

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

April 20, 2004

**TO:** Robin Hubbard and Susan LeFever

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**SUBJECT:** Proposed initiative measure 2003-2004 #144, 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 April 2, 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 40,000 customers;
2. To specify the procedures by which the customers of a qualifying utility, or of a municipally owned utility or cooperative electric association, may opt out of the requirements of this measure;
3. To include specified types of hydroelectricity among the eligible renewable energy resources that may be counted toward the portfolio standards under this measure;
4. To require the Colorado public utilities commission (PUC) to adopt 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; and
5. To limit the costs of implementation of this measure that may be passed on to consumers of a qualifying retail utility, so that the annual increase in retail rates do not exceed 50 cents per month for the average residential customer.

### **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. The first sentence in paragraph(a), on page 1, refers to "eligible renewable energy resources". The next sentence lists the "eligible renewable resources". Are these phrases intended to be identical, and, if so, should the word "energy" be inserted in the second sentence?
2. The third sentence of that same paragraph refers to "compliance with this article." Considering that this proposal has been revised since the earlier submission and no longer enacts a new article, should the reference to "this article" instead say "this section"?
3. The new language in proposed subsection (5), on page 3 ("Retail rate impact rule") contains a reference to "this section 40-2-124". The style currently followed in publication of the Colorado Revised Statutes would be not to mention the section number within the section itself, but say simply "this section". Do the proponents wish to follow this style?
4. Proposed § 40-2-125 (on page 3) refers to "thh electric resource standards ... ". Should this be "the electric resource standards"?

Substantive questions:

1. Why is 40,000 customers used as a threshold for a "qualifying utility" for the renewable energy standards? How many retail electric service providers serve more than 40,000 customers in Colorado?
2. The list of eligible renewable energy resources now includes "hydroelectricity with a nameplate rating of 10 megawatts or less". Is "nameplate rating" a recognized term of art in the industry, and is it considered a reliable indicator of the actual output of a generating device? What is the purpose of this limitation?
3. The list also includes "run-of-river hydroelectricity". What is the proponents' definition of "run-of-river hydroelectricity", and how does it differ from "hydroelectricity with a nameplate rating of 10 megawatts or less"? Would you consider adding a definition of "run-of-river hydroelectricity"?
4. In regard to the directive in proposed § 40-2-124 (2) (b), at the bottom of page 1, that the PUC establish 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: Are there any such standards currently in existence? If so, what revisions would need to be made to ensure that the environmental impacts of such facilities are minimized?
5. In proposed § 40-2-124 (2) (b), on page 2, the phrase "rural enterprise zones" has been removed but the statutory cross-reference to the enterprise zone statute, § 39-30-103, C.R.S., has not. Is it the proponents' intent that the 25% extra credit specified in that paragraph still be available when energy is generated at facilities that use renewables and are located in enterprise zones, but not elsewhere in the state?
6. Proposed subsection (5), on page 3 ("Retail rate impact rule") specifies a maximum retail rate impact of 50 cents per month for the "average residential customer" of a "qualifying retail utility."
  - a. Is a "qualifying retail utility" the same as a "qualifying utility"? If not, what is the difference?
  - b. How was the figure of 50 cents arrived at? How should it be calculated?
  - c. Will the "average" residential customer of some utilities notice a higher rate impact, or should they be subject to a higher rate impact, than the "average" residential customer of other utilities? Would it be acceptable for a utility to charge some of its residential customers more than an additional 50 cents per month and others less, so long as the system-wide average of that utility did not exceed 50 cents per month?
  - d. Do the proponents intend that the PUC limit the rate impact on business customers?
  - e. How would you respond to the argument that requiring a utility to make specified

investments, but limiting the return on those investments through a rate cap, could be considered confiscatory?

7. The same subsection (5) states that the retail rate impact shall be determined "net of new non-renewable alternative sources" of electricity supply that are "reasonably available" at the time of the determination. In this context:
  - a. Does "new" mean available no earlier than January 1, 2005?
  - b. Does "non-renewable" mean not included in the list of "eligible renewable [energy] resources" in proposed § 40-2-124 (1) (a), on page 1 of the proposal?
  - c. Does "alternative" describe some category of electric supply that is not included within "new", "renewable", or "non-renewable"? If not, could the word "alternative" be deleted to clarify this provision?
  - d. What is "reasonably available"? Is this a matter to be determined by the PUC in rulemaking?
  
8. New subsection (9), on page 3 ("Procedure for exemption and inclusion -- election") allows a "qualifying retail utility" or a "municipally-owned electric utility or rural electric cooperative" to exempt itself from the requirements of this measure on a one meter to one vote basis, "providing that a minimum of 50% of eligible consumers participates in the election".
  - a. Is a "qualifying retail utility" the same as a "qualifying utility"?
  - b. Is a "rural electric cooperative" the same as a "cooperative electric association," governed by article 9.5 of title 40, C.R.S.?
  - c. Does "*providing that* a minimum of 50% of eligible consumers participates" (emphasis added) mean that if less than 50% participate, the election results are disregarded? If so, may the board of directors conduct another round of voting, soliciting the participation of those who did not participate in the first round, until the number of votes necessary for approval is reached?
  - d. What is an "eligible consumer"? Would that include business customers as well as residential customers?
  - e. For purposes of the "one meter, one vote" provision, do you anticipate any problems as a result of situations in which more than one household is served by one meter, for example in the case of an apartment house or trailer park?
  - f. Paragraph (a), pertaining to qualifying (retail) utilities, sets out the election requirements for

exclusion, but does not mention a later election to be re-included in the coverage of this measure. Paragraph (b), pertaining to municipal and cooperative utilities, sets out the election requirements for inclusion, but does not mention a later election to be re-excluded from the coverage of this measure. Do the proponents intend the elections held pursuant to this subsection (9) to be a "once for all" decision, or would you consider adding language to allow the decision to be reversed at some time in the future?