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MEMORANDUM

April 2, 2004

TO: Howard Geller, Robin Hubbard

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #124, concerning energy efficiency and renewable energy standards.

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding your proposed amendment, a copy of which is attached.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in drafting the language of their proposal and to make the public aware of the contents of the proposal. Our first objective is to be sure we understand your intent and objective in proposing the amendment. We hope that the statements and questions in this memorandum will provide a basis for discussion and understanding of the proposal.

Special note

An earlier version of this amendment was the subject of a memorandum dated February 13, 2004. The comments and questions raised in this memorandum will be limited so as not to duplicate comments and questions that were addressed at the earlier hearing on this amendment.

Purposes

The purposes of the new and revised provisions of the proposed amendment appear to be as follows:

1. To limit the scope of coverage of the new provisions to providers of retail electric service that serve over 10,000 customers;
2. To allow a provider to opt out of the requirements of the new provisions upon a majority vote of its retail electric customers;
3. To avoid creating an incentive for the planting and harvesting of plants for use as energy-producing biomass;
4. To allow the use of energy efficiency measures, in addition to renewable energy sources, to meet electric resource standards;
5. To establish a graduated schedule of phased-in energy savings, beginning with 3% in 2007 and increasing for each successive 2-year period until reaching 15% in 2014-2015;
6. To provide economic incentives in the form of profit bonuses and approved rates of return, depending on the net economic benefit to consumers, for utilities that invest in renewables or conservation or both; and
7. To give the public utilities commission until December 31, 2005, to adopt all rules necessary to implement the new provisions enacted in this measure.

Comments and Questions

The form and substance of the new and revised provisions of the proposed amendment raise the following comments and questions:

Technical questions:

1. Section 1 of the measure is titled, "**Legislation declaration of intent.**" Such declarations are typically referred to as "legislative" declarations rather than "legislation" declarations. Do the proponents desire to change "legislation" to "legislative"?
2. Section 2 of the measure states that it adds a new article to title 40, Colorado Revised Statutes. In fact, it appears that the text adds two new sections to the end of the existing article 2 of title 40, which currently comprises sections 40-2-101 through 40-2-123. Would the proponents consider changing the amending clause to make this clear, for example by stating as follows:

"SECTION 1. Article 2 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:"

3. Alternatively, if the measure is intended to stand alone as its own article, may we suggest that it be renumbered article 2.5 and the two new sections be numbered as §§ 40-2.5-101 and 40-2.5-102?
4. To conform to standard drafting practices regarding the form of proposed amendments, would the proponents consider placing the subsection number (1) at the beginning of the introductory portion of § 40-2-124 rather than having it precede both paragraph (a) and paragraph (b) of that subsection, but not the introductory portion?
5. The last word of the first line of § 40-2-124 (2) (b), on page 2, is "ENTERPRIZE". Should this be "ENTERPRISE"?
6. Subsection (7) of proposed § 40-2-124 refers (on page 3) to "RULES CALLED FOR IN THE SECTIONS ABOVE". Since all the provisions calling for rules are contained in previous subsections of the same section, would it be more proper to say "RULES CALLED FOR IN SUBSECTIONS (1) TO (6) OF THIS SECTION"?
7. Similarly, § 40-2-125 (also on page 3) refers to "THIS ELECTRIC RESOURCE STANDARD." The standards are actually created and described in §40-2-124, not in § 40-2-125 itself; therefore the phrase "THIS ... STANDARD" may be ambiguous. Would the proponents consider changing the reference to say instead, "THE ELECTRIC RESOURCE STANDARDS SET FORTH IN SECTION 40-2-124"?

Substantive questions:

1. What is the proponents' definition of "energy efficiency resources?" Would you consider adding a definition of this term?
2. Why is 10,000 customers used as a threshold for a "qualifying utility" for the renewable energy standards? How many retail electric service providers serve more than 10,000 customers in Colorado?
3. What is the difference between an "electric service provider" and a "qualifying utility"? Would definitions of these terms help to clarify the proposal?
4. Do the proponents intend to require the public utilities commission (PUC) to adopt a formal election process for a qualifying utility to opt out of the requirements of this measure? How is a "documented vote" defined? Once a utility has opted out of the requirements, can it vote to opt in at a later date?
5. Proposed § 40-2-124 (first paragraph, on page 1) states: "NO ADDITIONAL REGULATORY AUTHORITY OF THE [PUC] OTHER THAN THAT SPECIFICALLY CONTAINED HEREIN IS PROVIDED OR IMPLIED." Is it the proponents' intent to prohibit the PUC from taking any action related to energy efficiency and renewable energy standards, except as set forth in this measure? For

example, would the PUC be precluded from entering a utility's property to test meters used in an energy efficiency program under § 40-4-109, C.R.S., ascertaining the value of "Saver's Switch" equipment under § 40-4-110, C.R.S., or prescribing a uniform system of accounts for an optional pricing program under § 40-4-11, C.R.S.?

6. Regarding the requirement in proposed § 40-4-124 (7) that the PUC establish "all rules" pertaining to renewable energy standards by December 31, 2005, do the proponents intend to prohibit later amendment of those rules or to preclude the adoption of additional rules after that date?
7. Is there any difference between the terms "eligible electric generation technologies" and "eligible renewable energy resources?" If so, what is the difference?
8. What is meant by the statement in proposed § 40-2-124 (1) (a) that "SUCH ELIGIBLE ELECTRIC GENERATION TECHNOLOGIES MUST BE IN-SERVICE NO EARLIER THAN JANUARY 1, 2005, AND NOT UTILIZED IN ANY OPTIONAL PRICING PROGRAM?" (Emphasis added.) What is an example of an "optional pricing program," and how is it defined? What is the significance of the January 1, 2005, date?
9. What is meant by "electric energy efficiency programs?" What is an example of such a program and how would it work? What is a "Total Resource Cost test"?
10. In the second line of subsection (2)(a), what is meant by "[T]he electric resource standards shall require each qualifying utility to *save*, ... electricity from eligible electric generation technologies...?" (Emphasis added.) Is the term "save" appropriate when speaking of generation, or should it be associated with the efficiency programs mentioned later in the same sentence? Also, for each qualifying utility, are the electric resource standards to require each qualifying utility to save, generate or otherwise acquire electricity "on a competitively bid basis?"
11. What is the meaning of subsection (2)(b), on page 2, regarding electricity generation from renewable energy technologies located in rural enterprise zones of Colorado? Do the proponents intend to apply the extra 25% credit when electricity is *generated* by a facility located in a rural enterprise zone, or when it is *used* by customers located in a rural enterprise zone?
12. Is it the proponents' intent to encourage the use of solar electric technologies among qualifying utilities' customers? Would customers be expected to contribute all or part of the installation cost of solar electric generation equipment located on-site at their homes or businesses?
13. What is the difference between "renewable energy credits" and "energy conservation credits?" How does a regional renewable energy or energy conservation credits market work? How does a system of tradable renewable energy and energy conservation credits work?

14. Under subsection (4)(a), on page 2 (policies for the recovery of costs), can you explain the method by which qualifying utilities would earn an extra profit on their investment of renewable energy technologies? Is the Total Resource Cost Test referred to in this section the same as the one mentioned in subsection (1)(b)?
15. Under subsection (5), on page 3 (annual reports), is it the proponents' intent that the annual reports submitted to the PUC separately state: (1) the amount of eligible renewable energy generated or acquired by the utility submitting the report; (2) the amount of electricity savings resulting from conservation programs implemented by the utility submitting the report; and (3) the costs and benefits of expenditures on renewable energy and energy conservation programs by customers of the utility submitting the report? Is the Total Resource Cost Test referred to in this paragraph the same as the Total Resource Cost Test referred to elsewhere in the proposal?
16. Are energy efficiency and renewable energy two separate issues?