost is less than $10 million, the commission shall render its final decision within 225 days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to §31-15A-1 *et seq*. of this code within 180 days after filing of the application: *Provided*, That if a substantial protest is received within 30 days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its

final decision within 270 days or 225 days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or §24-2-11a of this code is greater than $50 million, the commission shall render its final decision on any such application filed under the provisions of this section or §24-2-11a of this code within 400 days of the filing of the application and within 90 days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the time frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules it considers proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline, or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline, or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person, or corporation proposing any electric power project that requires a certificate under this section is not required to obtain the certificate before applying for or obtaining any franchise, license, or permit from any municipality or other governmental agency.

(l) Water or sewer utilities that are political subdivisions of the state and having at least 4,500 customers and combined gross revenues of $3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide adequate prior public notice of the contemplated construction and proposed changes to rates, fees, and charges, if any, as a result of the construction to both current customers and those persons who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the

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monthly billing statement of the customers of the utility for the month immediately preceding the month in which an ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, is to be before the governing body for the public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any.

(2) Adequate prior public notice of the contemplated construction by causing to be published as a Class I legal advertisement of the proposed public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, in compliance with §59-3-1 *et seq*. of this code. The publication area for publication shall be all territory served by the political subdivision. If the political subdivision provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction; a summary of the current rates, fees, and charges, and proposed changes to said rates, fees, and charges, if any; the date, time, and place of the public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any; and the place or places within the political subdivision where the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance or resolution shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the political subdivision and be heard with respect to the proposed construction and the proposed rates, fees, and charges, if any.

(4) The ordinance or resolution on the proposed construction and the proposed rates, fees, and charges shall be read at two meetings of the governing body with at least two weeks intervening between each meeting. The public hearing may be conducted prior to, or at, the meeting of the governing body at which the ordinance or resolution approving the proposed construction is considered on second reading.

(5) Enactment or adoption of the ordinance or resolution approving the proposed construction and the proposed rates, fees, and charges shall follow an affirmative vote of the governing body and the approved rates shall go into effect no sooner than 45 days following the action of the governing body. If the political subdivision proposes rates that will go into effect prior to the completion of construction of the proposed project, the 45-day waiting period may be waived by public vote of the governing body only if the political subdivision finds and declares the political subdivision to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the political subdivision to deliver continued and compliant public services: *Provided*, That, if the political subdivision is a public service district, in no event may the rate become effective prior to the date that the county commission has entered an order approving or modifying the action of the public service district board.

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(6) Rates, fees, and charges approved by an affirmative vote of the public service district board shall be forwarded in writing to the county commission with the authority to appoint the members of the public service board of the public service district. The county commission shall, within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees, and charges, the proposed rates, fees, and charges, as presented to the county commission, shall be effective with no further action by the board or county commission. In any event this 45-day period may be extended by official action of both the board proposing the rates, fees, and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class I legal advertisement of the proposed action, in compliance with §59-3-1 *et seq*. of this code, of the meeting where it shall consider the proposed increases in rates, fees, and charges no later than one week prior to the meeting date.

(8) A public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by 25 percent of the customers served by the public service district when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees, and charges under the provisions of this subsection may file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission's final action approving, modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees, and charges approved by resolution of the board, without final action by the county commission to approve, modify, or reject the rates, fees, and charges, and the circuit court shall resolve said complaint: *Provided, however*, That the rates, fees, and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect until set aside, altered, or amended by the circuit court in an order to be followed in the future.

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§24-2-11a. Requirement for certificate of public convenience and necessity before beginning construction of high voltage transmission line; contents of application; notice; hearing; criteria for granting or denying certificate; regulations.

(a) No public utility, person or corporation may begin construction of a high voltage transmission line of two hundred thousand volts or over, which line is not an ordinary extension of an existing system in the usual course of business as defined by the Public Service Commission, unless and until it or he or she has obtained from the Public Service Commission a certificate of public convenience and necessity approving the construction and proposed location of the transmission line.

(b) The application for the certificate shall be in the form the commission prescribes and shall contain:

(1) A description, in such detail as the commission prescribes, of the location and type of line facilities which the applicant proposes to construct;

(2) A statement justifying the need for the facilities;

(3) A statement of the environmental impact of the line facilities; and

(4) Other information the applicant considers relevant or the commission requires.

(c) Upon the filing of the application, the applicant shall publish, in the form the commission directs, as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for the publication to be each county in which any portion of the proposed transmission line is to be constructed, a notice of the filing of the application and that the commission may approve the application unless within fifteen days after completion of publication a written request for a hearing on the application has been received by the commission from a person or persons alleging that the proposed transmission line or its location is against the public interest. If the request is timely received, the commission shall set the matter for hearing on a date within sixty days from completion of the publication, and shall require the applicant to publish notice of the time and place of hearing in the same manner as is required for the publication of notice of the filing of the application. At least thirty business days before the deadline set by the Public Service Commission to file a petition to intervene with regard to the application, the applicant shall serve notice by certified mail to all owners of surface real estate that lie within the preferred corridor of the proposed transmission line. Notice received by a named owner who is the recipient of record of the most recent tax bill that has been issued by the county sheriff's office for a parcel of land at the time of the filing of the application is sufficient notice regarding that parcel for purposes of this subsection.

(d) Within sixty days after the filing of the application, or if hearing is held on the application, within ninety days after final submission on oral argument or brief, the commission may approve the application if it finds that the proposed transmission line:

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(1) Will economically, adequately and reliably contribute to meeting the present and anticipated requirements for electric power of the customers served by the applicant or is necessary and desirable for present and anticipated reliability of service for electric power for its service area or region;

(2) Will be in the best interest of West Virginia customers and its citizens; and

(3) Will result in an acceptable balance between reasonable power needs and reasonable environmental factors.

(e) The commission may impose conditions upon its approval of the application, or modify the applicant's proposal, to achieve an acceptable balance between reasonable power needs and reasonable environmental factors.

(f) The provisions of this section do not apply to the construction of line facilities which will be part of a transmission line for which any right-of-way has been acquired prior to January 1, 1973.

(g) The commission shall prescribe rules it considers proper for the administration and enforcement of the provisions of this section, which rules shall be promulgated in accordance with the applicable provisions of chapter twenty-nine-a of this code.

(h) Notwithstanding any other provision of the law to the contrary, the commission shall determine, in its discretion, which transmission line or lines crossing above the Ohio River must be marked to be made visible to airborne traffic flying in any area where the lines exist, and shall promulgate rules requiring that all public utilities or persons who install or maintain the lines make the necessary markings.

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§24-2-11b. Continuing prudence reviews.

(a) If, in granting a certificate of convenience and necessity for the construction of an electric utility generating plant, a facility to comply with the federal Clean Air Act, as amended, or transmission line, the commission determines that the completion date for such plant or line is more than one year from the date of the order granting the certificate, the commission may require that such construction project or projects be subject to a continuing prudence review pursuant to this section.

(b) If the commission determines that continuation of a certificate subject to a continuing prudence review is not warranted or that the certificate should be amended, it may rescind or modify its authorization for construction.

(c) The commission shall promulgate such rules and regulations as it determines are necessary for the administration of this section. The commission shall specify, either by rule or for a specific certificated project, the frequency of each prudence review, the rate-making treatment to be afforded partially completed projects, and such other terms and conditions as it determines are reasonable.

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§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

(a) Notice of an application for a siting certificate required under the provisions of subdivisions (1), (2), (3), (4), and (5), subsection (d), section one of this article shall be given as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, with the publication area being each county in which all or a portion of the facility is located or to be located. Such notice shall also be published as a Class I legal advertisement in a newspaper published each weekday in Kanawha County and circulated both within and outside of Kanawha County. If no substantial protest is received within thirty days after the publication of notice, the commission may waive formal hearing on the application.

(b) The commission shall render its decision within three hundred days of the date of filing of an application for a siting certificate. If no decision is rendered within such time period, the commission shall issue a siting certificate as applied for.

(c) In deciding whether to issue, refuse to issue, or issue in part and refuse to issue in part a siting certificate, the commission shall appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant. The commission may issue a siting certificate only if it determines that the terms and conditions of any public funding or any agreement relating to the abatement of property taxes do not offend the public interest, and the construction of the facility or material modification of the facility will result in a substantial positive impact on the local economy and local employment. The commission shall issue an order that includes appropriate findings of fact and conclusions of law that address each factor specified in this subsection. All material terms, conditions and limitations applicable to the construction and operation of the proposed facility or material modification of the facility shall be specifically set forth in the commission order.

(d) The commission may require an applicant for a siting certificate to provide such documents and other information as the commission deems necessary for its consideration of the application.

(e) If the commission issues the siting certificate, the commission shall have continuing jurisdiction over the holder of the siting certificate for the limited purposes of: (1) Considering future requests by the holder for modifications of or amendments to the siting certificate; (2) considering and resolving complaints related to the holder’s compliance with the material terms and conditions of the commission order issuing the siting certificate, whether or not the complainant was a party to the case in which the siting certificate was issued, which complaints shall be filed, answered, and resolved in accordance with the commission’s procedures for resolving formal complaints; and (3) enforcing the material terms and conditions of a commission order as provided in subsection (f) of this section.

(f) If the commission determines, in a proceeding instituted on its own motion or on the

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motion of any person, that the holder of a siting certificate has failed without reasonable justification to comply with any of the material terms and conditions of a commission order issuing a siting certificate, modifying or amending a siting certificate, or resolving a complaint related to compliance of the holder with the material terms and conditions of a siting certificate, the commission may enforce the material terms and conditions of the commission order: (1) By requiring the holder to show cause why it should not be required so to comply; (2) through a proceeding seeking the imposition of a civil penalty not to exceed $5,000 or criminal penalties as provided in §24-4-4 of this code, or both such civil and criminal penalties, and the imposition of either or both such civil penalty and criminal penalties shall be subject to the provisions of §24-4-8 of this code; (3) by mandamus or injunction as provided in section two of this article; or (4) prior to the completion of construction of the proposed facility or prior to the completion of construction of a material modification of the facility, by the suspension or revocation of the siting certificate, including the preliminary suspension of the siting certificate under the standards applicable to circuit courts of this state for the issuance of preliminary injunctions.

(g) Any person may seek to compel compliance with the material terms and conditions of a commission order issuing, modifying or amending a siting certificate, or resolving a complaint related to the holder's compliance with the material terms and conditions a siting certificate through appropriate proceedings in any circuit court having jurisdiction.

(h) The material terms and conditions of a commission order issuing, modifying or amending a siting certificate or resolving a complaint related to the holder's compliance with the material terms and conditions of a commission order issuing a siting certificate shall continue to apply to any transferee of the siting certificate or to any transferee of all or a portion of the ownership interest in an electric generating facility for which a siting certificate has been issued. In either case, the transferee or original holder of the siting certificate shall be subject to the continuing jurisdiction of the commission to the extent provided in subsections (e) and (f) of this section.

(i) Any party feeling aggrieved by a final order of the commission under this section may petition for a review thereof by the Supreme Court of Appeals pursuant to section one, article five of this chapter.

(j) The commission may prescribe such rules as may be necessary to carry out the provisions of this section in accordance with the provisions of §24-1-7 of this code. Such rules may include and provide for an application fee to be charged an applicant for a siting certificate, or for a modification of, or amendment to, a siting certificate previously issued, under the provisions of this section, which fee shall be paid into the State Treasury and kept in a special fund designated Public Service Commission fund as established in §24-3-6(a) of this code, to be used for the purposes set forth in that subsection.

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§24-2-11d. Revocation of certificate of public convenience and necessity; acquisition of facilities by capable public utility.

(a) In addition to the powers conferred by section seven, article two of this chapter, upon a finding by the Public Service Commission that a public utility which holds a certificate of public convenience and necessity to provide natural gas or electric service is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owner or owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers, or is not capable of providing economical and efficient utility service, the commission may, after reasonable notice and opportunity for hearing has been afforded to the affected utility and its customers, revoke the certificate of public convenience and necessity held by the public utility. In the case of such revocation, the commission shall concurrently order a capable public utility to acquire the facilities of the revoked public utility and to provide service to the customers of the revoked public utility. The commission shall also allow a capable public utility that acquires the facilities of a revoked public utility to recover all reasonable costs related to such acquisition of facilities and upgrading of service to customers of the revoked public utility, including, but not limited to, additional capital, environmental, operating and maintenance costs.

(b) In making a determination to revoke a certificate of public convenience and necessity, pursuant to subsection (a) of this section, the commission shall consider: (1) The financial, managerial and technical ability of the public utility considered for revocation; (2) the financial, managerial and technical ability of the capable public utility; (3) the expenditures that may be necessary to make improvements to the facilities of the public utility considered for revocation to assure compliance with all applicable statutory and regulatory standards concerning adequacy, efficiency, safety and reasonableness of service; and (4) any other matters which may be relevant.

(c) The price of the acquisition of the facilities of the revoked public utility shall be determined by an agreement between the revoked public utility and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable. If the revoked public utility and the acquiring capable public utility are unable to agree on an acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the revoked public utility by following the procedure prescribed for exercising the power of eminent domain pursuant to article two, chapter fifty-four of this code. The fact that the acquisition price has not been agreed to or finally determined shall not delay the effect of any order issued by the commission pursuant to subsection (a) of this section.

(d) As used in this section, the following words and phrases shall have the following meanings:

(1) "Capable public utility" means a public utility which provides electric or natural gas service and has at least twenty-five thousand customers which provides the same type of

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utility service as the revoked public utility and has the financial, managerial and technical ability to comply with all applicable statutory and regulatory standards concerning adequacy, efficiency, safety and reasonableness of service on a long-term basis;

(2) "Revoked public utility" means a public utility with less than twenty-five thousand customers which has had its certificate of public convenience and necessity revoked by the commission pursuant to subsection (a) of this section.

(e) Any action of the Public Service Commission to revoke the certificate of public convenience and necessity of an electric or natural gas public utility pursuant to the provisions of this section must be initiated on or before March 1, 2008.

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§24-2-12. What acts may not be done without consent of commission; consent in advance of exemption of transactions; when sale, etc., of franchises, mergers, etc., void.

Unless the consent and approval of the Public Service Commission of West Virginia is first obtained: (a) No public utility subject to the provisions of this chapter, except railroads other than street railroads, may enter into any contract with any other utility to operate any line or plant of any other utility subject thereto, nor which will enable such public utility to operate their lines or plants in connection with each other, but this shall not be construed to prevent physical connections between utilities supplying the same service or commodity, for temporary purposes only, upon condition, however, that prompt notice thereof be given to the commission for such action, if any, as it may deem necessary, and thereafter the commission may require such connection to be removed or discontinued; (b) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may purchase, lease, or in any other manner acquire control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business or other property of any other utility; (c) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may assign, transfer, lease, sell, or otherwise dispose of its franchises, licenses, permits, plants, equipment, business or other property or any part thereof; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property which is not necessary or useful, nor will become necessary or useful in the future, in the performance of its duties to the public; (d) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may, by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility; (e) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidence of indebtedness of any other public utility; (f) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may, by any means, direct or indirect, enter into any contract or arrangement for management, construction, engineering, supply or financial services or for the furnishing of any other service, property or thing, with any affiliated corporation, person or interest; (g) no person or corporation, whether or not organized under the laws of this state, may acquire either directly or indirectly a majority of the common stock of any public utility organized and doing business in this state.

The commission may grant its consent in advance or exempt from the requirements of this section all assignments, transfers, leases, sales or other disposition of the whole or any part of the franchises, licenses, permits, plants, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stocks, arrangement, transfer or acquisition of control, or other transaction referred to in this section, upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state.

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The commission shall prescribe such rules and regulations as, in its opinion, are necessary for the reasonable enforcement and administration of this section, including the procedure to be followed, the notice to be given of any hearing hereunder, if it deems a hearing necessary, and after such hearing or in case no hearing is required, the commission shall, if the public will be convenienced thereby, enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein provided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order.

Every assignment, transfer, lease, sale or other disposition of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stock, arrangement, transfer or acquisition of control or other transaction referred to in this section made otherwise than as hereinbefore provided shall be void to the extent that the interests of the public in this state are adversely affected, but this shall not be construed to relieve any utility from any duty required by this section.

WV Legislature

§24-2-12a. Issuance of stock; requirement of applying to commission for orders authorizing issuance; hearing and investigation on application; order; when issuance is void.

The power of public utilities to issue stocks and stock certificates or other evidence of interest or ownership is a special privilege, the right of supervision, regulation, restriction and control of which is vested in the state, and such power shall be exercised as provided by law under such rules and regulations as the commission may prescribe.

No public utility may issue stocks and stock certificates, or other evidence of interest or ownership unless, in addition to the other requirements of law, it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the issue is reasonably required for the purposes specified in the order: Provided, That the issuance of stocks and stock certificates or other evidence of interest or ownership by a corporation which devotes one or more of its divisions to the provision of a public service shall be exempted from the requirements hereof when the gross revenues generated by all such divisions represent less than twenty-five percent of the gross revenues generated by the corporation.

Preferred stock which has no voting rights for the election of directors or which has such voting rights only upon the failure of the corporation to meet its obligation to pay dividends on such stock and, in either case, which preferred stock is not capable of conversion into common equity shall not be subject to the provisions of this section.

To enable the commission to determine whether it will issue such order, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as it deems of assistance. The commission may by its order grant permission for the issue of such stocks or stock certificates or other evidence of interest or ownership in the amount applied for, or in a lesser amount, or refuse such permission, or grant it subject to such conditions as it deems reasonable and necessary. All stock and every stock certificate or other evidence of interest or ownership of a public utility issued without an order of the commission authorizing the issue thereof or not conforming in its provisions to any of the provisions which it is required by the order of authorization to contain is void.

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§24-2-13. Enforcement of federal acts.

In addition to all other powers and duties conferred upon the Public Service Commission herein, the commission shall be charged with the duty of enforcing the provisions of the United States "Federal Railroad Safety Act" and the "Uniform Motor Carrier Identification Act" in this state under the federal requirements contained therein requiring state enforcement of such acts, insofar as the same are not repugnant to the laws of this state or contrary to the rules and regulations of the commission.

The commission shall also perform those duties expressly conferred upon a state regulatory authority by the "National Energy Conservation Policy Act of 1978,""Power Plant and Industrial Fuel Use Act of 1978," and the "Public Utilities Regulatory Policy Act of 1978," insofar as the same are not repugnant to the laws of this state or contrary to the rules and regulations of the commission, unless the Governor, exercising authority reserved to him in said acts, designates another agency to perform such duties, in whole or in part. The term "state regulatory authority" as used in this paragraph shall have the same meaning as such term is defined by said federal acts.

In addition, the commission shall carry out other federal acts, including appropriate portions of the "Natural Gas Policy Act of 1978," for which the Governor designates it as the responsible agency in this state.

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§24-2-14. Reports required to be filed by generating electric utilities; contents; powers of commission to obtain information; availability to the public; certain studies required.

(a) On a monthly basis and within thirty days of the last day of the month for which the information is required, each electric utility shall submit to the commission, on an individual basis for each power plant it owns or operates, a list of each purchase or other acquisition of coal or other fuel at the plant, the tonnage or other amount of each purchase or acquisition, the fuel's cost at the mine or other source, fuel handling costs (including but not limited to costs of loading and unloading such fuel and the cost of storage thereof), fuel transportation costs and the method or mode of such transportation, the name of the person, firm or corporation from which the fuel was purchased or otherwise acquired, the mine or other source of the fuel, the heat value of the fuel expressed in British Thermal Units, the sulfur and ash content of the fuel, the fuel's actual cost per one million British Thermal Units; the terms of purchase of such fuel; whether the fuel was purchased under a long-term or short-term agreement or was a spot market purchase; the terms of purchase of such fuel; the date of execution of any contract pertaining to the purchase of such fuel and the expiration date of such contract; if the fuel is coal, the amount mined underground and on the surface; and whether the source of the fuel was an affiliated or nonaffiliated person, firm or corporation.

In addition, at the same time and on a similar basis, such electric utility shall submit to the commission a list of all persons, firms and corporations in this state with which it or its parent corporation is affiliated and which produce coal or some other fuel which can be used at a power plant. Such list shall state the name of each affiliate, its principal place of business, the nature of the affiliation; each mine or other source of fuel which the affiliate owns or operates, whether within or outside the state; the amount of fuel produced each month at each mine or other source of fuel; the name of each person, firm or corporation to whom the fuel is sold or otherwise disposed of, a breakdown of the amount of fuel sold or otherwise disposed of under long-term or short-term agreements, the final location at which the fuel will actually be used and a breakdown of related handling costs and transportation costs, the heat value of the fuel expressed in British Thermal Units, the sulfur and ash content of the fuel; if the fuel is coal, the amount mined underground and on the surface; and the fuel's cost per one million British Thermal Units.

The commission shall require the electric utility to submit a list of all persons, firms and corporations, within and outside this state, with which it or its parent corporation is affiliated and which provide transportation or are a part of a network providing transportation of fuel to a power plant. It shall obtain and use all available pertinent information on transportation and transportation costs from each such electric utility and its affiliated persons, firms and corporations, including its parent corporation. The commission may require the electric utility or any affiliated person, firm or corporation, including its parent corporation, to submit such other information as it considers necessary or advisable.

(b) If any information required under any provision of this section is located outside this state, the electric utility shall, at the option of the commission, either make the information

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available to the commission at the commission's offices or pay all reasonable and necessary expenses actually incurred by the commission or its designated representative in obtaining the information at the place where such information is maintained. The commission may designate representatives, including comparable officials of the state in which the information is located, to obtain such information on its behalf.

(c) If he makes a written request therefor and pays the actual cost thereof, any member of the general public shall receive a copy of any information obtained by the commission under any provision of this section. Upon request, the Legislature or its designated staff shall receive any such information without delay and at no cost.

(d) The commission is hereby directed from time to time to investigate, study, and if necessary, conduct public hearings with respect to, new systems and policies for the pricing of electrical power to consumers taking into consideration the following: (1) Daily peak load pricing; (2) time of day metering system; (3) the lifeline service rate system; (4) the progressive or inverted rate system; (5) any other rate system designed or which may be designed to save energy and to lower consumer charges and in addition thereto the commission shall investigate and study with respect to the propriety and feasibility of including automatic adjustment clauses or fuel adjustment clauses in any electric utility tariff, rate, joint rate, charge, toll or schedule.

The commission, no later than January 1, 1976, shall prepare its first report with recommendations and shall submit the same to the Governor and both houses of the Legislature, and shall thereafter, from time to time, submit such updates and periodic reports as may be deemed appropriate to keep the Governor and the Legislature fully advised of systems and policies for the pricing of electrical power.

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§24-2-15. Certain Automatic adjustment clauses, price indexes or fuel adjustment.

The commission shall not enforce, originate, continue, establish, change or otherwise authorize or permit an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule as the result of any automatic adjustment clause, fuel supply price index, or fuel adjustment clause. Automatic adjustment clauses, fuel supply contract price indexes, or fuel adjustment clauses that do not create a net increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll, or schedule shall be permitted by the commission. For purposes of this section, a "net increase" in the charge or charges for electric service shall mean that for the calendar year in which the automatic adjustment clause, fuel supply contract price index, or fuel adjustment clause is utilized, the average charge or charges for electric energy are higher than they would have been if the adjustment clause, fuel supply contract price index, or fuel adjustment clause were not utilized. The commission shall encourage the use of permitted automatic adjustment clauses, fuel supply contract price indexes, or fuel adjustment clauses as a means of increasing the generation of coal-fired power plants within the state. The Commission shall promulgate procedural rules governing the utilization of automatic adjustment clauses, fuel supply contract price indexes, and fuel adjustment clauses.

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§24-2-16. Anticompetitive clauses in natural gas contracts prohibited.

(a) Unenforceable clauses: Any provision of any contract for the sale of natural gas, which is or becomes utility natural gas, including any contract in existence on or before the date of enactment of this section, is hereby declared against public policy and unenforceable to the extent that such clause requires the utility to buy more than a reasonable amount of gas at a greater than reasonable price if such provision includes:

(1) A take-or-pay clause which commits the purchaser to take delivery of a minimum volume of natural gas; or

(2) An indefinite price escalator clause which has been defined in the Natural Gas Policy Act, section 105(b)(3)(B), 15 U.S.C.A., section 3315(b)(3)(B), as any provision of any contract:

(i) Which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) Which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties; or

(3) A most favored nation clause which accords to the transaction, presently or in the future, the highest price prevailing in the region for similar transactions.

(b) Commission review: Upon application made by the utility, or upon its own motion, the commission may hold hearings after notice as to the reasonableness of the quantity and price of gas purchased pursuant to such contracts.

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§24-2-17. Registry of electric customers on life support systems; notification prior to scheduled outages; priority of service restoration; limitation of liability; life support defined.

(a) In addition to all other powers and duties conferred upon the commission by this chapter, the commission shall promulgate rules establishing requirements for electric utilities in this state for purposes of accomplishing the following:

(1) Identifying and maintaining a registry of persons that are dependent upon life support systems which require electric service to function, and updating that registry at least twice annually; all new customers shall be notified of the registry and its functions;

(2) Providing adequate notice of planned power outages to each residence in the registry; and

(3) Organizing service restoration so that, as much as practicable given the scope and nature of a power outage, priority is given to residences listed in the registry.

(b) An electric utility which acts in good faith to comply with the rules promulgated in accordance with this section shall not be liable for damages in a civil action for any injuries or deaths resulting from loss of power to a life support system as a result of a power outage.

(c) Nothing in this section shall be construed as requiring an electric utility to provide back-up life support to any customers.

(d) For purposes of this section, the term "life support system" means a kidney dialysis machine, mechanical ventilation device or other medical device, the use of which is prescribed by a licensed physician and upon the request of the patient or his or her patient representative, is certified by such physician in writing to the electric utility as necessary to sustain critical body functions and without which a person is in imminent risk of death.

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§24-2-18. Legislative findings on electric service; jurisdictionof the commission to determine public interest inpermitting retail access to competitive power supply markets; participation of interested parties; development of deregulation plan; legislative approval or rejection of plan; certain reports required or permitted; continuing jurisdiction.

(a) The Legislature hereby finds that:

(1) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and the cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in West Virginia. Therefore, reliable electric service should continue to be available to all customers at reasonable rates and on reasonable terms and conditions;

(2) Many state governments have been studying policies that would create a competitive market for the supply of electricity;

(3) The Public Service Commission is the appropriate agency to determine whether West Virginia should adopt a plan whereby users of electricity in the state would have open access across existing and new utility delivery systems to a competitive market for power supply. An affirmative determination of this question is hereafter designated in this section as a "finding of public interest." If the commission makes a finding of public interest, the commission is also the appropriate agency to develop such a plan for submission to the Legislature for approval, hereafter designated in this section as a "deregulation plan."

(4) Notwithstanding the commission's substantial expertise in the supervision and regulation of the electricity generation industry, the significant public policy issues involved in determining whether to make a finding of public interest and, if necessary, in developing a deregulation plan, require that the commission seek and secure the involvement of a wide spectrum of interests in the state, including but not limited to the following interests, hereafter collectively designated in this section as "all interested parties": Groups representing senior citizens and other persons on fixed incomes, including the American association of retired persons; groups representing low income persons and the working poor, including the West Virginia community action directors association; labor unions, including the West Virginia AFL-CIO, the communications workers of America, the united mine workers of America, the West Virginia state building and construction trades council, the international brotherhood of electrical workers, the independent steel workers, and the united steel workers of America; groups representing residential consumers; groups representing industrial consumers; groups representing commercial consumers; groups representing the electric utility industry and electricity generation concerns; groups representing natural resources industries and associated industries, including the West Virginia coal association and the West Virginia oil and natural gas association; groups representing heating, ventilating and air conditioning contractors, including the West Virginia heating, ventilating, air conditioning and electrical contractors association; groups representing environmental concerns; the electric industry research group of West Virginia

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University; the West Virginia municipal league; and any other person or group which has an interest in these issues.

(5) In order to provide meaningful involvement and participation to all interested parties in determining whether to make a finding of public interest and, if necessary, in developing a deregulation plan, the commission is directed (A) to provide notice to all interested parties of each public meeting to be held by the commission in studying whether to make a finding of public interest and, if necessary, in developing a deregulation plan, including providing written notice by first class mail at least five days prior to the date of each public meeting to each of the groups specifically identified in subdivision (4) of this subsection; (B) to consult with all interested parties attending such public meetings; and (C) to report periodically to the Joint Committee on Government and Finance of the Legislature or any interim study committee appointed by the Joint Committee on Government and Finance on the commission's progress on these issues.

(6) The commission may not submit a deregulation plan to the Legislature for approval unless it submits findings and explains the basis for its findings, after providing adequate notice to all interested parties and other persons and holding a hearing or hearings, that the deregulation plan fairly balances the interests of the electric utilities, their customers, and the state's economy, and that the deregulation plan:

(A) Is in the best interest of West Virginia electric energy consumers;

(B) Results in potential benefits available for all customers, considering that while some customers may be immediately benefited by reductions in electricity costs, depending on their individual needs and choices, no customer should be worse off;

(C) Preserves universal electric service at reasonable rates;

(D) Maintains reasonable standards of safety, availability and reliability of electric service for all customers at all times, including at times of peak load usage of electric service;

(E) Does not result in a substantial negative impact on employment in the state or the state's economy;

(F) Does not impact compliance with environmental rules;

(G) Considers and maintains the public benefits of energy efficiency, renewable resource technology and research and development;

(H) Encourages the continued and expanded use of West Virginia coal, oil, natural gas and other energy resources;

(I) Assures that customers have meaningful choices among electricity providers and that customers are protected from anticompetitive behavior, poor service, and unfair billing, collection and disconnection procedures;

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(J) Is conditioned upon workable competition with a level playing field for all buyers and sellers, and provides for a code of conduct for electric service providers to be established by commission rule;

(K) Assures that existing commitments of utilities arising from past decisions made pursuant to historical regulatory and legal principles are addressed in a fair and reasonable manner, considering the financial integrity of the utilities;

(L) Addresses and maintains adequate protections for low-income consumers and gives meaningful consideration to the development of funding mechanisms to protect senior citizens and other persons on fixed incomes, low income persons and the working poor; and

(M) Ensures that regulated industries do not subsidize nonregulated industries and businesses.

(7) Restructuring of the electric utility industry should reasonably preserve tax revenues for state and local governments and should neither result in a shift of the tax burden to any customer or customer group nor result in a tax system which places any competitor in the market place at a disadvantage.

(b) In addition to its other powers and duties, the commission is authorized to determine, in consultation with all interested parties, whether to make a finding of public interest, and if a finding of public interest is made:

(1) To develop, in consultation with all interested parties, a deregulation plan to allow deregulation of existing utility generation assets and direct access by retail customers to competitive electric power supply markets and which is consistent with the legislative findings set forth in subsection (a) of this section;

(2) To prescribe, by order or rules, procedures and standards for the marketing of power supply in the state; and

(3) To resolve all issues necessary to provide for an orderly transition from the current regulated structure to a system of direct retail access in a fully workable competitive power supply market in a manner that is fair to customers, electric utilities and other affected parties.

(c) If the commission develops a deregulation plan pursuant to subsection (b) of this section, the commission shall submit the deregulation plan to each house of the Legislature during the next succeeding regular session of the Legislature or during any special session of the Legislature occurring after such regular session if legislative approval of the deregulation plan is included in the call therefor. Upon such submission, the Legislature shall, by concurrent resolution, approve or reject the deregulation plan. If the deregulation plan is so rejected, the concurrent resolution shall set forth the reasons for such rejection, and the commission may subsequently modify the deregulation plan to meet the objections of the

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Legislature and may resubmit it as modified to the Legislature pursuant to this subsection. No initial or modified deregulation plan may be adopted or implemented by the commission until the Legislature has approved it pursuant to this subsection.

(d) Upon the development of a deregulation plan and prior to or concurrently with the submission of the deregulation plan to the Legislature pursuant to subsection (c) of this section, the commission shall issue a report to the Governor, the President of the Senate and the Speaker of the House of Delegates on the potential state or local tax consequences which might be created by implementation of the deregulation plan, along with recommendations for statutory changes, if any are necessary, to satisfy the legislative findings specified in subdivisions (6) and (7), subsection (a) of this section.

(e) Upon the development of a deregulation plan and prior to or concurrently with the submission of the deregulation plan to the Legislature pursuant to subsection (c) of this section, any interested party who actively consulted with the commission during the development of the deregulation plan may issue a report to the Governor, the President of the Senate and the Speaker of the House of Delegates setting forth the instances in which such interested party believes the deregulation plan does not satisfy one or more of the legislative findings specified in subdivisions (6) and (7), subsection (a) of this section.

(f) After the adoption and implementation of a deregulation plan approved by the Legislature pursuant to subsection (c) of this section, the commission shall retain authority and jurisdiction to modify or rescind the deregulation plan if, upon application to the commission or upon the commission's own motion, and after notice to all interested parties and a hearing, the commission finds that it is in the public interest to do so, after making a finding that a substantial change in state or federal law or a court decision necessitates the rescission or modification of the deregulation plan to continue to meet the legislative findings in this section or that for any other reason the deregulation plan is not meeting such legislative findings. The implementation of a deregulation plan through an order of the commission pursuant to this section does not amend existing provisions of this code, except as specifically herein modified.

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§24-2-19. Integrated Resource Planning Required.

(a) Not later than March 31, 2015, the Public Service Commission shall issue an order directing any electric utility that does not have an existing requirement approved by the Public Service Commission that provides for the future review of both supply side and demand side resources to develop an initial integrated resource plan to be filed not later than January 1, 2016, in conjunction with other similar deadlines required by other states or entities of the electric utilities. This order may include guidelines for developing an integrated resource plan.

(b)(1) Any electric utility that has an existing requirement approved by the Public Service Commission that provides for the future review of both supply side and demand side resources is exempt from this initial integrated resource plan filing until such time as that existing requirement has been satisfied. Thereafter, such electric utility is required to file an integrated resource plan pursuant to §24-2-19(a) of this code.

(2) Each electric utility that has filed the initial integrated resource plan shall file an updated plan at least every five years after the initial integrated resource plan has been filed. Any electric utility that was exempt from filing an initial integrated resource plan shall file an integrated resource plan within five years of satisfying any existing requirement and at least every five years thereafter. All integrated resource plans shall comply with the provisions of any relevant order of the Public Service Commission establishing guidelines for the format and contents of updated and revised integrated resource plans.

(c) The Public Service Commission shall analyze and review an integrated resource plan. The Public Service Commission may request further information from the utility, as necessary. Nothing in this section affects the obligations of utilities to obtain otherwise applicable commission approvals.

(d) The Commission may consider both supply-side and demand-side resources when developing the requirements for the integrated resource plans. The plan shall compare projected peak demands with current and planned capacity resources in order to develop a portfolio of resources that represents a reasonable balance of cost and risk for the utility and its customers in meeting future demand for the provision of adequate and reliable service to its electric customers as specified by the Public Service Commission.

(e) The commission shall by order, entered no later than July 1, 2025, require all electric utilities operating in the state to supplement their existing integrated resource plans to include a detailed plant upgrade and maintenance plan, improvement compliance schedule, and cost estimate for ensuring the operation of each generating unit through their planned retirement date. The supplemental integrated resource plan shall also include an analysis of the action necessary to extend the life of each generating unit beyond their planned retirement date. Subject to notice and comment from interested parties, the commission may approve the supplemental integrated resource plan without modification or require modification of the supplemental plan before it is approved. The commission shall

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promulgate rules requiring the supplementation of integrated resource plans as required by this provision. The rules shall also provide a procedure for utilities to submit an independent evaluation of any modification required by the commission hereunder or to challenge such required modification.

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§24-2-20. Direct use of natural gas.

(a) The Legislature hereby finds that:

(1) Consumers of natural gas with an annual gas usage of at least 100 million cubic feet are sophisticated users of natural gas capable of choosing their source of natural gas supply;

(2) The Federal Energy Regulatory Commission has approved bypass of local utilities and permitted construction of interstate pipeline facilities to serve end use customers;

(3) The production and use of West Virginia natural gas in West Virginia will provide jobs for West Virginians, generate additional income and property taxes for our governments and our law and regulations should not impede use of West Virginia gas in West Virginia;

(4) The ability of large natural gas users to choose among gas suppliers without regulatory supervision will save economic resources, foster competition in this state, and may induce new businesses to locate in West Virginia and employ West Virginians; and

(5) Commission approval of natural gas service is unnecessary for consumers of natural gas with an annual gas usage of at least 100 million cubic feet.

(b) Notwithstanding any other provision of this code to the contrary, any person, entity, or a facility that has not previously been a natural gas utility customer and has a projected annual natural gas usage in West Virginia of at least 100 million cubic feet annually may receive natural gas service from any person, corporation, limited liability company, or other entity without the permission, consent, review, or input of the commission if the using person or entity notifies the utility providing natural gas service in the area of use of its intent to receive service from a nonutility and certifies to the commission that: (i) The utility has been notified; (ii) its projected annual gas usage will be at least 100 million cubic feet per year; (iii) it desires to receive natural gas from a supplier other than a public utility; (iv) it will receive natural gas produced in West Virginia; and (v) the name and West Virginia tax identification number of the supplier or suppliers are identified in the certification: *Provided*, That the natural gas provider bills the customer and the customer pays for at least 100 million cubic feet during each full calendar year after the utility has been notified, except in the event one or both of the contracting parties experiences a force majeure event or a condition beyond their reasonable control.

(c) Notwithstanding any other provision of this code to the contrary, no person, corporation, limited liability company, or other entity shall be or become a public utility, intrastate pipeline, common carrier, or otherwise subject to the jurisdiction of the commission from or in connection with purchasing, using, selling, giving, buying, providing, transporting to or from, or otherwise supplying or using natural gas pursuant to subsection (b) of this section: *Provided*, That this subsection shall not prevent or impede the commission's safety regulation of natural gas pipelines pursuant to chapter 24B of this code.

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(d) If a utility has an obligation to offer or provide service to an end user who elects its own supply pursuant to this section, the obligation shall terminate upon the commission's receipt of a certification provided by this section.

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§24-2-21. Required notice for power plant closure or sale.

(a) The Legislature hereby finds that:

(1) Coal-fired power plants owned by public electric utilities in West Virginia provide electric utility customers in the state with reliable and affordable energy;

(2) West Virginia's access to coal reserves has provided the citizens of the state with access to an energy resource that is affordable and accessible to coal-fired power plants in West Virginia; and

(3) Matters generally related to homeland security and national defense are of paramount importance to West Virginia and its residents and coal-fired power plants provide optimal protection and resiliency toward state security and uninterrupted power supplies for household, industrial, and military applications.

(b) It is the purpose of the Legislature to:

(1) Require the West Virginia Public Service Commission to consider all economics associated with its actions regarding the in-state plants operated by a public electric utility, including impacts on local communities and surrounding counties, and all impacts on employment; and

(2) Require public electric utilities to provide adequate notice before plant closure or permanently idling.

(c) Before any public electric utility announces the retirement of an electricity-generating unit, the proposed shutdown of an electricity-generating unit, or the proposed sale of and electricity-generating plant to another operator, the public electric utility shall give notice to the West Virginia Office of Homeland Security and Emergency Management, Public Service Commission of West Virginia, and the Legislature's Joint Committee on Government and Finance.

(d) Nothing in this section shall restrict or impede the commission's ability to act on future rate cases or other matters coming before the commission that ultimately affect electrical rates.

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

(a) A public electric utility may not retire, abandon, close, or otherwise permanently render incapable of operating, any electric generating plant or unit without the prior consent and approval of the commission. No funds obtained from (1) the Grid Stabilization and Security Fund set forth in 5B-2N-2a, (2) an environmental control bond issued pursuant to 24-2-4e, (3) a consumer rate relief bond issued pursuant to 24-2-4f, (4) or a utility consumer rate relief bond issued pursuant to 24-2-4h shall be used by a public utility to retire, abandon, close, or otherwise permanently render incapable of operating, any electric generating plant or unit.

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

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§24-2-22. Service outage communication plans.

(a) Each utility shall have an outage communication plan in place to notify customers of any planned and any unexpected disruption of utility services. Such outage communication plan shall, at a minimum, include a methodology for advance notification to all affected customers for planned service disruptions, methods of communication, and notification content requirements concerning the outage, including an estimate of the duration and end of the outage.

(b) Each utility shall file its outage communication plan with the commission.

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