

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REVISED

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

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 THAT GIVE PRIMARY**
104 **CONSIDERATION TO REPLACING OR REPOWERING COAL**
105 **GENERATION WITH NATURAL GAS AND ALSO CONSIDERING**
106 **OTHER LOW-EMITTING RESOURCES, AND MAKING AN**
107 **APPROPRIATION.**

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

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.

SENATE
Am ended 2nd Reading
M arch 30 , 2010

HOUSE
3rd Reading Unam ended
M arch 22 , 2010

HOUSE
Am ended 2nd Reading
M arch 19 , 2010

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In order to meet anticipated federal "Clean Air Act" requirements to reduce emissions from coal-fired power plants, **section 1** of the bill requires all rate-regulated utilities that own or operate coal-fired electric generating units to submit to the public utilities commission (PUC) an emission reduction plan for emissions from those units covering the lesser of 900 megawatts or 50% of the utility's coal-fired electric generating units in Colorado. The plans have to give primary consideration to replacing or repowering coal-fired electric generators with natural gas and to also consider other low-emitting resources, including energy efficiency.

The PUC will provide the department of public health and environment (department) an opportunity to comment on the utilities' plans. The department will determine whether certain new or repowered electric generating units proposed under the plans will emit more than 1,100 pounds of carbon dioxide per megawatt-hour and whether the plans comply with applicable requirements of the federal and state clean air laws. The plans are to be implemented by December 31, 2017.

In evaluating the plans, the PUC is to consider the following factors: The pollution reductions to be achieved; the increased use of existing natural gas-fired electric generating capacity; and the plan's effect on economic development, electricity reliability, cost and rate increases, compliance with renewable energy standards, and reliance on energy efficiency or other low-emitting resources. The PUC is to approve, deny, or modify the plans by December 15, 2010. The utilities' actions in complying with the plans are presumed to be prudent actions, the costs of which are recoverable in rates.

The air quality control commission will consider incorporating the emissions reductions derived from the plans into the regional haze element of the state implementation plan. Early reductions of greenhouse gas emissions will count as voluntary for purposes of early reduction credits under federal law.

Section 2 authorizes the PUC to approve interim rates taking effect no later than 60 days after a rate increase filing. **Section 3** directs the PUC to require a utility to rebate rates if a final rate is lower than an interim rate.

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

2 **SECTION 1.** Article 3.2 of title 40, Colorado Revised Statutes,
3 is amended BY THE ADDITION OF A NEW PART to read:

4 **PART 2**

1 COORDINATED UTILITY PLAN
2 TO REDUCE AIR EMISSIONS

3 **40-3.2-201. Short title.** THIS PART 2 SHALL BE KNOWN AND MAY
4 BE CITED AS THE "CLEAN AIR - CLEAN JOBS ACT".

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

20 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT THE USE OF
21 NATURAL GAS TO REDUCE COAL-FIRED EMISSIONS MAY REQUIRE
22 RATE-REGULATED UTILITIES TO ENTER INTO LONG-TERM CONTRACTS FOR
23 NATURAL GAS IN A MANNER THAT PROTECTS ELECTRICITY CONSUMERS.
24 EVEN THOUGH SUCH LONG-TERM CONTRACTS MIGHT BE BENEFICIAL TO
25 CONSUMERS, FINANCIAL RATING AGENCIES COULD FIND THAT SUCH
26 LONG-TERM CONTRACTS INCREASE THE FINANCIAL RISK TO
27 RATE-REGULATED UTILITIES, WHICH IN TURN COULD INCREASE THE COST

1 OF CAPITAL TO THESE UTILITIES. THE GENERAL ASSEMBLY FINDS THAT IT
2 IS IMPORTANT TO GIVE FINANCIAL MARKETS CONFIDENCE THAT UTILITIES
3 WILL BE ABLE TO RECOVER THE COSTS OF LONG-TERM GAS CONTRACTS
4 WITHOUT THE RISK OF FUTURE REGULATORS DISALLOWING CONTRACTS.

5 (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
6 COLORADO RATE-REGULATED UTILITIES REQUIRE TIMELY AND
7 FORWARD-LOOKING REVIEWS OF THEIR COSTS OF PROVIDING UTILITY
8 SERVICE IN ORDER TO UNDERTAKE THE COMPREHENSIVE AND EXTENSIVE
9 PLANNING AND CHANGES TO THEIR BUSINESS OPERATIONS CONTEMPLATED
10 BY THIS PART 2. IN ORDER TO ALLOW THESE UTILITIES TO CONTINUE TO
11 PROVIDE RELIABLE ELECTRIC SERVICE, ALTER THEIR OPERATIONS IN THE
12 MANNER DESCRIBED BY THIS PART 2, AND MEET OTHER STATE PUBLIC
13 POLICY GOALS, IT IS IMPERATIVE THAT COLORADO RATE-REGULATED
14 UTILITIES CONTINUE IN SOUND FINANCIAL CONDITION AND REMAIN
15 ATTRACTIVE INVESTMENTS SO THAT SUFFICIENT CAPITAL IS PROVIDED TO
16 ACHIEVE THE STATE'S GOALS. TO THAT END, THE GENERAL ASSEMBLY
17 FINDS THAT THE COMMISSION SHOULD HAVE ADDITIONAL TOOLS AND
18 MORE FLEXIBILITY IN ITS REGULATORY AUTHORITY TO ENSURE THE
19 CONTINUED FINANCIAL HEALTH OF THESE UTILITIES. THE GENERAL
20 ASSEMBLY ALSO FINDS AND DECLARES THAT THE ACTIONS PROVIDED FOR
21 IN THIS PART 2 BE IMPLEMENTED IN A MANNER TO ADDRESS THE SOUND
22 ECONOMIC, HEALTH, AND ENVIRONMENTAL CONDITIONS OF ENERGY
23 PRODUCING COMMUNITIES.

24 **40-3.2-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE
25 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

7 (5) "STATE IMPLEMENTATION PLAN" MEANS THE PLAN REQUIRED
8 BY AND DESCRIBED IN SECTION 110 (a) AND OTHER PROVISIONS OF THE
9 FEDERAL ACT.

10 **40-3.2-204. Emission control plans - role of the department of**
11 **public health and environment - timing of emission reductions -**
12 **approval.** (1) ON OR BEFORE AUGUST 15, 2010, AND IN COORDINATION
13 WITH CURRENT OR EXPECTED REQUIREMENTS OF THE FEDERAL ACT AND
14 THE STATE ACT, ALL RATE-REGULATED UTILITIES THAT OWN OR OPERATE
15 COAL-FIRED ELECTRIC GENERATING UNITS LOCATED IN COLORADO SHALL
16 SUBMIT TO THE COMMISSION AN EMISSION REDUCTION PLAN FOR
17 EMISSIONS FROM THOSE UNITS.

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

27 (I) NEW EMISSION CONTROL EQUIPMENT FOR OXIDES OF NITROGEN

1 AND OTHER POLLUTANTS;

2 (II) RETIREMENT OF COAL-FIRED UNITS, IF THE RETIRED
3 COAL-FIRED UNITS ARE REPLACED BY NATURAL GAS-FIRED ELECTRIC
4 GENERATION OR OTHER LOW-EMITTING RESOURCES AS DEFINED IN SECTION
5 40-3.2-206, INCLUDING ENERGY EFFICIENCY;

6 (III) CONVERSION OF COAL-FIRED GENERATION TO RUN ON
7 NATURAL GAS;

8 (IV) LONG-TERM FUEL SUPPLY AGREEMENTS;

9 (V) NEW NATURAL GAS PIPELINES AND OTHER SUPPORTING GAS
10 INFRASTRUCTURE;

11 (VI) INCREASED UTILIZATION OF EXISTING GAS-FIRED GENERATING
12 CAPACITY;

13 (VII) NEW TRANSMISSION LINES AND OTHER SUPPORTING
14 TRANSMISSION INFRASTRUCTURE;

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

20 (IX) ANY OTHER CAPITAL, FUEL, AND OPERATIONS AND
21 MAINTENANCE EXPENDITURES APPROPRIATE TO SUPPORT THE
22 IMPLEMENTATION OF THE PLAN.

23 (b) (I) PRIOR TO FILING THE PLAN, THE UTILITY SHALL CONSULT
24 WITH THE DEPARTMENT AND SHALL WORK WITH THE DEPARTMENT IN
25 GOOD FAITH TO DESIGN A PLAN TO MEET THE CURRENT AND REASONABLY
26 FORESEEABLE REQUIREMENTS OF THE FEDERAL ACT AND STATE LAW IN A
27 COST-EFFECTIVE AND FLEXIBLE MANNER.

1 (II) THE COMMISSION SHALL PROVIDE THE DEPARTMENT AN
2 OPPORTUNITY TO:

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

5 (B) EVALUATE AND DETERMINE WHETHER THE PLAN IS
6 CONSISTENT WITH THE CURRENT AND REASONABLY FORESEEABLE
7 REQUIREMENTS OF THE FEDERAL ACT.

8 (III) IN COMMENTING UPON THE UTILITY'S PLAN, THE DEPARTMENT
9 SHALL DETERMINE WHETHER ANY NEW OR REPOWERED ELECTRIC
10 GENERATING UNIT PROPOSED UNDER THE PLAN, OTHER THAN A PEAKING
11 FACILITY UTILIZED LESS THAN TWENTY PERCENT ON AN ANNUAL BASIS OR
12 A FACILITY THAT CAPTURES AND SEQUESTERS MORE THAN SEVENTY
13 PERCENT OF EMISSIONS NOT SUBJECT TO A NATIONAL AMBIENT AIR
14 QUALITY STANDARD OR A HAZARDOUS AIR POLLUTANT STANDARD, WILL
15 ACHIEVE EMISSION RATES EQUIVALENT TO OR LESS THAN A
16 COMBINED-CYCLE NATURAL GAS GENERATING UNIT.

17 (IV) THE COMMISSION SHALL NOT APPROVE A PLAN EXCEPT AFTER
18 AN EVIDENTIARY HEARING AND UNLESS THE DEPARTMENT HAS
19 DETERMINED THAT THE PLAN IS CONSISTENT WITH THE CURRENT AND
20 REASONABLY FORESEEABLE REQUIREMENTS OF THE FEDERAL ACT.

21 (c) THE PLAN SHALL INCLUDE A SCHEDULE THAT WOULD RESULT
22 IN FULL IMPLEMENTATION OF THE PLAN ON OR BEFORE DECEMBER 31,
23 2017. THE SCHEDULE MAY INCLUDE INTERIM MILESTONES. THE UTILITY
24 SHALL DESIGN THE SCHEDULE TO PROTECT SYSTEM RELIABILITY, CONTROL
25 OVERALL COST, AND ASSURE CONSISTENCY WITH THE REQUIREMENTS OF
26 THE FEDERAL ACT.

27 (d) THE PLAN SHALL SET FORTH THE COSTS ASSOCIATED WITH

1 ACTIVITIES IDENTIFIED IN THE PLAN, INCLUDING THE PLANNING,
2 DEVELOPMENT, CONSTRUCTION, AND OPERATION OF ELEMENTS IDENTIFIED
3 PURSUANT TO SUBPARAGRAPHS (I) TO (IX) OF PARAGRAPH (a) OF
4 SUBSECTION (2) OF THIS SECTION, AS WELL AS THE COSTS OF ANY
5 SHUTDOWN, DECOMMISSIONING, OR REPOWERING OF EXISTING COAL-FIRED
6 ELECTRIC GENERATING UNITS THAT ARE SET FORTH IN THE PLAN.

7 **40-3.2-205. Review - approval.** (1) IN EVALUATING THE PLAN,
8 THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

9 (a) WHETHER THE DEPARTMENT REPORTS THAT THE PLAN IS
10 LIKELY TO ACHIEVE AT LEAST A SEVENTY TO EIGHTY PERCENT REDUCTION,
11 OR GREATER, IN ANNUAL EMISSIONS OF OXIDES OF NITROGEN AS
12 NECESSARY TO COMPLY WITH CURRENT AND REASONABLY FORESEEABLE
13 REQUIREMENTS OF THE FEDERAL ACT AND THE STATE ACT. THE
14 REDUCTION IN EMISSIONS UNDER THIS PARAGRAPH (a) SHALL BE
15 MEASURED FROM 2008 LEVELS AT COAL-FIRED POWER PLANTS IDENTIFIED
16 IN THE PLAN. IN DETERMINING THE REDUCTION IN EMISSIONS UNDER THIS
17 PARAGRAPH (a), THE DEPARTMENT SHALL INCLUDE:

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

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

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

25
26 (c) THE DEGREE TO WHICH THE PLAN WILL RESULT IN REDUCTIONS
27 IN OTHER AIR POLLUTANT EMISSIONS;

1 (d) THE DEGREE TO WHICH THE PLAN WILL INCREASE UTILIZATION
2 OF EXISTING NATURAL GAS-FIRED GENERATING CAPACITY;

3 (e) THE DEGREE TO WHICH THE PLAN ENHANCES THE ABILITY OF
4 THE UTILITY TO MEET STATE OR FEDERAL CLEAN ENERGY REQUIREMENTS,
5 RELIES ON ENERGY EFFICIENCY, OR RELIES ON OTHER LOW EMITTING
6 RESOURCES;

7 (f) WHETHER THE PLAN PROMOTES COLORADO ECONOMIC
8 DEVELOPMENT;

9 (g) WHETHER THE PLAN PRESERVES RELIABLE ELECTRIC SERVICE
10 FOR COLORADO CONSUMERS;

11 (h) WHETHER THE PLAN IS LIKELY TO HELP PROTECT COLORADO
12 CUSTOMERS FROM FUTURE COST INCREASES, INCLUDING COSTS
13 ASSOCIATED WITH REASONABLY FORESEEABLE EMISSION REDUCTION
14 REQUIREMENTS; AND

15 (i) WHETHER THE COST OF THE PLAN RESULTS IN REASONABLE
16 RATE IMPACTS. IN EVALUATING THE RATE IMPACTS OF THE PLAN, THE
17 COMMISSION SHALL EXAMINE THE IMPACT OF THE RATES ON LOW-INCOME
18 CUSTOMERS.

19 (2) THE COMMISSION SHALL REVIEW THE PLAN AND ENTER AN
20 ORDER APPROVING, DENYING, OR MODIFYING THE PLAN BY DECEMBER 15,
21 2010. ANY MODIFICATIONS REQUIRED BY THE COMMISSION SHALL RESULT
22 IN A PLAN THAT THE DEPARTMENT DETERMINES IS LIKELY TO MEET
23 CURRENT AND REASONABLY FORESEEABLE FEDERAL AND STATE CLEAN AIR
24 ACT REQUIREMENTS.

25 (3) ALL ACTIONS TAKEN BY THE UTILITY IN FURTHERANCE OF, AND
26 IN COMPLIANCE WITH, AN APPROVED PLAN ARE PRESUMED TO BE PRUDENT
27 ACTIONS, THE COSTS OF WHICH ARE RECOVERABLE IN RATES AS PROVIDED

1 IN SECTION 40-3.2-207.

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

5 **40-3.2-206. Coal plant retirements - replacement resources.**

6 (1) (a) THE GENERAL ASSEMBLY FINDS THAT, IN DESIGNING A
7 COORDINATED EMISSION REDUCTION PLAN AS DESCRIBED IN SECTION
8 40-3.2-204 AND TO EXPEDITIOUSLY ACCELERATE COAL PLANT
9 RETIREMENTS, IT IS IN THE PUBLIC INTEREST FOR UTILITIES TO GIVE
10 PRIMARY CONSIDERATION TO REPLACING OR REPOWERING THEIR COAL
11 GENERATION WITH NATURAL GAS GENERATION AND THAT UTILITIES SHALL
12 ALSO CONSIDER OTHER LOW-EMITTING RESOURCES, INCLUDING ENERGY
13 EFFICIENCY, IF THIS REPLACEMENT OR REPOWERING CAN BE
14 ACCOMPLISHED PRUDENTLY AND FOR REASONABLE RATE IMPACTS
15 COMPARED WITH PLACING ADDITIONAL EMISSION CONTROLS ON
16 COAL-FIRED GENERATING UNITS, AND IF ELECTRIC SYSTEM RELIABILITY
17 CAN BE PRESERVED. TO THAT END, IN THE PLAN REQUIRED UNDER
18 SECTION 40-3.2-204, EACH UTILITY SHALL INCLUDE AN EVALUATION OF
19 THE FOLLOWING PROPOSALS:

20 (I) THE COST AND SYSTEM RELIABILITY IMPACTS OF RETIRING A
21 MINIMUM OF NINE HUNDRED MEGAWATTS OF COAL-FIRED ELECTRIC
22 GENERATING CAPACITY, OR FIFTY PERCENT OF THE UTILITY'S COAL-FIRED
23 GENERATING UNITS IN COLORADO, WHICHEVER IS LESS, BY JANUARY 1,
24 2015, AND REPOWERING THE AFFECTED COAL-FIRED FACILITIES WITH
25 NATURAL GAS OR REPLACING THEM WITH NATURAL GAS-FIRED
26 GENERATION OR OTHER LOW-EMITTING RESOURCES, INCLUDING ENERGY
27 EFFICIENCY. THE COAL-FIRED CAPACITY EVALUATED UNDER THIS

1 SUBPARAGRAPH (I) SHALL NOT INCLUDE ANY COAL-FIRED CAPACITY THAT
2 THE UTILITY HAS ALREADY ANNOUNCED THAT IT PLANS TO RETIRE PRIOR
3 TO JANUARY 1, 2015. THE UTILITY MAY ALSO PREPARE EVALUATIONS OF
4 ADDITIONAL SCENARIOS, INCLUDING SCENARIOS THAT RESULT IN THE
5 RETIREMENT OF LESS THAN NINE HUNDRED MEGAWATTS OF COAL-FIRED
6 ELECTRIC GENERATING CAPACITY OR THE RETIREMENT OF SOME PORTION
7 OF THE NINE HUNDRED MEGAWATTS OF CAPACITY AFTER JANUARY 1,
8 2015, BUT BEFORE JANUARY 1, 2018.

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

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

18 (A) THE ESTIMATED OVERALL IMPACTS ON THE UTILITY'S
19 EMISSIONS OF OXIDES OF NITROGEN AND OTHER POLLUTANTS;

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

22 (C) THE COSTS AND IMPACT ON ELECTRIC RATES FROM THESE
23 PROPOSALS; AND

24 (D) THE IMPACT OF THE RETIREMENTS ON THE RELIABILITY OF THE
25 UTILITY'S ELECTRIC SERVICE.

26 (II) ALL EVALUATIONS REQUIRED BY THIS SUBSECTION (1) SHALL
27 CONTRAST THE COSTS OF REPLACING COAL GENERATION WITH NATURAL

1 GAS GENERATION AND OTHER LOW-EMITTING RESOURCES, INCLUDING
2 ENERGY EFFICIENCY, WITH THE COSTS OF INSTALLING ADDITIONAL
3 EMISSION CONTROLS ON THE COAL PLANTS.

4 (2) THE UTILITY SHALL SET FORTH IN ITS PLAN THE UTILITY'S
5 PROPOSAL FOR THE BEST WAY OF TIMELY MEETING THE EMISSION
6 REDUCTION REQUIREMENTS REQUIRED BY FEDERAL AND STATE LAW,
7 GIVEN THE NEED TO PRESERVE ELECTRIC SYSTEM RELIABILITY, TO AVOID
8 UNREASONABLE RATE INCREASES, AND THE ECONOMIC AND
9 ENVIRONMENTAL BENEFITS OF COORDINATED EMISSION REDUCTIONS.

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

12 (a) COMPARE THE RELATIVE COSTS OF REPOWERING OR REPLACING
13 COAL FACILITIES WITH NATURAL GAS GENERATION OR OTHER
14 LOW-EMITTING RESOURCES, INCLUDING ENERGY EFFICIENCY, TO AN
15 ALTERNATIVE THAT INCORPORATES EMISSION CONTROLS ON THE EXISTING
16 COAL-FIRED UNITS;

17 (b) USE REASONABLE PROJECTIONS OF FUTURE COAL AND
18 NATURAL GAS COSTS;

19 (c) INCORPORATE A REASONABLE ESTIMATE FOR THE COST OF
20 REASONABLY FORESEEABLE EMISSION REGULATION CONSISTENT WITH THE
21 COMMISSION'S EXISTING PRACTICE;

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

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

1 (4) THE UTILITY MAY ENTER INTO LONG-TERM GAS SUPPLY
2 AGREEMENTS TO IMPLEMENT THE REQUIREMENTS OF THIS PART 2. A
3 LONG-TERM GAS SUPPLY AGREEMENT IS AN AGREEMENT WITH A TERM OF
4 NOT LESS THAN THREE YEARS OR MORE THAN TWENTY YEARS. ALL
5 LONG-TERM GAS SUPPLY AGREEMENTS MAY BE FILED WITH THE
6 COMMISSION FOR REVIEW AND APPROVAL. THE COMMISSION SHALL
7 DETERMINE WHETHER THE UTILITY ACTED PRUDENTLY BY ENTERING INTO
8 THE SPECIFIC AGREEMENT, WHETHER THE PROPOSED AGREEMENT APPEARS
9 TO BE BENEFICIAL TO CONSUMERS, AND WHETHER THE AGREEMENT IS IN
10 THE PUBLIC INTEREST. IF AN AGREEMENT IS APPROVED, THE UTILITY IS
11 ENTITLED TO RECOVER THROUGH RATES THE COSTS IT INCURS UNDER THE
12 APPROVED AGREEMENT, AND ANY APPROVED AMENDMENTS TO THE
13 AGREEMENT, NOTWITHSTANDING ANY CHANGE IN THE MARKET PRICE OF
14 NATURAL GAS DURING THE TERM OF THE AGREEMENT. THE COMMISSION
15 SHALL NOT REVERSE ITS APPROVAL OF THE LONG-TERM GAS AGREEMENT
16 EVEN IF THE AGREEMENT PRICE IS HIGHER THAN A FUTURE MARKET PRICE
17 OF NATURAL GAS.

18 **40-3.2-207. Cost recovery - legislative declaration.** (1) (a) A
19 UTILITY IS ENTITLED TO FULLY RECOVER THE COSTS THAT IT PRUDENTLY
20 INCURS IN EXECUTING AN APPROVED EMISSION REDUCTION PLAN,
21 INCLUDING THE COSTS OF PLANNING, DEVELOPING, CONSTRUCTING,
22 OPERATING, AND MAINTAINING ANY EMISSION CONTROL OR REPLACEMENT
23 CAPACITY CONSTRUCTED PURSUANT TO THE PLAN, AS WELL AS ANY
24 INTERIM AIR QUALITY EMISSION CONTROL COSTS THE UTILITY INCURS
25 WHILE THE PLAN IS BEING IMPLEMENTED.

26 (b) THE GENERAL ASSEMBLY FINDS THAT THE EMISSIONS
27 REDUCTIONS UNDER THIS PART 2 ARE BEING MADE TO ASSIST THE STATE

1 OF COLORADO TO COMPLY WITH CURRENT AND REASONABLY
2 FORESEEABLE EMISSION RESTRICTIONS UNDER FEDERAL LAW. TO PROVIDE
3 THIS ASSISTANCE, THE UTILITY IS BEING ASKED TO MAKE SUBSTANTIAL
4 CAPITAL INVESTMENTS AND TO ENTER INTO SUBSTANTIAL CONTRACTUAL
5 COMMITMENTS IN AN EXPEDITED TIME PERIOD OUTSIDE OF THE NORMAL
6 RESOURCE PLANNING PROCESS.

7 (2) (a) IF A PUBLIC UTILITY'S WHOLESALE SALES ARE SUBJECT TO
8 REGULATION BY THE FEDERAL ENERGY REGULATORY COMMISSION, AND IF
9 THE PUBLIC UTILITY SELLS POWER ON THE WHOLESALE MARKET FROM A
10 PROJECT DEVELOPED PURSUANT TO THE PLAN, THE COMMISSION SHALL
11 DETERMINE WHETHER TO ASSIGN A PORTION OF THE PLAN COST TO BE
12 RECOVERED FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. THE
13 COMMISSION MAY MAKE SUCH ASSIGNMENT TO THE EXTENT THAT IT DOES
14 NOT CONFLICT WITH THE PUBLIC UTILITY'S WHOLESALE CONTRACTS
15 ENTERED INTO BEFORE THE EFFECTIVE DATE OF THIS PART 2.

16 (b) EXCEPT AS SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION
17 (2), IF THE COMMISSION MAKES AN ASSIGNMENT OF COSTS PURSUANT TO
18 PARAGRAPH (a) OF THIS SUBSECTION (2) AND IF THE UTILITY APPLIES TO
19 THE FEDERAL ENERGY REGULATORY COMMISSION FOR RECOVERY AND
20 PURSUES THAT APPLICATION IN GOOD FAITH, THEN:

21 (I) TO THE EXTENT THAT THE FEDERAL ENERGY REGULATORY
22 COMMISSION DOES NOT PERMIT RECOVERY OF THE ALLOCATED
23 WHOLESALE PORTION OF PLAN-RELATED INVESTMENT, THE COMMISSION
24 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER SUCH DISALLOWED
25 WHOLESALE PORTION OF THE INVESTMENT THROUGH THE RECOVERY
26 MECHANISM DETAILED IN THIS SECTION; AND

27 (II) THE PUBLIC UTILITY MAY NOT RECOVER ANY REVENUE

1 SHORTFALL CAUSED BY A DELAY IN MAKING ANY FILING WITH THE
2 FEDERAL ENERGY REGULATORY COMMISSION OR DUE TO ANY RATE
3 SUSPENSION PERIOD EMPLOYED BY THE FEDERAL ENERGY REGULATORY
4 COMMISSION OR BECAUSE THE PUBLIC UTILITY FAILED TO PURSUE
5 RECOVERY OF THE AMOUNTS AT THE FEDERAL ENERGY REGULATORY
6 COMMISSION IN GOOD FAITH.

7 (c) IF THE PUBLIC UTILITY FAILS TO APPLY TO THE FEDERAL
8 ENERGY REGULATORY COMMISSION WITHIN SIX MONTHS AFTER THE
9 COMMISSION'S FINAL ORDER ASSIGNING A PORTION OF THE PLAN'S COSTS
10 TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY IS
11 NOT ENTITLED TO RECOVER THE ASSIGNED PORTION OF THE COSTS FROM
12 ITS RETAIL CUSTOMERS.

13 (3) CURRENT RECOVERY SHALL BE ALLOWED ON CONSTRUCTION
14 WORK IN PROGRESS AT THE UTILITY'S WEIGHTED AVERAGE COST OF
15 CAPITAL, INCLUDING ITS MOST RECENTLY AUTHORIZED RATE OF RETURN
16 ON EQUITY, FOR EXPENDITURES ON PROJECTS ASSOCIATED WITH THE PLAN
17 DURING THE CONSTRUCTION, STARTUP, AND PRE-SERVICE
18 IMPLEMENTATION PHASES OF THE PROJECTS.

19 (4) TO THE EXTENT THAT AN APPROVED PLAN INCLUDES THE
20 EARLY CONVERSION OR CLOSURE OF COAL-BASED GENERATION CAPACITY
21 BY JANUARY 1, 2015, AND TO THE EXTENT THAT THE UTILITY
22 DEMONSTRATES THAT A LAG IN THE RECOVERY OF THE COSTS OF THE PLAN
23 RELATED TO THE INVESTMENT REQUIRED BY SUCH PLAN CONTRIBUTES TO
24 A UTILITY EARNING LESS THAN ITS AUTHORIZED RETURN ON EQUITY, THE
25 COMMISSION SHALL EMPLOY RATE-MAKING MECHANISMS, IN ADDITION TO
26 ALLOWING A CURRENT RETURN ON CONSTRUCTION WORK IN PROGRESS,
27 THAT PERMIT RATE ADJUSTMENTS, NO LESS FREQUENTLY THAN ONCE PER

1 YEAR, WITHOUT REQUIRING THE UTILITY TO FILE A GENERAL RATE CASE TO
2 ALLOW RECOVERY OF THE APPROVED PLAN'S COSTS. SUCH RATE-MAKING
3 MECHANISMS MAY INCLUDE A SEPARATE RATE ADJUSTMENT CLAUSE,
4 REGULAR MAKE-WHOLE RATE INCREASES, OR OTHER APPROPRIATE
5 MECHANISMS AS DETERMINED BY THE COMMISSION.

6 (5) DURING THE TIME ANY SPECIAL REGULATORY PRACTICE IS IN
7 EFFECT, THE UTILITY SHALL FILE A NEW RATE CASE AT LEAST EVERY TWO
8 YEARS OR FILE A BASE RATE RECOVERY PLAN THAT SPANS MORE THAN ONE
9 YEAR.

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

15 **40-3.2-208. Air quality planning.** (1) THE AIR QUALITY
16 PROVISIONS OF THE EMISSION REDUCTION PLAN FILED UNDER THIS PART 2
17 ARE INTENDED TO FULFILL THE REQUIREMENTS OF THE STATE AND
18 FEDERAL ACTS AND SHALL BE PROPOSED BY THE DEPARTMENT TO THE AIR
19 QUALITY CONTROL COMMISSION AFTER THE UTILITY FILES THE PLAN WITH
20 THE COMMISSION TO BE CONSIDERED FOR INCORPORATION INTO THE
21 REGIONAL HAZE ELEMENT OF THE STATE IMPLEMENTATION PLAN.

22 (2) (a) UPON THE UTILITY'S FILING OF THE UTILITY PLAN WITH THE
23 COMMISSION PURSUANT TO SECTION 40-3.2-204, THE AIR QUALITY
24 CONTROL COMMISSION, IN RESPONSE TO THE PROPOSAL BY THE
25 DEPARTMENT, SHALL INITIATE A PROCEEDING TO INCORPORATE THE AIR
26 QUALITY PROVISIONS OF THE UTILITY PLAN INTO THE REGIONAL HAZE
27 ELEMENT OF THE STATE IMPLEMENTATION PLAN. EXCEPT AS SET FORTH IN

1 THIS SUBSECTION (2), THE AIR QUALITY CONTROL COMMISSION SHALL NOT
2 ACT ON THE UTILITY PLAN OR THE PROVISIONS OF THE REGIONAL HAZE
3 ELEMENT OF THE STATE IMPLEMENTATION PLAN THAT WOULD ESTABLISH
4 CONTROLS FOR THOSE UNITS COVERED BY THE UTILITY PLAN UNTIL AFTER
5 THE COMMISSION'S APPROVAL OF THE UTILITY PLAN.

6 (b) THE AIR QUALITY CONTROL COMMISSION SHALL VACATE THE
7 ENTIRE PROCEEDING RELATED TO THE UTILITY PLAN AND SHALL INITIATE
8 A NEW PROCEEDING FOR THE CONSIDERATION OF ALTERNATIVE PROPOSALS
9 FOR THE APPROPRIATE CONTROLS FOR THOSE UNITS COVERED BY THE
10 UTILITY PLAN FOR INCLUSION IN THE REGIONAL HAZE ELEMENT OF THE
11 STATE IMPLEMENTATION PLAN IF:

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

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

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

18 (c) THE AIR QUALITY CONTROL COMMISSION SHALL CONDUCT THE
19 PROCEEDINGS SPECIFIED IN THIS SUBSECTION (2) AFTER PUBLIC NOTICE
20 AND AN OPPORTUNITY FOR THE PUBLIC TO PARTICIPATE IN ACCORDANCE
21 WITH THE AIR QUALITY CONTROL COMMISSION'S PROCEDURES.

22 (3) IF THE FINAL APPROVED PROVISIONS OF THE STATE
23 IMPLEMENTATION PLAN ARE NOT CONSISTENT WITH THE AIR QUALITY
24 PROVISIONS OF THE UTILITY PLAN, THE UTILITY MAY FILE A REVISED
25 UTILITY PLAN WITH THE COMMISSION THAT MODIFIES THE ORIGINAL PLAN
26 TO BE CONSISTENT WITH THE FINAL APPROVED STATE IMPLEMENTATION
27 PLAN. THE REVISED UTILITY PLAN IS SUBJECT TO ALL OF THE REVIEW AND

1 COST RECOVERY PROVISIONS CONTAINED IN THIS PART 2.
2 NOTWITHSTANDING ANY REVISION REQUIRED TO THE UTILITY PLAN, THE
3 UTILITY IS ENTITLED TO FULLY RECOVER ANY COSTS IT PRUDENTLY
4 INCURRED OR CONTRACTED TO INCUR UNDER THE ORIGINALLY APPROVED
5 PLAN PRIOR TO THE PLAN'S REVISION AND ANY COSTS INCURRED AS A
6 RESULT OF ANY ENFORCEABLE STATE IMPLEMENTATION PLAN OR OTHER
7 AIR QUALITY REQUIREMENTS.

8 **40-3.2-209. Early reductions. REDUCTIONS IN EMISSIONS**
9 **ACHIEVED PURSUANT TO THIS PART 2** THROUGH A COMPLIANCE STRATEGY
10 BEFORE SUCH REDUCTIONS ARE MANDATED UNDER FEDERAL LAW ARE
11 VOLUNTARY FOR PURPOSES OF DETERMINING EARLY REDUCTION CREDITS
12 UNDER FEDERAL LAW. ==

13 **40-3.2-210. Exemption from limits on voluntary emission**
14 **reductions.** THE LIMITS ON UTILITY EXPENDITURES ON VOLUNTARY
15 EMISSION REDUCTIONS IN SECTION 40-3.2-102 DO NOT APPLY TO UTILITY
16 EXPENDITURES UNDER A PLAN APPROVED BY THE COMMISSION UNDER THIS
17 PART 2.

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

20 **40-6-111. Hearing on schedules - suspension - new rates -**
21 **rejection of tariffs.** (1) (d) NOTWITHSTANDING ANY ORDER OF
22 SUSPENSION OF A PROPOSED INCREASE IN ELECTRIC, GAS, OR STEAM RATES
23 UNDER THIS SUBSECTION (1), AFTER JANUARY 1, 2012, THE COMMISSION
24 MAY ORDER, WITHOUT HEARING, INTERIM RATES, AT ANY LEVEL UP TO THE
25 PROPOSED NEW RATES, TO TAKE EFFECT NOT LATER THAN SIXTY DAYS
26 AFTER THE FILING FOR THE PROPOSED RATE INCREASE. IN MAKING A
27 DETERMINATION AS TO WHETHER TO ALLOW INTERIM RATES, THE

1 COMMISSION SHALL CONSIDER THE AMOUNT OF THE REVENUE DEFICIENCY
2 PRESENTED BY THE UTILITY AND THE EXTENT TO WHICH THIS DEFICIENCY
3 WOULD ADVERSELY AFFECT THE UTILITY DURING THE TIME PERIOD
4 REQUIRED TO HOLD HEARINGS ON THE SUSPENDED RATES.

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

7 **40-6-111. Hearing on schedules - suspension - new rates -**
8 **rejection of tariffs.** (2) (a) (I) If a hearing is held thereon, whether
9 completed before or after the expiration of the period of suspension, the
10 commission shall establish the rates, fares, tolls, rentals, charges,
11 classifications, contracts, practices, OR rules ~~or regulations~~ proposed, in
12 whole or in part, or others in lieu thereof, ~~which~~ THAT it finds just and
13 reasonable. In making such finding in the case of a public utility other
14 than a rail carrier, the commission may consider current, future, or past
15 test periods or any reasonable combination thereof and any other factors
16 ~~which~~ THAT may affect the sufficiency or insufficiency of such rates,
17 fares, tolls, rentals, charges, or classifications during the period the same
18 may be in effect and may consider any factors ~~which~~ THAT influence an
19 adequate supply of energy, encourage energy conservation, or encourage
20 renewable energy development. THE COMMISSION SHALL CONSIDER THE
21 REASONABLENESS OF THE TEST PERIOD REVENUE REQUIREMENTS
22 PRESENTED BY THE UTILITY.

23 (II) IF THE RATES ESTABLISHED BY THE COMMISSION AFTER
24 HEARING ARE LOWER THAN ANY INTERIM RATES ESTABLISHED UNDER
25 PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION, THEN THE
26 COMMISSION SHALL ORDER THE UTILITY TO RETURN TO CUSTOMERS ON
27 THEIR UTILITY BILLS THROUGH A NEGATIVE RATE RIDER THE DIFFERENCE

1 BETWEEN THE TOTAL AMOUNT THAT WOULD HAVE BEEN COLLECTED
2 UNDER THE FINAL APPROVED RATES AND THE AMOUNT COLLECTED UNDER
3 THE INTERIM RATES FOR THE PERIOD THAT THE INTERIM RATES WERE IN
4 EFFECT, WITH INTEREST AT A RATE ESTABLISHED BY THE COMMISSION.

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

15 **SECTION 4. Appropriation.** (1) In addition to any other
16 appropriation, there is hereby appropriated, out of any moneys in the
17 public utilities commission fixed utility fund created in section 40-2-114,
18 Colorado Revised Statutes, not otherwise appropriated, to the department
19 of regulatory agencies, for allocation to the public utilities commission,
20 for the fiscal year beginning July 1, 2010, the sum of seventy-four
21 thousand one hundred fifteen dollars (\$74,115) cash funds and 0.6 FTE,
22 or so much thereof as may be necessary, for the implementation of this
23 act.

24 (2) In addition to any other appropriation, there is hereby
25 appropriated to the department of law, for the fiscal year beginning July
26 1, 2010, the sum of thirteen thousand forty-one dollars (\$13,041) and 0.1
27 FTE, or so much thereof as may be necessary, for the provision of legal

1 services to the department of regulatory agencies related to the
2 implementation of this act. Said sum shall be from reappropriated funds
3 received from the department of regulatory agencies out of the
4 appropriation made in subsection (1) of this section.

5 **SECTION 5. Applicability.** This act shall apply to conduct
6 occurring on or after the effective date of this act.

7 **SECTION 6. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.