

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 20-0841.02 Jennifer Berman x3286

HOUSE BILL 20-1225

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A BILL FOR AN ACT

101 **CONCERNING CLARIFICATION OF THE REQUIREMENT OF**
102 **REASONABLENESS IN CHARGES IMPOSED BY ONE COOPERATIVE**
103 **ELECTRIC ASSOCIATION UPON ANOTHER.**

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 <http://leg.colorado.gov>.)

The bill:

! Declares that the jurisdiction of the Colorado public utilities commission does and traditionally has always been understood to extend to the determination of just and reasonable rates by all public utilities; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
March 13, 2020

HOUSE
3rd Reading Unamended
March 4, 2020

HOUSE
Amended 2nd Reading
March 3, 2020

! Explicitly states that the terms and conditions imposed by one cooperative electric association on another regarding the installation, interconnection, and use of energy storage systems must be just and reasonable.

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

2 **SECTION 1. Legislative declaration.** (1) The General
3 Assembly finds and determines that:

4 (a) Article XXV of the Colorado Constitution vests "all power to
5 regulate the facilities, service and rates and charges" of public utilities in
6 the public utilities commission;

7 (b) Since at least 1913, the laws of Colorado have directed the
8 public utilities commission to "prevent unjust...rates, charges, and tariffs"
9 of public utilities;

10 (c) The Colorado Supreme Court has held that "the Commission
11 possesses not only the power and authority, but also the duty to prescribe
12 the rates of all utilities subject to its jurisdiction";

13 (d) Since at least 1944, United States Supreme Court cases have
14 emphasized that utility rates must be "just and reasonable", regardless of
15 the specific methodology by which rates are established; and

16 (e) The public utilities commission has previously determined that
17 it possesses jurisdiction to adjudicate a complaint concerning just and
18 reasonable "exit" charges assessed by a wholesale electric cooperative
19 against a retail electric cooperative.

20 (2) Therefore, the general assembly declares that the purpose of
21 this act is to further clarify and affirm the long-standing authority of the
22 Colorado public utilities commission to adjudicate complaints concerning
23 public utilities subject to its jurisdiction.

1 **SECTION 2.** In Colorado Revised Statutes, 40-1-102, **add** (1.3)
2 as follows:

3 **40-1-102. Definitions.** As used in articles 1 to 7 of this title 40,
4 unless the context otherwise requires:

5 (1.3) "CHARGE" INCLUDES ANY CONSIDERATION, HOWEVER
6 DENOMINATED, PAID OR PROVIDED BY A RETAIL COOPERATIVE ELECTRIC
7 ASSOCIATION TO A WHOLESALE ELECTRIC COOPERATIVE IN CONNECTION
8 WITH AN AGREEMENT BY WHICH THE RETAIL COOPERATIVE ELECTRIC
9 ASSOCIATION TERMINATES A WHOLESALE ELECTRIC SERVICE CONTRACT
10 WITH THE WHOLESALE ELECTRIC COOPERATIVE.

11 **SECTION 3.** In Colorado Revised Statutes, **add** 40-2-136 as
12 follows:

13 **40-2-136. Energy storage systems - terms and conditions for**
14 **installation, interconnection, and use by cooperatives - legislative**
15 **declaration - definitions.** (1) (a) THE GENERAL ASSEMBLY FINDS AND
16 DETERMINES THAT:

17 (I) CARDINAL PRINCIPLES OF COOPERATIVE ELECTRIC
18 ASSOCIATIONS INCLUDE DEMOCRATIC MEMBER CONTROL, AUTONOMY,
19 AND INDEPENDENCE; AND

20 (II) RAPIDLY EVOLVING TECHNOLOGIES IN GENERATION, ENERGY
21 STORAGE, AND DEMAND MANAGEMENT OFFER COOPERATIVE ELECTRIC
22 ASSOCIATIONS A VARIETY OF OPTIONS TO MEET THE NEEDS OF THEIR
23 MEMBERS RELIABLY.

24 (b) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT:

25 (I) IT IS IN THE PUBLIC INTEREST TO LIMIT BARRIERS TO THE
26 INSTALLATION, INTERCONNECTION, AND USE OF ENERGY STORAGE
27 SYSTEMS BY COOPERATIVE ELECTRIC ASSOCIATIONS IN COLORADO; AND

1 (II) COOPERATIVE ELECTRIC ASSOCIATIONS IN COLORADO SHOULD
2 BE ABLE TO INSTALL, INTERCONNECT, AND USE ENERGY STORAGE SYSTEMS
3 THAT ARE CONNECTED TO THE COOPERATIVE ELECTRIC ASSOCIATION'S
4 ELECTRICAL SYSTEM AND WILL NOT, AT ANY TIME, FLOW ONTO THE
5 TRANSMISSION FACILITIES OF A WHOLESALE ELECTRIC COOPERATIVE OR
6 OTHER THIRD PARTY WITHOUT PRIOR AGREEMENT AS PART OF MEETING
7 THEIR MEMBERS' NEEDS FOR RELIABLE, AFFORDABLE ENERGY WITHOUT
8 UNFAIR OR DISCRIMINATORY RATES OR FEES.

9 (2) A WHOLESALE ELECTRIC COOPERATIVE SHALL NOT SUBJECT
10 THE INSTALLATION, INTERCONNECTION, OR USE OF AN ENERGY STORAGE
11 SYSTEM BY A RETAIL COOPERATIVE ELECTRIC ASSOCIATION TO ANY
12 UNJUST, UNREASONABLE, DISCRIMINATORY, OR PREFERENTIAL CHARGE,
13 CLASSIFICATION, CONTRACT, FARE, FEE, PRACTICE, RATE, REGULATION,
14 RULE, SCHEDULE, SERVICE, OR TOLL.

15 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
16 REQUIRES:

17 (a) "COOPERATIVE ELECTRIC ASSOCIATION" MEANS A NONPROFIT
18 ELECTRIC CORPORATION OR ASSOCIATION OTHER THAN A WHOLESALE
19 ELECTRIC COOPERATIVE.

20 (b) "ENERGY STORAGE SYSTEM" HAS THE MEANING SET FORTH IN
21 SECTION 40-2-202 (2).

22 (c) "WHOLESALE ELECTRIC COOPERATIVE" MEANS ANY
23 GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION
24 THAT PROVIDES WHOLESALE ELECTRIC SERVICE DIRECTLY TO
25 COOPERATIVE ELECTRIC ASSOCIATIONS.

26 **SECTION 4.** In Colorado Revised Statutes, 40-3-101, **add (3)** as
27 follows:

1 **40-3-101. Reasonable charges - adequate service.** (3) (a) IF A
2 RETAIL COOPERATIVE ELECTRIC ASSOCIATION, IN CONJUNCTION WITH THE
3 PAYMENT OF AN APPLICABLE CHARGE, WITHDRAWS FROM MEMBERSHIP IN
4 A WHOLESALE ELECTRIC COOPERATIVE, AS DEFINED IN SECTION 40-2-136
5 (3)(c), THAT WITHDRAWAL IS DEEMED TO BE A MATTER OF STATEWIDE
6 CONCERN, AND, IN RELATION TO SUCH WITHDRAWAL:

7 (I) THE WHOLESALE ELECTRIC COOPERATIVE WILL ACT IN
8 ACCORDANCE WITH THE OBLIGATION OF GOOD FAITH AND FAIR DEALING
9 IN IMPLEMENTING THE WITHDRAWAL AND SHALL NOT REQUIRE OR IMPOSE
10 COMMERCIALY UNREASONABLE CONTRACTUAL TERMS ON THE RETAIL
11 COOPERATIVE ELECTRIC ASSOCIATION IN RELATION TO THE WITHDRAWAL;
12 AND

13 (II) THE WHOLESALE ELECTRIC COOPERATIVE SHALL, UPON
14 REQUEST FROM THE WITHDRAWING RETAIL COOPERATIVE ELECTRIC
15 ASSOCIATION, FACILITATE THE RETAIL COOPERATIVE ELECTRIC
16 ASSOCIATION'S TRANSITION FROM NATIVE LOAD TO A FIRM SERVICE
17 TRANSMISSION CUSTOMER WITHOUT DIMINISHING THE WITHDRAWING
18 RETAIL COOPERATIVE ELECTRIC ASSOCIATION'S NATIVE ELECTRIC LOAD
19 PRIORITY FOR ACCESSING FIRM TRANSMISSION CAPACITY.

20 (b) THE COMMISSION HAS THE AUTHORITY TO ADJUDICATE
21 COMPLAINTS ABOUT THE TERMS ON WHICH A WHOLESALE ELECTRIC
22 COOPERATIVE IMPLEMENTS WITHDRAWAL PURSUANT TO THIS SUBSECTION
23 (3).

24 **SECTION 5. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, or safety.