

## CHAPTER 414

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**PUBLIC UTILITIES**


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## SENATE BILL 13-252

BY SENATOR(S) Morse and Schwartz, Carroll, Giron, Jahn, Jones, Nicholson, Steadman, Aguilar, Guzman, Heath, Kefalas, Kerr; also REPRESENTATIVE(S) Ferrandino and Duran, Court, Hamner, Hullinghorst, Kraft-Tharp, McLachlan, Moreno, Rosenthal, Ryden, Schafer, Vigil, Young, Buckner, Fischer, Foote, Labuda, Levy, McCann, Melton, Salazar, Singer, Tyler.

## AN ACT

**CONCERNING MEASURES TO INCREASE COLORADO'S RENEWABLE ENERGY STANDARD SO AS TO ENCOURAGE THE DEPLOYMENT OF METHANE CAPTURE TECHNOLOGIES.**

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

**SECTION 1.** In Colorado Revised Statutes, 40-2-124, **amend** (1) introductory portion, (1) (a), (1) (c) (II) (A), (1) (c) (III), (1) (c) (V) introductory portion, (1) (c) (VI) introductory portion, (1) (c) (VII) (A), (1) (f) introductory portion, (1) (g) (I) (A), and (1) (g) (IV) (A); and **add** (1) (c) (V.5), (1) (c) (X), and (8) as follows:

**40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration.** (1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, ~~shall be considered~~ is a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, ~~shall be~~ is subject to the rules established under this article by the commission. No additional regulatory authority ~~of~~ IS PROVIDED TO the commission other than that specifically contained in this section. ~~is provided or implied.~~ In accordance with article 4 of title 24, C.R.S., the commission shall revise or clarify existing rules to establish the following:

(a) Definitions of eligible energy resources that can be used to meet the standards. "Eligible energy resources" means recycled energy and renewable energy resources. IN ADDITION, RESOURCES USING COAL MINE METHANE AND SYNTHETIC GAS PRODUCED BY PYROLYSIS OF MUNICIPAL SOLID WASTE ARE ELIGIBLE ENERGY RESOURCES IF THE COMMISSION DETERMINES THAT THE ELECTRICITY GENERATED BY

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

THOSE RESOURCES IS GREENHOUSE GAS NEUTRAL. The commission shall determine, following an evidentiary hearing, the extent to which such electric generation technologies utilized in an optional pricing program may be used to comply with this standard. A fuel cell using hydrogen derived from an eligible energy resource is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible energy resources. For purposes of this section:

(I) "Biomass" means:

(A) Nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush;

(B) Animal wastes and products of animal wastes; or

(C) Methane produced at landfills or as a by-product of the treatment of wastewater residuals.

(II) "COAL MINE METHANE" MEANS METHANE CAPTURED FROM ACTIVE AND INACTIVE COAL MINES WHERE THE METHANE IS ESCAPING TO THE ATMOSPHERE. IN THE CASE OF METHANE ESCAPING FROM ACTIVE MINES, ONLY METHANE VENTED IN THE NORMAL COURSE OF MINE OPERATIONS THAT IS NATURALLY ESCAPING TO THE ATMOSPHERE IS COAL MINE METHANE FOR PURPOSES OF ELIGIBILITY UNDER THIS SECTION.

~~(III)~~ (III) "Distributed renewable electric generation" or "distributed generation" means:

(A) Retail distributed generation; and

(B) Wholesale distributed generation.

(IV) "GREENHOUSE GAS NEUTRAL", WITH RESPECT TO ELECTRICITY GENERATED BY A COAL MINE METHANE OR SYNTHETIC GAS FACILITY, MEANS THAT THE VOLUME OF GREENHOUSE GASES EMITTED INTO THE ATMOSPHERE FROM THE CONVERSION OF FUEL TO ELECTRICITY IS NO GREATER THAN THE VOLUME OF GREENHOUSE GASES THAT WOULD HAVE BEEN EMITTED INTO THE ATMOSPHERE OVER THE NEXT FIVE YEARS, BEGINNING WITH THE PLANNED DATE OF OPERATION OF THE FACILITY, IF THE FUEL HAD NOT BEEN CONVERTED TO ELECTRICITY, WHERE GREENHOUSE GASES ARE MEASURED IN TERMS OF CARBON DIOXIDE EQUIVALENT.

(V) "PYROLYSIS" MEANS THE THERMOCHEMICAL DECOMPOSITION OF MATERIAL AT ELEVATED TEMPERATURES WITHOUT THE PARTICIPATION OF OXYGEN.

~~(VI)~~ (VI) "Recycled energy" means energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel. "Recycled energy" does not include energy produced by any system that uses energy, lost or otherwise, from a process whose primary purpose is the generation of electricity, including, without limitation, any process involving engine-driven generation or pumped hydroelectricity generation.

~~(IV)~~ (VII) "Renewable energy resources" means solar, wind, geothermal, biomass, new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less.

~~(V)~~ (VIII) "Retail distributed generation" means a renewable energy resource that is located on the site of a customer's facilities and is interconnected on the customer's side of the utility meter. In addition, retail distributed generation shall provide electric energy primarily to serve the customer's load and shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the customer at that site. For purposes of this subparagraph ~~(V)~~ (VIII), the customer's "site" includes all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

~~(VI)~~ (IX) "Wholesale distributed generation" means a renewable energy resource ~~in Colorado~~ with a nameplate rating of thirty megawatts or less and that does not qualify as retail distributed generation.

(c) Electric resource standards:

(II) (A) Of the amounts of distributed generation in sub-subparagraphs (C), (D), and (E) of subparagraph (I), SUB-SUBPARAGRAPH (D) OF SUBPARAGRAPH (V), AND SUBPARAGRAPH (V.5) of this paragraph (c), at least one-half ~~shall~~ MUST be derived from retail distributed generation; EXCEPT THAT THIS SUB-SUBPARAGRAPH (A) DOES NOT APPLY TO A QUALIFYING RETAIL UTILITY THAT IS A MUNICIPAL UTILITY.

(III) Each kilowatt-hour of electricity generated from eligible energy resources, ~~in Colorado~~, other than retail distributed generation ~~shall be counted~~ AND OTHER THAN ELIGIBLE ENERGY RESOURCES BEGINNING OPERATION ON OR AFTER JANUARY 1, 2015, COUNTS as one and ~~one-quarter~~ ONE-FOURTH kilowatt-hours for the purposes of compliance with this standard.

(V) Notwithstanding any other provision of law but subject to subsection (4) of this section, the electric resource standards ~~shall~~ MUST require each cooperative electric association THAT IS A QUALIFYING RETAIL UTILITY AND THAT PROVIDES SERVICE TO FEWER THAN ONE HUNDRED THOUSAND METERS, and EACH municipally owned utility that is a qualifying retail utility, to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

(V.5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH COOPERATIVE ELECTRIC ASSOCIATION THAT PROVIDES ELECTRICITY AT RETAIL TO ITS CUSTOMERS AND SERVES ONE HUNDRED THOUSAND OR MORE METERS SHALL GENERATE OR CAUSE TO BE GENERATED AT LEAST TWENTY PERCENT OF THE ENERGY IT PROVIDES TO ITS CUSTOMERS FROM ELIGIBLE ENERGY RESOURCES IN THE YEARS 2020 AND THEREAFTER.

(VI) Each kilowatt-hour of electricity generated from eligible energy resources at a community-based project ~~shall~~ MUST be counted as one and one-half kilowatt-hours. For purposes of this subparagraph (VI), "community-based project" means a project: ~~located in Colorado~~:

(VII)(A) For purposes of compliance with the standards set forth in ~~subparagraph~~ SUBPARAGRAPHS (V) AND (V.5) of this paragraph (c), each kilowatt-hour of renewable electricity generated from solar electric generation technologies shall be counted as three kilowatt-hours.

(X) OF THE MINIMUM AMOUNTS OF ELECTRICITY REQUIRED TO BE GENERATED OR CAUSED TO BE GENERATED BY QUALIFYING RETAIL UTILITIES IN ACCORDANCE WITH SUBPARAGRAPHS (V.5) AND SUB-SUBPARAGRAPHS (D) OF SUBPARAGRAPHS (V) OF THIS PARAGRAPH (c), ONE-TENTH, OR ONE PERCENT OF TOTAL RETAIL ELECTRICITY SALES, MUST BE FROM DISTRIBUTED GENERATION; EXCEPT THAT:

(A) FOR A COOPERATIVE ELECTRIC ASSOCIATION THAT IS A QUALIFYING RETAIL UTILITY AND THAT PROVIDES SERVICE TO FEWER THAN TEN THOUSAND METERS, THE DISTRIBUTED GENERATION COMPONENT MAY BE THREE-QUARTERS OF ONE PERCENT OF TOTAL RETAIL ELECTRICITY SALES; AND

(B) THIS SUBPARAGRAPH (X) DOES NOT APPLY TO A QUALIFYING RETAIL UTILITY THAT IS A MUNICIPAL UTILITY.

(f) Policies for the recovery of costs incurred with respect to these standards for qualifying retail utilities that are subject to rate regulation by the commission. These policies ~~shall~~ MUST provide incentives to qualifying retail utilities to invest in eligible energy resources ~~in the state of Colorado. Such policies shall~~ AND MUST include:

(g) Retail rate impact rule:

(I) (A) Except as otherwise provided in subparagraph (IV) of this paragraph (g), for each qualifying utility, the commission shall establish a maximum retail rate impact for this section FOR COMPLIANCE WITH THE ELECTRIC RESOURCE STANDARDS of two percent of the total electric bill annually for each customer. The retail rate impact shall be determined net of new alternative sources of electricity supply from noneligible energy resources that are reasonably available at the time of the determination.

(IV) (A) For cooperative electric associations, the maximum retail rate impact for this section is ~~one~~ TWO percent of the total electric bill annually for each customer.

**(8) Qualifying wholesale utilities - definition - electric resource standard - tradable credits - reports.** (a) **Definition.** EACH GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION THAT PROVIDES WHOLESALE ELECTRIC SERVICE DIRECTLY TO COLORADO ELECTRIC ASSOCIATIONS THAT ARE ITS MEMBERS IS A QUALIFYING WHOLESALE UTILITY. COMMISSION RULES ADOPTED UNDER SUBSECTIONS (1) TO (7) OF THIS SECTION DO NOT APPLY DIRECTLY TO QUALIFYING WHOLESALE UTILITIES, AND THIS SUBSECTION (8) DOES NOT PROVIDE THE COMMISSION WITH ADDITIONAL REGULATORY AUTHORITY OVER QUALIFYING WHOLESALE UTILITIES.

(b) **Electric resource standard.** NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH QUALIFYING WHOLESALE UTILITY SHALL GENERATE, OR CAUSE TO BE GENERATED, AT LEAST TWENTY PERCENT OF THE ENERGY IT PROVIDES TO ITS

COLORADO MEMBERS AT WHOLESALE FROM ELIGIBLE ENERGY RESOURCES IN THE YEAR 2020 AND THEREAFTER. IF, AND TO THE EXTENT THAT, THE PURCHASE OF ENERGY GENERATED FROM ELIGIBLE ENERGY RESOURCES BY A COLORADO MEMBER FROM A QUALIFYING WHOLESALE UTILITY WOULD CAUSE AN INCREASE IN RATES FOR THE COLORADO MEMBER THAT EXCEEDS THE RETAIL RATE IMPACT LIMITATION IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (IV) OF PARAGRAPH (g) OF SUBSECTION (1) OF THIS SECTION, THE OBLIGATION IMPOSED ON THE QUALIFYING WHOLESALE UTILITY IS REDUCED BY THE AMOUNT OF SUCH ENERGY NECESSARY TO ENABLE THE COLORADO MEMBER TO COMPLY WITH THE RATE IMPACT LIMITATION.

(c) A QUALIFYING WHOLESALE UTILITY MAY COUNT THE ENERGY GENERATED OR CAUSED TO BE GENERATED FROM ELIGIBLE ENERGY RESOURCES BY ITS COLORADO MEMBERS OR BY THE QUALIFYING WHOLESALE UTILITY ON BEHALF OF ITS COLORADO MEMBERS PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION TOWARD COMPLIANCE WITH THE ENERGY RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION.

(d) PREFERENCES FOR CERTAIN ELIGIBLE ENERGY RESOURCES AND THE LIMIT ON THEIR APPLICABILITY ESTABLISHED IN SUBPARAGRAPH (VIII) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION MAY BE USED BY A QUALIFYING WHOLESALE UTILITY IN MEETING THE ENERGY RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8).

(e) **Tradable renewable energy credits.** A QUALIFYING WHOLESALE UTILITY SHALL USE A SYSTEM OF TRADABLE RENEWABLE ENERGY CREDITS TO COMPLY WITH THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8); EXCEPT THAT A RENEWABLE ENERGY CREDIT ACQUIRED UNDER THIS SUBSECTION (8) EXPIRES AT THE END OF THE FIFTH CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH IT WAS GENERATED.

(f) IN IMPLEMENTING THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8), A QUALIFYING WHOLESALE UTILITY SHALL ASSURE THAT THE COSTS, BOTH DIRECT AND INDIRECT, ATTRIBUTABLE TO COMPLIANCE WITH THE STANDARD ARE RECOVERED FROM ITS COLORADO MEMBERS. THE QUALIFYING WHOLESALE UTILITY SHALL EMPLOY SUCH COST ALLOCATION METHODS AS ARE REQUIRED TO ASSURE THAT ANY DIRECT OR INDIRECT COSTS ATTRIBUTABLE TO COMPLIANCE WITH THE STANDARD ESTABLISHED IN THIS SUBSECTION (8) DO NOT AFFECT THE COST OR PRICE OF THE QUALIFYING WHOLESALE UTILITY'S SALES TO CUSTOMERS OUTSIDE OF COLORADO.

(g) **Reports.** EACH QUALIFYING WHOLESALE UTILITY SHALL SUBMIT AN ANNUAL REPORT TO THE COMMISSION NO LATER THAN JUNE 1, 2014, AND JUNE 1 OF EACH YEAR THEREAFTER. IN ADDITION, THE QUALIFYING WHOLESALE UTILITY SHALL POST AN ELECTRONIC COPY OF EACH REPORT ON ITS WEB SITE AND SHALL PROVIDE THE COMMISSION WITH AN ELECTRONIC COPY OF THE REPORT. IN EACH REPORT, THE QUALIFYING WHOLESALE UTILITY SHALL:

(I) DESCRIBE THE STEPS IT TOOK DURING THE IMMEDIATELY PRECEDING TWELVE MONTHS TO COMPLY WITH THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8);

(II) IN THE YEARS BEFORE 2020, DESCRIBE WHETHER IT IS MAKING SUFFICIENT PROGRESS TOWARD MEETING THE STANDARD IN 2020 OR IS LIKELY TO MEET THE 2020 STANDARD EARLY. IF IT IS NOT MAKING SUFFICIENT PROGRESS TOWARD MEETING THE STANDARD IN 2020, IT SHALL EXPLAIN WHY AND SHALL INDICATE THE STEPS IT INTENDS TO TAKE TO INCREASE THE PACE OF PROGRESS; AND

(III) IN 2020 AND THEREAFTER, DESCRIBE WHETHER IT HAS ACHIEVED COMPLIANCE WITH THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8) AND WHETHER IT ANTICIPATES CONTINUING TO DO SO. IF IT HAS NOT ACHIEVED SUCH COMPLIANCE OR DOES NOT ANTICIPATE CONTINUING TO DO SO, IT SHALL EXPLAIN WHY AND SHALL INDICATE THE STEPS IT INTENDS TO TAKE TO MEET THE STANDARD AND BY WHAT DATE.

(h) NOTHING IN THIS SUBSECTION (8) AMENDS OR WAIVES ANY PROVISION OF SUBSECTIONS (1) TO (7) OF THIS SECTION.

**SECTION 2. Effective date.** This act takes effect July 1, 2013.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 2013