

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

http://www.leg.state.co.us/bills/summaries.)

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 IN
9 COLORADO. A COORDINATED PLAN OF EMISSION REDUCTIONS FROM
10 COAL-FIRED POWER PLANTS WILL ENABLE COLORADO UTILITIES TO MEET
11 THE REQUIREMENTS OF THE FEDERAL ACT AND PROTECT PUBLIC HEALTH
12 AND THE ENVIRONMENT AT A LOWER COST THAN A PIECEMEAL APPROACH.
13 A COORDINATED PLAN OF REDUCTION OF EMISSIONS WILL ALSO RESULT IN
14 REDUCTIONS IN CARBON DIOXIDE AND PROMOTE THE USE OF NATURAL GAS
15 AND OTHER LOW-EMITTING RESOURCES TO MEET COLORADO'S
16 ELECTRICITY NEEDS, WHICH WILL IN TURN PROMOTE DEVELOPMENT OF
17 COLORADO'S ECONOMY AND INDUSTRY.

18 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT THE USE OF
19 NATURAL GAS TO REDUCE COAL-FIRED EMISSIONS MAY REQUIRE UTILITIES
20 TO ENTER INTO LONG-TERM CONTRACTS FOR NATURAL GAS IN A MANNER
21 THAT PROTECTS ELECTRICITY CONSUMERS. EVEN THOUGH SUCH
22 LONG-TERM CONTRACTS MIGHT BE BENEFICIAL TO CONSUMERS, FINANCIAL
23 RATING AGENCIES COULD FIND THAT SUCH LONG-TERM CONTRACTS
24 INCREASE THE FINANCIAL RISK TO THE UTILITY, WHICH IN TURN COULD
25 INCREASE THE COST OF CAPITAL TO THE UTILITY. THE GENERAL ASSEMBLY
26 FINDS THAT IT IS IMPORTANT TO GIVE FINANCIAL MARKETS CONFIDENCE
27 THAT UTILITIES WILL BE ABLE TO RECOVER THE COSTS OF LONG-TERM GAS

1 CONTRACTS WITHOUT THE RISK OF FUTURE REGULATORS DISALLOWING
2 CONTRACTS.

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

18 **40-3.2-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

1 (5) "STATE IMPLEMENTATION PLAN" MEANS THE PLAN REQUIRED
2 BY AND DESCRIBED IN SECTION 110 (a) AND OTHER PROVISIONS OF THE
3 FEDERAL ACT.

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

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

21 (I) NEW EMISSION CONTROL EQUIPMENT FOR OXIDES OF NITROGEN
22 AND OTHER POLLUTANTS;

23 (II) RETIREMENT OF COAL-FIRED UNITS, IF THE RETIRED
24 COAL-FIRED UNITS ARE REPLACED BY NATURAL GAS-FIRED ELECTRIC
25 GENERATION OR OTHER LOW-EMITTING RESOURCES AS DEFINED IN SECTION
26 40-3.2-206, INCLUDING ENERGY EFFICIENCY;

27 (III) CONVERSION OF COAL-FIRED GENERATION TO RUN ON

1 NATURAL GAS;

2 (IV) LONG-TERM FUEL SUPPLY AGREEMENTS;

3 (V) NEW NATURAL GAS PIPELINES AND OTHER SUPPORTING GAS

4 INFRASTRUCTURE;

5 (VI) INCREASED UTILIZATION OF EXISTING GAS-FIRED GENERATING

6 CAPACITY;

7 (VII) NEW TRANSMISSION LINES AND OTHER SUPPORTING

8 TRANSMISSION INFRASTRUCTURE;

9 (VIII) EMISSION CONTROL EQUIPMENT THAT IS REQUIRED TO BE

10 INSTALLED AT AFFECTED UNITS PRIOR TO OR IN CONJUNCTION WITH ANY

11 RETIREMENT, CONVERSION, OR EMISSION CONTROL EQUIPMENT RETROFIT

12 SET FORTH UNDER THE PLAN IN ORDER TO LIMIT ANY POLLUTANT OTHER

13 THAN OXIDES OF NITROGEN; AND

14 (IX) ANY OTHER CAPITAL, FUEL, AND OPERATIONS AND

15 MAINTENANCE EXPENDITURES APPROPRIATE TO SUPPORT THE

16 IMPLEMENTATION OF THE PLAN.

17 (b) (I) PRIOR TO FILING THE PLAN, THE UTILITY SHALL CONSULT

18 WITH THE DEPARTMENT AND SHALL WORK WITH THE DEPARTMENT IN

19 GOOD FAITH TO DESIGN A PLAN TO MEET THE CURRENT AND ANTICIPATED

20 REQUIREMENTS OF THE FEDERAL ACT AND STATE LAW IN A

21 COST-EFFECTIVE AND FLEXIBLE MANNER.

22 (II) THE COMMISSION SHALL PROVIDE THE DEPARTMENT AN

23 OPPORTUNITY TO:

24 (A) COMMENT ON THE AIR QUALITY, ALL OTHER AIR POLLUTANTS,

25 AND OTHER EMISSION REDUCTIONS OF THE PLAN; AND

26 (B) EVALUATE AND DETERMINE WHETHER THE PLAN IS

27 CONSISTENT WITH THE CURRENT AND ANTICIPATED REQUIREMENTS OF THE

1 FEDERAL ACT.

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

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

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

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

1 ELECTRIC GENERATING UNITS THAT ARE SET FORTH IN THE PLAN.

2 **40-3.2-205. Review - approval.** (1) IN EVALUATING THE PLAN,
3 THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

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

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

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

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

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

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

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

26 (f) THE DEGREE TO WHICH THE PLAN ENHANCES THE ABILITY OF
27 THE UTILITY TO MEET STATE OR FEDERAL RENEWABLE ENERGY

1 REQUIREMENTS, RELIES ON ENERGY EFFICIENCY, OR RELIES ON OTHER LOW
2 EMITTING RESOURCES;

3 (g) WHETHER THE PLAN PROMOTES COLORADO ECONOMIC
4 DEVELOPMENT;

5 (h) WHETHER THE PLAN PRESERVES RELIABLE ELECTRIC SERVICE
6 FOR COLORADO CONSUMERS;

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

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

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

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

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

27 **40-3.2-206. Coal plant retirements - replacement resources.**

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

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

1 OF THE NINE HUNDRED MEGAWATTS OF CAPACITY AFTER JANUARY 1,
2 2015, BUT BEFORE JANUARY 1, 2018.

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

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

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

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

17 (C) THE COSTS AND IMPACT ON ELECTRIC RATES FROM THESE
18 PROPOSALS; AND

19 (D) THE IMPACT OF THE RETIREMENTS ON THE RELIABILITY OF THE
20 UTILITY'S ELECTRIC SERVICE.

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

26 (2) THE UTILITY SHALL SET FORTH IN ITS PLAN THE UTILITY'S
27 PROPOSAL FOR THE BEST WAY OF TIMELY MEETING THE EMISSION

1 REDUCTION REQUIREMENTS REQUIRED BY FEDERAL AND STATE LAW,
2 GIVEN THE NEED TO PRESERVE ELECTRIC SYSTEM RELIABILITY, TO AVOID
3 UNREASONABLE RATE INCREASES, AND THE ECONOMIC AND
4 ENVIRONMENTAL BENEFITS OF COORDINATED EMISSION REDUCTIONS.

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

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

12 (b) USE REASONABLE PROJECTIONS OF FUTURE COAL AND
13 NATURAL GAS COSTS;

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

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

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

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

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

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

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

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

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

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

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

1 (c) IF THE PUBLIC UTILITY FAILS TO APPLY TO THE FEDERAL
2 ENERGY REGULATORY COMMISSION WITHIN SIX MONTHS AFTER THE
3 COMMISSION'S FINAL ORDER ASSIGNING A PORTION OF THE PLAN'S COSTS
4 TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY IS
5 NOT ENTITLED TO RECOVER THE ASSIGNED PORTION OF THE COSTS FROM
6 ITS RETAIL CUSTOMERS.

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

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

27 (5) DURING THE TIME ANY SPECIAL REGULATORY PRACTICE IS IN

1 EFFECT, THE UTILITY SHALL FILE A NEW RATE CASE AT LEAST EVERY TWO
2 YEARS OR FILE A BASE RATE RECOVERY PLAN THAT SPANS MORE THAN ONE
3 YEAR.

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

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

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

27 (b) THE AIR QUALITY CONTROL COMMISSION SHALL VACATE THE

1 ENTIRE PROCEEDING RELATED TO THE UTILITY PLAN AND SHALL INITIATE
2 A NEW PROCEEDING FOR THE CONSIDERATION OF ALTERNATIVE PROPOSALS
3 FOR THE APPROPRIATE CONTROLS FOR THOSE UNITS COVERED BY THE
4 UTILITY PLAN FOR INCLUSION IN THE REGIONAL HAZE ELEMENT OF THE
5 STATE IMPLEMENTATION PLAN IF:

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

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

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

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

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

1 AIR QUALITY REQUIREMENTS.

2 **40-3.2-209. Annual certification of early reductions in**
3 **greenhouse gases.** REDUCTIONS IN GREENHOUSE GASES ACHIEVED
4 THROUGH A COMPLIANCE STRATEGY BEFORE SUCH REDUCTIONS ARE
5 MANDATED UNDER FEDERAL LAW ARE VOLUNTARY FOR PURPOSES OF
6 DETERMINING EARLY REDUCTION CREDITS UNDER FEDERAL LAW. SUBJECT
7 TO APPLICABLE AND APPROPRIATE PROTECTIONS FOR CONFIDENTIAL
8 BUSINESS INFORMATION, THE UTILITY SHALL ANNUALLY CERTIFY AS
9 APPROPRIATE THE COMPARATIVE CARBON DIOXIDE EQUIVALENT EMISSION
10 RATE OF THE RETIRED AND REPLACEMENT ELECTRIC GENERATING
11 RESOURCES, THE COMPARATIVE UNIT UTILIZATION, HEAT RATES, NET
12 GREENHOUSE GASES, AND THE OVERALL VOLUME OF CARBON DIOXIDE
13 EQUIVALENT EMISSIONS REDUCED UNDER THE PLAN APPROVED UNDER
14 THIS PART 2. THE GOVERNOR SHALL ENUNCIATE EXPLICIT SUPPORT FOR
15 TREATING SUCH QUANTIFIED REDUCTIONS AS EARLY REDUCTIONS IN A
16 RESOLUTION OR CORRESPONDENCE TO THE UNITED STATES CONGRESS AND
17 THE PRESIDENT OF THE UNITED STATES CALLING FOR THE RECOGNITION OF
18 EARLY REDUCTIONS UNDER FEDERAL LAW.

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

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

26 **40-6-111. Hearing on schedules - suspension - new rates -**
27 **rejection of tariffs.** (1) (d) NOTWITHSTANDING ANY ORDER OF

1 SUSPENSION OF A PROPOSED INCREASE IN ELECTRIC, GAS, OR STEAM RATES
2 UNDER THIS SUBSECTION (1), THE COMMISSION MAY ORDER, WITHOUT
3 HEARING, INTERIM RATES, AT ANY LEVEL UP TO THE PROPOSED NEW
4 RATES, TO TAKE EFFECT NOT LATER THAN SIXTY DAYS AFTER THE FILING
5 FOR THE PROPOSED RATE INCREASE. IN MAKING A DETERMINATION AS TO
6 WHETHER TO ALLOW INTERIM RATES, THE COMMISSION SHALL CONSIDER
7 THE AMOUNT OF THE REVENUE DEFICIENCY PRESENTED BY THE UTILITY
8 AND THE EXTENT TO WHICH THIS DEFICIENCY WOULD ADVERSELY AFFECT
9 THE UTILITY DURING THE TIME PERIOD REQUIRED TO HOLD HEARINGS ON
10 THE SUSPENDED RATES.

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

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

1 PRESENTED BY THE UTILITY.

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

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

21 **SECTION 4. Appropriation.** (1) In addition to any other
22 appropriation, there is hereby appropriated, out of any moneys in the
23 public utilities commission fixed utility fund created in section 40-2-114,
24 Colorado Revised Statutes, not otherwise appropriated, to the department
25 of regulatory agencies, for allocation to the public utilities commission,
26 for the fiscal year beginning July 1, 2010, the sum of seventy-four
27 thousand one hundred fifteen dollars (\$74,115) cash funds and 0.6 FTE,

1 or so much thereof as may be necessary, for the implementation of this
2 act.

3 (2) In addition to any other appropriation, there is hereby
4 appropriated to the department of law, for the fiscal year beginning July
5 1, 2010, the sum of thirteen thousand forty-one dollars (\$13,041) and 0.1
6 FTE, or so much thereof as may be necessary, for the provision of legal
7 services to the department of regulatory agencies related to the
8 implementation of this act. Said sum shall be from reappropriated funds
9 received from the department of regulatory agencies out of the
10 appropriation made in subsection (1) of this section.

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

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