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MEMORANDUM

May 2, 2006

TO: Matt Baker
Howard Geller

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #130, concerning natural gas energy efficiency programs

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. To require all investor-owned natural gas distribution utilities in Colorado to develop and implement energy efficiency and conservation programs for their customers.
2. To define the customers who may make use of such programs to include both full-service customers and those who purchase gas on the wholesale market but pay an investor-owned utility for gas transportation.

3. To require investor-owned natural gas distribution utilities to spend at least one percent (1.0%) of their total revenues on the development and implementation of energy efficiency and conservation programs for their customers.
4. To direct the Colorado public utilities commission (PUC) to promulgate rules under which the utilities will develop and implement such programs, beginning no later than April 1, 2007, which rules shall establish:
 - Target figures for the utilities' expenditures on energy efficiency programs, expressed as a percentage of revenues derived from natural gas customers in 2006;
 - Target figures for energy savings through energy efficiency programs, expressed in terms per dollar of expenditure on such programs;
 - Cost recovery mechanisms, subject to a prohibition against cross-subsidization between residential and business customers;
 - A bonus structure under which utilities will be rewarded for making cost-effective investments that result in economic benefits; and
 - Reporting requirements for the purpose of measuring the benefits realized through energy efficiency programs and calculating the amount of cost recovery and bonuses that each utility may claim.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. The amending clause in Section 2 of the initiative says, "Article 1 of the Colorado Revised Statutes is amended ..." (Emphasis added.) Actually, it appears that article 1 of *title 40*, Colorado Revised Statutes, is being amended. Would the proponents consider editing the amending clause to avoid confusion?
2. Article 1 of title 40, C.R.S., currently ends with § 40-1-104. The new section added by this initiative is numbered § 40-1-126. To avoid a gap in numbering, would the proponents consider renumbering this new section as § 40-1-105, C.R.S.? Is there another place in the statutes where this section would be more appropriately located?
3. On page 1, lines 20-22 of the measure, there appears the heading:

ARTICLE 1 Natural Gas Energy Efficiency Programs

- a. The current edition of the Colorado Revised Statutes contains, at the beginning of article 1 of title 40, the following heading:

PUBLIC UTILITIES General and Administrative

ARTICLE 1
Definitions

(C.R.S. 2005, title 40, page 4.) Is the article heading on page 1, lines 20-22 of the initiative intended to replace the existing heading for Article 1? Is it intended as a second article heading, to follow § 40-1-104, C.R.S.? What is its purpose?

- b. The amending clause of the initiative states that the Colorado Revised Statutes are amended by the addition of "the following new sections."¹ Is it the proponents' intent to create a new article? If so, might it be more appropriately designated as article 1.5?
- c. Alternatively, could the new section be placed in article 2 of title 40, either as a new § 40-2-126 or as § 40-2-201, establishing a new part 2 of article 2? The heading on page 1, lines 20-22 would then read:

PART 2
NATURAL GAS ENERGY EFFICIENCY PROGRAMS

- d. If the heading were edited as above, the amending clause then could be edited to read: "Article 1 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:".
- 4. The material on page 1, lines 24-30, appears to be new language. In Colorado legislation, customarily, existing law is shown in upper and lower case, while new language is shown in small capitals. The remainder of this proposal, beginning on page 1, line 32, is shown in small capitals. To avoid confusion, would the proponents consider showing the material on page 1, lines 24-30 in small capitals also?
 - 5. To follow the outline style currently used for the Colorado Revised Statutes, would the proponents consider using lower-case letters for the paragraphs beginning on page 1, lines 32 and 45; page 2, lines 30, 37, and 43; and page 3, lines 1 and 4?
 - 6. It appears that the words "EMPLOYEE" on page 2, line 9, "A" on page 2, line 10, and "DEVELOP", on page 2, line 31, have inadvertently been printed with initial capitals. In addition, subparagraphs (I) through (IV) on page 2 begin without an initial capital letter. Would the proponents consider editing these portions to use standard capitalization?
 - 7. In subsection (1) on page 1, there appears to be a singular/plural disagreement between the phrases "each ... utility" on line 26, "their customers" on line 27, and "its total revenues" on line 28. Do the proponents wish to edit this sentence to avoid confusion?

¹Actually, there appears to be only one new section, currently identified as § 40-1-126.

8. Should the second "and" on page 2, line 18, be deleted?

Substantive questions:

1. The sentence on page 1, lines 29-30, provides that "the Public Utilities Commission shall initiate a rule-making on or before April 1, 2007[,] to establish the following:" Lines 32-43 set forth definitions of terms used within the text of the measure. To clarify, is it the proponents' intent that these definitions be subject to modification by the PUC as part of its rule-making, or must these definitions be incorporated into the PUC's rules without modification?
2. On page 1, lines 24-28, the measure requires that utilities spend at least 1.0% of their total revenues on energy efficiency and conservation programs.
 - a. How did the proponents arrive at this percentage of total revenues to be expended for such programs?
 - b. How are the "total revenues" of a utility to be calculated for this purpose?
3. There appears to be no definition of the term "energy efficiency and conservation program," although "education program" is defined. Are utilities restricted in any way as to the type of energy efficiency and conservation programs that would qualify under the measure? Do the proponents wish to include this term in the definitions section?
4. Page 1, lines 41-43, define the term "natural gas customers" to include "those who purchase gas on the wholesale market but pay an investor-owned utility for gas transportation."
 - a. Why have the proponents opted to include customers who purchase gas on the wholesale market but pay an investor-owned utility for gas transportation?
 - b. Do customers who purchase gas on the wholesale market usually *not* pay an investor-owned utility for gas transportation? Use of the term "but" seems to imply this. Could the definition be changed to include "those who purchase gas on the wholesale market *and* pay an investor-owned utility for gas transportation"?
5. What is the "gas dsm adjustment mechanism" referred to on page 3, line 4? Is that the cost adjustment mechanism referred to in subparagraph (III) on page 2, lines 5-15 "that is similar to cost adjustment mechanisms approved by the Commission for electricity demand-side management programs"? (And should "dsm" be capitalized?)
6. This initiative sets a deadline of six months, following completion of rule-making, by which time utilities must develop and implement energy efficiency and conservation programs. (Page 2, line 30.) How did the proponents arrive at this particular time period?
7. Subparagraph (I), at the top of page 2, directs the PUC to establish program expenditure targets equal to "at least" 1.0% of a utility's revenues from gas sales in 2006.

- a. Could the PUC establish a target that was higher than 1.0%? Do you wish to specify a maximum as well as a minimum percentage?
 - b. If the dollar value of a utility's gas sales doubled from 2006 to 2007, would the target expenditure still be 1.0% of the 2006 value? Do you wish to allow for any increase or decrease in the target expenditure?
8. In subparagraph (II), referring to target energy savings in therms per dollar spent, contains no minimum or maximum figure. Do you wish to leave these target figures entirely to the PUC's discretion?
9. What is a "therm"? Is it a standard unit of measure?
10. Subparagraph (III) requires that utilities be allowed to recover their prudently incurred costs of energy efficiency and conservation programs "without having to file a rate case." (Page 2, lines 6-7.)
 - a. Exactly how would this work? Would the determination of whether costs were "prudently incurred" not be addressed until the utility filed a rate case at some later time, for an increase that was based on factors other than its expenditures on energy efficiency and conservation programs? Would the PUC retain its authority to suspend rates or entertain complaints from consumers based on an increase under this subparagraph (III)?
 - b. Is this subparagraph (III) modeled on an existing provision that relates to demand-side management by electric utilities?
11. Subparagraph (IV) refers to the "net economic benefits" of the conservation and energy efficiency programs. (Page 2, lines 19-20.) How should these benefits be measured? Would they include benefits to the utility? To consumers? To society as a whole?
12. How would the bonus "reflect the ramp-up period" that "may be necessary" before a utility is able to achieve the targets? (Page 2, lines 22-23.) What is a "ramp-up period"? Who determines whether it is necessary?
13. What is the "annual energy efficiency budget" referred to on page 2, line 36? Is that the same as the energy efficiency program expenditure target?
14. What are the "impact and process evaluations" referred to on page 2, line 39?
15. Paragraph (c), at the bottom of page 2, requires utilities to submit annual reports. Do the proponents wish to specify when such reports would be due? For example, should the first such report be due on or before January 1, 2007, and subsequent reports be due on or before January 1 of each year?