

**Second Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 04-0120.02 Gregg Fraser

SENATE BILL 04-168

SENATE SPONSORSHIP

Phillips,

HOUSE SPONSORSHIP

Spradley,

Senate Committees
Business Affairs & Labor

House Committees
Transportation & Energy

A BILL FOR AN ACT

101 **CONCERNING RURAL RENEWABLE ELECTRIC RESOURCES IN**
102 **COLORADO.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Authorizes the creation of renewable energy cooperatives (cooperatives) to promote electric energy efficiency technologies and to generate, transmit, and sell electricity from renewable resources and technologies at wholesale.

Allows the Colorado agricultural development authority and the Colorado housing and finance authority to issue revenue bonds to construct renewable energy generation facilities and electric transmission lines to facilitate the transmission of electricity generated by

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 19, 2004

SENATE
3rd Reading Unamended
February 18, 2004

SENATE
Amended 2nd Reading
February 17, 2004

cooperatives. Requires the bonds to be repaid from revenues derived from the use of the generation facilities or transmission lines. Provides that the bonds shall not constitute indebtedness of the state and that income derived from the bonds shall be exempt from specified state and local taxes.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that energy is critically important to the overall welfare and
4 development of our society, and its use has a profound impact on the
5 society, economy, and environment of the state. Growth of the state's
6 population and economic base will continue to create a need for new
7 energy resources. The general assembly further finds that Colorado has
8 potential renewable energy resources that are currently underutilized.

9 (2) Therefore, in order to continue to be successful in attracting
10 new businesses and jobs, in promoting development of rural economies,
11 in minimizing water use for electricity generation, in diversifying
12 Colorado's energy resources to reduce the impact of volatile fuel prices,
13 and in improving the natural environment of the state, the general
14 assembly hereby declares that it is in the best interests of the citizens of
15 Colorado to develop and utilize renewable energy resources to the
16 maximum practicable extent.

17 **SECTION 2.** Part 2 of article 56 of title 7, Colorado Revised
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
19 read:

20 **7-56-210. Renewable energy cooperatives.** (1) IT IS THE POLICY
21 OF THIS STATE TO ENCOURAGE LOCAL OWNERSHIP OF RENEWABLE ENERGY
22 GENERATION FACILITIES TO IMPROVE THE FINANCIAL STABILITY OF RURAL
23 COMMUNITIES.

1 (2) SUBJECT TO THE PROVISIONS OF THIS ARTICLE, A RENEWABLE
2 ENERGY COOPERATIVE MAY BE ORGANIZED FOR THE PURPOSE OF
3 PROMOTING ELECTRIC ENERGY EFFICIENCY TECHNOLOGIES TO ITS
4 MEMBERS, GENERATING ELECTRICITY FROM RENEWABLE RESOURCES AND
5 TECHNOLOGIES, AND TRANSMITTING AND SELLING THE ELECTRICITY AT
6 WHOLESALE.

7 (3) FOR PURPOSES OF THIS SECTION, "RENEWABLE RESOURCES OR
8 TECHNOLOGIES" MEANS BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY,
9 SMALL HYDROELECTRICITY, AND WIND ENERGY. HYDROGEN DERIVED
10 FROM BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY, SMALL
11 HYDROELECTRICITY, AND WIND ENERGY IS ALSO CONSIDERED TO BE
12 RENEWABLE ENERGY FOR THE PURPOSES OF THIS ARTICLE. "RENEWABLE
13 RESOURCES OR TECHNOLOGIES" DOES NOT INCLUDE PUMPED STORAGE
14 FACILITIES; HYDROELECTRICITY OTHER THAN SMALL HYDROELECTRICITY;
15 COAL, NATURAL GAS, OIL, PROPANE, OR ANY OTHER FOSSIL FUEL; OR
16 NUCLEAR ENERGY. "RENEWABLE RESOURCES OR TECHNOLOGIES" ALSO
17 DOES NOT INCLUDE HYDROGEN DERIVED FROM PUMPED STORAGE
18 FACILITIES; HYDROELECTRICITY OTHER THAN SMALL HYDROELECTRICITY;
19 COAL, NATURAL GAS, OIL, PROPANE, OR ANY OTHER FOSSIL FUEL; OR
20 NUCLEAR ENERGY.

21 **SECTION 3.** Part 5 of article 56 of title 7, Colorado Revised
22 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
23 read:

24 **7-56-510. Renewable energy cooperatives - powers.** (1) IN
25 ADDITION TO THE POWERS GRANTED IN THIS ARTICLE, RENEWABLE ENERGY
26 COOPERATIVES MAY GENERATE ELECTRICITY FROM RENEWABLE
27 RESOURCES OR TECHNOLOGIES AND TRANSMIT AND SELL ELECTRICITY AT

1 WHOLESALE.

2 (2) NO RENEWABLE ENERGY COOPERATIVE SHALL SELL
3 ELECTRICITY AT RETAIL OR HAVE A CERTIFICATED TERRITORY IN THE
4 STATE EXCEPT AS ALLOWED FOR ITS OWN SERVICE OR PURSUANT TO PUBLIC
5 UTILITY LAW OR OTHER LEGAL AUTHORITY.

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8 **SECTION 4.** Part 1 of article 75 of title 35, Colorado Revised
9 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
10 read:

11 **35-75-111.5. Issuance of bonds to construct renewable energy**
12 **generation facilities and electric transmission lines - renewable energy**
13 **cooperatives.** (1) TO FACILITATE THE TRANSMISSION OF ELECTRICITY
14 GENERATED BY A RENEWABLE ENERGY COOPERATIVE ESTABLISHED
15 PURSUANT TO SECTION 7-56-210, C.R.S., THE AUTHORITY MAY ISSUE
16 REVENUE BONDS IN AMOUNTS SUFFICIENT TO PAY THE FOLLOWING
17 DESCRIBED COSTS OF CONSTRUCTION, UPGRADING, AND ACQUISITION,
18 INCLUDING ANY REQUIRED INTEREST ON THE BONDS DURING
19 CONSTRUCTION, UPGRADING, AND ACQUISITION, PLUS ALL AMOUNTS
20 REQUIRED FOR THE COSTS OF BOND ISSUANCE AND ANY REQUIRED
21 RESERVES ON THE BONDS:

22 (a) CONSTRUCTION OF RENEWABLE ENERGY GENERATION
23 FACILITIES;

24 (b) CONSTRUCTION OR UPGRADING OF ELECTRIC TRANSMISSION
25 LINES AND APPURTENANCES TO BE USED FOR THE TRANSFER OF
26 ELECTRICITY AT ONE HUNDRED FIFTEEN KILOVOLTS OR GREATER;

27 (c) ACQUISITION OF THE RIGHT-OF-WAY ON WHICH RENEWABLE
28 ENERGY GENERATION FACILITIES OR ELECTRIC TRANSMISSION LINES AND

1 APPURTENANCES TO BE USED FOR THE TRANSFER OF ELECTRICITY AT ONE
2 HUNDRED FIFTEEN KILOVOLTS OR GREATER ARE TO BE CONSTRUCTED; AND

3 (d) CONSTRUCTION OR UPGRADING OF ELECTRIC DISTRIBUTION
4 LINES AND APPURTENANCES TO BE USED TO CONNECT RENEWABLE
5 RESOURCES OR TECHNOLOGIES TO ELECTRIC TRANSMISSION LINES AND
6 APPURTENANCES.

7 (2) REVENUE BONDS, AND INTEREST THEREON, ISSUED PURSUANT
8 TO THIS SECTION SHALL BE PAYABLE FROM REVENUES DERIVED FROM USE
9 OF THE RENEWABLE ENERGY GENERATION FACILITIES OR ELECTRIC
10 TRANSMISSION LINES CONSTRUCTED, UPGRADED, OR ACQUIRED THROUGH
11 THE USE OF BOND PROCEEDS.

12 (3) REVENUE BONDS, INCLUDING REFUNDING REVENUE BONDS,
13 ISSUED HEREUNDER SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE
14 STATE, NOR SHALL THEY CONSTITUTE INDEBTEDNESS WITHIN THE MEANING
15 OF ANY CONSTITUTIONAL OR STATUTORY PROVISION LIMITING THE
16 INCURRING OF INDEBTEDNESS.

17 (4) THE PROCEEDS OF BONDS, REVENUES, AND RECEIPTS DERIVED
18 FROM THE CONSTRUCTION, UPGRADED, OR ACQUISITION ACTIVITIES
19 DESCRIBED IN THIS SECTION THAT ARE FINANCED IN WHOLE OR IN PART BY
20 THE BONDS, AND INTEREST AND INCOME EARNED ON THE DEPOSIT AND
21 INVESTMENT OF SUCH PROCEEDS, REVENUES, AND RECEIPTS, SHALL NOT BE
22 INCLUDED IN STATE FISCAL YEAR SPENDING FOR PURPOSES OF SECTION 20
23 OF ARTICLE X OF THE STATE CONSTITUTION AND ARTICLE 77 OF TITLE 24,
24 C.R.S.

25 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS
26 AUTHORIZING THE CONTRACTING BY THE STATE OF A DEBT OR LOAN IN ANY
27 FORM, NOR THE PLEDGING OF THE GENERAL TAXES OF THE STATE.

1 REVENUE BONDS ISSUED PURSUANT TO THIS SECTION SHALL NOT BE
2 CONSTRUED TO BE MORAL OBLIGATION BONDS. THE OWNERS OR HOLDERS
3 OF SUCH BONDS SHALL NOT LOOK TO ANY OTHER REVENUES OF THE STATE
4 FOR THE PAYMENT OF THE BONDS; SHALL NOT LOOK TO ANY LEGAL,
5 EQUITABLE, OR MORAL OBLIGATION ON THE PART OF THE STATE TO PAY
6 ANY PORTION OF THE BONDS; AND SHALL NOT LOOK TO THE STATE
7 GENERAL FUND OR ANY OTHER FUND OF THE STATE FOR THE PAYMENT OF
8 PRINCIPAL OR INTEREST OF SUCH OBLIGATION.

9 (6) REVENUE BONDS, INCLUDING REFUNDING REVENUE BONDS,
10 ISSUED HEREUNDER AND THE INCOME DERIVED THEREFROM SHALL BE
11 EXEMPT FROM ALL STATE, COUNTY, AND MUNICIPAL TAXATION IN THE
12 STATE, EXCEPT COLORADO ESTATE TAXES.

13 **SECTION 5.** Article 3 of title 40, Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW SECTION to read:

15 **40-3-107.5. Interconnection with renewable energy**
16 **cooperatives.** ELECTRIC UTILITIES SHALL INTERCONNECT WITH
17 RENEWABLE ENERGY COOPERATIVES ORGANIZED PURSUANT TO SECTION
18 7-56-210, C.R.S. EVERY RENEWABLE ENERGY COOPERATIVE THAT
19 DESIRES TO INTERCONNECT ITS SYSTEM WITH ANY FACILITIES OWNED OR
20 OPERATED BY A PUBLIC UTILITY SHALL COMPLY WITH APPLICABLE
21 INTERCONNECTION RULES AND WITH REASONABLE STANDARDS AND
22 POLICIES RELATED TO THE RELIABILITY OF THE PUBLIC UTILITY SYSTEM.
23 ALL SUCH STANDARDS AND POLICIES, AS WELL AS ALL COSTS FOR THE
24 INTERCONNECTION SHALL BE FAIR, REASONABLE, AND
25 NONDISCRIMINATORY TO EACH RENEWABLE ENERGY COOPERATIVE.

26 **SECTION 6.** Title 40, Colorado Revised Statutes, is amended
27 BY THE ADDITION OF A NEW ARTICLE to read:

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ARTICLE 3.3

**Electric Resource Standard
for Renewable Energy**

40-3.3-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE
CONTEXT OTHERWISE REQUIRES:

(1) (a) "BIOMASS" MEANS:

(I) ORGANIC MATTER FROM A PLANT OR TREE THAT IS PLANTED FOR
THE PURPOSE OF BEING USED TO PRODUCE ENERGY;

(II) NONTOXIC, LIGNOCELLULOSIC OR HEMICELLULOSIC MATTER
THAT REGENERATES, OR THE USE OF WHICH WILL NOT RESULT IN A
DEPLETION OF RESOURCES, AND THAT IS THE BYPRODUCT OF:

(A) FOREST RESTORATION OR FIRE MITIGATION TRIMMINGS;

(B) MILL RESIDUE;

(C) SLASH; OR

(D) BRUSH;

(III) BIOSOURCE FUELS;

(IV) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES;

(V) URBAN WOOD WASTE;

(VI) INVASIVE SPECIES;

(VII) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF
THE TREATMENT OF WASTEWATER RESIDUALS; AND

(VIII) AQUATIC PLANTS.

(b) "BIOMASS" DOES NOT INCLUDE BLACK LIQUOR, TREATED
WOODS, OR BIOMASS FROM MUNICIPAL SOLID WASTE OTHER THAN
METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF THE
TREATMENT OF WASTEWATER RESIDUALS.

(2) "ELECTRIC RESOURCE STANDARD" OR "STANDARD" MEANS A

1 STANDARD FOR RENEWABLE ENERGY CONTENT ESTABLISHED BY THE
2 COMMISSION PURSUANT TO SECTION 40-3.3-102.

3 (3) "PEAKING POWER RENEWABLE ENERGY SYSTEM" MEANS A
4 RENEWABLE ENERGY SYSTEM THAT DELIVERS ENERGY DURING TIME
5 PERIODS THAT GENERALLY COINCIDE WITH PEAK ELECTRIC UTILITY LOADS.

6 (4) "PROVIDER OF ELECTRIC SERVICE" OR "PROVIDER" MEANS ANY
7 PERSON OR ENTITY THAT IS IN THE BUSINESS OF SELLING ELECTRICITY TO
8 RETAIL CUSTOMERS IN THE STATE. THE TERM DOES NOT INCLUDE
9 MUNICIPAL UTILITIES, RURAL ELECTRIC ASSOCIATIONS, A LANDLORD OF A
10 MOBILE HOME PARK, OR AN OWNER OF A COMPANY TOWN OR SIMILAR
11 FACILITY THAT IS CENTRALLY METERED.

12 (5) "QUALIFIED ENERGY RECOVERY SYSTEM" MEANS A SYSTEM
13 WITH A NAMEPLATE CAPACITY OF NOT MORE THAN FIFTEEN MEGAWATTS
14 THAT CONVERTS THE OTHERWISE LOST ENERGY FROM THE HEAT FROM
15 EXHAUST STACKS OR PIPES USED FOR ENGINES, MANUFACTURING, OR
16 INDUSTRIAL PROCESSES TO GENERATE ELECTRICITY AND THAT DOES NOT
17 USE ADDITIONAL FOSSIL FUEL OR REQUIRE A COMBUSTION PROCESS TO
18 GENERATE THE ELECTRICITY. "QUALIFIED ENERGY RECOVERY SYSTEM"
19 DOES NOT INCLUDE ANY SYSTEM THAT USES ENERGY, LOST OR OTHERWISE,
20 FROM A PROCESS WHOSE PRIMARY PURPOSE IS THE GENERATION OF
21 ELECTRICITY, INCLUDING, WITHOUT LIMITATION, ANY PROCESS INVOLVING
22 ENGINE-DRIVEN GENERATION OR PUMPED HYDROGENERATION.

23 (6) (a) "RENEWABLE ENERGY" MEANS, NOTWITHSTANDING
24 SECTION 40-1-102 (6):

25 (I) BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY, SMALL
26 HYDROELECTRICITY, AND WIND ENERGY; AND

27 (II) HYDROGEN DERIVED FROM A SOURCE LISTED IN

1 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

2 (b) "RENEWABLE ENERGY" DOES NOT INCLUDE:

3 (I) PUMPED STORAGE FACILITIES; HYDROELECTRICITY OTHER THAN

4 SMALL HYDROELECTRICITY; COAL, NATURAL GAS, OIL, PROPANE, OR ANY

5 OTHER FOSSIL FUEL; OR NUCLEAR ENERGY; OR

6 (II) HYDROGEN DERIVED FROM A SOURCE LISTED IN

7 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b).

8 (7) "RENEWABLE ENERGY CONTRACT" MEANS A CONTRACT TO

9 ACQUIRE ELECTRICITY, TOGETHER WITH ANY ASSOCIATED RENEWABLE

10 ENERGY CREDITS, FROM ONE OR MORE RENEWABLE ENERGY SYSTEMS

11 OWNED, OPERATED, OR CONTROLLED BY OTHER PARTIES.

12 (8) "RENEWABLE ENERGY SYSTEM" MEANS A FACILITY OR ENERGY

13 SYSTEM, INCLUDING FUEL CELLS, THAT:

14 (a) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY AND

15 TRANSMITS OR DISTRIBUTES THE ELECTRICITY THAT IT GENERATES TO A

16 PROVIDER OF ELECTRIC SERVICE;

17 (b) GENERATES AND TRANSMITS ELECTRICITY TO A PROVIDER OF

18 ELECTRIC SERVICE USING RENEWABLE ENERGY AND FOSSIL FUELS IN

19 HYBRID COMBINATION TO BALANCE INTERMITTENT AVAILABILITY, OR TO

20 ENHANCE DISPATCHABILITY, IF, ON AN ANNUAL BASIS, THE AMOUNT OF

21 THERMAL ENERGY TRANSMITTED TO THE SYSTEM DERIVED FROM FOSSIL

22 FUELS DOES NOT EXCEED THE AMOUNT OF THERMAL ENERGY TRANSMITTED

23 TO THE SYSTEM DERIVED FROM RENEWABLE ENERGY. FOR THE PURPOSES

24 OF THIS ARTICLE, THE NAMEPLATE RATING OF A FACILITY AS DESCRIBED IN

25 THIS PARAGRAPH (b) SHALL NOT EXCEED THAT OF THE RENEWABLE

26 ENERGY CAPABILITY ALONE.

27 (c) ACTIVELY REDUCES THE CONSUMPTION OF GRID-SUPPLIED

1 ELECTRICITY BY USING RENEWABLE ENERGY AS A RESOURCE.

2 (9) "RETAIL CUSTOMER" MEANS A CUSTOMER LOCATED IN THE
3 STATE OF COLORADO WHO PURCHASES ELECTRICITY FOR THE CUSTOMER'S
4 OWN USE AND NOT FOR RESALE, INCLUDING, WITHOUT LIMITATION:

5 (a) THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR AN
6 AGENCY OR INSTRUMENTALITY OF THE STATE OR POLITICAL SUBDIVISION
7 OF THE STATE WHEN IT PURCHASES ELECTRICITY AT RETAIL; AND

8 (b) A LANDLORD OF A MOBILE HOME PARK OR OWNER OF A
9 COMPANY TOWN OR SIMILAR FACILITY THAT IS CENTRALLY METERED.

10 (10) "SMALL HYDROELECTRICITY" MEANS:

11 (a) A HYDROELECTRIC PROJECT WITH A NAMEPLATE RATING OF
12 TWENTY MEGAWATTS OR LESS IN EXISTENCE ON OR BEFORE THE EFFECTIVE
13 DATE OF THIS ARTICLE; OR

14 (b) UP TO THE FIRST TWENTY MEGAWATTS OF ANY
15 HYDROELECTRIC PROJECT NOT IN EXISTENCE ON OR BEFORE THE EFFECTIVE
16 DATE OF THIS ARTICLE.

17 **40-3.3-102. Electric resource standard - rules.** (1) FOR EACH
18 PROVIDER OF ELECTRIC SERVICE, THE COMMISSION SHALL ESTABLISH AN
19 ELECTRIC RESOURCE STANDARD FOR RENEWABLE ENERGY. THE ELECTRIC
20 RESOURCE STANDARD SHALL REQUIRE EACH PROVIDER TO GENERATE,
21 DISPLACE, OR ACQUIRE ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS
22 OR QUALIFIED ENERGY RECOVERY SYSTEMS IN AMOUNTS PRORATED UPON
23 RETAIL ENERGY SALES WITHIN COLORADO AS REPORTED IN EACH
24 PROVIDER'S FORM 1 SUBMITTED ANNUALLY TO THE FEDERAL ENERGY
25 REGULATORY COMMISSION, THAT TOTAL FOR THE STATE:

26 (a) BY DECEMBER 31, 2006, FIVE HUNDRED MEGAWATTS BASED
27 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION

1 EQUIPMENT;

2 (b) BY DECEMBER 31, 2010, NINE HUNDRED MEGAWATTS BASED
3 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION
4 EQUIPMENT; AND

5 (c) BY DECEMBER 31, 2020, ONE THOUSAND EIGHT HUNDRED
6 MEGAWATTS BASED UPON THE NAMEPLATE RATINGS OF THE RENEWABLE
7 ENERGY GENERATION EQUIPMENT.

8 (2) (a) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A
9 COMPETITIVE ACQUISITION PROCESS WILL GENERALLY BE USED TO
10 ACQUIRE RENEWABLE RESOURCES REQUIRED BY THIS ARTICLE. THIS
11 PROCESS IS INTENDED TO RESULT IN A RENEWABLE RESOURCE PORTFOLIO
12 THAT BALANCES COST, BENEFIT, AND RISK FACTORS.

13 (b) IN A RESOURCE PLANNING PROCESS PRIOR TO THE YEAR 2010,
14 THE COMMISSION SHALL REVIEW THE UTILIZATION OF PEAKING POWER
15 RENEWABLE ENERGY SYSTEMS PURSUANT TO PARAGRAPH (a) OF THIS
16 SUBSECTION (2) FOR EACH PROVIDER, IF ANY SUCH PEAKING POWER
17 RENEWABLE ENERGY SYSTEM IS PROPOSED BY A PARTY TO BE INCLUDED
18 IN THE ENERGY PROVIDER'S RESOURCE PORTFOLIO. IF THE COMMISSION
19 FINDS PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) THAT SUCH
20 SYSTEMS ARE ADVANTAGEOUS, CONSIDERING COSTS, BENEFITS, AND RISKS,
21 IT MAY ORDER THE PROVIDER TO ACQUIRE PEAKING POWER RENEWABLE
22 ENERGY SYSTEMS TOTALING UP TO TEN PERCENT OF ITS 2010 OBLIGATION
23 UNDER THIS ARTICLE.

24 (3) EACH KILOWATT OF RENEWABLE ELECTRIC RESOURCES
25 INSTALLED IN AN AREA OF COLORADO DESIGNATED AS AN ENTERPRISE
26 ZONE PURSUANT TO SECTION 39-30-103, C.R.S., SHALL COUNT AS ONE AND
27 ONE-HALF KILOWATTS TOWARD COMPLIANCE WITH THIS STANDARD.

1 (4) EACH KILOWATT OF RENEWABLE ELECTRIC GENERATING
2 RESOURCES IN COLORADO GENERATED BY A FACILITY, THE NAMEPLATE
3 RATING OF WHICH IS FIVE MEGAWATTS OR SMALLER, THAT UTILIZES
4 NONTOXIC PLANT MATTER THAT IS THE BYPRODUCT OF FIRE MITIGATION
5 TRIMMINGS ON PRIVATE LANDS SHALL COUNT AS TWO KILOWATTS TOWARD
6 COMPLIANCE WITH THIS STANDARD.

7 (5) EACH KILOWATT OF CUSTOMER-SITED SOLAR ELECTRIC
8 RENEWABLE RESOURCES SHALL COUNT AS THREE KILOWATTS TOWARD
9 COMPLIANCE WITH THIS STANDARD.

10 (6) IN APPLYING THE ELECTRIC RESOURCE STANDARD, THE
11 COMMISSION SHALL FULLY CREDIT THE PROVIDER OF ELECTRIC SERVICE
12 WITH THE RENEWABLE ENERGY KILOWATTS THAT THE PROVIDER OF
13 ELECTRIC SERVICE HAS INSTALLED OR PURCHASED NOTWITHSTANDING
14 WHETHER THE COST OF THE RENEWABLE ENERGY HAS BEEN OR WILL BE
15 RECOVERED THROUGH AN OPTIONAL RENEWABLE ENERGY PRICING
16 PROGRAM OR THROUGH STANDARD UTILITY RATES. PROVIDERS ARE
17 AUTHORIZED AND ENCOURAGED TO DEVELOP AND EXPAND OPTIONAL
18 RENEWABLE ENERGY PRICING PROGRAMS OR GREEN TAG PROGRAMS THAT
19 PROMOTE RENEWABLE ENERGY.

20 (7) IF, FOR THE BENEFIT OF ONE OR MORE OF ITS RETAIL
21 CUSTOMERS IN THIS STATE, THE PROVIDER HAS SUBSIDIZED MORE THAN
22 FIFTY PERCENT OF THE COST OF A CUSTOMER-SITED WIND OR SOLAR
23 ENERGY SYSTEM WITH A NAMEPLATE RATING OF TEN KILOWATTS OR LESS
24 THAT REDUCES THE CONSUMPTION OF GRID-SUPPLIED ELECTRICITY, THE
25 TOTAL INSTALLED NAMEPLATE CAPACITY OF THE WIND OR SOLAR ENERGY
26 SYSTEM SHALL BE DEEMED TO PRODUCE ENERGY THAT THE PROVIDER
27 GENERATED OR ACQUIRED FROM A RENEWABLE ENERGY SYSTEM.

1 (8) FOR THE PURPOSES OF COMPLYING WITH ITS ELECTRIC
2 RESOURCE STANDARD, PROVIDERS OF ELECTRIC SERVICE MAY FILE WITH
3 THE COMMISSION FOR ITS APPROVAL A STANDARD FORM OF CONTRACT FOR
4 CUSTOMER-SITED RENEWABLE ENERGY SYSTEMS WITH NAMEPLATE
5 RATINGS GREATER THAN TEN KILOWATTS AND NOT GREATER THAN FIVE
6 MEGAWATTS.

7 (9) ELECTRIC ENERGY PRODUCED BY A PROVIDER OF ELECTRIC
8 SERVICE THROUGH CO-FIRING RENEWABLE FUELS DESCRIBED IN SECTION
9 40-3.3-101 (1) AND (6) (a) (II) SHALL COUNT TOWARD COMPLIANCE WITH
10 THIS STANDARD PRORATED ON THE HEAT CONTENT OF THE RENEWABLE
11 FUELS AS A PERCENTAGE OF ALL FUELS USED TO PRODUCE SUCH ENERGY.
12 ANY FACILITY UTILIZED FOR CO-FIRING RENEWABLE FUELS SHALL MEET
13 CURRENT EMISSION REQUIREMENTS.

14 (10) THE COMMISSION MAY PROMULGATE RULES TO ESTABLISH A
15 SYSTEM OF RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A
16 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD. SUCH
17 RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE
18 24, C.R.S.

19 (11) IF A PROVIDER BELIEVES IT WILL BE UNABLE TO COMPLY WITH
20 ITS ELECTRIC RESOURCE STANDARD REQUIREMENTS THROUGH THE
21 GENERATION OF ELECTRICITY FROM ITS OWN RENEWABLE ENERGY
22 SYSTEMS, THROUGH RENEWABLE ENERGY SUPPLY CONTRACTS, THROUGH
23 QUALIFIED ENERGY RECOVERY SYSTEMS, OR, IF APPLICABLE, THROUGH THE
24 SALE AND PURCHASE OF RENEWABLE ENERGY CREDITS, THE PROVIDER
25 SHALL SO NOTIFY THE COMMISSION. IF THE COMMISSION DETERMINES
26 THERE IS NOT OR WILL NOT BE A SUFFICIENT SUPPLY OF ELIGIBLE
27 ELECTRICITY AVAILABLE TO THE PROVIDER, OR THAT THE PROVIDER WILL

1 NOT BE ABLE TO OBTAIN OR BUILD, AT REASONABLE COST, THE
2 TRANSMISSION NEEDED TO DELIVER THE ELIGIBLE ENERGY TO THE
3 PROVIDER'S SYSTEM, THE COMMISSION MAY EXEMPT THE PROVIDER FROM
4 THE REMAINING REQUIREMENTS OF ITS ELECTRIC RESOURCE STANDARD OR
5 FROM ANY APPROPRIATE PORTION THEREOF, AS DETERMINED BY THE
6 COMMISSION. IF THE COMMISSION REASONABLY DETERMINES, BASED UPON
7 AN EVIDENTIARY HEARING, INCLUDING A REVIEW OF MITIGATION
8 MEASURES, THAT ADDING RENEWABLE RESOURCES PURSUANT TO THE
9 STANDARD IN SECTION 40-3.3-102 (1) COMPROMISES SYSTEM RELIABILITY
10 OR CONFLICTS WITH RELIABILITY STANDARDS OF THE NORTH AMERICAN
11 ELECTRIC RELIABILITY COUNCIL, THE WESTERN ELECTRIC COORDINATING
12 COUNCIL, OR THE FEDERAL ENERGY REGULATORY COMMISSION, THE
13 COMMISSION SHALL DEFER THAT PORTION OF THE RENEWABLE ENERGY
14 RESOURCES THAT CAUSES THE RELIABILITY PROBLEM UNTIL SUCH TIME
15 THAT THE PROBLEM IS RESOLVED.

16 (12) A PROVIDER SHALL NOT HAVE THE AUTHORITY TO CONDEMN
17 OR EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,
18 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION
19 38-2-101, C.R.S., TO SITE THE GENERATION FACILITIES OF A RENEWABLE
20 ENERGY SYSTEM USED IN WHOLE OR IN PART TO MEET AN ELECTRIC
21 RESOURCE STANDARD ESTABLISHED PURSUANT TO THIS ARTICLE. A
22 PROVIDER SHALL CONTINUE TO HAVE THE AUTHORITY TO CONDEMN OR
23 EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,
24 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION
25 38-2-101, C.R.S., TO TRANSMIT ENERGY USED IN WHOLE OR IN PART TO
26 MEET AN ELECTRIC RESOURCE STANDARD ESTABLISHED PURSUANT TO THIS
27 ARTICLE.

1 (13) ELIGIBLE CAPACITY USED TO MEET THE STANDARD SHALL
2 EITHER BE PRODUCED IN COLORADO OR WITHIN FIFTEEN MILES OF
3 COLORADO'S BORDERS. RESOURCES THAT, BEFORE THE EFFECTIVE DATE
4 OF THIS ACT, ARE OWNED BY, UNDER CONTRACT TO, OR THE SUBJECT OF
5 NEGOTIATIONS WITH, A PROVIDER OR AVAILABLE TO A PROVIDER BUT FOR
6 A LACK OF TRANSMISSION CAPACITY SHALL NOT BE SUBJECT TO THIS
7 SUBSECTION (13).

8 (14) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PREVENT
9 A PROVIDER OF ELECTRIC SERVICE FROM USING THE SAME RENEWABLE
10 ENERGY RESOURCES TO MEET THE REQUIREMENTS OF THIS ARTICLE AND
11 ANY EXISTING OR FUTURE FEDERAL ELECTRIC RESOURCE STANDARD FOR
12 RENEWABLE ENERGY.

13 (15) (a) A PROVIDER OF ELECTRIC SERVICE SHALL PLAN FOR THE
14 ACQUISITION OF RENEWABLE RESOURCES SUFFICIENT TO MEET THE
15 REQUIREMENTS OF THIS ARTICLE OVER THE PLANNING PERIOD OF ITS
16 LEAST-COST RESOURCE PLAN OR ANY SUCCESSOR PLAN. IN CONSIDERING
17 SUCH PLAN, THE COMMISSION SHALL CONSIDER THE STATUS OF FEDERAL
18 SUBSIDIES FOR RENEWABLE ENERGY. HOWEVER, IF THE LEAST COST PLAN
19 APPROVED BY THE COMMISSION OR ANY SUCCESSOR PLAN INDICATES THAT
20 ADDITIONAL CAPACITY, REGARDLESS OF SOURCE, IS NOT NEEDED FOR
21 CERTAIN YEARS DURING THE PLANNING PERIOD, THE COMMISSION MAY
22 AUTHORIZE THE PROVIDER OF ELECTRIC SERVICE TO DEFER THE
23 ACQUISITION OF RENEWABLE RESOURCES REQUIRED UNDER THIS ARTICLE
24 FOR THOSE YEARS UNTIL SUCH TIME AS ADDITIONAL CAPACITY IS NEEDED.

25 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (15),
26 IF THE COMMISSION DETERMINES THAT THE COST OF ELECTRICITY,
27 INCLUDING ANCILLARY COSTS, FROM PROPOSED OR EXISTING RENEWABLE

1 RESOURCE FACILITIES IS COST EFFECTIVE COMPARED TO THE COST OF
2 OPERATING EXISTING GENERATION RESOURCES OR PURCHASING ENERGY
3 UNDER EXISTING POWER SUPPLY CONTRACTS, THE COMMISSION MAY
4 ORDER THE ACQUISITION OF SUCH RESOURCES.

5 (16) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE
6 BUT SUBJECT TO OTHER APPLICABLE REQUIREMENTS OF THIS TITLE, IF THE
7 COMMISSION DETERMINES, FOLLOWING AN EVIDENTIARY HEARING, THAT
8 THE TOTAL COST OF ELECTRICITY OF A PORTFOLIO OF NEW RENEWABLE
9 RESOURCES EXCEEDS THE TOTAL COST OF ANY OTHER PORTFOLIO OF NEW
10 ELECTRIC RESOURCES REASONABLY AVAILABLE TO THE PROVIDER OF
11 ELECTRIC SERVICE AS PART OF ITS LEAST-COST RESOURCE PLAN, THE
12 COMMISSION SHALL REQUIRE THE PROVIDER TO DEFER THE ACQUISITION OF
13 THE RENEWABLE ELECTRIC RESOURCE UNTIL SUCH TIME AS THE TOTAL
14 COST DOES NOT EXCEED THAT OF OTHER AVAILABLE RESOURCES. FOR
15 PURPOSES OF THIS SUBSECTION (16), THE TOTAL COST OF ELECTRICITY
16 SHALL INCLUDE ALL REASONABLY KNOWN AND QUANTIFIABLE COSTS OVER
17 THE RESOURCE PLANNING HORIZON, INCLUDING ANCILLARY SERVICE
18 COSTS, THE COSTS OF LEGALLY REQUIRED AVAILABLE CONTROL
19 TECHNOLOGY FOR NEW RESOURCES, AND THE COSTS ASSOCIATED WITH
20 TRANSMISSION.

21 **40-3.3-103. Renewable energy cost recovery - acquisition plan.**

22 (1) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A
23 RENEWABLE ENERGY CONTRACT OR QUALIFIED ENERGY RECOVERY
24 SYSTEM CONTRACT BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND
25 ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT OR QUALIFIED
26 ENERGY RECOVERY SYSTEM CONTRACT AND ITS TERMS AND CONDITIONS
27 SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE COMMISSION

1 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER ALL JUST AND
2 REASONABLE COSTS ASSOCIATED WITH THE CONTRACT. IF A PROVIDER OF
3 ELECTRIC SERVICE SUBMITS A FORM OF CONTRACT TO THE COMMISSION
4 FOR ITS APPROVAL, AND THE COMMISSION APPROVES THE TERMS AND
5 CONDITIONS OF THE FORM OF CONTRACT, ANY CONTRACT ENTERED INTO
6 BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND ANOTHER PARTY THAT
7 IS MATERIALLY CONSISTENT WITH THE TERMS AND CONDITIONS OF THE
8 APPROVED FORM OF CONTRACT SHALL BE DEEMED TO BE A PRUDENT
9 INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES
10 SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED
11 WITH THE CONTRACT. THE PROVIDER OF ELECTRIC SERVICE SHALL BE
12 ENTITLED TO FULL RECOVERY OF ITS PRUDENTLY INCURRED COSTS OF
13 CONSTRUCTING AND OPERATING ITS OWN RENEWABLE ENERGY SYSTEMS
14 OR QUALIFIED ENERGY RECOVERY SYSTEMS AS DETERMINED BY THE
15 COMMISSION.

16 (2) EACH PROVIDER SHALL FILE WITH THE COMMISSION FOR ITS
17 APPROVAL THE PROVIDER'S PLAN FOR ACQUIRING THE RESOURCES
18 NECESSARY TO MEET THE REQUIREMENTS OF THIS ARTICLE. THE PROVIDER
19 SHALL UPDATE ITS PLAN AS NECESSARY. THE PLAN SHALL SPECIFY THE
20 PORTION OF THE RENEWABLE RESOURCE OBLIGATION UNDER THIS ARTICLE
21 THAT THE PROVIDER INTENDS TO ACQUIRE THROUGH:

- 22 (a) A STAND-ALONE RENEWABLE ENERGY TARIFF;
- 23 (b) A COMPETITIVE ACQUISITION PROCESS; AND
- 24 (c) AN ALTERNATIVE METHOD OF ACQUISITION, SUCH AS BY
25 SELF-BUILDING OR THE USE OF RENEWABLE ENERGY CREDITS.

26 (3) A PROVIDER OF ELECTRIC SERVICE THAT IS ALSO A WHOLESALE
27 ELECTRICITY SUPPLIER SHALL NOT RECOVER COSTS OF RENEWABLE

1 RESOURCES PURSUANT TO THIS ARTICLE, EITHER IN PART OR IN TOTAL,
2 FROM ANY WHOLESALE CUSTOMER UNLESS THE WHOLESALE CUSTOMER
3 AGREES, BY CONTRACT, TO ACCEPT RESPONSIBILITY FOR THE RENEWABLE
4 RESOURCE COSTS. A PROVIDER OF ELECTRIC SERVICE SHALL RECOVER
5 FROM RETAIL CUSTOMERS THE COSTS NOT RECOVERED BY CONTRACT FROM
6 WHOLESALE CUSTOMERS. EACH PROVIDER OF ELECTRIC SERVICE SHALL
7 SUBMIT TO THE COMMISSION, IN AN INFORMATIONAL FILING, EACH
8 WHOLESALE CONTRACT THAT INCLUDES RENEWABLE RESOURCE
9 PROVISIONS MADE BY A WHOLESALE CUSTOMER WITH THE PROVIDER OF
10 ELECTRIC SERVICE, AND EVERY AMENDMENT TO SUCH CONTRACT.

11 **40-3.3-104. Annual report.** (1) EACH PROVIDER OF ELECTRIC
12 SERVICE SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT
13 PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN BY THE
14 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD.

15 (2) EACH PROVIDER SHALL SUBMIT THE ANNUAL REPORT TO THE
16 COMMISSION AFTER THE END OF EACH CALENDAR YEAR AND WITHIN THE
17 TIME PRESCRIBED BY THE COMMISSION. THE REPORT SHALL BE SUBMITTED
18 IN A FORMAT APPROVED BY THE COMMISSION.

19 (3) EACH ANNUAL REPORT SHALL INCLUDE CLEAR AND CONCISE
20 INFORMATION THAT SETS FORTH:

21 (a) THE AMOUNT OF ELECTRICITY THAT THE PROVIDER GENERATED
22 OR ACQUIRED FROM RENEWABLE ENERGY SYSTEMS OR QUALIFIED ENERGY
23 RECOVERY SYSTEMS DURING THE REPORTING PERIOD AND, IF APPLICABLE,
24 THE AMOUNT OF RENEWABLE ENERGY CREDITS THAT THE PROVIDER
25 ACQUIRED, SOLD, OR TRADED DURING THE REPORTING PERIOD TO COMPLY
26 WITH ITS ELECTRIC RESOURCE STANDARD;

27 (b) THE CAPACITY OF EACH RENEWABLE ENERGY SYSTEM OR

1 QUALIFIED ENERGY RECOVERY SYSTEM OWNED, OPERATED, OR
2 CONTROLLED BY THE PROVIDER, THE TOTAL AMOUNT OF ELECTRICITY
3 GENERATED BY EACH SUCH SYSTEM DURING THE REPORTING PERIOD, AND
4 THE PERCENTAGE OF THAT TOTAL AMOUNT THAT WAS GENERATED
5 DIRECTLY FROM RENEWABLE ENERGY;

6 (c) WHETHER, DURING THE REPORTING PERIOD, THE PROVIDER
7 BEGAN CONSTRUCTION ON, ACQUIRED, OR PLACED INTO OPERATION ANY
8 RENEWABLE ENERGY SYSTEM OR QUALIFIED ENERGY RECOVERY SYSTEM
9 AND, IF SO, THE DATE OF ANY SUCH EVENT;

10 (d) INFORMATION ON THE COST AND TIMING OF TRANSMISSION
11 FACILITIES AND SERVICES NECESSARY FOR THE UTILIZATION OF ENERGY
12 FROM RENEWABLE ENERGY FACILITIES THAT ARE UTILIZED TO COMPLY
13 WITH THE STANDARD; AND

14 (e) ANY OTHER INFORMATION THAT THE COMMISSION BY RULE
15 DEEMS RELEVANT.

16 **40-3.3-105. Rules - fines - renewable energy account.** (1) THE
17 COMMISSION SHALL PROMULGATE RULES NECESSARY FOR THE
18 ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE. THE RULES
19 PROMULGATED BY THE COMMISSION SHALL INCLUDE:

20 (a) ENFORCEMENT MECHANISMS THAT ARE NECESSARY AND
21 REASONABLE TO ENSURE THAT EACH PROVIDER OF ELECTRIC SERVICE
22 COMPLIES WITH ITS ELECTRIC RESOURCE STANDARD; AND

23 (b) PROVISIONS GOVERNING THE IMPOSITION OF ADMINISTRATIVE
24 PENALTIES ASSESSED AFTER A HEARING HELD BY THE COMMISSION
25 PURSUANT TO SECTION 40-6-109. THE PROVIDER SHALL NOT BE PENALIZED
26 IF THE PROVIDER FAILS TO COMPLY WITH THE ELECTRIC RESOURCE
27 STANDARD DUE TO THE NONPERFORMANCE OF A PARTY OTHER THAN THE

1 PROVIDER UNDER A RENEWABLE ENERGY CONTRACT, AND THE PROVIDER
2 EXERCISES REASONABLE DILIGENCE TO COME INTO COMPLIANCE WITH THE
3 ELECTRIC RESOURCE STANDARD. UNDER NO CIRCUMSTANCES SHALL THE
4 COSTS OF ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO
5 RETAIL CUSTOMERS.

6 (c) PROVISIONS REQUIRING THAT MONEYS COLLECTED FOR
7 PENALTIES THAT RESULT FROM NONCOMPLIANCE WITH THE STANDARD
8 SHALL BE:

9 (I) TRANSMITTED TO THE STATE TREASURER, WHO SHALL DEPOSIT
10 THEM IN A SPECIAL RENEWABLE ENERGY ACCOUNT IN THE PUBLIC UTILITIES
11 COMMISSION FIXED UTILITY FUND CREATED IN SECTION 40-2-114, WHICH
12 SPECIAL ACCOUNT IS HEREBY CREATED;

13 (II) USED TO THE FULLEST EXTENT PRACTICABLE TO ENCOURAGE
14 THE DEVELOPMENT OF ADDITIONAL RENEWABLE ENERGY FACILITIES AS
15 DETERMINED BY THE COMMISSION.

16 (2) ANY RULES PROMULGATED PURSUANT TO THIS ARTICLE SHALL
17 BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

18 **SECTION 7. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.