SENATE COMMITTEE OF REFERENCE REPORT

April 15, 2019

Chair of Committee

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB19-107 be amended as follows, and as so amended, be referred to the Committee on Local Government with favorable recommendation:

Amend printed bill, strike everything below the enacting clause and substitute:

"SECTION 1. In Colorado Revised Statutes, add part 6 to article 15 of title 40 as follows:

PART 6
ELECTRIC UTILITY EASEMENTS

40-15-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "ATTACHED FACILITY" MEANS A BROADBAND FACILITY, AS DEFINED IN SECTION 38-5.5-102 (2), OR A BROADBAND NETWORK OR ANY PORTION OF A BROADBAND NETWORK, IN EACH CASE LOCATED SUBSTANTIALLY:

(a) ABOVEGROUND AND ATTACHED TO AN ELECTRIC UTILITY'S ELECTRIC SERVICE INFRASTRUCTURE; OR

(b) UNDERGROUND IN AN ELECTRIC EASEMENT AND EXISTING BEFORE THE DELIVERY OF NOTICE PURSUANT TO SECTION 40-15-602 (2).

(2) "BROADBAND AFFILIATE" MEANS A COMMERCIAL BROADBAND SUPPLIER THAT IS A SEPARATE LEGAL ENTITY FROM ANY ELECTRIC UTILITY BUT IS CONTROLLED BY, CONTROLS, OR IS UNDER COMMON CONTROL WITH AN ELECTRIC UTILITY.

(3) "COMMERCIAL BROADBAND SERVICE" MEANS "BROADBAND SERVICE", AS THAT TERM IS DEFINED IN SECTION 38-5.5-102 (1), OR BROADBAND INTERNET SERVICE."
(4) (a) "COMMERCIAL BROADBAND SUPPLIER" MEANS:

(I) A PROVIDER OF BROADBAND INTERNET SERVICE OR AN 
EXISTING BROADBAND PROVIDER, AS THAT TERM IS DEFINED IN SECTION 
38-5.5-102 (3), OR A PERSON THAT INTENDS TO PROVIDE BROADBAND 
INTERNET SERVICE OR BROADBAND SERVICE; OR 

(II) A PERSON THAT DIRECTLY OR INDIRECTLY SELLS, LEASES, OR 
OTHERWISE TRANSFERS ATTACHED FACILITIES OR A RIGHT TO INSTALL, 
OPERATE, MAINTAIN, OR USE ATTACHED FACILITIES FOR ANOTHER 
PERSON'S PROVISION OF COMMERCIAL BROADBAND SERVICE OR A PERSON 
THAT INTENDS TO SELL, LEASE, OR OTHERWISE TRANSFER ATTACHED 
FACILITIES OR A RIGHT TO INSTALL, OPERATE, MAINTAIN, OR USE 
ATTACHED FACILITIES.

(b) "COMMERCIAL BROADBAND SUPPLIER" DOES NOT MEAN AN 
electric utility.

(5) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED 
easement, right-of-way under section 38-4-103 or otherwise, or 
similar right in or to real property, no matter how acquired, 
held by an electric utility for the siting of electric service 
infrastructure or for the purpose of delivering electric service, 
regardless of whether:

(a) THE EASEMENT OR OTHER RIGHT IS EXCLUSIVELY FOR THE 
PROVISION OF ELECTRIC SERVICE OR FOR USE IN CONNECTION WITH 
COMMERCIAL BROADBAND SERVICE, TELECOMMUNICATION SERVICE, OR 
ANOTHER PURPOSE; OR 

(b) THE ELECTRIC UTILITY OR A COMMERCIAL BROADBAND 
supplier uses the easement or other right to provide commercial 
broadband service.

(6) "ELECTRIC UTILITY" MEANS A COOPERATIVE ELECTRIC 
ASSOCIATION, AS DEFINED IN SECTION 40-9.5-102.

(7) "INTEREST HOLDER" MEANS A PROPERTY OWNER OR OTHER 
PERSON WITH AN INTEREST IN THE REAL PROPERTY UPON WHICH AN 
electric easement is located.

(8) "MEMORANDUM" MEANS A WRITTEN INSTRUMENT THAT 
INCLUDES, AT A MINIMUM, THE NAME AND ADDRESS OF THE ELECTRIC 
UTILITY, THE DATE ON WHICH THE NOTICE WAS MAILED, AND THE 
INFORMATION REQUIRED TO BE INCLUDED IN A NOTICE UNDER SECTION 

(9) "NOTICE" MEANS A WRITTEN LETTER SUBSTANTIALLY 
COMPLYING WITH THE REQUIREMENTS SET FORTH IN SECTION 40-15-602 
(2)(b), WHICH NOTICE SHALL BE DEEMED DELIVERED ON THE DATE 
POSTMARKED OR OTHERWISE TIME STAMPED.
(10) "PERSON" HAS THE MEANING SET FORTH IN SECTION 40-1-102.

(11) "PROPERTY OWNER" MEANS A PERSON WITH A RECORDED FEE SIMPL SIMPLE INTEREST IN REAL PROPERTY UPON WHICH AN ELECTRIC EASEMENT IS LOCATED.

40-15-602. Electric easements - commercial broadband service - broadband affiliates - notice required. (1) WITH REGARD TO REAL PROPERTY SUBJECT TO AN ELECTRIC EASEMENT, IF AN ELECTRIC UTILITY, OR ANY COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC UTILITY TO ACT ON ITS BEHALF, COMPLIES WITH THE NOTICE AND FILING REQUIREMENTS SET FORTH IN SUBSECTION (2) OF THIS SECTION, THE ELECTRIC UTILITY HOLDING THE ELECTRIC EASEMENT MAY, WITHOUT THE CONSENT OF AN INTEREST HOLDER IN THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT, TAKE THE FOLLOWING ACTIONS TO THE EXTENT NOT ALREADY PERMITTED BY THE ELECTRIC EASEMENT:

(a) INSTALL, MAINTAIN, OR OWN, OR PERMIT ANY COMMERCIAL BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, TO INSTALL, MAINTAIN, OR OWN AN ATTACHED FACILITY FOR EXTERNAL USE AND OPERATION BY A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, IN PROVIDING COMMERCIAL BROADBAND SERVICE;

AND

(b) LEASE OR OTHERWISE PROVIDE TO A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, ANY EXCESS CAPACITY OF ATTACHED FACILITIES FOR PURPOSES OF PROVIDING COMMERCIAL BROADBAND SERVICE.

(2) (a) AT LEAST THIRTY DAYS BEFORE FIRST EXERCISING ITS RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION WITH RESPECT TO AN ELECTRIC EASEMENT OR PORTION OF AN ELECTRIC EASEMENT, AN ELECTRIC UTILITY OR ITS DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST SEND NOTICE TO EACH PROPERTY OWNER THAT HOLDS AN INTEREST IN THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT AND MUST FILE A MEMORANDUM IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN WHICH THE ELECTRIC UTILITY IS EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION. IF, WITHIN ONE YEAR AFTER DELIVERY OF NOTICE PURSUANT TO THIS SUBSECTION (2), AN ELECTRIC UTILITY HAS NOT COMMENCED ENGAGING IN ANY OF THE ACTIONS SET FORTH IN SUBSECTION (1) OF THIS SECTION, INCLUDING THE COMMENCEMENT OF CONSTRUCTING A NEW INSTALLATION, THE ELECTRIC UTILITY OR DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST REDELIVER NOTICE PURSUANT TO THIS SUBSECTION (2) BEFORE EXERCISING ITS RIGHTS.
UNDER SUBSECTION (1) OF THIS SECTION. IF AN ELECTRIC UTILITY OR ITS
DESIGNATED COMMERCIAL BROADBAND SUPPLIER FAILS TO DELIVER
SUFFICIENT NOTICE IN ACCORDANCE WITH THIS SUBSECTION (2), IT MAY
ONLY COMMENCE EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS
SECTION UPON SUBSEQUENT DELIVERY OF SUFFICIENT NOTICE, AT WHICH
TIME THE ONE-YEAR PERIOD WILL COMMENCE.

(b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION
(2) MUST:
(I) BE SENT BY FIRST-CLASS MAIL FROM OR ON BEHALF OF THE
ELECTRIC UTILITY TO THE INTEREST HOLDER AT THE LAST KNOWN
ADDRESS BASED ON THE ELECTRIC UTILITY’S RECORDS OR THE ADDRESS
LISTED FOR THE PROPERTY IN THE RECORDS OF THE OFFICE OF THE COUNTY
CLERK AND RECORDER;
(II) INCLUDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND
NAMED POINT OF CONTACT FOR THE ELECTRIC UTILITY AND, IF DELIVERED
BY A COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC
UTILITY, THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF
CONTACT FOR THE DESIGNATED COMMERCIAL BROADBAND SUPPLIER;
(III) INCLUDE THE PROPERTY ADDRESS AND APPROXIMATE
LOCATION OF THE ELECTRIC EASEMENT, WHICH NEED NOT INCLUDE A
LEGAL DESCRIPTION, LAND TITLE SURVEY, PLAT, OR OTHER DESIGNATION
OF THE EXACT BOUNDARIES OF THE ELECTRIC EASEMENT;
(IV) INCLUDE:
(A) A CITATION TO THIS PART 6; AND
(B) A COPY OF THE LANGUAGE OF SUBSECTION (1) OF THIS SECTION
WITH AN INDICATION OF WHETHER THE ELECTRIC UTILITY IS EXERCISING
RIGHTS UNDER ONE OR MORE OF SUBSECTION (1)(a) OR (1)(b) OF THIS
SECTION;
(V) GIVE AN ESTIMATED TIME FOR THE START OF INSTALLATION OR
CONSTRUCTION WITH REGARD TO ANY NEW INSTALLATION OR
CONSTRUCTION THAT WILL OCCUR IN CONNECTION WITH THE EXERCISE OF
RIGHTS UNDER SUBSECTION (1) OF THIS SECTION;
(VI) INCLUDE A STATEMENT REGARDING THE RIGHT AND
OBLIGATION OF THE ELECTRIC UTILITY, OR ITS DESIGNATED COMMERCIAL
BROADBAND SUPPLIER, TO RECORD A MEMORANDUM; AND
(VII) INCLUDE A STATEMENT REGARDING THE STATUTE OF
LIMITATIONS FOR THE INTEREST HOLDER TO FILE A CLAIM WITH RESPECT
TO THE ELECTRIC UTILITY’S EXERCISE OF RIGHTS.

(3) UPON EXERCISE OF THE RIGHTS SET FORTH IN SUBSECTION (1)
OF THIS SECTION, THE RIGHTS RUN WITH THE LAND AND ARE ASSIGNABLE
BY THE ELECTRIC UTILITY.
(4) An electric utility shall not directly provide retail commercial broadband service but may cause or allow a broadband affiliate to offer retail commercial broadband service. As long as an electric utility maintains its exclusive right to provide electric service to customers within its exclusive service territory, both the electric utility that has a broadband affiliate and the broadband affiliate shall:

(a) Maintain or cause to be maintained an accounting system for the broadband affiliate separate from the electric utility’s accounting system, using generally accepted accounting principles or another reasonable and customary allocation method;

(b) Cause a financial audit to be performed by an independent certified public accountant, within two years after commencement of commercial operation of retail commercial broadband service and at least once every two years thereafter, with respect to the broadband affiliate’s provision of commercial broadband service, including an audit of the allocation of costs for property and services that are used in both the provision of commercial broadband service and the electric utility’s provision of electric service; and

(c) (i) Not cause or allow the electric utility to use its exclusive right to provide electric services within its exclusive territory to directly or indirectly cross-subsidize the broadband affiliate or its provision of commercial broadband service, whether by discriminatory or below fair market value pricing; payment of capital or operating costs properly charged to the broadband affiliate under applicable accounting rules; use of any revenue from or subsidy for the provision of electric service to support commercial broadband service, except in connection with the electric utility’s provision of electricity; or otherwise.

(II) Nothing in this subsection (4)(c) prohibits an electric utility from:

(A) Entering into a transaction with a broadband affiliate on terms and conditions substantially similar to those that would be agreed to between two similarly situated parties in an arm’s length commercial transaction; or

(B) Providing reduced-cost commercial broadband service to low-income retail customers.

(5) The terms and conditions of a written electric
EASEMENT APPLY TO AN ELECTRIC UTILITY’S USES OF THE ELECTRIC
EASEMENT SET FORTH IN SUBSECTION (1) OF THIS SECTION, EXCEPT TO THE
EXTENT THAT THOSE TERMS AND CONDITIONS PROHIBIT OR HAVE THE
EFFECT OF PROHIBITING OR MATERIALLY IMPAIRING THE ELECTRIC
UTILITY’S EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION.
A PROHIBITION ON ABOVEGROUND ELECTRIC SERVICE INFRASTRUCTURE
CONTAINED WITHIN A WRITTEN ELECTRIC EASEMENT CONSTITUTES A
PROHIBITION ON ABOVEGROUND ATTACHED FACILITIES.

(6) NOTHING IN THIS PART 6 REQUIRES AN ELECTRIC UTILITY TO
COMPLY WITH SUBSECTION (2) OF THIS SECTION IN ORDER TO TAKE ANY
ACTION OR EXERCISE ANY RIGHT UNDER AN ELECTRIC EASEMENT THAT IS
ALREADY PERMITTED BY THE TERMS OF THE ELECTRIC EASEMENT.

40-15-603. Statute of limitations - damages - limitations on
damages. (1) (a) No claim or cause of action against an electric
utility or a commercial broadband supplier concerning the
electric utility’s or commercial broadband supplier’s exercise of
rights under this part 6 or any actions that the electric utility
or commercial broadband supplier takes before the effective
date of this section that, if taken after the effective date of this
section, would be authorized under section 40-15-602 (1) may be
brought by or on behalf of an interest holder more than two
years after the latest of:

(I) the effective date of this section;
(II) the date of delivery of notice pursuant to section
40-15-602 (2); or
(III) the date of recording of a memorandum pursuant to
section 40-15-602 (2).

(b) Subsection (1)(a) of this section does not apply to a
claim or cause of action based solely on damage to property or
breach of the terms and conditions of a written electric
easement as the terms and conditions apply in accordance with
section 40-15-602 (5).

(c) Nothing in this section 40-15-603 extends the statutory
limitation period applicable to a claim or revives an expired
claim.

(2) A claim or cause of action shall not be brought by or
on behalf of an interest holder against a commercial broadband
supplier for actions that the commercial broadband supplier has
taken under section 40-15-602 (2) an electric utility.

(3) If an interest holder brings a trespass claim, inverse
condemnation claim, or any other claim or cause of action for
AN ELECTRIC UTILITY’S OR COMMERCIAL BROADBAND SUPPLIER’S EXERCISE OF RIGHTS OR PERFORMANCE OF ACTIONS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF ACTION:

(a) The measure of damages for all such claims, taken together, is the fair market value of the reduction in value of the interest holder’s interest in the real property, as contemplated by Section 38-1-121 (1). In determining or providing the fair market value under this subsection (3)(a):

(I) The following shall not be used and are not admissible as evidence in any proceeding:

(A) Profits, fees, or revenue derived from the attached facilities; or

(B) The rental value of the real property interest or the electric easement, including the rental value of any attached facilities or an assembled broadband corridor; and

(II) Consideration must be given to any increase in value to the real property interest resulting from the availability of commercial broadband service to the real property underlying the real property interest that arises from the installation of attached facilities.

(b) The interest holder must make reasonable accommodations for the electric utility or commercial broadband supplier to perform an appraisal or inspection of the real property within ninety days following any written request for an appraisal or inspection. If an interest holder fails to make such accommodations, the electric utility or commercial broadband supplier has no further liability to the interest holder.

(c) Any damages for the exercise of rights or actions set forth in subsection (1) of this section:

(I) Except as provided in subsection (3)(c)(III) of this section, are limited to those damages that existed at the time that the electric utility or commercial broadband supplier first exercised the rights or performed the actions;

(II) Shall not be deemed to continue, accrue, or accumulate; and

(III) May include additional damages for any physical damage to property or breach of the terms and conditions of a written electric easement as the terms and conditions apply after giving effect to Section 40-15-602 (5).
(d) (I) Except for an electric utility's or commercial broadband supplier's gross negligence or willful misconduct, or in accordance with the terms and conditions of a written electric easement as the terms and conditions apply in accordance with Section 40-15-602 (5), an interest holder is not entitled to reimbursement from an electric utility or commercial broadband supplier for the cost of any appraisal, attorney fees, or award for special, consequential, indirect, or punitive damages.

(II) For purposes of this subsection (3)(d), any action or failure to act by an electric utility or commercial broadband supplier in furtherance of the electric utility's or commercial broadband supplier's exercise of rights set forth in Section 40-15-602 (1) shall not be deemed gross negligence or willful misconduct.

(4) By accepting a damage award under this section other than a damage award under subsection (3)(c)(III) of this section, an interest holder shall be deemed to have granted an easement, equal in duration to the term of the electric easement and subject to Section 40-15-602 (5), to the extent of the interest holder's rights in the real property, for all of the uses of the real property and actions set forth in Section 40-15-602 (1).

**40-15-604. Electric utility obligations.** (1) An electric utility that exercises any rights under Section 40-15-602 (1)(a) or (1)(b) for the provision of commercial broadband service or that has a broadband affiliate shall not discriminate among commercial broadband suppliers, including broadband affiliates, in offering or granting rights to install or attach any attached facilities or in leasing or using capacity of any attached facilities.

(2) An electric utility that has a broadband affiliate and, if applicable, the broadband affiliate shall:

(a) Charge recurring fees not exceeding any fees in accordance with rates that apply to attachments to poles under Section 224 (e) of the Federal "Communications Act of 1934", as amended, and the FCC's regulations and policies implementing the federal act concerning pole attachment rates that apply to investor-owned utilities, as set forth in 47 CFR 1.1406, to all commercial broadband suppliers for attachments on a pole or electric service infrastructure that is owned or controlled by the electric utility or broadband affiliate; except that, if an electric utility demonstrates with competent
EVIDENCE THAT IT CANNOT RECOVER ALL OF ITS INCREMENTAL CAPITAL AND OPERATING COSTS OF PROVIDING THE POLE ATTACHMENT THROUGH THE RATES AND ANY APPLICABLE ONE-TIME CHARGES, THE ELECTRIC UTILITY MAY CHARGE A HIGHER RATE TO COMMERCIAL BROADBAND SUPPLIERS ON A NONDISCRIMINATORY BASIS TO THE EXTENT REQUIRED TO RECOVER THE INCREMENTAL COSTS;

(b) PROVIDE ALL COMMERCIAL BROADBAND SUPPLIERS ACCESS TO ALL POLES OR ELECTRIC SERVICE INFRASTRUCTURE OWNED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE FOR THE PURPOSE OF ATTACHING EQUIPMENT FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE. ACCESS PROVIDED IN ACCORDANCE WITH THIS SUBSECTION (2)(b) MUST BE PROVIDED:

(I) ON A JUST, REASONABLE, AND NONDISCRIMINATORY BASIS AND IN A MANNER CONSISTENT WITH THE REGULATORY OBLIGATIONS SET FORTH IN FCC REGULATIONS REGARDING INVESTOR-OWNED UTILITY POLE OWNERS; AND

(II) UNDER TERMS AND CONDITIONS THAT ARE NO LESS FAVORABLE THAN THE TERMS AND CONDITIONS OFFERED TO BROADBAND AFFILIATES, INCLUDING TERMS AND CONDITIONS REGARDING APPLICATION REQUIREMENTS, TECHNICAL REQUIREMENTS, ELECTRIC LINEMAN HEALTH AND SAFETY REQUIREMENTS, ADMINISTRATIVE FEES, TIMELINES, AND MAKE-READY REQUIREMENTS; AND

(c) CHARGE FEES TO COMMERCIAL BROADBAND SUPPLIERS FOR LEASE OR USE OF ATTACHED FACILITIES OWNED OR CONTROLLED BY THE ELECTRIC UTILITY UNDER JUST, REASONABLE, AND NONDISCRIMINATORY TERMS AND CONDITIONS, INCLUDING FEES THAT ARE EQUAL TO OR LESS THAN THE FEES THAT THE ELECTRIC UTILITY CHARGES TO ITS BROADBAND AFFILIATES.

(3) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, NOTHING IN THIS SECTION REQUIRES AN ELECTRIC UTILITY TO OFFER OR GRANT A RIGHT TO ACCESS OR USE AN ELECTRIC EASEMENT OR TO USE ATTACHED FACILITIES OR ELECTRIC SERVICE INFRASTRUCTURE OWNED OR CONTROLLED BY THE ELECTRIC UTILITY IN A MANNER THAT WOULD MATERIALLY INTERFERE WITH THE ELECTRIC UTILITY'S CONSTRUCTION, MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY INFRASTRUCTURE FOR THE PROVISION OF ELECTRIC SERVICE.

(4)(a) AN ELECTRIC UTILITY WITH A BROADBAND AFFILIATE SHALL NOT UNREASONABLY WITHHOLD AUTHORIZATION OR DELAY ITS DECISION WHETHER TO PROVIDE AUTHORIZATION TO A COMMERCIAL BROADBAND SUPPLIER TO INSTALL, MAINTAIN, OWN, OPERATE, OR USE ATTACHED FACILITIES ON ELECTRIC SERVICE INFRASTRUCTURE OWNED OR
CONTROLLED BY THE ELECTRIC UTILITY. AN ELECTRIC UTILITY MAY ONLY
WITHHOLD AUTHORIZATION PURSUANT TO THIS SUBSECTION (4) IF THE
REASON FOR WITHHOLDING AUTHORIZATION IS THAT:

(I) THERE IS INSUFFICIENT CAPACITY FOR THE ATTACHED
FACILITIES; OR

(II) CONCERNS OF SAFETY OR RELIABILITY OR GENERALLY
APPLICABLE ENGINEERING PURPOSES WEIGH AGAINST GRANTING THE
AUTHORIZATION.

(b) AN ELECTRIC UTILITY THAT WITHHOLDS AUTHORIZATION
PURSUANT TO THIS SUBSECTION (4) SHALL PROMPTLY NOTIFY THE
COMMERCIAL BROADBAND SUPPLIER IN WRITING OF THE REASONS FOR
WITHHOLDING AUTHORIZATION.

(5) UPON REQUEST OF A COMMERCIAL BROADBAND SUPPLIER, AN
ELECTRIC UTILITY AND ANY BROADBAND AFFILIATE SUBJECT TO THIS
SECTION SHALL CAUSE AN OFFICER OF THE ELECTRIC UTILITY AND AN
OFFICER OF THE BROADBAND AFFILIATE TO CERTIFY THAT THE ELECTRIC
UTILITY AND THE BROADBAND AFFILIATE, RESPECTIVELY, ARE IN
COMPLIANCE WITH THIS SECTION AND SECTION 40-15-602 (4)(b). IF A
DISPUTE ARISES IN A COURT OF COMPETENT JURISDICTION BETWEEN AN
ELECTRIC UTILITY OR ITS BROADBAND AFFILIATE AND AN UNAFFILIATED
COMMERCIAL BROADBAND SUPPLIER:

(a) REGARDING MATTERS ADDRESSED IN THIS PART 6, THE PARTIES
TO THE DISPUTE HAVE STANDING TO FILE A CLAIM OR CAUSE OF ACTION IN
ANY COURT OF COMPETENT JURISDICTION IN THE STATE; AND

(b) THE FOLLOWING ARE DISCOVERABLE AND ADMISSIBLE AS
EVIDENCE IN COURT REGARDING THE ELECTRIC UTILITY’S AND ITS
BROADBAND AFFILIATE’S COMPLIANCE WITH THIS SECTION:

(I) ANY CERTIFICATION REQUESTED AND PRODUCED PURSUANT TO
THIS SUBSECTION (5);

(II) THE TERMS AND CONDITIONS APPLIED TO THE ELECTRIC
UTILITY’S OR BROADBAND AFFILIATE’S OFFER TO OR GRANT OF A RIGHT TO
THE UNAFFILIATED COMMERCIAL BROADBAND SUPPLIER TO INSTALL,
MAINTAIN, OWN, OPERATE, OR USE ATTACHED FACILITIES; AND

(III) ANY AUDIT REQUIRED TO BE PERFORMED PURSUANT TO

(6) NOTWITHSTANDING ANY PROVISION OF THIS PART 6 TO THE
CONTRARY, AN ELECTRIC UTILITY THAT IS SUBJECT TO REGULATION UNDER
47 U.S.C. SEC. 224, AS AMENDED, AND THE FCC REGULATIONS
PROMULGATED PURSUANT TO THAT FEDERAL LAW, IS NOT SUBJECT TO THIS
SECTION.

(7) NOTHING IN THIS PART 6:
(a) SUBJECTS AN ELECTRIC UTILITY TO REGULATION BY THE FCC;
(b) CONSTITUTES AN EXERCISE OF, OR AN OBLIGATION OR
INTENTION TO EXERCISE, THE RIGHT OF THE STATE UNDER 47 U.S.C. SEC.
224 (c) TO REGULATE THE RATES, TERMS, AND CONDITIONS FOR POLE
ATTACHMENTS, AS DEFINED IN 47 U.S.C. SEC. 224 (a)(4); OR
(c) CONSTITUTES A CERTIFICATION, OR AN OBLIGATION OR
INTENTION TO CERTIFY, TO THE FCC UNDER 47 U.S.C. SEC. 224.

SECTION 2. In Colorado Revised Statutes, amend 38-4-103 as
follows:

38-4-103. Electric power companies. (1) Any foreign or
domestic corporation organized or chartered for the purpose, among other
things, of conducting and maintaining electric power transmission
lines for providing power or light by means of electricity for hire shall have
has a right-of-way for the construction, operation, and maintenance of
such electric power transmission lines through any patented or unpatented
mine or mining claim or other land without the consent of the owner
thereof of the patented or unpatented mine or mining claim or
other land, if such the right-of-way is necessary for the purposes
proposed.
(2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN
ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40:
(a) INSTALL OR ALLOW THE INSTALLATION OF ANY ATTACHED
facility, as that term is defined in section 40-15-601 (1); and
(b) EXERCISE ANY RIGHTS AVAILABLE TO THE ELECTRIC UTILITY
UNDER PART 6 OF ARTICLE 15 OF TITLE 40 IN CONNECTION WITH THE
INSTALLATION.

SECTION 3. In Colorado Revised Statutes, amend 38-5-103 as
follows:

38-5-103. Power of companies to contract. (1) Such An electric
light power, gas, or pipeline company or such a city or town shall have
power to may contract with any person or corporation, the owner of any
lands land or any franchise, easement, or interest therein on the land
over or under which the line of electric light wire power or pipeline is
proposed to be laid or created for the right-of-way for the construction,
maintenance, and operation of its electric light wires, pipes, poles,
regulator stations, substations, or other property and for the erection,
maintenance, occupation, and operation of offices at suitable distances for
the public accommodation.
(2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN
ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW
THE INSTALLATION OF ANY ATTACHED FACILITY FOR COMMERCIAL
BROADBAND SERVICE, AS THOSE TERMS ARE DEFINED IN SECTION
40-15-601 (1) AND (3), RESPECTIVELY.

SECTION 4. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2020 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor."."