

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

PREAMENDED

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

LLS NO. 04-0387.01 Thomas Morris

HOUSE BILL 04-1273

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A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF AN ELECTRIC RESOURCE**
102 **STANDARD FOR RENEWABLE ENERGY FOR PROVIDERS OF**
103 **ELECTRIC SERVICE.**

Bill Summary

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

Requires the public utilities commission (commission) to establish an electric resource standard (standard) for renewable energy. Specifies that the standard shall require electric service providers to generate or acquire a specified amount of renewable energy each year. Increases the amount of renewable energy to be generated or acquired over a specified number of years.

Encourages electric service providers to use a competitive

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.

acquisition process to obtain the renewable resources necessary to fulfill its obligations. Counts renewable energy generated in an enterprise zone, by small biomass, or by solar electric resources as additional kilowatts toward complying with the standard. Specifies that a provider shall be credited for a specified amount of renewable energy that is produced or acquired even if the cost is recovered through an optional pricing program. Allows electricity produced by wind or solar energy systems subsidized by a provider to be deemed to be from a renewable energy system for purposes of complying with the standard. Allows the commission to adopt rules establishing a system of renewable energy credits that may be used to comply with the standard.

Requires a provider to notify the commission if the provider will be unable to comply with the standard for a particular calendar year. Authorizes the commission to exempt the provider from all or a portion of the standard if there is an insufficient supply of renewable energy, or allow a deferral if new capacity is not needed.

Specifies that approved renewable energy contracts are deemed a prudent investment and the costs associated with the contract may be recovered. Requires providers to create a plan for acquiring the renewable resources necessary to meet the standard and to submit an annual report to the commission concerning the provider's compliance with the standard. Requires the commission to promulgate rules necessary for the administration and enforcement of the act, including through the imposition of fines. Requires revenues from such fines to be used to encourage the development of additional renewable energy facilities.

Defines terms.

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

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

9 (2) Therefore, in order to continue to be successful in attracting
10 new businesses and jobs, in promoting development of rural economies,

1 in minimizing water use for electricity generation, in diversifying
2 Colorado's energy resources to reduce the impact of volatile fuel prices,
3 and in improving the natural environment of the state, the general
4 assembly hereby declares that it is in the best interests of the citizens of
5 Colorado to develop and utilize renewable energy resources to the
6 maximum practicable extent.

7 **SECTION 2.** Title 40, Colorado Revised Statutes, is amended
8 BY THE ADDITION OF A NEW ARTICLE to read:

9 **ARTICLE 3.3**
10 **Electric Resource Standard**
11 **for Renewable Energy**

12 **40-3.3-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
13 CONTEXT OTHERWISE REQUIRES:

- 14 (1) (a) "BIOMASS" MEANS:
- 15 (I) ORGANIC MATTER FROM A PLANT OR TREE THAT IS PLANTED FOR
16 THE PURPOSE OF BEING USED TO PRODUCE ENERGY;
- 17 (II) NONTOXIC, LIGNOCELLULOSIC OR HEMICELLULOSIC MATTER
18 THAT REGENERATES, OR THE USE OF WHICH WILL NOT RESULT IN A
19 DEPLETION OF RESOURCES, AND THAT IS THE BYPRODUCT OF:
- 20 (A) FOREST RESTORATION OR FIRE MITIGATION TRIMMINGS;
- 21 (B) MILL RESIDUE;
- 22 (C) SLASH; OR
- 23 (D) BRUSH;
- 24 (III) BIOSOURCE FUELS;
- 25 (IV) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES;
- 26 (V) URBAN WOOD WASTE;
- 27 (VI) INVASIVE SPECIES;

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

3 (VIII) AQUATIC PLANTS.

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

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

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

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

20 (5) "QUALIFIED ENERGY RECOVERY SYSTEM" MEANS A SYSTEM
21 WITH A NAMEPLATE CAPACITY OF NOT MORE THAN FIFTEEN MEGAWATTS
22 THAT CONVERTS THE OTHERWISE LOST ENERGY FROM THE HEAT FROM
23 EXHAUST STACKS OR PIPES USED FOR ENGINES, MANUFACTURING, OR
24 INDUSTRIAL PROCESSES TO GENERATE ELECTRICITY AND THAT DOES NOT
25 USE ADDITIONAL FOSSIL FUEL OR REQUIRE A COMBUSTION PROCESS TO
26 GENERATE THE ELECTRICITY. "QUALIFIED ENERGY RECOVERY SYSTEM"
27 DOES NOT INCLUDE ANY SYSTEM THAT USES ENERGY, LOST OR OTHERWISE,

1 FROM A PROCESS WHOSE PRIMARY PURPOSE IS THE GENERATION OF
2 ELECTRICITY, INCLUDING, WITHOUT LIMITATION, ANY PROCESS INVOLVING
3 ENGINE-DRIVEN GENERATION OR PUMPED HYDROGENERATION.

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

6 (I) BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY, SMALL
7 HYDROELECTRICITY, AND WIND ENERGY; AND

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

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

11 (I) PUMPED STORAGE FACILITIES; HYDROELECTRICITY OTHER THAN
12 SMALL HYDROELECTRICITY; COAL, NATURAL GAS, OIL, PROPANE, OR ANY
13 OTHER FOSSIL FUEL; OR NUCLEAR ENERGY; OR

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

16 (7) "RENEWABLE ENERGY CONTRACT" MEANS A CONTRACT TO
17 ACQUIRE ELECTRICITY, TOGETHER WITH ANY ASSOCIATED RENEWABLE
18 ENERGY CREDITS, FROM ONE OR MORE RENEWABLE ENERGY SYSTEMS
19 OWNED, OPERATED, OR CONTROLLED BY OTHER PARTIES.

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

22 (a) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY AND
23 TRANSMITS OR DISTRIBUTES THE ELECTRICITY THAT IT GENERATES TO A
24 PROVIDER OF ELECTRIC SERVICE;

25 (b) GENERATES AND TRANSMITS ELECTRICITY TO A PROVIDER OF
26 ELECTRIC SERVICE USING RENEWABLE ENERGY AND FOSSIL FUELS IN
27 HYBRID COMBINATION TO BALANCE INTERMITTENT AVAILABILITY, OR TO

1 ENHANCE DISPATCHABILITY, IF, ON AN ANNUAL BASIS, THE AMOUNT OF
2 THERMAL ENERGY TRANSMITTED TO THE SYSTEM DERIVED FROM FOSSIL
3 FUELS DOES NOT EXCEED THE AMOUNT OF THERMAL ENERGY TRANSMITTED
4 TO THE SYSTEM DERIVED FROM RENEWABLE ENERGY. FOR THE PURPOSES
5 OF THIS ARTICLE, THE NAMEPLATE RATING OF A FACILITY AS DESCRIBED IN
6 THIS PARAGRAPH (b) SHALL NOT EXCEED THAT OF THE RENEWABLE
7 ENERGY CAPABILITY ALONE.

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

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

13 (a) THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR AN
14 AGENCY OR INSTRUMENTALITY OF THE STATE OR POLITICAL SUBDIVISION
15 OF THE STATE WHEN IT PURCHASES ELECTRICITY AT RETAIL; AND

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

18 (10) "SMALL HYDROELECTRICITY" MEANS:

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

22 (b) TECHNOLOGIES THAT HARNESS THE INCREMENTAL
23 HYDROELECTRIC POTENTIAL OF WATER IMPOUNDMENTS OR CONVEYANCE
24 STRUCTURES IN EXISTENCE ON OR BEFORE THE EFFECTIVE DATE OF THIS
25 ARTICLE, IF SUCH INCREMENTAL HYDROELECTRIC DEVELOPMENT DOES NOT
26 ADVERSELY CHANGE EXISTING IMPACTS TO THE AQUATIC ECOSYSTEM OR
27 RESULT IN INCREASED DIVERSION OR CONSUMPTIVE USE OF WATER FROM

1 ANY RIVER, STREAM, OR OTHER WATERWAY; OR

2 (c) A PROJECT THAT HARNESSSES THE HYDROELECTRIC POTENTIAL
3 OF WATER IMPOUNDMENTS OR CONVEYANCE STRUCTURES NOT IN
4 EXISTENCE ON OR BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, WITH A
5 NAMEPLATE RATING OF TEN MEGAWATTS OR LESS.

6 **40-3.3-102. Electric resource standard - rules.** (1) FOR EACH
7 PROVIDER OF ELECTRIC SERVICE, THE COMMISSION SHALL ESTABLISH AN
8 ELECTRIC RESOURCE STANDARD FOR RENEWABLE ENERGY. THE ELECTRIC
9 RESOURCE STANDARD SHALL REQUIRE EACH PROVIDER TO GENERATE,
10 DISPLACE, OR ACQUIRE ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS
11 OR QUALIFIED ENERGY RECOVERY SYSTEMS IN AMOUNTS PRORATED UPON
12 RETAIL ENERGY SALES WITHIN COLORADO AS REPORTED IN EACH
13 PROVIDER'S FORM 1 SUBMITTED ANNUALLY TO THE FEDERAL ENERGY
14 REGULATORY COMMISSION, THAT TOTAL FOR THE STATE:

15 (a) BY DECEMBER 31, 2006, FIVE HUNDRED MEGAWATTS BASED
16 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION
17 EQUIPMENT;

18 (b) BY DECEMBER 31, 2010, NINE HUNDRED MEGAWATTS BASED
19 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION
20 EQUIPMENT; AND

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

24 (2) (a) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A
25 COMPETITIVE ACQUISITION PROCESS WILL GENERALLY BE USED TO
26 ACQUIRE RENEWABLE RESOURCES REQUIRED BY THIS ARTICLE. THIS
27 PROCESS IS INTENDED TO RESULT IN A RENEWABLE RESOURCE PORTFOLIO

1 THAT BALANCES COST, BENEFIT, AND RISK FACTORS.

2 (b) IN A RESOURCE PLANNING PROCESS PRIOR TO THE YEAR 2010,
3 THE COMMISSION SHALL REVIEW THE UTILIZATION OF PEAKING POWER
4 RENEWABLE ENERGY SYSTEMS PURSUANT TO PARAGRAPH (a) OF THIS
5 SUBSECTION (2) FOR EACH PROVIDER, IF ANY SUCH PEAKING POWER
6 RENEWABLE ENERGY SYSTEM IS PROPOSED BY A PARTY TO BE INCLUDED
7 IN THE ENERGY PROVIDER'S RESOURCE PORTFOLIO. IF THE COMMISSION
8 FINDS PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) THAT SUCH
9 SYSTEMS ARE ADVANTAGEOUS, CONSIDERING COSTS, BENEFITS, AND RISKS,
10 IT MAY ORDER THE PROVIDER TO ACQUIRE PEAKING POWER RENEWABLE
11 ENERGY SYSTEMS TOTALING UP TO TEN PERCENT OF ITS 2010 OBLIGATION
12 UNDER THIS ARTICLE.

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

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

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

26 (6) IN APPLYING THE ELECTRIC RESOURCE STANDARD, THE
27 COMMISSION SHALL FULLY CREDIT THE PROVIDER OF ELECTRIC SERVICE

1 WITH THE RENEWABLE ENERGY KILOWATTS THAT THE PROVIDER OF
2 ELECTRIC SERVICE HAS INSTALLED OR PURCHASED NOTWITHSTANDING
3 WHETHER THE COST OF THE RENEWABLE ENERGY HAS BEEN OR WILL BE
4 RECOVERED THROUGH AN OPTIONAL RENEWABLE ENERGY PRICING
5 PROGRAM OR THROUGH STANDARD UTILITY RATES. PROVIDERS ARE
6 AUTHORIZED AND ENCOURAGED TO DEVELOP AND EXPAND OPTIONAL
7 RENEWABLE ENERGY PRICING PROGRAMS OR GREEN TAG PROGRAMS THAT
8 PROMOTE RENEWABLE ENERGY.

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

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

23 (9) ELECTRIC ENERGY PRODUCED BY A PROVIDER OF ELECTRIC
24 SERVICE THROUGH CO-FIRING RENEWABLE FUELS DESCRIBED IN SECTION
25 40-3.3-101 (1) AND (6) (a) (II) SHALL COUNT TOWARD COMPLIANCE WITH
26 THIS STANDARD PRORATED ON THE HEAT CONTENT OF THE RENEWABLE
27 FUELS AS A PERCENTAGE OF ALL FUELS USED TO PRODUCE SUCH ENERGY.

1 ANY FACILITY UTILIZED FOR CO-FIRING RENEWABLE FUELS SHALL MEET
2 CURRENT EMISSION REQUIREMENTS.

3 (10) THE COMMISSION MAY PROMULGATE RULES TO ESTABLISH A
4 SYSTEM OF RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A
5 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD. SUCH
6 RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE
7 24, C.R.S.

8 (11) IF A PROVIDER BELIEVES IT WILL BE UNABLE TO COMPLY WITH
9 ITS ELECTRIC RESOURCE STANDARD REQUIREMENTS THROUGH THE
10 GENERATION OF ELECTRICITY FROM ITS OWN RENEWABLE ENERGY
11 SYSTEMS, THROUGH RENEWABLE ENERGY SUPPLY CONTRACTS, THROUGH
12 QUALIFIED ENERGY RECOVERY SYSTEMS, OR, IF APPLICABLE, THROUGH THE
13 SALE AND PURCHASE OF RENEWABLE ENERGY CREDITS, THE PROVIDER
14 SHALL SO NOTIFY THE COMMISSION. IF THE COMMISSION DETERMINES
15 THERE IS NOT OR WILL NOT BE A SUFFICIENT SUPPLY OF ELIGIBLE
16 ELECTRICITY AVAILABLE TO THE PROVIDER, OR THAT THE PROVIDER WILL
17 NOT BE ABLE TO OBTAIN OR BUILD, AT REASONABLE COST, THE
18 TRANSMISSION NEEDED TO DELIVER THE ELIGIBLE ENERGY TO THE
19 PROVIDER'S SYSTEM, THE COMMISSION MAY EXEMPT THE PROVIDER FROM
20 THE REMAINING REQUIREMENTS OF ITS ELECTRIC RESOURCE STANDARD OR
21 FROM ANY APPROPRIATE PORTION THEREOF, AS DETERMINED BY THE
22 COMMISSION.

23 (12) A PROVIDER SHALL NOT HAVE THE AUTHORITY TO CONDEMN
24 OR EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,
25 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION
26 38-2-101, C.R.S., TO SITE THE GENERATION FACILITIES OF A RENEWABLE
27 ENERGY SYSTEM USED IN WHOLE OR IN PART TO MEET AN ELECTRIC

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

8 (13) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE
9 THE ELIGIBLE CAPACITY USED TO MEET THE STANDARD TO BE PRODUCED
10 ONLY IN THE STATE OF COLORADO, IF THE PROVIDER GIVES PREFERENCE
11 TO RENEWABLE ENERGY FACILITIES IN COLORADO WHEN OTHER FACTORS
12 ARE DEEMED EQUAL.

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

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

1 ACQUISITION OF RENEWABLE RESOURCES REQUIRED UNDER THIS ARTICLE
2 FOR THOSE YEARS UNTIL SUCH TIME AS ADDITIONAL CAPACITY IS NEEDED.

3 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (15),
4 IF THE COMMISSION DETERMINES THAT THE COST OF ELECTRICITY,
5 INCLUDING ANCILLARY COSTS, FROM PROPOSED OR EXISTING RENEWABLE
6 RESOURCE FACILITIES IS COST EFFECTIVE COMPARED TO THE COST OF
7 OPERATING EXISTING GENERATION RESOURCES OR PURCHASING ENERGY
8 UNDER EXISTING POWER SUPPLY CONTRACTS, THE COMMISSION MAY
9 ORDER THE ACQUISITION OF SUCH RESOURCES.

10 **40-3.3-103. Renewable energy cost recovery - acquisition plan.**

11 (1) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A
12 RENEWABLE ENERGY CONTRACT OR QUALIFIED ENERGY RECOVERY
13 SYSTEM CONTRACT BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND
14 ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT OR QUALIFIED
15 ENERGY RECOVERY SYSTEM CONTRACT AND ITS TERMS AND CONDITIONS
16 SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE COMMISSION
17 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER ALL JUST AND
18 REASONABLE COSTS ASSOCIATED WITH THE CONTRACT. IF A PROVIDER OF
19 ELECTRIC SERVICE SUBMITS A FORM OF CONTRACT TO THE COMMISSION
20 FOR ITS APPROVAL, AND THE COMMISSION APPROVES THE TERMS AND
21 CONDITIONS OF THE FORM OF CONTRACT, ANY CONTRACT ENTERED INTO
22 BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND ANOTHER PARTY THAT
23 IS MATERIALLY CONSISTENT WITH THE TERMS AND CONDITIONS OF THE
24 APPROVED FORM OF CONTRACT SHALL BE DEEMED TO BE A PRUDENT
25 INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES
26 SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED
27 WITH THE CONTRACT. THE PROVIDER OF ELECTRIC SERVICE SHALL BE

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

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

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

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

27 **40-3.3-104. Annual report.** (1) EACH PROVIDER OF ELECTRIC

1 SERVICE SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT
2 PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN BY THE
3 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD.

4 (2) EACH PROVIDER SHALL SUBMIT THE ANNUAL REPORT TO THE
5 COMMISSION AFTER THE END OF EACH CALENDAR YEAR AND WITHIN THE
6 TIME PRESCRIBED BY THE COMMISSION. THE REPORT SHALL BE SUBMITTED
7 IN A FORMAT APPROVED BY THE COMMISSION.

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

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

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

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

26 (d) INFORMATION ON THE COST AND TIMING OF TRANSMISSION
27 FACILITIES AND SERVICES NECESSARY FOR THE UTILIZATION OF ENERGY

1 FROM RENEWABLE ENERGY FACILITIES THAT ARE UTILIZED TO COMPLY
2 WITH THE STANDARD; AND

3 (e) ANY OTHER INFORMATION THAT THE COMMISSION BY RULE
4 DEEMS RELEVANT.

5 **40-3.3-105. Rules - fines - renewable energy account.** (1) THE
6 COMMISSION SHALL PROMULGATE RULES NECESSARY FOR THE
7 ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE. THE RULES
8 PROMULGATED BY THE COMMISSION SHALL INCLUDE:

9 (a) ENFORCEMENT MECHANISMS THAT ARE NECESSARY AND
10 REASONABLE TO ENSURE THAT EACH PROVIDER OF ELECTRIC SERVICE
11 COMPLIES WITH ITS ELECTRIC RESOURCE STANDARD; AND

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

22 (c) MONEYS COLLECTED FOR PENALTIES THAT RESULT FROM
23 NONCOMPLIANCE WITH THE STANDARD SHALL BE:

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

1 (II) USED TO THE FULLEST EXTENT PRACTICABLE TO ENCOURAGE
2 THE DEVELOPMENT OF ADDITIONAL RENEWABLE ENERGY FACILITIES AS
3 DETERMINED BY THE COMMISSION.

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

6 **SECTION 3. Effective date.** This act shall take effect at 12:01
7 a.m. on the day following the expiration of the ninety-day period after
8 final adjournment of the general assembly that is allowed for submitting
9 a referendum petition pursuant to article V, section 1 (3) of the state
10 constitution (August 4, 2004, if adjournment sine die is on May 5, 2004);
11 except that, if a referendum petition is filed against this act or an item,
12 section, or part of this act within such period, then the act, item, section,
13 or part, if approved by the people, shall take effect on the date of the
14 official declaration of the vote thereon by proclamation of the governor.