

CHAPTER 362

PUBLIC UTILITIES

HOUSE BILL 18-1271

BY REPRESENTATIVE(S) Gray and Willett, Danielson, Hansen, Young, Duran;
also SENATOR(S) Tate, Fields, Kerr, Martinez Humenik, Merrifield, Moreno, Priola, Zenzinger.

AN ACT**CONCERNING THE AUTHORIZATION OF ECONOMIC DEVELOPMENT RATES TO BE CHARGED BY
ELECTRIC UTILITIES TO QUALIFYING NONRESIDENTIAL CUSTOMERS.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) The health, safety, and welfare of the people of our state are dependent upon the continued development and expansion of opportunities for employment in Colorado;

(b) The cost of electricity is an important consideration for private-sector businesses when deciding to locate or expand operations in Colorado, and an equally important consideration for many businesses in making these economic decisions is identifying states that allow for the customer's achievement of sustainability and other energy and environmental goals; and

(c) Electric utilities should be able to offer rates and programs that help attract these businesses and provide incentives for the expansion of existing business operations, thus helping to stimulate further economic development in Colorado.

(2) Therefore, the general assembly declares that it is in the public interest to allow public utilities to offer economic development rates in accordance with this act.

SECTION 2. In Colorado Revised Statutes, 40-3-104.3, **amend** (5); and **add** (6), (7), and (8) as follows:

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

40-3-104.3. Manner of regulation - competitive responses - definitions - repeal. (5) Nothing in this section ~~shall limit~~ LIMITS or ~~restrict~~ RESTRICTS the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination except as specifically provided in this section.

(6) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN INVESTOR-OWNED ELECTRIC UTILITY SUBJECT TO RATE REGULATION BY THE COMMISSION MAY OFFER ECONOMIC DEVELOPMENT RATES TO A QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER.

(b) (I) AN ECONOMIC DEVELOPMENT RATE APPROVED PURSUANT TO THIS SECTION MUST BE LOWER THAN THE RATE OR RATES THAT THE QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER WOULD BE OR CURRENTLY IS SUBJECT TO UNDER THE UTILITY'S TARIFFS IN EFFECT AT THE TIME THE QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER SEEKS TO QUALIFY FOR THE ECONOMIC DEVELOPMENT RATE; EXCEPT THAT AN ECONOMIC DEVELOPMENT RATE MUST NOT BE LOWER THAN THE UTILITY'S MARGINAL COST OF PROVIDING SERVICE TO THE QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER.

(II) (A) THE COMMISSION MAY APPROVE INVESTOR-OWNED UTILITY TARIFFS THAT PROVIDE FOR IMPLEMENTATION OF AN ECONOMIC DEVELOPMENT RATE AND SET A MINIMUM AND MAXIMUM AMOUNT FOR THE RATE CONSISTENT WITH SUBSECTION (6)(b)(I) OF THIS SECTION.

(B) NOTWITHSTANDING SUBSECTION (6)(b)(II)(A) OF THIS SECTION, THE UTILITY MAY NEGOTIATE AND ENTER INTO AGREEMENTS RELATED TO ECONOMIC DEVELOPMENT RATES WITH INDIVIDUAL QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMERS WITHOUT COMMISSION APPROVAL SO LONG AS THE AGREED-UPON ECONOMIC DEVELOPMENT RATE COMPLIES WITH THE COMMISSION-APPROVED TARIFF AND THE ADDITION OR EXPANSION OF EXISTING LOAD AT A SINGLE LOCATION IS LESS THAN OR EQUAL TO TWENTY MEGAWATTS. ANY ADDITION OR EXPANSION OF EXISTING LOAD AT A SINGLE LOCATION THAT IS GREATER THAN TWENTY MEGAWATTS REQUIRES SEPARATE COMMISSION APPROVAL BASED UPON A FINDING THAT THE ADDITION OR EXPANSION IS CONSISTENT WITH THIS SECTION.

(III) AN INVESTOR-OWNED UTILITY MAY OFFER AN ECONOMIC DEVELOPMENT RATE TO A QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER FOR UP TO TEN YEARS.

(c) (I) AN AUTHORIZATION GRANTED BY THE COMMISSION PURSUANT TO THIS SECTION MUST INCLUDE SUCH TERMS AND CONDITIONS AS THE COMMISSION DETERMINES ARE NECESSARY TO ENSURE THAT THE ECONOMIC DEVELOPMENT RATES OR CHARGES ASSESSED TO OTHER CUSTOMERS DO NOT SUBSIDIZE THE COST OF PROVIDING SERVICE TO QUALIFYING COMMERCIAL AND INDUSTRIAL CUSTOMERS CONSISTENT WITH SUBSECTION (6)(b)(I) OF THIS SECTION, AND THAT THERE IS NO OTHER SUBSIDIZATION OF SUCH SERVICE. IN DEVELOPING THE TERMS AND CONDITIONS, THE COMMISSION SHALL CONSIDER, AMONG OTHER THINGS, THE RATES AND CHARGES ASSESSED TO THE UTILITY'S WHOLESALE CUSTOMERS AND THE EFFECTS ON OTHER TRANSMISSION SYSTEM OWNERS AND USERS RESULTING FROM NEW TRANSMISSION FACILITIES CONSTRUCTED IN CONNECTION WITH THE UTILITY'S EXPANSION OF AN EXISTING VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE

OFFERING.

(II) IN A COMMISSION PROCEEDING RELATED TO ECONOMIC DEVELOPMENT RATES AUTHORIZED PURSUANT TO SUBSECTION (6)(b) OF THIS SECTION, THE UTILITY BEARS THE BURDEN OF PROOF TO ESTABLISH THAT:

(A) THE RATES OR CHARGES ASSESSED TO OTHER CUSTOMERS DO NOT SUBSIDIZE THE COST OF PROVIDING ECONOMIC DEVELOPMENT RATES TO QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMERS;

(B) THE RATES OF OTHER REGULATED UTILITY OPERATIONS DO NOT INCREASE; AND

(C) OTHER CUSTOMERS ON THE UTILITY'S SYSTEM DO NOT EXPERIENCE A RATE INCREASE DUE TO A RATE OR RATES OFFERED TO A QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER PURSUANT TO THIS SECTION.

(III) THE COMMISSION SHALL NOT IMPUTE TO THE UTILITY REVENUES THAT WOULD HAVE BEEN RECEIVED FROM THE QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER IF THE CUSTOMER WERE BEING PROVIDED SERVICE UNDER THE CORRESPONDING RATE FOR WHICH IT WOULD HAVE OTHERWISE QUALIFIED UNDER THE UTILITY'S TARIFFS.

(d) (I) AN INVESTOR-OWNED UTILITY MAY SEEK COMMISSION APPROVAL TO EXPAND ANY VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE OFFERING, EXCEPT THOSE COVERED BY VALID AGREEMENTS TO THE CONTRARY EXECUTED AND APPROVED BY THE COMMISSION AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (6)(d), THROUGH THE ACQUISITION OF ADDITIONAL RENEWABLE GENERATION CAPACITY AND ENERGY TO MEET THE CURRENT AND PROJECTED DEMAND OF:

(A) ANY COMMERCIAL OR INDUSTRIAL CUSTOMER MAKING A CAPITAL INVESTMENT OF TWO HUNDRED FIFTY MILLION DOLLARS OR MORE;

(B) ANY COMMERCIAL OR INDUSTRIAL CUSTOMER THAT REQUIRES SUCH EXPANSION TO REMAIN AS A CUSTOMER OF THAT UTILITY; OR

(C) ANY QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER ENTERING THE SERVICE TERRITORY OF THE UTILITY.

(II) THE COMMISSION MAY APPROVE, WITHIN ONE HUNDRED TWENTY DAYS, AN EXPANSION OF AN EXISTING VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE OFFERING UPON A SHOWING BY THE UTILITY THAT:

(A) THERE IS NOT SUFFICIENT CAPACITY AND ENERGY IN THE EXISTING VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE OFFERING TO SATISFY THE NEEDS OF THE CUSTOMER AND THE CUSTOMER MEETS THE REQUIREMENTS OF SUBSECTION (6)(d)(I) OF THIS SECTION; AND

(B) THE AVAILABILITY OF THE PROGRAM OR SERVICE, EITHER ON ITS OWN OR IN COMBINATION WITH OTHER INCENTIVES, IS A SUBSTANTIAL FACTOR IN THE CUSTOMER'S DECISION TO LOCATE NEW OR EXPAND OR RETAIN EXISTING BUSINESS

OPERATIONS IN COLORADO.

(7) AS USED IN SUBSECTION (6) OF THIS SECTION AND THIS SUBSECTION (7):

(a) "QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER":

(I) MEANS A UTILITY CUSTOMER THAT:

(A) AGREES TO: LOCATE COMMERCIAL OR INDUSTRIAL OPERATIONS IN COLORADO AND ADD AT LEAST THREE MEGAWATTS OF NEW LOAD AT A SINGLE LOCATION; OR EXPAND EXISTING COMMERCIAL OR INDUSTRIAL OPERATIONS IN COLORADO AND ADD AT LEAST THREE MEGAWATTS OF NEW LOAD AT A SINGLE LOCATION; AND

(B) DEMONSTRATES, TO THE SATISFACTION OF THE INVESTOR-OWNED UTILITY, SUBJECT TO REVIEW BY THE COMMISSION, THAT: THE COST OF ELECTRICITY IS A CRITICAL CONSIDERATION IN DECIDING WHERE TO LOCATE NEW OR EXPAND EXISTING OPERATIONS; AND THE AVAILABILITY OF ECONOMIC DEVELOPMENT RATES, EITHER ON THEIR OWN OR IN COMBINATION WITH OTHER ECONOMIC DEVELOPMENT INCENTIVES, IS A SUBSTANTIAL FACTOR IN THE CUSTOMER'S DECISION TO LOCATE NEW OR EXPAND EXISTING BUSINESS OPERATIONS IN COLORADO.

(II) DOES NOT INCLUDE A CUSTOMER THAT AGREES TO RELOCATE OR OTHERWISE TRANSFER ITS EXISTING LOAD OF AT LEAST THREE MEGAWATTS FROM THE SERVICE TERRITORY OF ANOTHER PUBLIC UTILITY, AS DEFINED IN SECTION 40-1-103, INTO THE SERVICE TERRITORY OF THE UTILITY OFFERING ECONOMIC DEVELOPMENT RATES.

(b) "VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE OFFERING" MEANS A PROGRAM OR OTHER SERVICE OFFERING APPROVED BY THE COMMISSION THAT ALLOWS A COMMERCIAL OR INDUSTRIAL CUSTOMER ACCESS TO ELIGIBLE ENERGY RESOURCES, AS THAT TERM IS DEFINED IN SECTION 40-2-124 (1)(a), ON A VOLUNTARY BASIS, ON TERMS AND CONDITIONS DEEMED NECESSARY BY THE COMMISSION. FOR A VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE OFFERING TO BE EXPANDED, IT MUST HAVE BEEN APPROVED BY THE COMMISSION PRIOR TO THE EXPANSION REQUEST OF A COMMERCIAL OR INDUSTRIAL CUSTOMER PURSUANT TO SUBSECTION (6)(d)(I) OF THIS SECTION.

(8) THIS SUBSECTION (8) AND SUBSECTIONS (6) AND (7) OF THIS SECTION ARE REPEALED, EFFECTIVE JANUARY 1, 2028.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 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 the ninety-day period after final adjournment of the general assembly, 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 2018 and, in such case, will take effect on January 1, 2019, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: June 1, 2018