

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0144.01 Thomas Morris

HOUSE BILL 10-1365

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A BILL FOR AN ACT

101      **CONCERNING INCENTIVES FOR ELECTRIC UTILITIES TO REDUCE AIR**  
102            **EMISSIONS, AND, IN CONNECTION THEREWITH, REQUIRING PLANS**  
103            **TO ACHIEVE SUCH REDUCTIONS TO GIVE PRIMARY**  
104            **CONSIDERATION TO CONVERTING FROM COAL TO NATURAL GAS.**

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

In order to meet anticipated federal "Clean Air Act" requirements to reduce emissions from coal-fired power plants, **section 1** of the bill

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.*



1           **40-3.2-201. Short title.** THIS PART 2 SHALL BE KNOWN AND MAY  
2 BE CITED AS THE "CLEAN AIR - CLEAN JOBS ACT".

3           **40-3.2-202. Legislative declaration.** (1) THE GENERAL  
4 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE  
5 FEDERAL "CLEAN AIR ACT", 42 U.S.C. SEC. 7401 ET SEQ., WILL LIKELY  
6 REQUIRE REDUCTIONS IN EMISSIONS FROM COAL-FIRED POWER PLANTS IN  
7 COLORADO. A COORDINATED PLAN OF EMISSION REDUCTIONS FROM  
8 COAL-FIRED POWER PLANTS WILL ENABLE COLORADO UTILITIES TO MEET  
9 THE REQUIREMENTS OF THE FEDERAL ACT AND PROTECT PUBLIC HEALTH  
10 AND THE ENVIRONMENT AT A LOWER COST THAN A PIECEMEAL APPROACH.  
11 A COORDINATED PLAN OF REDUCTION OF EMISSIONS WILL ALSO RESULT IN  
12 REDUCTIONS IN CARBON DIOXIDE AND PROMOTE THE USE OF NATURAL GAS  
13 AND OTHER LOW-EMITTING RESOURCES TO MEET COLORADO'S  
14 ELECTRICITY NEEDS, WHICH WILL IN TURN PROMOTE DEVELOPMENT OF  
15 COLORADO'S ECONOMY AND INDUSTRY.

16           (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT THE USE OF  
17 NATURAL GAS TO REDUCE COAL-FIRED EMISSIONS MAY REQUIRE UTILITIES  
18 TO ENTER INTO LONG-TERM CONTRACTS FOR NATURAL GAS IN A MANNER  
19 THAT PROTECTS ELECTRICITY CONSUMERS. EVEN THOUGH SUCH  
20 LONG-TERM CONTRACTS MIGHT BE BENEFICIAL TO CONSUMERS, FINANCIAL  
21 RATING AGENCIES COULD FIND THAT SUCH LONG-TERM CONTRACTS  
22 INCREASE THE FINANCIAL RISK TO THE UTILITY, WHICH IN TURN COULD  
23 INCREASE THE COST OF CAPITAL TO THE UTILITY. THE GENERAL ASSEMBLY  
24 FINDS THAT IT IS IMPORTANT TO GIVE FINANCIAL MARKETS CONFIDENCE  
25 THAT UTILITIES WILL BE ABLE TO RECOVER THE COSTS OF LONG-TERM GAS  
26 CONTRACTS WITHOUT THE RISK OF FUTURE REGULATORS DISALLOWING  
27 CONTRACTS.

1           (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT  
2 COLORADO UTILITIES REQUIRE TIMELY AND FORWARD-LOOKING REVIEWS  
3 OF THEIR COSTS OF PROVIDING UTILITY SERVICE IN ORDER TO UNDERTAKE  
4 THE COMPREHENSIVE AND EXTENSIVE PLANNING AND CHANGES TO THEIR  
5 BUSINESS OPERATIONS CONTEMPLATED BY THIS PART 2. IN ORDER TO  
6 ALLOW THESE UTILITIES TO CONTINUE TO PROVIDE RELIABLE ELECTRIC  
7 SERVICE, ALTER THEIR OPERATIONS IN THE MANNER DESCRIBED BY THIS  
8 PART 2, AND MEET OTHER STATE PUBLIC POLICY GOALS SUCH AS THE  
9 RENEWABLE ENERGY STANDARD, IT IS IMPERATIVE THAT COLORADO  
10 UTILITIES CONTINUE IN SOUND FINANCIAL CONDITION AND REMAIN  
11 ATTRACTIVE INVESTMENTS SO THAT SUFFICIENT CAPITAL IS PROVIDED TO  
12 ACHIEVE THE STATE'S GOALS. TO THAT END, THE GENERAL ASSEMBLY  
13 FINDS THAT THE COMMISSION SHOULD HAVE ADDITIONAL TOOLS AND  
14 MORE FLEXIBILITY IN ITS REGULATORY AUTHORITY TO ENSURE THE  
15 CONTINUED FINANCIAL HEALTH OF THESE UTILITIES.

16           **40-3.2-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE  
17 CONTEXT OTHERWISE REQUIRES:

18           (1) "AIR QUALITY CONTROL COMMISSION" MEANS THE COMMISSION  
19 CREATED IN SECTION 25-7-104, C.R.S.

20           (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH  
21 AND ENVIRONMENT.

22           (3) "FEDERAL ACT" MEANS THE FEDERAL "CLEAN AIR ACT", 42  
23 U.S.C. SEC. 7401 ET SEQ., AS AMENDED.

24           (4) "STATE ACT" MEANS THE "COLORADO AIR POLLUTION  
25 PREVENTION AND CONTROL ACT", ARTICLE 7 OF TITLE 25, C.R.S.

26           (5) "STATE IMPLEMENTATION PLAN" MEANS THE PLAN REQUIRED  
27 BY AND DESCRIBED IN SECTION 110 (a) AND OTHER PROVISIONS OF THE

1 FEDERAL ACT.

2 **40-3.2-204. Emission control plans - role of the department of**  
3 **public health and environment - timing of emission reductions -**  
4 **approval.** (1) ON OR BEFORE AUGUST 15, 2010, AND IN COORDINATION  
5 WITH CURRENT OR EXPECTED REQUIREMENTS OF THE FEDERAL ACT AND  
6 THE STATE ACT, ALL RATE-REGULATED UTILITIES THAT OWN OR OPERATE  
7 COAL-FIRED ELECTRIC GENERATING UNITS LOCATED IN COLORADO SHALL  
8 SUBMIT TO THE COMMISSION AN EMISSION REDUCTION PLAN FOR  
9 EMISSIONS FROM THOSE UNITS.

10 (2) (a) THE PLAN FILED UNDER THIS SECTION SHALL COVER A  
11 MINIMUM OF NINE HUNDRED MEGAWATTS OR FIFTY PERCENT OF THE  
12 UTILITY'S COAL-FIRED ELECTRIC GENERATING UNITS IN COLORADO,  
13 WHICHEVER IS SMALLER. EXCEPT AS SET FORTH IN SECTION 40-3.2-206,  
14 THE COAL-FIRED CAPACITY COVERED UNDER THE PLAN FILED UNDER THIS  
15 SECTION SHALL NOT INCLUDE ANY COAL-FIRED CAPACITY THAT THE  
16 UTILITY HAS ALREADY ANNOUNCED THAT IT PLANS TO RETIRE PRIOR TO  
17 JANUARY 1, 2015. AT THE UTILITY'S DISCRETION, THE PLAN MAY INCLUDE  
18 SOME OR ALL OF THE FOLLOWING ELEMENTS:

19 (I) NEW EMISSION CONTROL EQUIPMENT FOR OXIDES OF NITROGEN  
20 AND OTHER POLLUTANTS;

21 (II) RETIREMENT OF COAL-FIRED UNITS, IF THE RETIRED  
22 COAL-FIRED UNITS ARE REPLACED BY NATURAL GAS-FIRED ELECTRIC  
23 GENERATION OR OTHER LOW-EMITTING RESOURCES AS DEFINED IN SECTION  
24 40-3.2-206, INCLUDING ENERGY EFFICIENCY;

25 (III) CONVERSION OF COAL-FIRED GENERATION TO RUN ON  
26 NATURAL GAS;

27 (IV) LONG-TERM FUEL SUPPLY AGREEMENTS;

1 (V) NEW NATURAL GAS PIPELINES AND OTHER SUPPORTING GAS  
2 INFRASTRUCTURE;

3 (VI) INCREASED UTILIZATION OF EXISTING GAS-FIRED GENERATING  
4 CAPACITY;

5 (VII) NEW TRANSMISSION LINES AND OTHER SUPPORTING  
6 TRANSMISSION INFRASTRUCTURE;

7 (VIII) EMISSION CONTROL EQUIPMENT THAT IS REQUIRED TO BE  
8 INSTALLED AT AFFECTED UNITS PRIOR TO OR IN CONJUNCTION WITH ANY  
9 RETIREMENT, CONVERSION, OR EMISSION CONTROL EQUIPMENT RETROFIT  
10 SET FORTH UNDER THE PLAN IN ORDER TO LIMIT ANY POLLUTANT OTHER  
11 THAN OXIDES OF NITROGEN; AND

12 (IX) ANY OTHER CAPITAL, FUEL, AND OPERATIONS AND  
13 MAINTENANCE EXPENDITURES APPROPRIATE TO SUPPORT THE  
14 IMPLEMENTATION OF THE PLAN.

15 (b) (I) PRIOR TO FILING THE PLAN, THE UTILITY SHALL CONSULT  
16 WITH THE DEPARTMENT AND SHALL WORK WITH THE DEPARTMENT IN  
17 GOOD FAITH TO DESIGN A PLAN TO MEET THE CURRENT AND ANTICIPATED  
18 REQUIREMENTS OF THE FEDERAL ACT AND STATE LAW IN A  
19 COST-EFFECTIVE AND FLEXIBLE MANNER.

20 (II) THE COMMISSION SHALL PROVIDE THE DEPARTMENT AN  
21 OPPORTUNITY TO:

22 (A) COMMENT ON THE AIR QUALITY, ALL OTHER AIR POLLUTANTS,  
23 AND OTHER EMISSION REDUCTIONS OF THE PLAN; AND

24 (B) EVALUATE AND DETERMINE WHETHER THE PLAN IS  
25 CONSISTENT WITH THE CURRENT AND ANTICIPATED REQUIREMENTS OF THE  
26 FEDERAL ACT.

27 (III) IN COMMENTING UPON THE UTILITY'S PLAN, THE DEPARTMENT

1 SHALL DETERMINE WHETHER ANY NEW OR REPOWERED ELECTRIC  
2 GENERATING UNIT PROPOSED UNDER THE PLAN, OTHER THAN A PEAKING  
3 FACILITY UTILIZED LESS THAN TWENTY PERCENT ON AN ANNUAL BASIS,  
4 WILL EMIT MORE THAN ONE THOUSAND ONE HUNDRED POUNDS OF CARBON  
5 DIOXIDE PER MEGAWATT-HOUR; EXCEPT THAT IN NO EVENT SHALL THE  
6 DEPARTMENT OR COMMISSION INCORPORATE AN ENFORCEABLE CARBON  
7 DIOXIDE EMISSION LIMIT INTO ANY AIR QUALITY OR OTHER PERMIT OR  
8 CONDITION TO OPERATE ANY SUCH FACILITY UNLESS OTHERWISE  
9 REQUIRED BY FEDERAL LAW.

10 (IV) THE COMMISSION SHALL NOT APPROVE A PLAN EXCEPT AFTER  
11 AN EVIDENTIARY HEARING AND UNLESS THE DEPARTMENT HAS  
12 DETERMINED THAT THE PLAN IS CONSISTENT WITH THE CURRENT AND  
13 ANTICIPATED REQUIREMENTS OF THE FEDERAL ACT.

14 (c) THE PLAN SHALL INCLUDE A SCHEDULE THAT WOULD RESULT  
15 IN FULL IMPLEMENTATION OF THE PLAN ON OR BEFORE DECEMBER 31,  
16 2017. THE SCHEDULE MAY INCLUDE INTERIM MILESTONES. THE UTILITY  
17 SHALL DESIGN THE SCHEDULE TO PROTECT SYSTEM RELIABILITY, CONTROL  
18 OVERALL COST, AND ASSURE CONSISTENCY WITH THE REQUIREMENTS OF  
19 THE FEDERAL ACT.

20 (d) THE PLAN SHALL SET FORTH THE COSTS ASSOCIATED WITH  
21 ACTIVITIES IDENTIFIED IN THE PLAN, INCLUDING THE PLANNING,  
22 DEVELOPMENT, CONSTRUCTION, AND OPERATION OF ELEMENTS IDENTIFIED  
23 PURSUANT TO SUBPARAGRAPHS (I) TO (IX) OF PARAGRAPH (a) OF  
24 SUBSECTION (2) OF THIS SECTION, AS WELL AS THE COSTS OF ANY  
25 SHUTDOWN, DECOMMISSIONING, OR REPOWERING OF EXISTING COAL-FIRED  
26 ELECTRIC GENERATING UNITS THAT ARE SET FORTH IN THE PLAN.

27 **40-3.2-205. Review - approval.** (1) IN EVALUATING THE PLAN,

1 THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

2 (a) WHETHER THE DEPARTMENT REPORTS THAT THE PLAN IS  
3 LIKELY TO ACHIEVE AT LEAST A SEVENTY TO EIGHTY PERCENT REDUCTION,  
4 OR GREATER, IN ANNUAL EMISSIONS OF OXIDES OF NITROGEN AS  
5 NECESSARY TO COMPLY WITH CURRENT AND ANTICIPATED REQUIREMENTS  
6 OF THE FEDERAL ACT AND THE STATE ACT. THE REDUCTION IN EMISSIONS  
7 UNDER THIS PARAGRAPH (a) SHALL BE MEASURED FROM 2008 LEVELS AT  
8 COAL-FIRED POWER PLANTS IDENTIFIED IN THE PLAN. IN DETERMINING THE  
9 REDUCTION IN EMISSIONS UNDER THIS PARAGRAPH (a), THE DEPARTMENT  
10 SHALL INCLUDE:

11 (I) EMISSIONS FROM COAL-FIRED POWER PLANTS IDENTIFIED IN THE  
12 PLAN AND CONTINUING TO OPERATE AFTER RETROFIT WITH EMISSION  
13 CONTROL EQUIPMENT; AND

14 (II) EMISSIONS FROM ANY FACILITIES CONSTRUCTED TO REPLACE  
15 ANY RETIRED COAL-FIRED POWER PLANTS IDENTIFIED IN THE PLAN.

16 (b) WHETHER THE DEPARTMENT HAS MADE THE DETERMINATION  
17 UNDER SECTION 40-3.2-204 (2) (b) (III);

18 (c) THE DEGREE TO WHICH THE PLAN WILL RESULT IN REDUCTIONS  
19 OF OTHER POLLUTANTS;

20 (d) THE DEGREE TO WHICH THE PLAN WILL RESULT IN REDUCTIONS  
21 IN OTHER AIR POLLUTANTS EMISSIONS;

22 (e) THE DEGREE TO WHICH THE PLAN WILL INCREASE UTILIZATION  
23 OF EXISTING NATURAL GAS-FIRED GENERATING CAPACITY;

24 (f) THE DEGREE TO WHICH THE PLAN ENHANCES THE ABILITY OF  
25 THE UTILITY TO MEET STATE OR FEDERAL RENEWABLE ENERGY  
26 REQUIREMENTS, RELIES ON ENERGY EFFICIENCY, OR RELIES ON OTHER LOW  
27 EMITTING RESOURCES;



1 (g) WHETHER THE PLAN PROMOTES COLORADO ECONOMIC  
2 DEVELOPMENT;

3 (h) WHETHER THE PLAN PRESERVES RELIABLE ELECTRIC SERVICE  
4 FOR COLORADO CONSUMERS;

5 (i) WHETHER THE PLAN IS LIKELY TO HELP PROTECT COLORADO  
6 CUSTOMERS FROM FUTURE COST INCREASES, INCLUDING COSTS  
7 ASSOCIATED WITH POTENTIAL FEDERAL CLIMATE POLICY; AND

8 (j) WHETHER THE COST OF THE PLAN RESULTS IN REASONABLE  
9 RATE IMPACTS. IN EVALUATING THE RATE IMPACTS OF THE PLAN, THE  
10 COMMISSION SHALL EXAMINE THE IMPACT OF THE RATES ON LOW-INCOME  
11 CUSTOMERS.

12 (2) THE COMMISSION SHALL REVIEW THE PLAN AND ENTER AN  
13 ORDER APPROVING, DENYING, OR MODIFYING THE PLAN BY DECEMBER 15,  
14 2010. ANY MODIFICATIONS REQUIRED BY THE COMMISSION SHALL RESULT  
15 IN A PLAN THAT THE DEPARTMENT DETERMINES IS LIKELY TO MEET  
16 CURRENT AND ANTICIPATED FEDERAL AND STATE CLEAN AIR ACT  
17 REQUIREMENTS.

18 (3) ALL ACTIONS TAKEN BY THE UTILITY IN FURTHERANCE OF, AND  
19 IN COMPLIANCE WITH, AN APPROVED PLAN ARE PRESUMED TO BE PRUDENT  
20 ACTIONS, THE COSTS OF WHICH ARE RECOVERABLE IN RATES AS PROVIDED  
21 IN SECTION 40-3.2-207.

22 (4) IF THE UTILITY DISAGREES WITH THE COMMISSION'S  
23 MODIFICATIONS TO ITS PROPOSED PLAN WITH RESPECT TO RESOURCE  
24 SELECTION, THE UTILITY MAY WITHDRAW ITS APPLICATION.

25 **40-3.2-206. Coal plant retirements - replacement resources.**

26 (1) (a) THE GENERAL ASSEMBLY FINDS THAT, IN DESIGNING A  
27 COORDINATED EMISSION REDUCTION PLAN AND TO EXPEDITIOUSLY

1 ACCELERATE COAL PLANT RETIREMENTS, IT IS IN THE PUBLIC INTEREST FOR  
2 UTILITIES TO GIVE PRIMARY CONSIDERATION TO REPLACING OR  
3 REPOWERING THEIR COAL GENERATION WITH NATURAL GAS GENERATION  
4 AND THAT UTILITIES SHALL ALSO CONSIDER OTHER LOW-EMITTING  
5 RESOURCES, INCLUDING ENERGY EFFICIENCY, IF THIS REPLACEMENT OR  
6 REPOWERING CAN BE ACCOMPLISHED PRUDENTLY AND FOR REASONABLE  
7 RATE IMPACTS COMPARED WITH PLACING ADDITIONAL EMISSION CONTROLS  
8 ON COAL-FIRED GENERATING UNITS, AND IF ELECTRIC SYSTEM RELIABILITY  
9 CAN BE PRESERVED. TO THAT END, IN THE PLAN REQUIRED UNDER  
10 SECTION 40-3.2-204, EACH UTILITY SHALL INCLUDE AN EVALUATION OF  
11 THE FOLLOWING PROPOSALS:

12 (I) THE COST AND SYSTEM RELIABILITY IMPACTS OF RETIRING A  
13 MINIMUM OF NINE HUNDRED MEGAWATTS OF COAL-FIRED ELECTRIC  
14 GENERATING CAPACITY, OR FIFTY PERCENT OF THE UTILITY'S COAL-FIRED  
15 GENERATING UNITS IN COLORADO, WHICHEVER IS LESS, BY JANUARY 1,  
16 2015, AND REPOWERING THE AFFECTED COAL-FIRED FACILITIES WITH  
17 NATURAL GAS OR REPLACING THEM WITH NATURAL GAS-FIRED  
18 GENERATION OR OTHER LOW-EMITTING RESOURCES, INCLUDING ENERGY  
19 EFFICIENCY. THE COAL-FIRED CAPACITY EVALUATED UNDER THIS  
20 SUBPARAGRAPH (I) SHALL NOT INCLUDE ANY COAL-FIRED CAPACITY THAT  
21 THE UTILITY HAS ALREADY ANNOUNCED THAT IT PLANS TO RETIRE PRIOR  
22 TO JANUARY 1, 2015. THE UTILITY MAY ALSO PREPARE EVALUATIONS OF  
23 ADDITIONAL SCENARIOS, INCLUDING SCENARIOS THAT RESULT IN THE  
24 RETIREMENT OF LESS THAN NINE HUNDRED MEGAWATTS OF COAL-FIRED  
25 ELECTRIC GENERATING CAPACITY OR THE RETIREMENT OF SOME PORTION  
26 OF THE NINE HUNDRED MEGAWATTS OF CAPACITY AFTER JANUARY 1,  
27 2015, BUT BEFORE JANUARY 1, 2018.

1           (II) RETIREMENTS OF A PORTION OF ITS COAL-FIRED GENERATING  
2 CAPACITY IN THE PERIOD AFTER THE EFFECTIVE DATE OF THIS PART 2 BUT  
3 PRIOR TO JANUARY 1, 2015. AT A MINIMUM, THE UTILITY SHALL  
4 EVALUATE WHETHER TO RETIRE A PORTION OF ITS COAL-FIRED CAPACITY  
5 ON OR BEFORE JANUARY 1, 2013, OR WHETHER THE RETIREMENTS OF  
6 COAL-FIRED GENERATING FACILITIES THAT HAVE ALREADY BEEN  
7 ANNOUNCED COULD BE ADVANCED TO AN EARLIER RETIREMENT DATE.

8           (b) (I) FOR ALL EVALUATIONS REQUIRED BY THIS SUBSECTION (1),  
9 THE UTILITY SHALL REPORT:

10           (A) THE ESTIMATED OVERALL IMPACTS ON THE UTILITY'S  
11 EMISSIONS OF OXIDES OF NITROGEN AND OTHER POLLUTANTS AND CARBON  
12 DIOXIDE;

13           (B) THE FEASIBILITY OF THE RETIREMENT, REPOWERING, OR  
14 REPLACEMENT ON THE SCHEDULE PROPOSED IN THE EVALUATION;

15           (C) THE COSTS AND IMPACT ON ELECTRIC RATES FROM THESE  
16 PROPOSALS; AND

17           (D) THE IMPACT OF THE RETIREMENTS ON THE RELIABILITY OF THE  
18 UTILITY'S ELECTRIC SERVICE.

19           (II) ALL EVALUATIONS REQUIRED BY THIS SUBSECTION (1) SHALL  
20 CONTRAST THE COSTS OF REPLACING COAL GENERATION WITH NATURAL  
21 GAS GENERATION AND OTHER LOW-EMITTING RESOURCES, INCLUDING  
22 ENERGY EFFICIENCY, WITH THE COSTS OF INSTALLING ADDITIONAL  
23 EMISSION CONTROLS ON THE COAL PLANTS.

24           (2) THE UTILITY SHALL SET FORTH IN ITS PLAN THE UTILITY'S  
25 PROPOSAL FOR THE BEST WAY OF TIMELY MEETING THE EMISSION  
26 REDUCTION REQUIREMENTS REQUIRED BY FEDERAL AND STATE LAW,  
27 GIVEN THE NEED TO PRESERVE ELECTRIC SYSTEM RELIABILITY, TO AVOID

1 UNREASONABLE RATE INCREASES, AND THE ECONOMIC AND  
2 ENVIRONMENTAL BENEFITS OF COORDINATED EMISSION REDUCTIONS.

3 (3) IN REVIEWING THE REASONABLENESS OF THE UTILITY'S  
4 PROPOSED PLAN, THE COMMISSION SHALL:

5 (a) COMPARE THE RELATIVE COSTS OF REPOWERING OR REPLACING  
6 COAL FACILITIES WITH NATURAL GAS GENERATION OR OTHER  
7 LOW-EMITTING RESOURCES, INCLUDING ENERGY EFFICIENCY, TO AN  
8 ALTERNATIVE THAT INCORPORATES EMISSION CONTROLS ON THE EXISTING  
9 COAL-FIRED UNITS;

10 (b) USE REASONABLE PROJECTIONS OF FUTURE COAL AND  
11 NATURAL GAS COSTS;

12 (c) INCORPORATE A REASONABLE ESTIMATE FOR THE COST OF  
13 FUTURE CARBON DIOXIDE EMISSION REGULATION;

14 (d) CONSIDER THE DEGREE TO WHICH THE PLAN WILL INCREASE  
15 UTILIZATION OF EXISTING NATURAL GAS-FIRED GENERATING RESOURCES  
16 AVAILABLE TO THE UTILITY, TOGETHER WITH INCREASED UTILIZATION OF  
17 OTHER LOW-EMITTING RESOURCES INCLUDING ENERGY EFFICIENCY; AND

18 (e) CONSIDER THE ECONOMIC AND ENVIRONMENTAL BENEFITS OF  
19 A COORDINATED EMISSIONS REDUCTION STRATEGY.

20 (4) THE UTILITY MAY ENTER INTO LONG-TERM GAS SUPPLY  
21 AGREEMENTS TO IMPLEMENT THE REQUIREMENTS OF THIS PART 2. A  
22 LONG-TERM GAS SUPPLY AGREEMENT IS AN AGREEMENT WITH A TERM OF  
23 NOT LESS THAN THREE YEARS OR MORE THAN TWENTY YEARS. ALL  
24 LONG-TERM GAS SUPPLY AGREEMENTS MAY BE FILED WITH THE  
25 COMMISSION FOR REVIEW AND APPROVAL. THE COMMISSION SHALL  
26 DETERMINE WHETHER THE UTILITY ACTED PRUDENTLY BY ENTERING INTO  
27 THE SPECIFIC AGREEMENT, WHETHER THE PROPOSED AGREEMENT APPEARS

1 TO BE BENEFICIAL TO CONSUMERS, AND WHETHER THE AGREEMENT IS IN  
2 THE PUBLIC INTEREST. IF AN AGREEMENT IS APPROVED, THE UTILITY IS  
3 ENTITLED TO RECOVER THROUGH RATES THE COSTS IT INCURS UNDER THE  
4 APPROVED AGREEMENT, AND ANY APPROVED AMENDMENTS TO THE  
5 AGREEMENT, NOTWITHSTANDING ANY CHANGE IN THE MARKET PRICE OF  
6 NATURAL GAS DURING THE TERM OF THE AGREEMENT. THE COMMISSION  
7 SHALL NOT REVERSE ITS APPROVAL OF THE LONG-TERM GAS AGREEMENT  
8 EVEN IF THE AGREEMENT PRICE IS HIGHER THAN A FUTURE MARKET PRICE  
9 OF NATURAL GAS.

10 **40-3.2-207. Cost recovery - legislative declaration.** (1) (a) A  
11 UTILITY IS ENTITLED TO FULLY RECOVER THE COSTS THAT IT PRUDENTLY  
12 INCURS IN EXECUTING AN APPROVED EMISSION REDUCTION PLAN,  
13 INCLUDING THE COSTS OF PLANNING, DEVELOPING, CONSTRUCTING,  
14 OPERATING, AND MAINTAINING ANY EMISSION CONTROL OR REPLACEMENT  
15 CAPACITY CONSTRUCTED PURSUANT TO THE PLAN, AS WELL AS ANY  
16 INTERIM AIR QUALITY EMISSION CONTROL COSTS THE UTILITY INCURS  
17 WHILE THE PLAN IS BEING IMPLEMENTED.

18 (b) THE GENERAL ASSEMBLY FINDS THAT THE EMISSIONS  
19 REDUCTIONS UNDER THIS PART 2 ARE BEING MADE TO ASSIST THE STATE  
20 OF COLORADO TO COMPLY WITH CURRENT AND ANTICIPATED EMISSION  
21 RESTRICTIONS UNDER FEDERAL LAW. TO PROVIDE THIS ASSISTANCE, THE  
22 UTILITY IS BEING ASKED TO MAKE SUBSTANTIAL CAPITAL INVESTMENTS  
23 AND TO ENTER INTO SUBSTANTIAL CONTRACTUAL COMMITMENTS IN AN  
24 EXPEDITED TIME PERIOD OUTSIDE OF THE NORMAL RESOURCE PLANNING  
25 PROCESS.

26 (2) (a) IF A PUBLIC UTILITY'S WHOLESALE SALES ARE SUBJECT TO  
27 REGULATION BY THE FEDERAL ENERGY REGULATORY COMMISSION, AND IF

1 THE PUBLIC UTILITY SELLS POWER ON THE WHOLESALE MARKET FROM A  
2 PROJECT DEVELOPED PURSUANT TO THE PLAN, THE COMMISSION SHALL  
3 DETERMINE WHETHER TO ASSIGN A PORTION OF THE PLAN COST TO BE  
4 RECOVERED FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. THE  
5 COMMISSION MAY MAKE SUCH ASSIGNMENT TO THE EXTENT THAT IT DOES  
6 NOT CONFLICT WITH THE PUBLIC UTILITY'S WHOLESALE CONTRACTS  
7 ENTERED INTO BEFORE THE EFFECTIVE DATE OF THIS PART 2.

8 (b) EXCEPT AS SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION  
9 (2), IF THE COMMISSION MAKES AN ASSIGNMENT OF COSTS PURSUANT TO  
10 PARAGRAPH (a) OF THIS SUBSECTION (2) AND IF THE UTILITY APPLIES TO  
11 THE FEDERAL ENERGY REGULATORY COMMISSION FOR RECOVERY AND  
12 PURSUES THAT APPLICATION IN GOOD FAITH, THEN:

13 (I) TO THE EXTENT THAT THE FEDERAL ENERGY REGULATORY  
14 COMMISSION DOES NOT PERMIT RECOVERY OF THE ALLOCATED  
15 WHOLESALE PORTION OF PLAN-RELATED INVESTMENT, THE COMMISSION  
16 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER SUCH DISALLOWED  
17 WHOLESALE PORTION OF THE INVESTMENT THROUGH THE RECOVERY  
18 MECHANISM DETAILED IN THIS SECTION; AND

19 (II) THE PUBLIC UTILITY MAY NOT RECOVER ANY REVENUE  
20 SHORTFALL CAUSED BY A DELAY IN MAKING ANY FILING WITH THE  
21 FEDERAL ENERGY REGULATORY COMMISSION OR DUE TO ANY RATE  
22 SUSPENSION PERIOD EMPLOYED BY THE FEDERAL ENERGY REGULATORY  
23 COMMISSION OR BECAUSE THE PUBLIC UTILITY FAILED TO PURSUE  
24 RECOVERY OF THE AMOUNTS AT THE FEDERAL ENERGY REGULATORY  
25 COMMISSION IN GOOD FAITH.

26 (c) IF THE PUBLIC UTILITY FAILS TO APPLY TO THE FEDERAL  
27 ENERGY REGULATORY COMMISSION WITHIN SIX MONTHS AFTER THE

1 COMMISSION'S FINAL ORDER ASSIGNING A PORTION OF THE PLAN'S COSTS  
2 TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY IS  
3 NOT ENTITLED TO RECOVER THE ASSIGNED PORTION OF THE COSTS FROM  
4 ITS RETAIL CUSTOMERS.

5 (3) CURRENT RECOVERY SHALL BE ALLOWED ON CONSTRUCTION  
6 WORK IN PROGRESS AT THE UTILITY'S WEIGHTED AVERAGE COST OF  
7 CAPITAL, INCLUDING ITS MOST RECENTLY AUTHORIZED RATE OF RETURN  
8 ON EQUITY, FOR EXPENDITURES ON PROJECTS ASSOCIATED WITH THE PLAN  
9 DURING THE CONSTRUCTION, STARTUP, AND PRE-SERVICE  
10 IMPLEMENTATION PHASES OF THE PROJECTS.

11 (4) TO THE EXTENT THAT AN APPROVED PLAN INCLUDES THE  
12 EARLY CONVERSION OR CLOSURE OF COAL-BASED GENERATION CAPACITY  
13 BY JANUARY 1, 2015, AND TO THE EXTENT THAT THE UTILITY  
14 DEMONSTRATES THAT A LAG IN THE RECOVERY OF THE COSTS OF THE PLAN  
15 RELATED TO THE INVESTMENT REQUIRED BY SUCH PLAN CONTRIBUTES TO  
16 A UTILITY EARNING LESS THAN ITS AUTHORIZED RETURN ON EQUITY, THE  
17 COMMISSION SHALL EMPLOY RATE-MAKING MECHANISMS, IN ADDITION TO  
18 ALLOWING A CURRENT RETURN ON CONSTRUCTION WORK IN PROGRESS,  
19 THAT PERMIT RATE ADJUSTMENTS, NO LESS FREQUENTLY THAN ONCE PER  
20 YEAR, WITHOUT REQUIRING THE UTILITY TO FILE A GENERAL RATE CASE TO  
21 ALLOW RECOVERY OF THE APPROVED PLAN'S COSTS. SUCH RATE-MAKING  
22 MECHANISMS MAY INCLUDE A SEPARATE RATE ADJUSTMENT CLAUSE,  
23 REGULAR MAKE-WHOLE RATE INCREASES, OR OTHER APPROPRIATE  
24 MECHANISMS AS DETERMINED BY THE COMMISSION.

25 (5) DURING THE TIME ANY SPECIAL REGULATORY PRACTICE IS IN  
26 EFFECT, THE UTILITY SHALL FILE A NEW RATE CASE AT LEAST EVERY TWO  
27 YEARS OR FILE A BASE RATE RECOVERY PLAN THAT SPANS MORE THAN ONE

1 YEAR.

2 (6) THE COMMISSION SHALL ALLOW, BUT NOT REQUIRE, THE  
3 UTILITY TO DEVELOP AND OWN AS UTILITY RATE-BASED PROPERTY ANY  
4 NEW ELECTRIC GENERATING PLANT CONSTRUCTED PRIMARILY TO REPLACE  
5 ANY COAL-FIRED ELECTRIC GENERATING UNIT RETIRED PURSUANT TO THE  
6 PLAN FILED UNDER THIS PART 2.

7 **40-3.2-208. Air quality planning.** (1) THE AIR QUALITY  
8 PROVISIONS OF THE EMISSION REDUCTION PLAN FILED UNDER THIS PART 2  
9 ARE INTENDED TO FULFILL THE REQUIREMENTS OF THE STATE AND  
10 FEDERAL ACTS AND SHALL BE PROPOSED BY THE DEPARTMENT TO THE AIR  
11 QUALITY CONTROL COMMISSION AFTER THE UTILITY FILES THE PLAN WITH  
12 THE COMMISSION TO BE CONSIDERED FOR INCORPORATION INTO THE  
13 REGIONAL HAZE ELEMENT OF THE STATE IMPLEMENTATION PLAN.

14 (2) (a) UPON THE UTILITY'S FILING OF THE UTILITY PLAN WITH THE  
15 COMMISSION PURSUANT TO SECTION 40-3.2-204, THE AIR QUALITY  
16 CONTROL COMMISSION, IN RESPONSE TO THE PROPOSAL BY THE  
17 DEPARTMENT, SHALL INITIATE A PROCEEDING TO INCORPORATE THE AIR  
18 QUALITY PROVISIONS OF THE UTILITY PLAN INTO THE REGIONAL HAZE  
19 ELEMENT OF THE STATE IMPLEMENTATION PLAN. EXCEPT AS SET FORTH IN  
20 THIS SUBSECTION (2), THE AIR QUALITY CONTROL COMMISSION SHALL NOT  
21 ACT ON THE UTILITY PLAN OR THE PROVISIONS OF THE REGIONAL HAZE  
22 ELEMENT OF THE STATE IMPLEMENTATION PLAN THAT WOULD ESTABLISH  
23 CONTROLS FOR THOSE UNITS COVERED BY THE UTILITY PLAN UNTIL AFTER  
24 THE COMMISSION'S APPROVAL OF THE UTILITY PLAN.

25 (b) THE AIR QUALITY CONTROL COMMISSION SHALL VACATE THE  
26 ENTIRE PROCEEDING RELATED TO THE UTILITY PLAN AND SHALL INITIATE  
27 A NEW PROCEEDING FOR THE CONSIDERATION OF ALTERNATIVE PROPOSALS



1 FOR THE APPROPRIATE CONTROLS FOR THOSE UNITS COVERED BY THE  
2 UTILITY PLAN FOR INCLUSION IN THE REGIONAL HAZE ELEMENT OF THE  
3 STATE IMPLEMENTATION PLAN IF:

4 (I) THE COMMISSION DOES NOT APPROVE THE UTILITY PLAN BY  
5 DECEMBER 15, 2010;

6 (II) THE UTILITY WITHDRAWS ITS APPLICATION PURSUANT TO  
7 SECTION 40-3.2-205 (4); OR

8 (III) THE AIR QUALITY CONTROL COMMISSION REJECTS ANY  
9 PORTION OF THE UTILITY PLAN AS APPROVED BY THE COMMISSION.

10 (c) THE AIR QUALITY CONTROL COMMISSION SHALL CONDUCT THE  
11 PROCEEDINGS SPECIFIED IN THIS SUBSECTION (2) AFTER PUBLIC NOTICE  
12 AND AN OPPORTUNITY FOR THE PUBLIC TO PARTICIPATE IN ACCORDANCE  
13 WITH THE AIR QUALITY CONTROL COMMISSION'S PROCEDURES.

14 (3) IF THE FINAL APPROVED PROVISIONS OF THE STATE  
15 IMPLEMENTATION PLAN ARE NOT CONSISTENT WITH THE AIR QUALITY  
16 PROVISIONS OF THE UTILITY PLAN, THE UTILITY MAY FILE A REVISED  
17 UTILITY PLAN WITH THE COMMISSION THAT MODIFIES THE ORIGINAL PLAN  
18 TO BE CONSISTENT WITH THE FINAL APPROVED STATE IMPLEMENTATION  
19 PLAN. THE REVISED UTILITY PLAN IS SUBJECT TO ALL OF THE REVIEW AND  
20 COST RECOVERY PROVISIONS CONTAINED IN THIS PART 2.  
21 NOTWITHSTANDING ANY REVISION REQUIRED TO THE UTILITY PLAN, THE  
22 UTILITY IS ENTITLED TO FULLY RECOVER ANY COSTS IT PRUDENTLY  
23 INCURRED OR CONTRACTED TO INCUR UNDER THE ORIGINALLY APPROVED  
24 PLAN PRIOR TO THE PLAN'S REVISION AND ANY COSTS INCURRED AS A  
25 RESULT OF ANY ENFORCEABLE STATE IMPLEMENTATION PLAN OR OTHER  
26 AIR QUALITY REQUIREMENTS.

27 **40-3.2-209. Annual certification of early reductions in**

1 **greenhouse gases.** REDUCTIONS IN GREENHOUSE GASES ACHIEVED  
2 THROUGH A COMPLIANCE STRATEGY BEFORE SUCH REDUCTIONS ARE  
3 MANDATED UNDER FEDERAL LAW ARE VOLUNTARY FOR PURPOSES OF  
4 DETERMINING EARLY REDUCTION CREDITS UNDER FEDERAL LAW. SUBJECT  
5 TO APPLICABLE AND APPROPRIATE PROTECTIONS FOR CONFIDENTIAL  
6 BUSINESS INFORMATION, THE UTILITY SHALL ANNUALLY CERTIFY AS  
7 APPROPRIATE THE COMPARATIVE CARBON DIOXIDE EQUIVALENT EMISSION  
8 RATE OF THE RETIRED AND REPLACEMENT ELECTRIC GENERATING  
9 RESOURCES, THE COMPARATIVE UNIT UTILIZATION, HEAT RATES, NET  
10 GREENHOUSE GASES, AND THE OVERALL VOLUME OF CARBON DIOXIDE  
11 EQUIVALENT EMISSIONS REDUCED UNDER THE PLAN APPROVED UNDER  
12 THIS PART 2. THE GOVERNOR SHALL ENUNCIATE EXPLICIT SUPPORT FOR  
13 TREATING SUCH QUANTIFIED REDUCTIONS AS EARLY REDUCTIONS IN A  
14 RESOLUTION OR CORRESPONDENCE TO THE UNITED STATES CONGRESS AND  
15 THE PRESIDENT OF THE UNITED STATES CALLING FOR THE RECOGNITION OF  
16 EARLY REDUCTIONS UNDER FEDERAL LAW.

17 **40-3.2-210. Exemption from limits on voluntary emission**  
18 **reductions.** THE LIMITS ON UTILITY EXPENDITURES ON VOLUNTARY  
19 EMISSION REDUCTIONS IN SECTION 40-3.2-102 DO NOT APPLY TO UTILITY  
20 EXPENDITURES UNDER A PLAN APPROVED BY THE COMMISSION UNDER THIS  
21 PART 2.

22 **SECTION 2.** 40-6-111 (1), Colorado Revised Statutes, is  
23 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24 **40-6-111. Hearing on schedules - suspension - new rates -**  
25 **rejection of tariffs.** (1) (d) NOTWITHSTANDING ANY ORDER OF  
26 SUSPENSION OF A PROPOSED INCREASE IN ELECTRIC, GAS, OR STEAM RATES  
27 UNDER THIS SUBSECTION (1), THE COMMISSION MAY ORDER, WITHOUT

1 HEARING, INTERIM RATES, AT ANY LEVEL UP TO THE PROPOSED NEW  
2 RATES, TO TAKE EFFECT NOT LATER THAN SIXTY DAYS AFTER THE FILING  
3 FOR THE PROPOSED RATE INCREASE. IN MAKING A DETERMINATION AS TO  
4 WHETHER TO ALLOW INTERIM RATES, THE COMMISSION SHALL CONSIDER  
5 THE AMOUNT OF THE REVENUE DEFICIENCY PRESENTED BY THE UTILITY  
6 AND THE EXTENT TO WHICH THIS DEFICIENCY WOULD ADVERSELY AFFECT  
7 THE UTILITY DURING THE TIME PERIOD REQUIRED TO HOLD HEARINGS ON  
8 THE SUSPENDED RATES.

9 **SECTION 3.** 40-6-111 (2) (a), Colorado Revised Statutes, is  
10 amended to read:

11 **40-6-111. Hearing on schedules - suspension - new rates -**  
12 **rejection of tariffs.** (2) (a) (I) If a hearing is held thereon, whether  
13 completed before or after the expiration of the period of suspension, the  
14 commission shall establish the rates, fares, tolls, rentals, charges,  
15 classifications, contracts, practices, OR rules ~~or regulations~~ proposed, in  
16 whole or in part, or others in lieu thereof, ~~which~~ THAT it finds just and  
17 reasonable. In making such finding in the case of a public utility other  
18 than a rail carrier, the commission may consider current, future, or past  
19 test periods or any reasonable combination thereof and any other factors  
20 ~~which~~ THAT may affect the sufficiency or insufficiency of such rates,  
21 fares, tolls, rentals, charges, or classifications during the period the same  
22 may be in effect and may consider any factors ~~which~~ THAT influence an  
23 adequate supply of energy, encourage energy conservation, or encourage  
24 renewable energy development. THE COMMISSION SHALL CONSIDER THE  
25 REASONABLENESS OF THE TEST PERIOD REVENUE REQUIREMENTS  
26 PRESENTED BY THE UTILITY.

27 (II) IF THE RATES ESTABLISHED BY THE COMMISSION AFTER

1 HEARING ARE LOWER THAN ANY INTERIM RATES ESTABLISHED UNDER  
2 PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION, THEN THE  
3 COMMISSION SHALL ORDER THE UTILITY TO RETURN TO CUSTOMERS ON  
4 THEIR UTILITY BILLS THROUGH A NEGATIVE RATE RIDER THE DIFFERENCE  
5 BETWEEN THE TOTAL AMOUNT THAT WOULD HAVE BEEN COLLECTED  
6 UNDER THE FINAL APPROVED RATES AND THE AMOUNT COLLECTED UNDER  
7 THE INTERIM RATES FOR THE PERIOD THAT THE INTERIM RATES WERE IN  
8 EFFECT, WITH INTEREST AT A RATE ESTABLISHED BY THE COMMISSION.

9 (III) All such rates, fares, tolls, rentals, charges, classifications,  
10 contracts, practices, OR rules ~~or regulations~~ not so suspended, on the  
11 effective date thereof, which, in the case of a public utility other than a  
12 rail carrier, shall not be less than thirty days ~~from~~ AFTER the time of filing  
13 the same with the commission, or of such lesser time as the commission  
14 may grant, shall go into effect and be the established and effective rates,  
15 fares, tolls, rentals, charges, classifications, contracts, practices, AND rules  
16 ~~and regulations~~ subject to the power of the commission, after a hearing  
17 on its own motion or upon complaint, as provided in this article, to alter  
18 or modify the same.

19 **SECTION 4. Applicability.** This act shall apply to conduct  
20 occurring on or after the effective date of this act.

21 **SECTION 5. Safety clause.** The general assembly hereby finds,  
22 determines, and declares that this act is necessary for the immediate  
23 preservation of the public peace, health, and safety.