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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

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ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4530**

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

—●—
Passed March 7, 2012

To Take Effect From Passage

HB 4530

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COMMITTEE SUBSTITUTE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

FOR

H. B. 4530

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

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-4f, relating to authorizing the Public Service Commission of West Virginia to consider and authorize the recovery of certain expanded net energy costs by certain electric utilities through the issuance of consumer rate relief bonds; providing definitions; providing application process for financing order authorizing the recovery of certain costs; requiring certain information in application for financing order; providing for issuance of financing order and information contained therein; allowing for disposition of consumer rate relief property; providing for term of financing order; providing for subsequent Public Service Commission proceedings and limits on commission authority; providing for duties of certain electric utilities; providing for application of adjustment mechanism and filing of schedules with commission; providing for nonbypassability of consumer rate relief changes; providing for utility default and successors to certain utilities; providing for security interest in consumer rate relief property and transfer and sale of same; providing for

limitation on taxation of consumer rate relief charges and exemption thereto; providing that consumer rate relief bonds are not debt of governmental entities or a pledge of taxing power; providing consumer rate relief bonds as legal investment; providing for certain pledge of state; providing for governing law; and providing for severability and non-utility status.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4f. Consumer rate relief bonds.

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

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

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

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

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

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

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

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

36 (1) "Adjustment mechanism" means a formula-based
37 mechanism for making adjustments to consumer rate relief
38 charges to correct for over-collection or under-collection of
39 such charges or otherwise to ensure the timely and complete
40 payment and recovery of such charges and financing costs.
41 The adjustment mechanism shall accommodate: (i) Standard
42 adjustments to consumer rate relief charges that are limited to
43 relatively stable conditions of operations; and (ii)
44 nonstandard adjustments to consumer rate relief charges that
45 are necessary to reflect significant changes from historical
46 conditions of operations, such as the loss of significant

47 electrical load. The adjustment mechanism is not to be used
48 as a means to authorize the issuance of consumer rate relief
49 bonds in a principal amount greater, or the payment or
50 recovery of expanded net energy costs in an amount greater,
51 than that which was authorized in the financing order which
52 established the adjustment mechanism.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 (H) Costs related to issuing or servicing consumer rate
137 relief bonds or related to obtaining a financing order,

138 including servicing fees and expenses, trustee fees and
139 expenses, legal fees and expenses, administrative fees,
140 placement fees, underwriting fees, capitalized interest and
141 equity, rating-agency fees and other related costs authorized
142 by the commission in a financing order; and

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

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

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

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

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

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

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

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

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

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

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

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

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

199 (22) “Regulatory sanctions” means, under the
200 circumstances presented, a regulatory or ratemaking sanction
201 or penalty that the commission is authorized to impose
202 pursuant to this chapter or any proceeding for the
203 enforcement of any provision of this chapter or any order of
204 the commission that the commission is authorized to pursue
205 or conduct pursuant to this chapter, including without
206 limitation: (i) The initiation of any proceeding in which the
207 utility is required to show cause why it should not be required
208 to comply with the terms and conditions of a financing order
209 or the requirements of this section; (ii) the imposition of
210 penalties pursuant to article four of this chapter; and (iii) a
211 proceeding by mandamus, injunction or other appropriate
212 proceeding as provided in section two of this article.

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

221 (c) *Application for financing order.*

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

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

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

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

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

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

249 The application shall include all of the following:

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

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

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

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

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

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

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

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

281 (9) Other information required by commission rules.

282 (e) *Issuance of financing order.*

283 (1) Except as otherwise provided in this section,
284 proceedings on an application submitted by an electric utility
285 under subsection (c) of this section are governed by the
286 commission's standard procedural rules. Any party that

287 participated in a proceeding in which the subject expanded
288 net energy costs were authorized or approved automatically
289 has standing to participate in the financing order proceedings
290 and the commission shall determine the standing or lack of
291 standing of any other petitioner for party status.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

376 (9) Because the actual structure and pricing of the
377 consumer rate relief bonds will not be known at the time the
378 financing order is issued, in the case of every securitization
379 approved by the commission, the qualifying utility which
380 intends to cause the issuance of such bonds will provide to

381 the commission and the commission's financial adviser, if
382 any, prior to the issuance of the bonds, an issuance advice
383 letter following the determination of the final terms of the
384 bonds. The issuance advice letter shall indicate the final
385 structure of the consumer rate relief bonds and provide the
386 best available estimate of total ongoing costs. The issuance
387 advice letter should report the initial consumer rate relief
388 charges and other information specific to the consumer rate
389 relief bonds to be issued, as the financing order may require.
390 The qualifying utility may proceed with the issuance of the
391 consumer rate relief bonds unless, prior to noon on the fourth
392 business day after the commission receives the issuance
393 advice letter, the commission issues a disapproval letter
394 directing that the bonds as proposed shall not be issued and
395 the basis for that disapproval. The financing order may
396 provide such additional provisions relating to the issuance
397 advice letter process as the commission deems appropriate.

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

408 (11) The financing order shall also provide for a procedure
409 requiring the qualifying utility to adjust its rates or provide
410 credits in a manner that would return to customers any
411 overpayments resulting from the securitization for the expanded
412 net energy costs in excess of actual prudently incurred costs as
413 subsequently determined by the commission. The adjustment
414 mechanism may not affect or impair the consumer rate relief

415 property or the right to impose, collect, or adjust the consumer
416 rate relief charges under this section.

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

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

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

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

444 (14) In the case of two or more affiliated utilities that
445 have jointly applied for a financing order as provided in

446 subdivision (1), subsection (c) of this section, a financing
447 order may authorize each affiliated utility to impose
448 consumer rate relief charges on its customers and to cause to
449 be issued consumer rate relief bonds and to receive and use
450 the proceeds which it receives with respect thereto as
451 provided in subdivision (1), subsection (j) of this section.

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

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

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

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

469 (3) A transfer, sale, conveyance, assignment, grant of a
470 security interest in or pledge of consumer rate relief property
471 by a qualifying utility to an affiliate of the utility, to the
472 extent previously authorized in a financing order, does not
473 require the prior consent and approval of the commission
474 under section twelve of this article.

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

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

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

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

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

502 (3) A final financing order is irrevocable and the
503 commission may not reduce, impair, postpone or terminate
504 the consumer rate relief charges authorized in the final

505 financing order or impair the property or the collection or
506 recovery of consumer rate relief costs.

507 (h) *Subsequent commission proceeding.*

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

518 (i) *Limits on commission authority.*

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

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

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

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

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

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

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

544 (j) *Duties of qualifying utility.*

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

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

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

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

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

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

591 (2) On the same day a qualifying utility files with the
592 commission its calculation of the adjustment, it shall cause
593 notice of the filing to be given, in the form specified in the
594 financing order, as a Class I legal advertisement in
595 compliance with the provisions of article three, chapter fifty-
596 nine of this code in a newspaper of general circulation
597 published each weekday in Kanawha County. This

598 publication is only required if the calculation of the
599 adjustment filed by the utility with the commission would
600 result in an increase in the amount of the consumer rate relief
601 charges.

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

613 (4) If the commission authorizes a nonstandard
614 adjustment procedure in the financing order, and the
615 qualifying utility files for such an adjustment, the commission
616 shall allow interested parties thirty days from the date the
617 qualifying utility filed the calculation of a nonstandard
618 adjustment to make comments. The commission's review of
619 the total amount required for a nonstandard adjustment shall
620 be limited to the mathematical accuracy of the total
621 adjustment needed to assure the full and timely payment of
622 all debt service costs and related financing costs of the
623 consumer rate relief bonds. The commission may also
624 determine the proper allocation of those costs within and
625 between classes of customers and to special contract
626 customers, the proper design of the consumer rate relief
627 charges and the appropriate application of those charges
628 under the methodology set forth in the formula-based
629 adjustment mechanism approved in the financing order. If the
630 commission determines that a hearing is necessary, the
631 commission shall hold a hearing on the comments within

632 forty days of the date the qualifying utility filed the
633 calculation of the nonstandard adjustment. The nonstandard
634 adjustment, as modified by the commission, if necessary,
635 shall be approved by the commission within sixty days and
636 the commission may shorten the filing and hearing periods
637 above in the financing order to ensure this result. Any
638 procedure for a nonstandard adjustment must be consistent
639 with assuring the full and timely payment of debt service of
640 the consumer rate relief bonds and associated financing costs.

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

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

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

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

657 (m) *Utility default.*

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

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

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

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

684 (n) *Successors to qualifying utility.*

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

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

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

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

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

717 (4) The security interest attaches without any physical
718 delivery of collateral or other act and upon the filing of the
719 financing statement with the Office of the Secretary of State.
720 The lien of the security interest is valid, binding and
721 perfected against all parties having claims of any kind in tort,
722 contract or otherwise against the person granting the security
723 interest, regardless of whether the parties have notice of the
724 lien. Also upon this filing, a transfer of an interest in the
725 consumer rate relief property is perfected against all parties

726 having claims of any kind, including any judicial lien, or
727 other lien creditors or any claims of the seller or creditors of
728 the seller, other than creditors holding a prior security
729 interest, ownership interest or assignment in the property
730 previously perfected in accordance with this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

806 (1) The imposition, billing, collection and receipt of
807 consumer rate relief charges under this section are exempt
808 from state income, sales, franchise, gross receipts, business
809 and occupation and other taxes or similar charges: *Provided,*
810 *however,* That neither this exemption nor any other provision
811 of this subsection shall preclude any municipality from taxing
812 consumer rate relief charges under the authority granted to

813 municipalities pursuant to sections five and five-a of article
814 thirteen in chapter eight of this code.

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

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

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

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

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

846 (s) *Pledge of state.*

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

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

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

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

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

879 (u) *Severability.*

880 If any provision of this section or the application thereof
881 to any person, circumstance or transaction is held by a court
882 of competent jurisdiction to be unconstitutional or invalid, the
883 unconstitutionality or invalidity does not affect the
884 constitutionality or validity of any other provision of this
885 section or its application or validity to any person,
886 circumstance or transaction, including, without limitation, the
887 irrevocability of a financing order issued pursuant to this
888 section, the validity of the issuance of consumer rate relief
889 bonds, the imposition of consumer rate relief charges, the
890 transfer or assignment of consumer rate relief property or the
891 collection and recovery of consumer rate relief charges. To
892 these ends, the Legislature hereby declares that the provisions
893 of this section are intended to be severable and that the
894 Legislature would have enacted this section even if any
895 provision of this section held to be unconstitutional or invalid
896 had not been included in this section.

897 (v) *Non-utility status.*

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman, House Committee

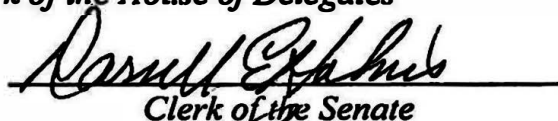

Chairman, Senate Committee

Originating in the House.

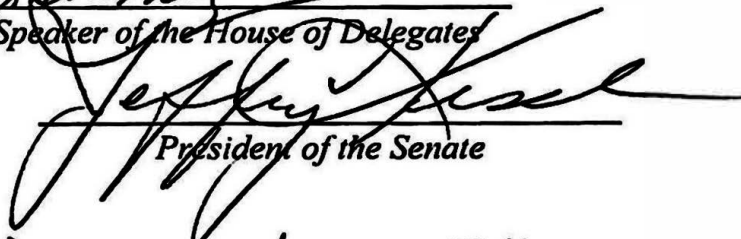
To take effect from passage.

FILED
2012 MAR 15 PM 3:32
OFFICE WEST VIRGINIA
SECRETARY OF STATE


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 15th
day of March, 2012.


Governor

PRESENTED TO THE GOVERNOR

MAR 10 2012

Time 9:24 am