

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 7, 2004
Date

Committee on Transportation & Energy.

After consideration on the merits, the Committee recommends the following:

SB04-168 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 2, after line 1, insert the following:

2 **"SECTION 1. Legislative declaration.** (1) The general
3 assembly finds that energy is critically important to the overall welfare
4 and 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 Renumber succeeding sections accordingly.

1 Page 6, after line 10, insert the following:

2 "SECTION 6. Title 40, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 3.3**
5 **Electric Resource Standard**
6 **for Renewable Energy**

7 **40-3.3-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) (a) "BIOMASS" MEANS:

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

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

15 (A) FOREST RESTORATION OR FIRE MITIGATION TRIMMINGS;

16 (B) MILL RESIDUE;

17 (C) SLASH; OR

18 (D) BRUSH;

19 (III) BIOSOURCE FUELS;

20 (IV) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES;

21 (V) URBAN WOOD WASTE;

22 (VI) INVASIVE SPECIES;

23 (VII) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF

1 THE TREATMENT OF WASTEWATER RESIDUALS; AND

2 (VIII) AQUATIC PLANTS.

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

7 (2) "ELECTRIC RESOURCE STANDARD" OR "STANDARD" MEANS A
8 STANDARD FOR RENEWABLE ENERGY CONTENT ESTABLISHED BY THE
9 COMMISSION PURSUANT TO SECTION 40-3.3-102.

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

13 (4) "PROVIDER OF ELECTRIC SERVICE" OR "PROVIDER" MEANS ANY
14 PERSON OR ENTITY THAT IS IN THE BUSINESS OF SELLING ELECTRICITY TO
15 RETAIL CUSTOMERS IN THE STATE. THE TERM DOES NOT INCLUDE
16 MUNICIPAL UTILITIES, RURAL ELECTRIC ASSOCIATIONS, A LANDLORD OF A
17 MOBILE HOME PARK, OR AN OWNER OF A COMPANY TOWN OR SIMILAR
18 FACILITY THAT IS CENTRALLY METERED.

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

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

1 (I) BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY, SMALL
2 HYDROELECTRICITY, AND WIND ENERGY; AND

3 (II) HYDROGEN DERIVED FROM A SOURCE LISTED IN
4 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

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

6 (I) PUMPED STORAGE FACILITIES; HYDROELECTRICITY OTHER THAN
7 SMALL HYDROELECTRICITY; COAL, NATURAL GAS, OIL, PROPANE, OR ANY
8 OTHER FOSSIL FUEL; OR NUCLEAR ENERGY; OR

9 (II) HYDROGEN DERIVED FROM A SOURCE LISTED IN
10 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b).

11 (7) "RENEWABLE ENERGY CONTRACT" MEANS A CONTRACT TO
12 ACQUIRE ELECTRICITY, TOGETHER WITH ANY ASSOCIATED RENEWABLE
13 ENERGY CREDITS, FROM ONE OR MORE RENEWABLE ENERGY SYSTEMS
14 OWNED, OPERATED, OR CONTROLLED BY OTHER PARTIES.

15 (8) "RENEWABLE ENERGY SYSTEM" MEANS A FACILITY OR ENERGY
16 SYSTEM, INCLUDING FUEL CELLS, THAT:

17 (a) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY AND
18 TRANSMITS OR DISTRIBUTES THE ELECTRICITY THAT IT GENERATES TO A
19 PROVIDER OF ELECTRIC SERVICE;

20 (b) GENERATES AND TRANSMITS ELECTRICITY TO A PROVIDER OF
21 ELECTRIC SERVICE USING RENEWABLE ENERGY AND FOSSIL FUELS IN
22 HYBRID COMBINATION TO BALANCE INTERMITTENT AVAILABILITY, OR TO
23 ENHANCE DISPATCHABILITY, IF, ON AN ANNUAL BASIS, THE AMOUNT OF
24 THERMAL ENERGY TRANSMITTED TO THE SYSTEM DERIVED FROM FOSSIL
25 FUELS DOES NOT EXCEED THE AMOUNT OF THERMAL ENERGY TRANSMITTED
26 TO THE SYSTEM DERIVED FROM RENEWABLE ENERGY. FOR THE PURPOSES
27 OF THIS ARTICLE, THE NAMEPLATE RATING OF A FACILITY AS DESCRIBED IN
28 THIS PARAGRAPH (b) SHALL NOT EXCEED THAT OF THE RENEWABLE
29 ENERGY CAPABILITY ALONE.

1 (c) ACTIVELY REDUCES THE CONSUMPTION OF GRID-SUPPLIED
2 ELECTRICITY BY USING RENEWABLE ENERGY AS A RESOURCE.

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

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

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

11 (10) "SMALL HYDROELECTRICITY" MEANS:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (8) FOR THE PURPOSES OF COMPLYING WITH ITS ELECTRIC
23 RESOURCE STANDARD, PROVIDERS OF ELECTRIC SERVICE MAY FILE WITH
24 THE COMMISSION FOR ITS APPROVAL A STANDARD FORM OF CONTRACT FOR
25 CUSTOMER-SITED RENEWABLE ENERGY SYSTEMS WITH NAMEPLATE
26 RATINGS GREATER THAN TEN KILOWATTS AND NOT GREATER THAN FIVE
27 MEGAWATTS.

28 (9) ELECTRIC ENERGY PRODUCED BY A PROVIDER OF ELECTRIC
29 SERVICE THROUGH CO-FIRING RENEWABLE FUELS DESCRIBED IN SECTION
30 40-3.3-101 (1) AND (6) (a) (II) SHALL COUNT TOWARD COMPLIANCE WITH
31 THIS STANDARD PRORATED ON THE HEAT CONTENT OF THE RENEWABLE
32 FUELS AS A PERCENTAGE OF ALL FUELS USED TO PRODUCE SUCH ENERGY.
33 ANY FACILITY UTILIZED FOR CO-FIRING RENEWABLE FUELS SHALL MEET
34 CURRENT EMISSION REQUIREMENTS.

1 (10) THE COMMISSION MAY PROMULGATE RULES TO ESTABLISH A
2 SYSTEM OF RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A
3 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD. SUCH
4 RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE
5 24, C.R.S.

6 (11) IF A PROVIDER BELIEVES IT WILL BE UNABLE TO COMPLY WITH
7 ITS ELECTRIC RESOURCE STANDARD REQUIREMENTS THROUGH THE
8 GENERATION OF ELECTRICITY FROM ITS OWN RENEWABLE ENERGY
9 SYSTEMS, THROUGH RENEWABLE ENERGY SUPPLY CONTRACTS, THROUGH
10 QUALIFIED ENERGY RECOVERY SYSTEMS, OR, IF APPLICABLE, THROUGH THE
11 SALE AND PURCHASE OF RENEWABLE ENERGY CREDITS, THE PROVIDER
12 SHALL SO NOTIFY THE COMMISSION. IF THE COMMISSION DETERMINES
13 THERE IS NOT OR WILL NOT BE A SUFFICIENT SUPPLY OF ELIGIBLE
14 ELECTRICITY AVAILABLE TO THE PROVIDER, OR THAT THE PROVIDER WILL
15 NOT BE ABLE TO OBTAIN OR BUILD, AT REASONABLE COST, THE
16 TRANSMISSION NEEDED TO DELIVER THE ELIGIBLE ENERGY TO THE
17 PROVIDER'S SYSTEM, THE COMMISSION MAY EXEMPT THE PROVIDER FROM
18 THE REMAINING REQUIREMENTS OF ITS ELECTRIC RESOURCE STANDARD OR
19 FROM ANY APPROPRIATE PORTION THEREOF, AS DETERMINED BY THE
20 COMMISSION. IF THE COMMISSION REASONABLY DETERMINES, BASED UPON
21 AN EVIDENTIARY HEARING, INCLUDING A REVIEW OF MITIGATION
22 MEASURES, THAT ADDING RENEWABLE RESOURCES PURSUANT TO THE
23 STANDARD IN SECTION 40-3.3-102 (1) COMPROMISES SYSTEM RELIABILITY
24 OR CONFLICTS WITH RELIABILITY STANDARDS OF THE NORTH AMERICAN
25 ELECTRIC RELIABILITY COUNCIL, THE WESTERN ELECTRIC COORDINATING
26 COUNCIL, OR THE FEDERAL ENERGY REGULATORY COMMISSION, THE
27 COMMISSION SHALL DEFER THAT PORTION OF THE RENEWABLE ENERGY
28 RESOURCES THAT CAUSES THE RELIABILITY PROBLEM UNTIL SUCH TIME
29 THAT THE PROBLEM IS RESOLVED.

30 (12) A PROVIDER SHALL NOT HAVE THE AUTHORITY TO CONDEMN
31 OR EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,
32 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION
33 38-2-101, C.R.S., TO SITE THE GENERATION FACILITIES OF A RENEWABLE
34 ENERGY SYSTEM USED IN WHOLE OR IN PART TO MEET AN ELECTRIC
35 RESOURCE STANDARD ESTABLISHED PURSUANT TO THIS ARTICLE. A
36 PROVIDER SHALL CONTINUE TO HAVE THE AUTHORITY TO CONDEMN OR

1 EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,
2 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION
3 38-2-101, C.R.S., TO TRANSMIT ENERGY USED IN WHOLE OR IN PART TO
4 MEET AN ELECTRIC RESOURCE STANDARD ESTABLISHED PURSUANT TO THIS
5 ARTICLE.

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

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

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

30 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (15),
31 IF THE COMMISSION DETERMINES THAT THE COST OF ELECTRICITY,
32 INCLUDING ANCILLARY COSTS, FROM PROPOSED OR EXISTING RENEWABLE
33 RESOURCE FACILITIES IS COST EFFECTIVE COMPARED TO THE COST OF
34 OPERATING EXISTING GENERATION RESOURCES OR PURCHASING ENERGY

1 UNDER EXISTING POWER SUPPLY CONTRACTS, THE COMMISSION MAY
2 ORDER THE ACQUISITION OF SUCH RESOURCES.

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

19 **40-3.3-103. Renewable energy cost recovery - acquisition plan.**
20 (1) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A
21 RENEWABLE ENERGY CONTRACT OR QUALIFIED ENERGY RECOVERY
22 SYSTEM CONTRACT BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND
23 ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT OR QUALIFIED
24 ENERGY RECOVERY SYSTEM CONTRACT AND ITS TERMS AND CONDITIONS
25 SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE COMMISSION
26 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER ALL JUST AND
27 REASONABLE COSTS ASSOCIATED WITH THE CONTRACT. IF A PROVIDER OF
28 ELECTRIC SERVICE SUBMITS A FORM OF CONTRACT TO THE COMMISSION
29 FOR ITS APPROVAL, AND THE COMMISSION APPROVES THE TERMS AND
30 CONDITIONS OF THE FORM OF CONTRACT, ANY CONTRACT ENTERED INTO
31 BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND ANOTHER PARTY THAT
32 IS MATERIALLY CONSISTENT WITH THE TERMS AND CONDITIONS OF THE
33 APPROVED FORM OF CONTRACT SHALL BE DEEMED TO BE A PRUDENT
34 INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES
35 SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED
36 WITH THE CONTRACT. THE PROVIDER OF ELECTRIC SERVICE SHALL BE

1 ENTITLED TO FULL RECOVERY OF ITS PRUDENTLY INCURRED COSTS OF
2 CONSTRUCTING AND OPERATING ITS OWN RENEWABLE ENERGY SYSTEMS
3 OR QUALIFIED ENERGY RECOVERY SYSTEMS AS DETERMINED BY THE
4 COMMISSION.

5 (2) EACH PROVIDER SHALL FILE WITH THE COMMISSION FOR ITS
6 APPROVAL THE PROVIDER'S PLAN FOR ACQUIRING THE RESOURCES
7 NECESSARY TO MEET THE REQUIREMENTS OF THIS ARTICLE. THE PROVIDER
8 SHALL UPDATE ITS PLAN AS NECESSARY. THE PLAN SHALL SPECIFY THE
9 PORTION OF THE RENEWABLE RESOURCE OBLIGATION UNDER THIS ARTICLE
10 THAT THE PROVIDER INTENDS TO ACQUIRE THROUGH:

11 (a) A STAND-ALONE RENEWABLE ENERGY TARIFF;

12 (b) A COMPETITIVE ACQUISITION PROCESS; AND

13 (c) AN ALTERNATIVE METHOD OF ACQUISITION, SUCH AS BY
14 SELF-BUILDING OR THE USE OF RENEWABLE ENERGY CREDITS.

15 (3) A PROVIDER OF ELECTRIC SERVICE THAT IS ALSO A WHOLESALE
16 ELECTRICITY SUPPLIER SHALL NOT RECOVER COSTS OF RENEWABLE
17 RESOURCES PURSUANT TO THIS ARTICLE, EITHER IN PART OR IN TOTAL,
18 FROM ANY WHOLESALE CUSTOMER UNLESS THE WHOLESALE CUSTOMER
19 AGREES, BY CONTRACT, TO ACCEPT RESPONSIBILITY FOR THE RENEWABLE
20 RESOURCE COSTS. A PROVIDER OF ELECTRIC SERVICE SHALL RECOVER
21 FROM RETAIL CUSTOMERS THE COSTS NOT RECOVERED BY CONTRACT FROM
22 WHOLESALE CUSTOMERS. EACH PROVIDER OF ELECTRIC SERVICE SHALL
23 SUBMIT TO THE COMMISSION, IN AN INFORMATIONAL FILING, EACH
24 WHOLESALE CONTRACT THAT INCLUDES RENEWABLE RESOURCE
25 PROVISIONS MADE BY A WHOLESALE CUSTOMER WITH THE PROVIDER OF
26 ELECTRIC SERVICE, AND EVERY AMENDMENT TO SUCH CONTRACT.

27 **40-3.3-104. Annual report.** (1) EACH PROVIDER OF ELECTRIC
28 SERVICE SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT
29 PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN BY THE
30 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD.

31 (2) EACH PROVIDER SHALL SUBMIT THE ANNUAL REPORT TO THE

1 COMMISSION AFTER THE END OF EACH CALENDAR YEAR AND WITHIN THE
2 TIME PRESCRIBED BY THE COMMISSION. THE REPORT SHALL BE SUBMITTED
3 IN A FORMAT APPROVED BY THE COMMISSION.

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

6 (a) THE AMOUNT OF ELECTRICITY THAT THE PROVIDER GENERATED
7 OR ACQUIRED FROM RENEWABLE ENERGY SYSTEMS OR QUALIFIED ENERGY
8 RECOVERY SYSTEMS DURING THE REPORTING PERIOD AND, IF APPLICABLE,
9 THE AMOUNT OF RENEWABLE ENERGY CREDITS THAT THE PROVIDER
10 ACQUIRED, SOLD, OR TRADED DURING THE REPORTING PERIOD TO COMPLY
11 WITH ITS ELECTRIC RESOURCE STANDARD;

12 (b) THE CAPACITY OF EACH RENEWABLE ENERGY SYSTEM OR
13 QUALIFIED ENERGY RECOVERY SYSTEM OWNED, OPERATED, OR
14 CONTROLLED BY THE PROVIDER, THE TOTAL AMOUNT OF ELECTRICITY
15 GENERATED BY EACH SUCH SYSTEM DURING THE REPORTING PERIOD, AND
16 THE PERCENTAGE OF THAT TOTAL AMOUNT THAT WAS GENERATED
17 DIRECTLY FROM RENEWABLE ENERGY;

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

22 (d) INFORMATION ON THE COST AND TIMING OF TRANSMISSION
23 FACILITIES AND SERVICES NECESSARY FOR THE UTILIZATION OF ENERGY
24 FROM RENEWABLE ENERGY FACILITIES THAT ARE UTILIZED TO COMPLY
25 WITH THE STANDARD; AND

26 (e) ANY OTHER INFORMATION THAT THE COMMISSION BY RULE
27 DEEMS RELEVANT.

28 **40-3.3-105. Rules - fines - renewable energy account.** (1) THE
29 COMMISSION SHALL PROMULGATE RULES NECESSARY FOR THE
30 ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE. THE RULES
31 PROMULGATED BY THE COMMISSION SHALL INCLUDE:

1 (a) ENFORCEMENT MECHANISMS THAT ARE NECESSARY AND
2 REASONABLE TO ENSURE THAT EACH PROVIDER OF ELECTRIC SERVICE
3 COMPLIES WITH ITS ELECTRIC RESOURCE STANDARD; AND

4 (b) PROVISIONS GOVERNING THE IMPOSITION OF ADMINISTRATIVE
5 PENALTIES ASSESSED AFTER A HEARING HELD BY THE COMMISSION
6 PURSUANT TO SECTION 40-6-109. THE PROVIDER SHALL NOT BE PENALIZED
7 IF THE PROVIDER FAILS TO COMPLY WITH THE ELECTRIC RESOURCE
8 STANDARD DUE TO THE NONPERFORMANCE OF A PARTY OTHER THAN THE
9 PROVIDER UNDER A RENEWABLE ENERGY CONTRACT, AND THE PROVIDER
10 EXERCISES REASONABLE DILIGENCE TO COME INTO COMPLIANCE WITH THE
11 ELECTRIC RESOURCE STANDARD. UNDER NO CIRCUMSTANCES SHALL THE
12 COSTS OF ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO
13 RETAIL CUSTOMERS.

14 (c) PROVISIONS REQUIRING THAT MONEYS COLLECTED FOR
15 PENALTIES THAT RESULT FROM NONCOMPLIANCE WITH THE STANDARD
16 SHALL BE:

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

21 (II) USED TO THE FULLEST EXTENT PRACTICABLE TO ENCOURAGE
22 THE DEVELOPMENT OF ADDITIONAL RENEWABLE ENERGY FACILITIES AS
23 DETERMINED BY THE COMMISSION.

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

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