

Be it Enacted by the People of the State of Colorado:

SECTION 1. Legislative declaration of intent:

Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources. Colorado has energy efficiency and renewable energy resources that are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize energy efficiency and renewable energy resources to the maximum practicable extent.

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

ARTICLE 2

Energy Efficiency and Renewable Energy Standards

40-2-124. Energy Efficiency and Renewable Energy Standards. (1) EACH PROVIDER OF RETAIL ELECTRIC SERVICE IN THE STATE OF COLORADO THAT SERVES OVER 40,000 CUSTOMERS SHALL BE CONSIDERED A QUALIFYING UTILITY AND SHALL BE SUBJECT TO THE RULES ESTABLISHED UNDER THIS ARTICLE BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO (COMMISSION). NO ADDITIONAL REGULATORY AUTHORITY OF THE COMMISSION OTHER THAN THAT SPECIFICALLY CONTAINED HEREIN IS PROVIDED OR IMPLIED. IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., ON OR BEFORE JANUARY 1, 2005, THE COMMISSION SHALL INITIATE ONE OR MORE RULEMAKING PROCESSES TO ESTABLISH THE FOLLOWING:

(A) DEFINITIONS OF ELIGIBLE RENEWABLE ENERGY RESOURCES THAT CAN BE USED TO MEET THE STANDARDS. ELIGIBLE RENEWABLE RESOURCES ARE SOLAR, WIND, GEOTHERMAL, BIOMASS, HYDROELECTRICITY WITH A NAMEPLATE RATING OF 10 MEGAWATTS OR LESS, AND RUN-OF-RIVER HYDROELECTRICITY. ELECTRIC GENERATION TECHNOLOGIES THAT USE ELIGIBLE RENEWABLE ENERGY RESOURCES MUST BE IN-SERVICE NO EARLIER THAN JANUARY 1, 2005 TO BE ELIGIBLE TOWARDS COMPLIANCE WITH THIS ARTICLE. THE COMMISSION SHALL DETERMINE, FOLLOWING AN EVIDENTIARY HEARING, THE EXTENT THAT SUCH ELECTRIC GENERATION TECHNOLOGIES UTILIZED IN AN OPTIONAL PRICING PROGRAM MAY BE USED TO COMPLY WITH THIS STANDARD. A FUEL CELL USING HYDROGEN DERIVED FROM THESE ELIGIBLE RESOURCES IS ALSO AN ELIGIBLE ELECTRIC GENERATION TECHNOLOGY. FOSSIL AND NUCLEAR FUELS AND THEIR DERIVATIVES ARE NOT ELIGIBLE RESOURCES. FURTHER, "BIOMASS" SHALL BE DEFINED TO MEAN:

(I) NONTOXIC PLANT MATTER THAT IS THE BYPRODUCT OF AGRICULTURAL CROPS, URBAN WOOD WASTE, MILL RESIDUE, SLASH, OR BRUSH;

(II) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES; OR

(III) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF THE TREATMENT OF WASTEWATER RESIDUALS.

(B) STANDARDS FOR THE DESIGN, PLACEMENT AND MANAGEMENT OF ELECTRIC GENERATION TECHNOLOGIES THAT USE ELIGIBLE RENEWABLE ENERGY RESOURCES TO ENSURE THAT THE ENVIRONMENTAL IMPACTS OF SUCH FACILITIES ARE MINIMIZED.

(C) DEFINITIONS OF ELIGIBLE ELECTRIC ENERGY EFFICIENCY PROGRAMS THAT QUALIFYING UTILITIES CAN USE TO MEET THE STANDARDS. ELIGIBLE ENERGY EFFICIENCY PROGRAMS SHALL INCLUDE BUT NOT BE LIMITED TO INFORMATION, TRAINING, REBATE, INNOVATIVE PRICING, AND TECHNICAL ASSISTANCE PROGRAMS. ELIGIBLE ENERGY EFFICIENCY PROGRAMS SHALL BE COST-EFFECTIVE TO THE QUALIFYING UTILITY AND ITS CUSTOMERS BASED ON USE OF A TOTAL RESOURCE COST TEST.

(2) (A) ELECTRIC RESOURCE STANDARDS FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY RESOURCES. FOR EACH QUALIFYING UTILITY, THE ELECTRIC RESOURCE STANDARDS SHALL REQUIRE EACH QUALIFYING UTILITY TO SAVE, GENERATE OR OTHERWISE ACQUIRE ELECTRICITY FROM ELIGIBLE ELECTRIC GENERATION TECHNOLOGIES AND ELECTRICITY SAVINGS FROM ELIGIBLE ENERGY EFFICIENCY PROGRAMS THAT IN COMBINATION MEET THE FOLLOWING MINIMUM AMOUNTS:

- (I) 3% OF THE QUALIFYING UTILITY'S RETAIL ELECTRICITY SALES FOR THE YEAR 2007;
- (II) 6% OF THE QUALIFYING UTILITY'S RETAIL ELECTRICITY SALES FOR THE YEARS 2008 AND 2009;
- (III) 9% OF THE QUALIFYING UTILITY'S RETAIL ELECTRICITY SALES FOR THE YEARS 2010 AND 2011;
- (IV) 12% OF THE QUALIFYING UTILITY'S RETAIL ELECTRICITY SALES FOR THE YEARS 2012 AND 2013;
- (V) 15% OF THE QUALIFYING UTILITY'S RETAIL ELECTRICITY SALES FOR THE YEARS 2014 AND 2015.

(B) ELECTRICITY GENERATION FROM RENEWABLE ENERGY TECHNOLOGIES LOCATED IN COLORADO PURSUANT TO SECTION 39-30-103, C.R.S., SHALL QUALIFY FOR 25% EXTRA CREDIT IN THAT EACH KILOWATT-HOUR GENERATED BY SUCH TECHNOLOGIES SHALL BE COUNTED AS 1.25 KILOWATT-HOURS FOR THE PURPOSES OF COMPLIANCE WITH THE STANDARDS IN PART (2) (A).

(C) OF THE AMOUNTS IN PART (2) (A), AT LEAST 2.5% SHALL BE DERIVED FROM ELIGIBLE SOLAR ELECTRIC GENERATION TECHNOLOGIES (FOR EXAMPLE, 2.5% OF THE 15%, OR 0.375% OF TOTAL RETAIL ELECTRICITY SALES IN 2014 AND 2015). AT LEAST ONE HALF OF THIS 2.5% SHALL BE DERIVED FROM SOLAR ELECTRIC TECHNOLOGIES LOCATED ON-SITE AT CUSTOMERS' HOMES OR BUSINESS FACILITIES.

(D) TO THE EXTENT THAT THE ABILITY OF A QUALIFYING UTILITY TO ACQUIRE ELIGIBLE ELECTRIC GENERATION IS LIMITED BY A REQUIREMENTS CONTRACT WITH AN ELECTRIC SUPPLIER, THE QUALIFYING UTILITY SHALL ACQUIRE THE MAXIMUM AMOUNT ALLOWED BY THE CONTRACT. FOR ANY SHORTFALLS TO THE AMOUNTS ESTABLISHED BY THE COMMISSION PURSUANT TO (2)(A), THE QUALIFYING UTILITY SHALL ACQUIRE AN EQUIVALENT AMOUNT OF RENEWABLE ENERGY AND ENERGY CONSERVATION CREDITS.

(3) A SYSTEM OF TRADABLE RENEWABLE ENERGY AND ENERGY CONSERVATION CREDITS THAT MAY BE USED BY A QUALIFYING UTILITY TO COMPLY WITH THESE STANDARDS. A QUALIFYING UTILITY MAY USE RENEWABLE ENERGY AND ENERGY CONSERVATION CREDITS FOR MEETING UP TO 50% OF ITS STANDARD. CREDITS MAY BE TRADED AMONG QUALIFYING UTILITIES. ALSO, QUALIFYING UTILITIES MAY BE ALLOWED TO USE CREDITS PURCHASED FROM A REGIONAL RENEWABLE ENERGY OR ENERGY CONSERVATION CREDITS MARKET, IF SUCH A MARKET IS ESTABLISHED IN THE REGION AND THE

COMMISSION DETERMINES THAT THE MARKET IS GOVERNED BY RULES THAT ARE CONSISTENT WITH THE RULES ESTABLISHED FOR THIS IN-STATE STANDARDS PROGRAM.

(4) POLICIES FOR THE RECOVERY OF COSTS INCURRED WITH RESPECT TO THESE STANDARDS FOR QUALIFYING UTILITIES THAT ARE SUBJECT TO RATE REGULATION. SUCH POLICIES SHALL INCLUDE:

(A) ALLOWING QUALIFYING UTILITIES TO EARN AN EXTRA PROFIT ON THEIR INVESTMENT IN RENEWABLE ENERGY TECHNOLOGIES AND ENERGY CONSERVATION PROGRAMS IF THESE INVESTMENTS IN COMBINATION PROVIDE NET ECONOMIC BENEFITS TO CUSTOMERS BASED ON THE TOTAL RESOURCE COST TEST. THE ALLOWED PROFIT IN ANY PARTICULAR YEAR SHALL BE THE QUALIFYING UTILITY'S MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN PLUS A BONUS. THE BONUS SHALL BE LIMITED TO 50% OF THE NET ECONOMIC BENEFIT PROVIDED BY THE INVESTMENT IN RENEWABLE ENERGY TECHNOLOGIES AND ENERGY EFFICIENCY PROGRAMS IN THAT YEAR OR FIVE PERCENT OF THIS INVESTMENT, WHICHEVER IS LOWER. IN DETERMINING NET ECONOMIC BENEFITS, FEDERAL TAX CREDITS FOR RENEWABLE ENERGY OR ENERGY EFFICIENCY MEASURES SHALL NOT BE INCLUDED IN THE ANALYSIS.

(B) ALLOWING QUALIFYING UTILITIES TO EARN THEIR MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN, BUT NO BONUS, ON INVESTMENT IN RENEWABLE ENERGY TECHNOLOGIES AND ENERGY CONSERVATION PROGRAMS IN A PARTICULAR YEAR IF THESE INVESTMENTS IN COMBINATION DO NOT PROVIDE A NET ECONOMIC BENEFIT TO CUSTOMERS.

(C) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A RENEWABLE ENERGY CONTRACT BETWEEN THE QUALIFYING UTILITY AND ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT AND ITS TERMS AND CONDITIONS SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED WITH THE CONTRACT.

(5) RETAIL RATE IMPACT RULE. THE COMMISSION SHALL ANNUALLY ESTABLISH A MAXIMUM RETAIL RATE IMPACT FOR THIS SECTION 40-2-124 OF 50 CENTS (\$0.50) PER MONTH FOR THE AVERAGE RESIDENTIAL CUSTOMER OF A QUALIFYING RETAIL UTILITY. THE RETAIL RATE IMPACT SHALL BE DETERMINED NET OF NEW NON-RENEWABLE ALTERNATIVE SOURCES OF ELECTRICITY SUPPLY REASONABLY AVAILABLE AT THE TIME OF THE DETERMINATION.

(6) ANNUAL REPORTS. EACH QUALIFYING UTILITY SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN BY THE QUALIFYING UTILITY TO COMPLY WITH THE STANDARDS UNDER THIS ARTICLE, THE AMOUNT OF ELIGIBLE RENEWABLE ENERGY GENERATED OR OTHERWISE ACQUIRED, THE AMOUNT OF ELECTRICITY SAVINGS RESULTING FROM CONSERVATION PROGRAMS, AND THE COSTS AND BENEFITS OF EXPENDITURES ON RENEWABLE ENERGY AND ENERGY CONSERVATION PROGRAMS, USING THE TOTAL RESOURCE COST TEST TO DETERMINE COSTS AND BENEFITS. THE REPORT SHALL BE SUBMITTED WITHIN THE TIME PRESCRIBED AND IN A FORMAT APPROVED BY THE COMMISSION.

(7) OTHER RULES NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE. SUCH RULES SHALL INCLUDE:

(A) ENFORCEMENT MECHANISMS THAT ARE NECESSARY AND REASONABLE TO ENSURE THAT EACH QUALIFYING UTILITY THAT IS SUBJECT TO RATE REGULATION COMPLIES WITH ITS STANDARDS UNDER THIS ARTICLE; AND

(B) PROVISIONS GOVERNING THE IMPOSITION OF ADMINISTRATIVE PENALTIES ON QUALIFYING UTILITIES THAT ARE SUBJECT TO RATE REGULATION, ASSESSED AFTER A HEARING HELD BY THE COMMISSION PURSUANT TO SECTION 40-6-109. UNDER NO CIRCUMSTANCES SHALL THE COSTS OF ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO RETAIL CUSTOMERS.

(8) THE COMMISSION SHALL ESTABLISH ALL RULES CALLED FOR IN SUBSECTIONS (1) TO (7) OF THIS SECTION BY DECEMBER 31, 2005.

(9) PROCEDURE FOR EXEMPTION AND INCLUSION – ELECTION.

(A) THE BOARD OF DIRECTORS OF EACH QUALIFYING RETAIL UTILITY SUBJECT TO SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS EXEMPTION FROM SECTION 40-2-124 CRS, TO ITS CONSUMERS ON A ONE METER EQUALS ONE VOTE BASIS. APPROVAL BY A MAJORITY OF THOSE VOTING IN THE ELECTION SHALL BE REQUIRED FOR SUCH EXEMPTION, PROVIDING THAT A MINIMUM OF 50% OF ELIGIBLE CONSUMERS PARTICIPATES IN THE ELECTION.

(B) THE BOARD OF DIRECTORS OF EACH MUNICIPALLY-OWNED ELECTRIC UTILITY OR RURAL ELECTRIC COOPERATIVE NOT SUBJECT TO SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS INCLUSION IN SECTION 40-2-124 CRS, TO ITS CONSUMERS ON A ONE METER EQUALS ONE VOTE BASIS. APPROVAL BY A MAJORITY OF THOSE VOTING IN THE ELECTION SHALL BE REQUIRED FOR SUCH INCLUSION, PROVIDING THAT A MINIMUM OF 50% OF ELIGIBLE CONSUMERS PARTICIPATES IN THE ELECTION.

40-2-125 Eminent Domain Restrictions. A QUALIFYING UTILITY SHALL NOT HAVE THE AUTHORITY TO CONDEMN OR EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE, RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION 38-2-101, C.R.S., TO SITE THE GENERATION FACILITIES OF A RENEWABLE ENERGY SYSTEM USED IN WHOLE OR IN PART TO MEET THH ELECTRIC RESOURCE STANDARDS SET FORTH IN SECTION 40-2-124..

SECTION 3. This article shall be effective on December 1, 2004.