

HOUSE FLOOR AMENDMENT

Second Reading

BY REPRESENTATIVES Becker and Hansen

1 Amend reengrossed bill, page 4, after line 10 insert:

2 **"SECTION 4.** In Colorado Revised Statutes, 40-2-124, **amend**
3 (1) introductory portion; and repeal (1)(f)(I) as follows:

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

17 (f) Policies for the recovery of costs incurred with respect to these
18 standards for qualifying retail utilities that are subject to rate regulation
19 by the commission. These policies must provide incentives to qualifying
20 retail utilities to invest in eligible energy resources and must include:

21 (I) ~~Allowing a qualifying retail utility to develop and own as~~
22 ~~utility rate-based property up to twenty-five percent of the total new~~
23 ~~eligible energy resources the utility acquires from entering into power~~
24 ~~purchase agreements and from developing and owning resources after~~
25 ~~March 27, 2007, if the new eligible energy resources proposed to be~~
26 ~~developed and owned by the utility can be constructed at reasonable cost~~
27 ~~compared to the cost of similar eligible energy resources available in the~~
28 ~~market. The qualifying retail utility shall be allowed to develop and own~~
29 ~~as utility rate-based property more than twenty-five percent but not more~~
30 ~~than fifty percent of total new eligible energy resources acquired after~~
31 ~~March 27, 2007, if the qualifying retail utility shows that its proposal~~
32 ~~would provide significant economic development, employment, energy~~
33 ~~security, or other benefits to the state of Colorado. The qualifying retail~~
34 ~~utility may develop and own these resources either by itself or jointly with~~
35 ~~other owners, and, if owned jointly, the entire jointly owned resource~~
36 ~~shall count toward the percentage limitations in this subparagraph (I). For~~
37 ~~the resources addressed in this subparagraph (I), the qualifying retail~~
38 ~~utility shall not be required to comply with the competitive bidding~~
39 ~~requirements of the commission's rules; except that nothing in this~~
40 ~~subparagraph (I) shall preclude the qualifying retail utility from bidding~~

1 to own a greater percentage of new eligible energy resources than
2 permitted by this subparagraph (I). In addition, nothing in this
3 subparagraph (I) shall prevent the commission from waiving, repealing,
4 or revising any commission rule in a manner otherwise consistent with
5 applicable law.

6 **SECTION 5.** In Colorado Revised Statutes, **add 40-2-125.5** as
7 follows:

8 **40-2-125.5. Carbon dioxide emission reductions - goal to**
9 **eliminate by 2050 - legislative declaration - interim targets -**
10 **submission and approval of plans - definitions - cost recovery -**
11 **reports.** (1) **Legislative declaration.** THE GENERAL ASSEMBLY FINDS
12 AND DECLARES THAT:

13 (a) IT IS A MATTER OF STATEWIDE IMPORTANCE TO PROMOTE THE
14 DEVELOPMENT OF COST-EFFECTIVE CLEAN ENERGY AND NEW
15 TECHNOLOGIES AND REDUCE THE CARBON DIOXIDE EMISSIONS FROM THE
16 COLORADO ELECTRIC GENERATING SYSTEM;

17 (b) THE CREATION OF A LOW-COST, RELIABLE, AND CLEAN
18 ELECTRICITY SYSTEM IS CRITICAL TO ACHIEVING THE LEVEL OF
19 GREENHOUSE GAS EMISSIONS NECESSARY TO AVOID THE WORST IMPACTS
20 OF CLIMATE CHANGE AND ADVANCING A ROBUST AND EFFICIENT
21 LOW-CARBON ECONOMY FOR THE STATE OF COLORADO AND THE NATION;

22 (c) TECHNOLOGY ADVANCEMENT HAS ALREADY ALLOWED
23 COLORADO TO ACHIEVE REDUCTIONS IN CARBON DIOXIDE EMISSIONS FROM
24 THE ELECTRIC UTILITY SECTOR, AND CONTINUED TECHNOLOGY
25 DEVELOPMENT IS KEY TO EXTEND PROGRESS TOWARD A RELIABLE,
26 LOW-COST, CLEAN ENERGY FUTURE;

27 (d) ALTERNATIVE FINANCING MECHANISMS MAY RESULT IN LOWER
28 COSTS TO ELECTRIC UTILITY CUSTOMERS; THEREFORE, IT IS HELPFUL TO
29 PROVIDE ALTERNATIVE FINANCING MECHANISMS THAT UTILITIES MAY USE
30 TO REDUCE THE TOTAL AMOUNT OF COSTS BEING INCLUDED IN CUSTOMER
31 RATES RESULTING FROM ACCELERATING THE RETIREMENT OF ELECTRIC
32 GENERATING FACILITIES; AND

33 (e) A BOLD CLEAN ENERGY POLICY WILL SUPPORT THIS PROGRESS
34 AND ALLOW COLORADANS TO ENJOY THE BENEFITS OF RELIABLE CLEAN
35 ENERGY AT AN AFFORDABLE COST.

36 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
37 OTHERWISE REQUIRES:

38 (a) "CLEAN ENERGY PLAN" MEANS A PLAN FILED BY A QUALIFYING
39 RETAIL UTILITY AS PART OF ITS ELECTRIC RESOURCE PLAN TO REDUCE THE
40 QUALIFYING RETAIL UTILITY'S CARBON DIOXIDE EMISSIONS ASSOCIATED
41 WITH ELECTRICITY SALES TO THE QUALIFYING RETAIL UTILITY'S
42 ELECTRICITY CUSTOMERS BY EIGHTY PERCENT FROM 2005 LEVELS BY
43 2030, AND THAT SEEKS TO ACHIEVE PROVIDING ITS CUSTOMERS WITH

1 ENERGY GENERATED FROM ONE-HUNDRED-PERCENT CLEAN ENERGY
2 RESOURCES BY 2050.

3 (b) "CLEAN ENERGY RESOURCE" MEANS ANY
4 ELECTRICITY-GENERATING TECHNOLOGY THAT GENERATES OR STORES
5 ELECTRICITY WITHOUT EMITTING CARBON DIOXIDE INTO THE ATMOSPHERE.
6 CLEAN ENERGY RESOURCES INCLUDE, WITHOUT LIMITATION, ELIGIBLE
7 ENERGY RESOURCES AS DEFINED IN SECTION 40-2-124 (1)(a).

8 (c) "QUALIFYING RETAIL UTILITY" MEANS A RETAIL UTILITY
9 PROVIDING ELECTRIC SERVICE TO MORE THAN FIVE HUNDRED THOUSAND
10 CUSTOMERS IN THIS STATE OR ANY OTHER ELECTRIC UTILITY THAT OPTS IN
11 PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION.

12 (3) **Clean energy targets.** (a) IN ADDITION TO THE OTHER
13 REQUIREMENTS OF THIS SECTION, A QUALIFYING RETAIL UTILITY SHALL
14 MEET THE FOLLOWING CLEAN ENERGY TARGETS:

15 (I) BY 2030, THE QUALIFYING RETAIL UTILITY SHALL REDUCE THE
16 CARBON DIOXIDE EMISSIONS ASSOCIATED WITH ELECTRICITY SALES TO THE
17 QUALIFYING RETAIL UTILITY'S ELECTRICITY CUSTOMERS BY EIGHTY
18 PERCENT FROM 2005 LEVELS.

19 (II) FOR THE YEARS 2050 AND THEREAFTER, OR SOONER IF
20 PRACTICABLE, THE QUALIFYING RETAIL UTILITY SHALL SEEK TO ACHIEVE
21 THE GOAL OF PROVIDING ITS CUSTOMERS WITH ENERGY GENERATED FROM
22 ONE-HUNDRED-PERCENT CLEAN ENERGY RESOURCES SO LONG AS DOING
23 SO IS TECHNICALLY AND ECONOMICALLY FEASIBLE, IN THE PUBLIC
24 INTEREST, AND CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

25 (III) THE QUALIFYING RETAIL UTILITY SHALL RETIRE RENEWABLE
26 ENERGY CREDITS ESTABLISHED UNDER SECTION 40-2-124 (1)(d), IN THE
27 YEAR GENERATED, BY ANY ELIGIBLE ENERGY RESOURCES USED TO COMPLY
28 WITH THE REQUIREMENTS OF THIS SECTION.

29 (b) ANY OTHER ELECTRIC PUBLIC UTILITY MAY OPT INTO THE FULL
30 TERMS OF THIS ENTIRE SECTION UPON NOTIFICATION TO THE COMMISSION.

31 (4) **Submission and approval of plans.** (a) THE FIRST ELECTRIC
32 RESOURCE PLAN THAT A QUALIFYING RETAIL UTILITY FILES WITH THE
33 COMMISSION AFTER JANUARY 1, 2020, MUST INCLUDE A CLEAN ENERGY
34 PLAN THAT WILL ACHIEVE THE CLEAN ENERGY TARGET SET FORTH IN
35 SUBSECTION (3)(a)(I) OF THIS SECTION AND MAKE PROGRESS TOWARD THE
36 ONE-HUNDRED-PERCENT CLEAN ENERGY GOAL SET FORTH IN SUBSECTION
37 (3)(a)(II) OF THIS SECTION IN ACCORDANCE WITH THE FOLLOWING:

38 (I) THE ELECTRIC RESOURCE PLAN CONTAINING THE CLEAN
39 ENERGY PLAN MUST UTILIZE A RESOURCE ACQUISITION PERIOD THAT
40 EXTENDS THROUGH 2030.

41 (II) THE CLEAN ENERGY PLAN SUBMITTED TO THE COMMISSION
42 MUST SET FORTH A PLAN OF ACTIONS AND INVESTMENTS BY THE
43 QUALIFYING RETAIL UTILITY PROJECTED TO ACHIEVE COMPLIANCE WITH

1 THE CLEAN ENERGY TARGETS IN SUBSECTIONS (3)(a)(I) AND (3)(a)(II) OF
2 THIS SECTION AND THAT RESULT IN AN AFFORDABLE, RELIABLE, AND
3 CLEAN ELECTRIC SYSTEM.

4 (III) IN THE ELECTRIC RESOURCE PLAN THAT INCLUDES THE CLEAN
5 ENERGY PLAN, THE QUALIFYING RETAIL UTILITY SHALL CLEARLY
6 DISTINGUISH BETWEEN THE SET OF RESOURCES NECESSARY TO MEET
7 CUSTOMER DEMANDS IN THE RESOURCE ACQUISITION PERIOD AND THE
8 ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THAT MAY BE UNDERTAKEN
9 TO MEET THE CLEAN ENERGY TARGET IN SUBSECTION (3)(a)(I) OF THIS
10 SECTION, WHICH MAY CREATE AN ADDITIONAL RESOURCE NEED FOR THE
11 CLEAN ENERGY PLAN. THESE ACTIVITIES MAY INCLUDE RETIREMENT OF
12 EXISTING GENERATING FACILITIES, CHANGES IN SYSTEM OPERATION, OR
13 ANY OTHER NECESSARY ACTIONS.

14 (IV) AFTER CONDUCTING ANY PROCUREMENT PROCESS PURSUANT
15 TO SUBSECTION (5)(b) OF THIS SECTION OR OTHERWISE, THE QUALIFYING
16 RETAIL UTILITY SHALL SET FORTH THE ACTIONS AND INVESTMENTS
17 REQUIRED TO FILL THE ADDITIONAL RESOURCE NEED IDENTIFIED FOR THE
18 CLEAN ENERGY PLAN TO SATISFY THE CLEAN ENERGY TARGET IN
19 SUBSECTION (3)(a)(I) OF THIS SECTION. THESE ACTIONS AND INVESTMENTS
20 MAY INCLUDE DEVELOPMENT OF NEW CLEAN ENERGY RESOURCES,
21 DEVELOPMENT OF NEW TRANSMISSION AND OTHER SUPPORTING
22 INFRASTRUCTURE, AND CLEAN ENERGY RESOURCE ACQUISITIONS. ANY
23 NEW TRANSMISSION DEVELOPMENT IS SUBJECT TO EXISTING COMMISSION
24 AND STAKEHOLDER TRANSMISSION PLANNING PROCESSES, AS APPLICABLE.

25 (V) THE CLEAN ENERGY PLAN MUST DESCRIBE THE EFFECT OF THE
26 ACTIONS AND INVESTMENTS INCLUDED IN THE CLEAN ENERGY PLAN ON
27 THE SAFETY, RELIABILITY, RENEWABLE ENERGY INTEGRATION, AND
28 RESILIENCE OF ELECTRIC SERVICE IN THE STATE OF COLORADO.

29 (VI) THE CLEAN ENERGY PLAN MUST SET FORTH THE PROJECTED
30 COST OF ITS IMPLEMENTATION AND ANTICIPATED REDUCTIONS IN CARBON
31 DIOXIDE AND OTHER EMISSIONS.

32 (VII) IF THE CLEAN ENERGY PLAN INCLUDES ACCELERATED
33 RETIREMENT OF ANY EXISTING GENERATING FACILITIES, THE CLEAN
34 ENERGY PLAN MUST INCLUDE WORKFORCE TRANSITION AND COMMUNITY
35 ASSISTANCE PLANS FOR UTILITY WORKERS IMPACTED BY ANY CLEAN
36 ENERGY PLAN AND A PLAN TO PAY COMMUNITY ASSISTANCE TO ANY
37 LOCAL GOVERNMENT OR SCHOOL DISTRICT, THE VOTERS OF WHICH HAVE
38 APPROVED PROJECTS THE COSTS OF WHICH ARE EXPECTED TO BE PAID FOR
39 FROM PROPERTY TAXES THAT ARE DIRECTLY IMPACTED BY THE
40 ACCELERATED RETIREMENT OF THE ELECTRIC GENERATING FACILITY IN AN
41 AMOUNT EQUAL TO THE COSTS OF THE VOTER-APPROVED PROJECTS THAT
42 WERE EXPECTED TO BE PAID FROM THE REVENUE SOURCES DIRECTLY
43 IMPACTED BY THE ACCELERATED RETIREMENT OF THE PROJECTS,

1 INCLUDING BUT NOT LIMITED TO THE PAYMENT OF BONDS, NOTES, OR
2 OTHER MULTIPLE-FISCAL YEAR OBLIGATIONS OR LEASE PURCHASE
3 AGREEMENTS THAT HAVE BEEN ISSUED OR ENTERED INTO TO PAY THE
4 COSTS OF SUCH PROJECTS. ANY PAYMENT OF COMMUNITY ASSISTANCE
5 SHALL BE REDUCED ON AN EQUIVALENT BASIS TO THE EXTENT THAT
6 PROPERTY TAX IS DERIVED FROM NEW ELECTRIC INFRASTRUCTURE
7 DEVELOPED IN THE SAME IMPACTED COMMUNITY. THE QUALIFYING RETAIL
8 UTILITY MAY PROPOSE A COST-RECOVERY MECHANISM TO RECOVER THE
9 PRUDENTLY INCURRED COSTS OF ANY WORKFORCE TRANSITION AND
10 COMMUNITY ASSISTANCE PLANS. THE WORKFORCE TRANSITION AND
11 COMMUNITY ASSISTANCE PLANS MUST INCLUDE, TO THE EXTENT FEASIBLE,
12 ESTIMATES OF:

13 (A) THE NUMBER OF WORKERS EMPLOYED BY THE UTILITY OR A
14 CONTRACTOR OF THE UTILITY AT THE ELECTRIC GENERATING FACILITY;

15 (B) THE TOTAL NUMBER OF EXISTING WORKERS WITH JOBS THAT
16 WILL BE RETAINED AND THE TOTAL NUMBER OF EXISTING WORKERS WITH
17 JOBS THAT WILL BE ELIMINATED DUE TO THE RETIREMENT OF THE
18 ELECTRIC GENERATING FACILITY;

19 (C) WITH RESPECT TO THE EXISTING WORKERS WITH JOBS THAT
20 WILL BE ELIMINATED DUE TO THE RETIREMENT OF THE ELECTRIC
21 GENERATING FACILITY, THE TOTAL NUMBER AND NUMBER BY JOB
22 CLASSIFICATION OF WORKERS FOR WHOM: EMPLOYMENT WILL END
23 WITHOUT BEING OFFERED OTHER EMPLOYMENT BY THE UTILITY; THE
24 WORKERS WILL RETIRE AS PLANNED, BE OFFERED EARLY RETIREMENT, OR
25 LEAVE VOLUNTARILY; THE WORKERS WILL BE RETAINED BY BEING
26 TRANSFERRED TO OTHER ELECTRIC GENERATING FACILITIES OR OFFERED
27 OTHER EMPLOYMENT BY THE UTILITY; AND THE WORKERS WILL BE
28 RETRAINED TO CONTINUE TO WORK FOR THE UTILITY IN A NEW JOB
29 CLASSIFICATION;

30 (D) IF THE UTILITY IS REPLACING THE ELECTRIC GENERATING
31 FACILITY BEING RETIRED WITH A NEW ELECTRIC GENERATING FACILITY:
32 THE NUMBER OF WORKERS FROM THE RETIRED ELECTRIC GENERATING
33 FACILITY THAT WILL BE OFFERED EMPLOYMENT AT THE NEW ELECTRIC
34 GENERATING FACILITY; AND THE NUMBER OF JOBS AT THE NEW ELECTRIC
35 GENERATING FACILITY THAT WILL BE OUTSOURCED TO SUBCONTRACTORS.
36 THE UTILITY SHALL DEVELOP A TRAINING OR APPRENTICESHIP PROGRAM,
37 UNDER THE TERMS OF AN APPLICABLE COLLECTIVE BARGAINING
38 AGREEMENT, IF ANY, FOR THE MAINTENANCE AND OPERATION OF ANY NEW
39 COMBINATION GENERATION AND STORAGE FACILITY OWNED BY THE
40 UTILITY THAT DOES NOT EMIT CARBON DIOXIDE, TO WHICH FACILITY
41 DISPLACED WORKERS MAY TRANSFER AS APPROPRIATE.

42 (VIII) IF THE MINIMUM AMOUNTS OF ELECTRICITY FROM ELIGIBLE
43 ENERGY RESOURCES SET FORTH IN SECTION 40-2-124 (1)(c) ARE

1 SATISFIED, A QUALIFYING RETAIL UTILITY MAY PROPOSE TO USE UP TO
2 ONE-HALF OF THE FUNDS COLLECTED ANNUALLY UNDER SECTION 40-2-124
3 (1)(g), AS WELL AS ANY ACCRUED FUNDS, TO RECOVER THE INCREMENTAL
4 COST OF CLEAN ENERGY RESOURCES AND THEIR DIRECTLY RELATED
5 INTERCONNECTION FACILITIES. THE UTILITY MAY ACCOUNT FOR THESE
6 FUNDS IN CALCULATING THE COST OF THE PLAN.

7 (b) THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF
8 PUBLIC HEALTH AND ENVIRONMENT SHALL PARTICIPATE IN ANY
9 PROCEEDING SEEKING APPROVAL OF A CLEAN ENERGY PLAN DEVELOPED
10 BY A QUALIFYING RETAIL UTILITY PURSUANT TO THIS SECTION. THE
11 DIVISION SHALL DESCRIBE THE METHODS OF MEASURING CARBON DIOXIDE
12 EMISSIONS AND SHALL VERIFY THE PROJECTED CARBON DIOXIDE EMISSION
13 REDUCTIONS AS A RESULT OF THE CLEAN ENERGY PLAN.

14 (c) AFTER CONSULTING WITH THE AIR QUALITY CONTROL
15 COMMISSION, THE DIVISION OF ADMINISTRATION SHALL DETERMINE
16 WHETHER A CLEAN ENERGY PLAN AS FILED UNDER THIS SECTION WILL
17 RESULT IN AN EIGHTY-PERCENT REDUCTION, RELATIVE TO 2005 LEVELS,
18 IN CARBON DIOXIDE EMISSIONS FROM THE QUALIFYING RETAIL UTILITY'S
19 COLORADO ELECTRICITY SALES BY 2030 AND IS OTHERWISE CONSISTENT
20 WITH ANY GREENHOUSE GAS EMISSION REDUCTION GOALS ESTABLISHED
21 BY THE STATE OF COLORADO. THE DIVISION SHALL PUBLISH, AND SHALL
22 REPORT TO THE PUBLIC UTILITIES COMMISSION, THE DIVISION'S
23 CALCULATION OF CARBON DIOXIDE EMISSION REDUCTIONS ATTRIBUTABLE
24 TO ANY APPROVED CLEAN ENERGY PLAN. NOTHING IN THE DIVISION'S
25 ENGAGEMENT IN THIS PROCESS SHALL BE CONSTRUED TO DIMINISH OR
26 OVERRIDE THE COMMISSION'S AUTHORITY UNDER THIS TITLE 40.

27 (d) THE COMMISSION SHALL APPROVE THE CLEAN ENERGY PLAN IF
28 THE COMMISSION FINDS IT TO BE IN THE PUBLIC INTEREST AND CONSISTENT
29 WITH THE CLEAN ENERGY TARGET IN SUBSECTION (3)(a)(I) OF THIS
30 SECTION, AND THE COMMISSION MAY MODIFY THE PLAN IF THE
31 MODIFICATION IS NECESSARY TO ENSURE THAT THE PLAN IS IN THE PUBLIC
32 INTEREST. IN EVALUATING WHETHER A CLEAN ENERGY PLAN SUBMITTED
33 TO THE COMMISSION IS IN THE PUBLIC INTEREST, THE COMMISSION SHALL
34 CONSIDER THE FOLLOWING FACTORS, AMONG OTHER RELEVANT FACTORS
35 AS DEFINED BY THE COMMISSION:

36 (I) REDUCTIONS IN CARBON DIOXIDE AND OTHER EMISSIONS THAT
37 WILL BE ACHIEVED THROUGH THE CLEAN ENERGY PLAN AND THE
38 ENVIRONMENTAL AND HEALTH BENEFITS OF THOSE REDUCTIONS;

39 (II) THE FEASIBILITY OF THE CLEAN ENERGY PLAN AND THE CLEAN
40 ENERGY PLAN'S IMPACT ON THE RELIABILITY AND RESILIENCE OF THE
41 ELECTRIC SYSTEM. THE COMMISSION SHALL NOT APPROVE ANY PLAN THAT
42 DOES NOT PROTECT SYSTEM RELIABILITY.

43 (III) WHETHER THE CLEAN ENERGY PLAN WILL RESULT IN A

1 REASONABLE COST TO CUSTOMERS, AS EVALUATED ON A NET PRESENT
2 VALUE BASIS. IN EVALUATING THE COST IMPACTS OF THE CLEAN ENERGY
3 PLAN, THE COMMISSION SHALL CONSIDER THE EFFECT ON CUSTOMERS OF
4 THE PROJECTED COSTS ASSOCIATED WITH THE PLAN AS SET FORTH IN
5 SUBSECTION (4)(a)(VI) OF THIS SECTION AS WELL AS ANY PROJECTED
6 SAVINGS ASSOCIATED WITH THE PLAN, INCLUDING PROJECTED AVOIDED
7 FUEL COSTS.

8 (e) IF THE COMMISSION FINDS THAT APPROVAL OF THE CLEAN
9 ENERGY PLAN IS NOT IN THE PUBLIC INTEREST, OR IF THE COMMISSION
10 MODIFIES THE PLAN, THE UTILITY MAY CHOOSE TO SUBMIT AN AMENDED
11 PLAN TO THE COMMISSION FOR APPROVAL IN LIEU OF HAVING NO PLAN OR
12 IMPLEMENTING THE MODIFIED PLAN. NO CLEAN ENERGY PLAN IS
13 EFFECTIVE WITHOUT COMMISSION APPROVAL, AND A QUALIFYING RETAIL
14 UTILITY SHALL NOT BE REQUIRED TO SUBMIT MORE THAN ONE PLAN FOR
15 COMMISSION APPROVAL.

16 (5) **Regulatory matters.** (a) **Ensuring retail rate stability.**
17 (I) THE COMMISSION SHALL ESTABLISH A MAXIMUM ELECTRIC RETAIL
18 RATE IMPACT OF ONE AND ONE-HALF PERCENT OF THE TOTAL ELECTRIC
19 BILL ANNUALLY FOR EACH CUSTOMER FOR IMPLEMENTATION OF THE
20 APPROVED ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES, CONSISTENT
21 WITH THIS SUBSECTION (5). NOTHING IN THIS SUBSECTION (5)(a)
22 SUPERSEDES SUBSECTION (3)(a)(I) OF THIS SECTION.

23 (II) A QUALIFYING RETAIL UTILITY SHALL COLLECT REVENUES FOR
24 THE ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THROUGH A CLEAN
25 ENERGY PLAN REVENUE RIDER ASSESSED ON A PERCENTAGE BASIS ON ALL
26 RETAIL CUSTOMER BILLS, AS DEEMED PRUDENT BY THE COMMISSION. THE
27 REVENUE RIDER MAY BE ESTABLISHED AS EARLY AS THE YEAR FOLLOWING
28 APPROVAL OF A CLEAN ENERGY PLAN BY THE COMMISSION, AND THE
29 QUALIFYING RETAIL UTILITY MAY PROPOSE A COMMENCEMENT DATE AND
30 LEVEL NO GREATER THAN THE MAXIMUM ELECTRIC RETAIL RATE IMPACT.
31 THE REVENUE RIDER SHALL AFFORD THE QUALIFYING RETAIL UTILITY COST
32 RECOVERY TREATMENT UP TO THE MAXIMUM ELECTRIC RETAIL RATE
33 IMPACT UNTIL THE FIRST RATE CASE FOLLOWING THE FINAL
34 IMPLEMENTATION OF THE CLEAN ENERGY PLAN, AT WHICH TIME THE
35 REMAINING COSTS AND SAVINGS ASSOCIATED WITH THE CLEAN ENERGY
36 PLAN WILL BE INCORPORATED INTO BASE RATES. THE QUALIFYING RETAIL
37 UTILITY MAY PROPOSE TO ADJUST THE LEVEL OF THE RETAIL RATE RIDER
38 OVER TIME SO LONG AS IT DOES NOT EXCEED THE MAXIMUM RETAIL RATE
39 IMPACT AND AS DEEMED PRUDENT BY THE COMMISSION. NOTHING IN THIS
40 SUBSECTION (5) AFFECTS THE COMMISSION'S AUTHORITY TO EVALUATE
41 THE PRUDENCE OF COSTS ASSOCIATED WITH APPROVED CLEAN ENERGY
42 PLAN ACTIVITIES.

43 (III) THE CLEAN ENERGY PLAN REVENUE RIDER WILL BE UTILIZED

1 FOR COSTS OF A QUALIFYING RETAIL UTILITY'S CLEAN ENERGY PLAN
2 CAPITAL INVESTMENTS AND OPERATING AND RELATED EXPENSES,
3 EXCLUSIVE OF:

4 (A) FUEL AND TRANSMISSION COSTS;
5 (B) COSTS ASSOCIATED WITH THE CAPITAL INVESTMENTS AND
6 OPERATING AND RELATED EXPENSES WITHIN THE OVERALL APPROVED
7 RESOURCE PORTFOLIO NECESSARY TO FULLY SATISFY THE RESOURCE NEED
8 IDENTIFIED FOR THE ELECTRIC RESOURCE PLAN WITHOUT THE CLEAN
9 ENERGY PLAN;

10 (C) THE INCREMENTAL COSTS OF ELIGIBLE ENERGY RESOURCES
11 RECOVERED WITH FUNDS COLLECTED UNDER SECTION 40-2-124 (1)(g);
12 AND

13 (D) THE INCREMENTAL COSTS OF ANY CLEAN ENERGY RESOURCES
14 AND THEIR DIRECTLY RELATED INTERCONNECTION FACILITIES THAT,
15 SUBJECT TO COMMISSION APPROVAL, ARE RECOVERED WITH FUNDS
16 COLLECTED UNDER SECTION 40-2-124 (1)(g) IN ACCORDANCE WITH
17 SUBSECTION (4)(a)(VIII) OF THIS SECTION. SAVINGS ASSOCIATED WITH
18 THE PLAN WILL RETURN TO CUSTOMERS THROUGH EXISTING RATE RIDERS
19 AND BASE RATE ADJUSTMENTS.

20 (IV) THE CLEAN ENERGY PLAN REVENUE RIDER SHALL AFFORD
21 CUSTOMERS CERTAINTY ON THE MAXIMUM RATE IMPACT OF THE
22 APPROVED ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THROUGH AT
23 LEAST CALENDAR YEAR 2030. ANNUALLY, THE QUALIFYING RETAIL
24 UTILITY SHALL FILE A REPORT WITH THE COMMISSION INDICATING, AT A
25 MINIMUM:

26 (A) THE AMOUNT OF RIDER COLLECTIONS;
27 (B) THE REVENUE REQUIREMENT ASSOCIATED WITH THE APPROVED
28 ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES TO BE PAID FOR FROM THE
29 RIDER COLLECTIONS;

30 (C) ANY POSITIVE OR NEGATIVE RIDER ACCOUNT BALANCE;
31 (D) INTEREST EXPENSE ASSOCIATED WITH THE REVENUE RIDER
32 BALANCE; AND

33 (E) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.
34 (V) IN THE FIRST RATE CASE FOLLOWING THE FINAL
35 IMPLEMENTATION OF THE CLEAN ENERGY PLAN, THE COMMISSION SHALL
36 CONDUCT A FINAL RECONCILIATION OF THE CLEAN ENERGY PLAN REVENUE
37 RIDER AND DETERMINE HOW TO ACCOUNT FOR ANY POSITIVE OR NEGATIVE
38 RIDER BALANCE. IN THE MANNER DETERMINED BY THE COMMISSION, ANY
39 REMAINING POSITIVE BALANCE SHALL BE RETURNED TO CUSTOMERS OR
40 USED TO REDUCE CUSTOMER RATES AND ANY NEGATIVE BALANCE SHALL
41 BE INCORPORATED INTO THE QUALIFYING RETAIL UTILITY'S RATES.

42 (b) THE QUALIFYING RETAIL UTILITY SHALL UTILIZE A
43 COMPETITIVE BIDDING PROCESS, AS DEFINED BY THE COMMISSION IN

1 RULES, TO PROCURE ANY ENERGY RESOURCES TO FILL THE CUMULATIVE
2 RESOURCE NEED DERIVED FROM THE ELECTRIC RESOURCE PLAN AND THE
3 CLEAN ENERGY PLAN IN SUBSECTION (4)(a)(III) OF THIS SECTION. THE
4 COMMISSION SHALL ALLOW THE QUALIFYING RETAIL UTILITY, INCLUSIVE
5 OF ANY OWNERSHIP BY ITS AFFILIATES, TO OWN A TARGET OF FIFTY
6 PERCENT OF THE ENERGY AND CAPACITY ASSOCIATED WITH THE CLEAN
7 ENERGY RESOURCES AND ANY OTHER ENERGY RESOURCES DEVELOPED OR
8 ACQUIRED TO MEET THE RESOURCE NEED, AS WELL AS ALL ASSOCIATED
9 INFRASTRUCTURE, IF THE COMMISSION FINDS THE COST OF UTILITY OR
10 AFFILIATE OWNERSHIP OF THE GENERATION ASSETS COMES AT A
11 REASONABLE COST AND RATE IMPACT. UTILITY OWNERSHIP MAY COME
12 FROM UTILITY OR AFFILIATE SELF-BUILDS, BUILD-TRANSFERS FROM
13 INDEPENDENT POWER PRODUCERS, OR SALES OF EXISTING ASSETS FROM
14 INDEPENDENT POWER PRODUCERS OR SIMILAR COMMERCIAL
15 ARRANGEMENTS.

16 (c) ANY ACTIONS, INCLUDING TRANSMISSION DEVELOPMENT,
17 TAKEN BY THE QUALIFYING RETAIL UTILITY SHALL BE PRESUMED PRUDENT
18 TO THE EXTENT THOSE ACTIONS ARE A PART OF AN APPROVED CLEAN
19 ENERGY PLAN.

20 (d) FOR THE PURPOSES OF THIS SECTION, THE CLEAN ENERGY
21 TARGET EVALUATION WILL BE BASED UPON THE QUALIFYING RETAIL
22 UTILITY'S ELECTRICITY SALES WITHIN ITS ELECTRIC SERVICE TERRITORY AS
23 IT EXISTED ON JANUARY 1, 2019. IN THE EVENT OF A SIGNIFICANT
24 ACQUISITION, THE QUALIFYING RETAIL UTILITY MAY FILE WITHIN ONE
25 YEAR AFTER THE ACQUISITION AN ADDITIONAL CLEAN ENERGY PLAN TO
26 ADDRESS THAT ACQUISITION, AND THE COMMISSION SHALL CONSIDER THE
27 ADDITIONAL CLEAN ENERGY PLAN CONSISTENT WITH THE GOALS OF THIS
28 SECTION.

29 (e) THE COMMISSION MAY, ON ITS OWN MOTION OR UPON
30 APPLICATION BY A QUALIFYING RETAIL UTILITY, AMEND AN APPROVED
31 CLEAN ENERGY PLAN IF AMENDMENT IS NECESSARY TO ENSURE THE
32 RELIABILITY AND RESILIENCE OF THE ELECTRIC SYSTEM. THE COMMISSION
33 MAY REQUIRE THE QUALIFYING RETAIL UTILITY TO PROVIDE SUCH
34 PERIODIC REPORTS ON THE RELIABILITY AND RESILIENCY OF THE ELECTRIC
35 SYSTEM AS IT MAY DEEM APPROPRIATE TO ENSURE THE CLEAN ENERGY
36 PLAN DOES NOT ADVERSELY IMPACT RELIABILITY OR RESILIENCY.

37 (f) (I) A CLEAN ENERGY PLAN VOLUNTARILY FILED BY A
38 MUNICIPAL UTILITY OR A COOPERATIVE ELECTRIC ASSOCIATION THAT HAS
39 VOTED TO EXEMPT ITSELF FROM REGULATION BY THE COMMISSION
40 PURSUANT TO ARTICLE 9.5 OF THIS TITLE 40 SHALL BE DEEMED APPROVED
41 BY THE COMMISSION AS FILED IF:

42 (A) THE DIVISION OF ADMINISTRATION, IN CONSULTATION WITH
43 THE COMMISSION, VERIFIES THAT THE PLAN DEMONSTRATES THAT, BY

1 2030, THE MUNICIPAL UTILITY OR COOPERATIVE ELECTRIC ASSOCIATION
2 WILL ACHIEVE AT LEAST AN EIGHTY PERCENT REDUCTION IN GREENHOUSE
3 GAS EMISSIONS CAUSED BY THE ENTITY'S COLORADO ELECTRICITY SALES
4 RELATIVE TO 2005 LEVELS; AND

5 (B) THE CLEAN ENERGY PLAN HAS PREVIOUSLY BEEN APPROVED
6 BY A VOTE OF THE ENTITY'S GOVERNING BODY.

7 (II) VOLUNTARY SUBMISSION OF A CLEAN ENERGY PLAN BY A
8 MUNICIPAL UTILITY OR A COOPERATIVE ELECTRIC ASSOCIATION DOES NOT
9 ALTER THE ENTITY'S REGULATORY STATUS WITH RESPECT TO THE
10 COMMISSION, INCLUDING UNDER ARTICLE 9.5 OF THIS TITLE 40.

11 (g) NOTHING IN THIS SUBSECTION (5) PRECLUDES THE USE OF
12 BONDS AS A MECHANISM FOR RECOVERING UTILITY CAPITAL IN A RETIRED
13 ELECTRIC GENERATING FACILITY.

14 (6) **Reports.** ONE YEAR AFTER APPROVAL OF ANY ELECTRIC
15 RESOURCE PLAN THAT INCORPORATES A CLEAN ENERGY PLAN, THE
16 QUALIFYING RETAIL UTILITY SHALL PREPARE A REPORT TO THE GOVERNOR,
17 THE GENERAL ASSEMBLY, THE PUBLIC UTILITIES COMMISSION, AND THE AIR
18 QUALITY CONTROL COMMISSION OUTLINING PROGRESS TOWARD THE
19 CLEAN ENERGY TARGETS SET FORTH IN THIS SECTION. THE REPORT MUST
20 SET FORTH THE CLEAN ENERGY RESOURCES DEVELOPED UNDER ANY CLEAN
21 ENERGY PLAN, THE COST AND CUSTOMER IMPACT OF THOSE CLEAN ENERGY
22 RESOURCES, THE EFFECT OF ANY APPROVED CLEAN ENERGY PLAN ON
23 SYSTEM RELIABILITY, AND ANY OTHER RELEVANT INFORMATION. THE
24 REPORT MUST ALSO IDENTIFY THE NEED FOR NEW OR ADDITIONAL
25 TECHNOLOGY DEVELOPMENT NECESSARY TO ACHIEVE THE CLEAN ENERGY
26 TARGETS OF THIS SECTION.

27 (7) **Future electric resource plans.** ANY ELECTRIC RESOURCE
28 PLAN SUBMITTED TO THE COMMISSION AFTER APPROVAL OF THE CLEAN
29 ENERGY PLAN MUST INCLUDE AN UPDATE ON THE PROGRESS MADE
30 TOWARD THE APPROVED CLEAN ENERGY PLAN, AS WELL AS ACTIONS AND
31 INVESTMENTS BY THE QUALIFYING RETAIL UTILITY PROJECTED TO ACHIEVE
32 COMPLIANCE WITH THE EMISSION REDUCTION TARGET IDENTIFIED IN
33 SUBSECTION (3)(a)(I) OF THIS SECTION AND MAKE PROGRESS TOWARD THE
34 ONE-HUNDRED-PERCENT CLEAN ENERGY GOAL SET FORTH IN SUBSECTION
35 (3)(a)(II) OF THIS SECTION. THE COMMISSION MAY SOLICIT INPUT FROM
36 THE DIVISION OF ADMINISTRATION FOR ASSISTANCE IN EVALUATING THE
37 EMISSION REDUCTIONS ASSOCIATED WITH ANY FUTURE ELECTRIC
38 RESOURCE PLAN AND CONSISTENT WITH THE CLEAN ENERGY TARGETS OF
39 THIS SECTION. THE COMMISSION SHALL REVIEW THE QUALIFYING RETAIL
40 UTILITY'S ACTIONS AND INVESTMENTS IN ACCORDANCE WITH THE
41 STANDARDS SET FORTH IN SUBSECTION (4)(d) OF THIS SECTION.

42 (8) **Regional transmission investigation.** THE COMMISSION
43 SHALL OPEN AN INVESTIGATORY PROCEEDING FOR PURPOSES OF

1 EVALUATING AND CONSIDERING THE COSTS AND BENEFITS ASSOCIATED
2 WITH REGIONAL TRANSMISSION ORGANIZATIONS, ENERGY IMBALANCE
3 MARKETS, JOINT TARIFFS, AND POWER POOLS.".

4 Renumber succeeding sections accordingly.

5 Page 4, after line 23 insert:

6 **"SECTION 7.** In Colorado Revised Statutes, **amend** 40-2-129 as
7 follows:

8 **40-2-129. New resource acquisitions - factors in determination**
9 **- local employment - "best value" metrics.** (1) (a) When evaluating
10 electric resource acquisitions and requests for a certificate of convenience
11 and necessity for construction or expansion of generating facilities,
12 including but not limited to pollution control or fuel conversion upgrades
13 and conversion of existing coal-fired plants to natural gas plants, the
14 commission shall consider, ~~on a qualitative basis, factors that affect~~
15 ~~employment and~~ IN ALL DECISIONS INVOLVED IN ELECTRIC RESOURCE
16 ACQUISITION PROCESSES, BEST VALUE REGARDING EMPLOYMENT OF
17 COLORADO LABOR, AS DEFINED IN SECTION 8-17-101 (2)(a), AND POSITIVE
18 IMPACTS ON the long-term economic viability of Colorado communities.
19 To this end, the commission shall require utilities to ~~request~~ OBTAIN AND
20 PROVIDE TO THE COMMISSION the following information regarding "best
21 value" employment metrics: The availability of training programs,
22 including training through apprenticeship programs registered with the
23 United States department of ~~labor~~; LABOR's office of apprenticeship and
24 training OR BY STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THAT
25 OFFICE; employment of Colorado ~~workers~~ LABOR as compared to
26 importation of out-of-state workers; long-term career opportunities; and
27 industry-standard wages, health care, and pension benefits. When a utility
28 proposes to construct new facilities of its own, the utility shall supply
29 similar information to the commission.

30 (b) ANY ELECTRIC RESOURCE ACQUISITION DECISION MUST BE
31 BASED IN PART ON REVIEW OF THE BEST VALUE EMPLOYMENT METRICS
32 CRITERIA SET FORTH IN ANY SOLICITATION DOCUMENT. THE COMMISSION
33 SHALL NOT APPROVE ANY ELECTRIC RESOURCE PLAN, ACQUISITION, OR
34 POWER PURCHASE AGREEMENT THAT FAILS TO EITHER:

35 (I) PROVIDE THE BEST VALUE EMPLOYMENT METRICS
36 DOCUMENTATION SPECIFIED IN THE SOLICITATION DOCUMENT; OR

37 (II) IN THE ALTERNATIVE, CERTIFY COMPLIANCE WITH OBJECTIVE
38 BEST VALUE EMPLOYMENT METRICS PERFORMANCE STANDARDS SET FORTH
39 IN THE SOLICITATION DOCUMENT.

40 (c) THE COMMISSION MAY WAIVE THE REQUIREMENTS OF THIS

1 SECTION IF A UTILITY AGREES TO USE A PROJECT LABOR AGREEMENT FOR
2 CONSTRUCTION OR EXPANSION OF A GENERATING FACILITY.

3 (2) FOLLOWING DEVELOPMENT OR ACQUISITION OF A GENERATING
4 FACILITY BY A UTILITY, FOR ALL GENERATING FACILITIES OWNED BY THE
5 UTILITY THAT DO NOT EMIT CARBON DIOXIDE, THE UTILITY SHALL USE
6 UTILITY EMPLOYEES OR QUALIFIED CONTRACTORS IF THE CONTRACTORS'
7 EMPLOYEES HAVE ACCESS TO AN APPRENTICESHIP PROGRAM REGISTERED
8 WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF
9 APPRENTICESHIP AND TRAINING OR BY A STATE APPRENTICESHIP COUNCIL
10 RECOGNIZED BY THAT OFFICE; EXCEPT THAT THIS APPRENTICESHIP
11 REQUIREMENT DOES NOT APPLY TO:

12 (a) THE DESIGN, PLANNING, OR ENGINEERING OF THE
13 INFRASTRUCTURE;

14 (b) MANAGEMENT FUNCTIONS TO OPERATE THE INFRASTRUCTURE;
15 OR

16 (c) ANY WORK INCLUDED IN A WARRANTY.

17 (3) THE PROVISIONS OF THIS SECTION REGARDING BEST VALUE
18 EMPLOYMENT METRICS DO NOT APPLY TO PROJECTS INVOLVING RETAIL
19 DISTRIBUTED GENERATION, AS DEFINED IN SECTION 40-2-124 (1)(a)(VIII)
20 OR 40-2-127(2)(b)(I)(B).".

21 Renumber succeeding sections accordingly.

22 Page 26, after line 21 insert:

23 **"SECTION 22.** In Colorado Revised Statutes, **add** article 41 to
24 title 40 as follows:

25 **ARTICLE 41**

26 **Colorado Energy Impact Bond Act**

27 **40-41-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 41 IS
28 THE "COLORADO ENERGY IMPACT BOND ACT".

29 **40-41-102. Definitions.** AS USED IN THIS ARTICLE 41, UNLESS THE
30 CONTEXT OTHERWISE REQUIRES:

31 (1) "ADJUSTMENT MECHANISM" MEANS A FORMULA-BASED
32 MECHANISM FOR MAKING AUTOMATIC ADJUSTMENTS TO CO-EI CHARGES
33 AUTHORIZED IN A FINANCING ORDER AND FOR MAKING ANY ADJUSTMENTS
34 THAT ARE NECESSARY TO CORRECT FOR OVERCOLLECTION OR
35 UNDERCOLLECTION OF SUCH CHARGES OR OTHERWISE ENSURE THE TIMELY
36 AND COMPLETE PAYMENT OF THE CO-EI BONDS AND ALL FINANCING
37 COSTS.

38 (2) "ANCILLARY AGREEMENT" MEANS ANY BOND, INSURANCE
39 POLICY, LETTER OF CREDIT, RESERVE ACCOUNT, SURETY BOND, INTEREST
40 RATE LOCK OR SWAP ARRANGEMENT, HEDGING ARRANGEMENT, LIQUIDITY

1 OR CREDIT SUPPORT ARRANGEMENT, OR OTHER FINANCIAL ARRANGEMENT
2 ENTERED INTO IN CONNECTION WITH CO-EI BONDS THAT IS DESIGNED TO
3 PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE CO-EI
4 BONDS OR TO MITIGATE THE RISK OF AN INCREASE IN INTEREST RATES.

5 (3) "ASSIGNEE" MEANS ANY PERSON TO WHICH AN INTEREST IN
6 CO-EI PROPERTY IS SOLD, ASSIGNED, TRANSFERRED, OR CONVEYED,
7 OTHER THAN AS SECURITY, AND ANY SUCCESSOR TO OR SUBSEQUENT
8 ASSIGNEE OF SUCH A PERSON.

9 (4) "BONDHOLDER" MEANS ANY HOLDER OR OWNER OF CO-EI
10 BONDS.

11 (5) "CO-EI BONDS" MEANS COLORADO ENERGY IMPACT BONDS
12 THAT ARE LOW-COST CORPORATE SECURITIES, SUCH AS SENIOR SECURED
13 BONDS, DEBENTURES, NOTES, CERTIFICATES OF PARTICIPATION,
14 CERTIFICATES OF BENEFICIAL INTEREST, CERTIFICATES OF OWNERSHIP, OR
15 OTHER EVIDENCES OF INDEBTEDNESS OR OWNERSHIP THAT HAVE A
16 SCHEDULED MATURITY DATE AS DETERMINED REASONABLE BY THE
17 COMMISSION BUT NOT LATER THAN THIRTY-TWO YEARS FOLLOWING
18 ISSUANCE, THAT ARE RATED AA OR AA2 OR BETTER BY AT LEAST ONE
19 MAJOR INDEPENDENT CREDIT RATING AGENCY AT THE TIME OF PRICING,
20 AND THAT ARE ISSUED BY AN ELECTRIC UTILITY OR AN ASSIGNEE
21 PURSUANT TO A FINANCING ORDER, THE PROCEEDS OF WHICH ARE USED,
22 DIRECTLY OR INDIRECTLY, TO RECOVER, FINANCE, OR REFINANCE
23 COMMISSION-APPROVED CO-EI COSTS AND FINANCING COSTS.

24 (6) "CO-EI CHARGE" MEANS A CHARGE IN AN AMOUNT
25 AUTHORIZED BY THE COMMISSION IN A FINANCING ORDER IN ORDER TO
26 PROVIDE A SOURCE OF REVENUE SOLELY TO REPAY, FINANCE, OR
27 REFINANCE CO-EI COSTS AND FINANCING COSTS THAT ARE IMPOSED ON
28 AND ARE A PART OF ALL CUSTOMER BILLS AND ARE COLLECTED IN FULL BY
29 THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES, ITS
30 SUCCESSORS OR ASSIGNEES, OR A COLLECTION AGENT THROUGH A
31 NONBYPASSABLE CHARGE THAT IS SEPARATE AND APART FROM THE
32 ELECTRIC UTILITY'S BASE RATES.

33 (7) (a) "CO-EI COSTS" MEANS:

34 (I) (A) AT THE OPTION OF AND UPON PETITION BY AN ELECTRIC
35 UTILITY, AND AS APPROVED BY THE COMMISSION, ANY OF THE PRETAX
36 COSTS THAT THE ELECTRIC UTILITY HAS INCURRED OR WILL INCUR THAT
37 ARE CAUSED BY, ASSOCIATED WITH, OR REMAIN AS A RESULT OF THE
38 RETIREMENT OF AN ELECTRIC GENERATING FACILITY LOCATED IN THE
39 STATE.

40 (B) AS USED IN THIS SUBSECTION (7), "PRETAX COSTS", IF
41 APPROVED BY THE COMMISSION, INCLUDE, BUT ARE NOT LIMITED TO, THE
42 UNRECOVERED CAPITALIZED COST OF A RETIRED ELECTRIC GENERATING
43 FACILITY, COSTS OF DECOMMISSIONING AND RESTORING THE SITE OF THE

1 ELECTRIC GENERATING FACILITY, AND OTHER APPLICABLE CAPITAL AND
2 OPERATING COSTS, ACCRUED CARRYING CHARGES, DEFERRED EXPENSES,
3 REDUCTIONS FOR APPLICABLE INSURANCE AND SALVAGE PROCEEDS AND
4 THE COSTS OF RETIRING ANY EXISTING INDEBTEDNESS, FEES, COSTS, AND
5 EXPENSES TO MODIFY EXISTING DEBT AGREEMENTS OR FOR WAIVERS OR
6 CONSENTS RELATED TO EXISTING DEBT AGREEMENTS.

7 (II) AMOUNTS FOR ASSISTANCE TO AFFECTED WORKERS AND
8 COMMUNITIES IF APPROVED BY THE COMMISSION.

9 (III) PRETAX COSTS THAT AN ELECTRIC UTILITY HAS PREVIOUSLY
10 INCURRED RELATED TO THE COMMISSION-APPROVED CLOSURE OF AN
11 ELECTRIC GENERATING FACILITY OCCURRING BEFORE THE EFFECTIVE DATE
12 OF THIS SECTION.

13 (b) "CO-EI COSTS" DO NOT INCLUDE ANY MONETARY PENALTY,
14 FINE, OR FORFEITURE ASSESSED AGAINST AN ELECTRIC UTILITY BY A
15 GOVERNMENT AGENCY OR COURT UNDER A FEDERAL OR STATE
16 ENVIRONMENTAL STATUTE, RULE, OR REGULATION.

17 (8) "CO-EI PROPERTY" MEANS:

18 (a) ALL RIGHTS AND INTERESTS OF AN ELECTRIC UTILITY OR
19 SUCCESSOR OR ASSIGNEE OF AN ELECTRIC UTILITY UNDER A FINANCING
20 ORDER FOR THE RIGHT TO IMPOSE, BILL, COLLECT, AND RECEIVE CO-EI
21 CHARGES AS IT IS AUTHORIZED TO DO SOLELY UNDER THE FINANCING
22 ORDER AND TO OBTAIN PERIODIC ADJUSTMENTS TO SUCH CO-EI CHARGES
23 AS PROVIDED IN THE FINANCING ORDER; AND

24 (b) ALL REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENTS,
25 PAYMENTS, MONEY, OR PROCEEDS ARISING FROM THE RIGHTS AND
26 INTERESTS SPECIFIED IN SUBSECTION (8)(a) OF THIS SECTION, REGARDLESS
27 OF WHETHER SUCH REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENT,
28 PAYMENTS, MONEY, OR PROCEEDS ARE IMPOSED, BILLED, RECEIVED,
29 COLLECTED, OR MAINTAINED TOGETHER WITH OR COMMINGLED WITH
30 OTHER REVENUE, COLLECTIONS, RIGHTS TO PAYMENT, PAYMENTS, MONEY,
31 OR PROCEEDS.

32 (9) "CO-EI REVENUE" MEANS ALL REVENUE, RECEIPTS,
33 COLLECTIONS, PAYMENTS, MONEY, CLAIMS, OR OTHER PROCEEDS ARISING
34 FROM CO-EI PROPERTY.

35 (10) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF
36 THE STATE OF COLORADO.

37 (11) "CUSTOMER" MEANS A PERSON THAT TAKES ELECTRIC
38 DISTRIBUTION OR ELECTRIC TRANSMISSION SERVICE FROM AN ELECTRIC
39 UTILITY OR ITS SUCCESSORS OR ASSIGNEES UNDER COMMISSION-APPROVED
40 RATE SCHEDULES OR PURSUANT TO SPECIAL CONTRACTS FOR
41 CONSUMPTION OF ELECTRICITY IN THE STATE. THE TERM INCLUDES A
42 CUSTOMER'S SUCCESSORS AND ASSIGNEES.

43 (12) "ELECTRIC UTILITY" MEANS AN ENTITY OPERATING FOR THE

1 PURPOSE OF SUPPLYING ELECTRICITY TO THE PUBLIC FOR DOMESTIC,
2 MECHANICAL, OR PUBLIC USES AND INCLUDES AN INVESTOR-OWNED
3 ELECTRIC UTILITY SUBJECT TO REGULATION UNDER ARTICLES 1 TO 7 OF
4 THIS TITLE 40, A MUNICIPALLY OWNED UTILITY, AND A COOPERATIVE
5 ELECTRIC ASSOCIATION.

6 (13) "FINANCING COSTS" MEANS, IF APPROVED BY THE
7 COMMISSION IN A FINANCING ORDER, COSTS TO ISSUE, SERVICE, REPAY, OR
8 REFINANCE CO-EI BONDS, WHETHER INCURRED OR PAID UPON ISSUANCE
9 OF THE CO-EI BONDS OR OVER THE LIFE OF THE CO-EI BONDS, AND
10 INCLUDES:

11 (a) PRINCIPAL, INTEREST, AND REDEMPTION PREMIUMS THAT ARE
12 PAYABLE ON CO-EI BONDS;

13 (b) ANY PAYMENT REQUIRED UNDER AN ANCILLARY AGREEMENT
14 AND ANY AMOUNT REQUIRED TO FUND OR REPLENISH A RESERVE ACCOUNT
15 OR OTHER ACCOUNTS ESTABLISHED UNDER THE TERMS OF ANY INDENTURE,
16 ANCILLARY AGREEMENT, OR OTHER FINANCING DOCUMENT PERTAINING TO
17 CO-EI BONDS;

18 (c) ANY OTHER COSTS RELATED TO ISSUING, SUPPORTING,
19 REPAYING, REFUNDING, AND SERVICING CO-EI BONDS, INCLUDING, BUT
20 NOT LIMITED TO, SERVICING FEES, ACCOUNTING AND AUDITING FEES,
21 TRUSTEE FEES, LEGAL FEES, CONSULTING FEES, FINANCIAL ADVISOR FEES,
22 ADMINISTRATIVE FEES, PLACEMENT AND UNDERWRITING FEES,
23 CAPITALIZED INTEREST, RATING AGENCY FEES, STOCK EXCHANGE LISTING
24 AND COMPLIANCE FEES, SECURITY REGISTRATION FEES, FILING FEES,
25 INFORMATION TECHNOLOGY PROGRAMMING COSTS, AND ANY OTHER
26 DEMONSTRABLE COSTS NECESSARY TO OTHERWISE ENSURE AND
27 GUARANTEE THE TIMELY PAYMENT OF CO-EI BONDS OR OTHER AMOUNTS
28 OR CHARGES PAYABLE IN CONNECTION WITH CO-EI BONDS;

29 (d) ANY TAXES AND LICENSE FEES IMPOSED ON THE REVENUE
30 GENERATED FROM THE COLLECTION OF A CO-EI CHARGE;

31 (e) ANY STATE AND LOCAL TAXES, INCLUDING FRANCHISE, SALES
32 AND USE, AND OTHER TAXES OR SIMILAR CHARGES, INCLUDING, BUT NOT
33 LIMITED TO, REGULATORY ASSESSMENT FEES, WHETHER PAID, PAYABLE,
34 OR ACCRUED; AND

35 (f) ANY COSTS INCURRED BY AN ELECTRIC UTILITY TO PAY THE
36 COMMISSION'S COSTS OF ENGAGING SPECIALIZED COUNSEL AND EXPERT
37 CONSULTANTS EXPERIENCED IN SECURITIZED ELECTRIC UTILITY
38 RATEPAYER-BACKED BOND FINANCING SIMILAR TO CO-EI BONDS AS
39 AUTHORIZED BY SECTION 40-41-107 (3).

40 (14) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION
41 ISSUED PURSUANT TO SECTION 40-41-106 THAT GRANTS, IN WHOLE OR IN
42 PART, AN APPLICATION FILED PURSUANT TO SECTION 40-41-103 AND THAT
43 AUTHORIZES THE ISSUANCE OF CO-EI BONDS IN ONE OR MORE SERIES, THE

1 IMPOSITION, CHARGING, AND COLLECTION OF CO-EI CHARGES, AND THE
2 CREATION OF CO-EI PROPERTY.

3 (15) "FINANCING PARTY" MEANS A HOLDER OF CO-EI BONDS AND
4 TRUSTEES, COLLATERAL AGENTS, ANY PARTY UNDER AN ANCILLARY
5 AGREEMENT, OR ANY OTHER PERSON ACTING FOR THE BENEFIT OF A
6 HOLDER OF CO-EI BONDS.

7 (16) "FINANCING STATEMENT" HAS THE SAME MEANING AS SET
8 FORTH IN SECTION 4-9-102 (39).

9 (17) "NONBYPASSABLE" MEANS THAT THE PAYMENT OF A CO-EI
10 CHARGE MAY NOT BE AVOIDED BY ANY FUTURE OR EXISTING CUSTOMER
11 LOCATED WITHIN AN ELECTRIC UTILITY SERVICE AREA AS SUCH SERVICE
12 AREA EXISTED AS OF THE DATE OF THE FINANCING ORDER OR, IF THE
13 FINANCING ORDER SO PROVIDES, AS SUCH SERVICE AREA MAY BE
14 EXPANDED, EVEN IF THE CUSTOMER ELECTS TO PURCHASE ELECTRICITY
15 FROM A SUPPLIER OTHER THAN THE ELECTRIC UTILITY.

16 (18) "SUCCESSOR" MEANS, WITH RESPECT TO ANY LEGAL ENTITY,
17 ANOTHER LEGAL ENTITY THAT SUCCEEDS BY OPERATION OF LAW TO THE
18 RIGHTS AND OBLIGATIONS OF THE FIRST LEGAL ENTITY PURSUANT TO ANY
19 BANKRUPTCY, REORGANIZATION, RESTRUCTURING, OTHER INSOLVENCY
20 PROCEEDING, MERGER, ACQUISITION, CONSOLIDATION, OR SALE OR
21 TRANSFER OF ASSETS, WHETHER ANY OF THESE OCCUR DUE TO A
22 RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY OR OTHERWISE.
23 SOLELY FOR THE PURPOSE OF IMPLEMENTING THIS ARTICLE 41,
24 "SUCCESSOR" DOES NOT INCLUDE ANY MUNICIPALLY OWNED ELECTRIC
25 UTILITY ESTABLISHED AND PROVIDING RETAIL ELECTRIC SERVICE BEFORE
26 THE DATE ON WHICH CO-EI BONDS ARE ISSUED PURSUANT TO A FINANCING
27 ORDER RELATING TO ELECTRIC GENERATING FACILITIES THAT SERVE OR
28 PREVIOUSLY SERVED THE SERVICE AREA OF THE MUNICIPALLY OWNED
29 ELECTRIC UTILITY.

30 **40-41-103. Financing orders - application requirements.**

31 (1) AN ELECTRIC UTILITY, IN ITS SOLE DISCRETION, MAY APPLY TO THE
32 COMMISSION FOR A FINANCING ORDER AS AUTHORIZED BY THIS SECTION.

33 (2) (a) AN INVESTOR-OWNED OR OTHER REGULATED ELECTRIC
34 UTILITY MAY FILE AN APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS
35 IN ONE OR MORE SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES,
36 AND CREATE CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN
37 ELECTRIC GENERATING FACILITY IN COLORADO THAT HAS PREVIOUSLY
38 BEEN APPROVED BY THE COMMISSION.

39 (b) AN ELECTRIC UTILITY THAT IS NOT REGULATED MAY FILE AN
40 APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS IN ONE OR MORE
41 SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES, AND CREATE
42 CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN ELECTRIC
43 GENERATING FACILITY IN COLORADO.

1 (c) THE COMMISSION SHALL TAKE FINAL ACTION TO APPROVE,
2 DENY, OR MODIFY ANY APPLICATION FOR A FINANCING ORDER AS
3 DESCRIBED IN SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION IN A FINAL
4 ORDER ISSUED IN ACCORDANCE WITH THE COMMISSION'S RULES FOR
5 ADDRESSING APPLICATIONS.

6 (3) (a) AN APPLICATION FOR A FINANCING ORDER MUST INCLUDE
7 THE FOLLOWING INFORMATION:

8 (I) A DESCRIPTION OF THE CO-EI COSTS THAT THE APPLICANT
9 PROPOSES TO RECOVER WITH THE PROCEEDS OF THE CO-EI BONDS;

10 (II) AN ESTIMATE OF THE FINANCING COSTS RELATED TO THE
11 CO-EI BONDS;

12 (III) AN ESTIMATE OF THE CO-EI CHARGES NECESSARY TO PAY
13 THE CO-EI COSTS AND ALL FINANCING COSTS, AND THE PERIOD OVER
14 WHICH SUCH COSTS WILL BE RECOVERED, INCLUDING THE PROPOSED
15 SCHEDULED AND FINAL MATURITY OF THE CO-EI BONDS;

16 (IV) A PROPOSED METHODOLOGY FOR ALLOCATING THE REVENUE
17 REQUIREMENT FOR THE CO-EI CHARGE AMONG CUSTOMER CLASSES,
18 INCLUDING SPECIAL CONTRACT CUSTOMERS;

19 (V) A DESCRIPTION OF THE NONBYPASSABLE CO-EI CHARGE
20 REQUIRED TO BE PAID BY CUSTOMERS WITHIN THE ELECTRIC UTILITY'S
21 SERVICE AREA FOR RECOVERY OF CO-EI COSTS AND A PROPOSED
22 ADJUSTMENT MECHANISM REFLECTING THE ALLOCATION METHODOLOGY
23 REFERRED TO IN SUBSECTION (3)(a)(IV) OF THIS SECTION;

24 (VI) AN ESTIMATE OF THE TIMING OF THE ISSUANCE OF THE CO-EI
25 BONDS, OR SERIES OF BONDS; AND

26 (VII) AN ESTIMATE OF THE NET PROJECTED COST SAVINGS OR A
27 DEMONSTRATION OF HOW THE ISSUANCE OF CO-EI BONDS AND THE
28 IMPOSITION OF CO-EI CHARGES WOULD AVOID OR SIGNIFICANTLY
29 MITIGATE RATE IMPACTS TO CUSTOMERS AS COMPARED WITH TRADITIONAL
30 METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM
31 CUSTOMERS.

32 (b) IN ADDITION TO FURNISHING THE INFORMATION SPECIFIED IN
33 SUBSECTION (3)(a) OF THIS SECTION, AN APPLICANT SHALL:

34 (I) SPECIFY A FUTURE RATEMAKING PROCESS TO RECONCILE ANY
35 DIFFERENCE BETWEEN THE CO-EI COSTS FINANCED BY CO-EI BONDS AND
36 THE FINAL CO-EI COSTS INCURRED BY THE UTILITY OR THE ASSIGNEE. THE
37 RECONCILIATION MAY AFFECT THE ELECTRIC UTILITY'S BASE RATES OR
38 ANY RIDER ADOPTED PURSUANT TO SECTION 40-41-104 (4), BUT SHALL
39 NOT AFFECT THE AMOUNT OF THE BONDS OR THE ASSOCIATED CO-EI
40 CHARGES PAID BY CUSTOMERS.

41 (II) PROVIDE DIRECT TESTIMONY SUPPORTING THE APPLICATION.

42 **40-41-104. Issuance of financing orders.** (1) FOLLOWING
43 NOTICE AND HEARING ON AN APPLICATION FOR A FINANCING ORDER AS

1 REQUIRED BY THE COMMISSION'S RULES, PRACTICE, AND PROCEDURE, THE
2 COMMISSION MAY ISSUE A FINANCING ORDER IF THE COMMISSION FINDS
3 THAT:

4 (a) THE CO-EI COSTS DESCRIBED IN THE APPLICATION RELATED TO
5 THE RETIREMENT OF THE ELECTRIC GENERATING FACILITIES ARE
6 REASONABLE;

7 (b) THE PROPOSED ISSUANCE OF CO-EI BONDS AND THE
8 IMPOSITION AND COLLECTION OF CO-EI CHARGES:

9 (I) ARE JUST AND REASONABLE;

10 (II) ARE CONSISTENT WITH THE PUBLIC INTEREST;

11 (III) CONSTITUTE A PRUDENT AND REASONABLE MECHANISM FOR
12 THE FINANCING OF THE CO-EI COSTS DESCRIBED IN THE APPLICATION; AND

13 (IV) WILL PROVIDE SUBSTANTIAL, TANGIBLE, AND QUANTIFIABLE
14 NET PRESENT VALUE SAVINGS OR OTHER BENEFITS TO CUSTOMERS THAT
15 ARE GREATER THAN THE BENEFITS THAT WOULD HAVE BEEN ACHIEVED
16 ABSENT THE ISSUANCE OF CO-EI BONDS; AND

17 (c) THE PROVISIONS OF THE FINANCING ORDER WILL ENSURE THAT
18 THE PROPOSED STRUCTURING, MARKETING, AND PRICING OF THE CO-EI
19 BONDS WILL:

20 (I) MATERIALLY LOWER OVERALL COSTS TO CUSTOMERS OR AVOID
21 OR MITIGATE RATE IMPACTS TO CUSTOMERS RELATIVE TO TRADITIONAL
22 METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM
23 CUSTOMERS; AND

24 (II) ACHIEVE THE MAXIMUM NET PRESENT VALUE OF CUSTOMER
25 SAVINGS, AS DETERMINED BY THE COMMISSION IN A FINANCING ORDER,
26 CONSISTENT WITH MARKET CONDITIONS AT THE TIME OF SALE AND THE
27 TERMS OF THE FINANCING ORDER.

28 (2) THE FINANCING ORDER MUST:

29 (a) DETERMINE THE MAXIMUM AMOUNT OF CO-EI COSTS THAT
30 MAY BE FINANCED FROM PROCEEDS OF CO-EI BONDS AUTHORIZED TO BE
31 ISSUED BY THE FINANCING ORDER;

32 (b) APPROVE A METHODOLOGY FOR ALLOCATING THE REVENUE
33 REQUIREMENT FOR THE CO-EI CHARGE AMONG CUSTOMER CLASSES;

34 (c) DESCRIBE THE PROPOSED CUSTOMER BILLING MECHANISM FOR
35 CO-EI CHARGES AND INCLUDE A FINDING THAT THE MECHANISM IS JUST
36 AND REASONABLE;

37 (d) DESCRIBE AND ESTIMATE THE FINANCING COSTS THAT MAY BE
38 RECOVERED THROUGH CO-EI CHARGES AND THE PERIOD OVER WHICH THE
39 COSTS MAY BE RECOVERED, SUBJECT TO SECTION 40-41-105;

40 (e) DETERMINE WHETHER THE PROPOSED STRUCTURING, EXPECTED
41 PRICING, AND FINANCING COSTS OF CO-EI BONDS HAVE A SIGNIFICANT
42 LIKELIHOOD OF LOWERING OVERALL COSTS TO CUSTOMERS OR AVOIDING
43 OR SIGNIFICANTLY MITIGATING RATE IMPACTS TO CUSTOMERS AS

1 COMPARED WITH TRADITIONAL METHODS OF FINANCING AND RECOVERING
2 CO-EI COSTS FROM CUSTOMERS. A FINANCING ORDER MUST PROVIDE
3 DETAILED FINDINGS OF FACT ADDRESSING COST-EFFECTIVENESS AND
4 ASSOCIATED RATE IMPACTS UPON CUSTOMERS AND CUSTOMER CLASSES.

5 (f) REQUIRE THE IMPOSITION AND COLLECTION OF THE
6 NON-BYPASSABLE CO-EI CHARGES AUTHORIZED UNDER A FINANCING
7 ORDER FOR THE PERIOD SPECIFIED IN SUBSECTION (2)(d) OF THIS SECTION;

8 (g) DESCRIBE THE CO-EI PROPERTY THAT MAY BE CREATED IN
9 FAVOR OF THE UTILITY AND ITS SUCCESSORS AND ASSIGNEES AND THAT
10 WILL BE USED TO PAY, AND SECURE THE PAYMENT OF, THE CO-EI BONDS
11 AND FINANCING COSTS AUTHORIZED IN THE FINANCING ORDER;

12 (h) AUTHORIZE AND APPROVE AN ADJUSTMENT MECHANISM
13 REFLECTING THE ALLOCATION METHODOLOGY SPECIFIED IN SUBSECTION
14 (2)(b) OF THIS SECTION;

15 (i) AUTHORIZE THE APPLICANT ELECTRIC UTILITY TO FINANCE
16 CO-EI COSTS THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF CO-EI
17 BONDS. AN ELECTRIC UTILITY IS NOT REQUIRED TO SECURE A SEPARATE
18 FINANCING ORDER FOR EACH ISSUANCE OF CO-EI BONDS OR FOR EACH
19 SCHEDULED PHASE OF THE PREVIOUSLY APPROVED RETIREMENT OF
20 ELECTRIC GENERATING FACILITIES APPROVED IN THE FINANCING ORDER.

21 (j) INCLUDE ANY ADDITIONAL FINDINGS OR CONCLUSIONS DEEMED
22 APPROPRIATE BY THE COMMISSION;

23 (k) SPECIFY THE DEGREE OF FLEXIBILITY AFFORDED TO THE
24 ELECTRIC UTILITY IN ESTABLISHING THE TERMS AND CONDITIONS OF THE
25 CO-EI BONDS, INCLUDING, BUT NOT LIMITED TO, REPAYMENT SCHEDULES,
26 EXPECTED INTEREST RATES, AND OTHER FINANCING COSTS;

27 (l) SPECIFY THE TIMING OF ACTIONS REQUIRED BY THE ORDER,
28 INCLUDING:

29 (I) THE TIMING OF ISSUANCE OF THE CO-EI BONDS, INDEPENDENT
30 OF THE SCHEDULE OF RETIREMENT OF THE ELECTRIC GENERATING
31 FACILITY;

32 (II) THE ENERGY ASSISTANCE FUNDS, IF INCLUDED IN THE BOND
33 ISSUE, MAY BE TRANSFERRED TO A THIRD-PARTY ENTITY DESIGNATED BY
34 THE COMMISSION TO ADMINISTER TRANSITION ASSISTANCE ON BEHALF OF
35 DISPLACED WORKERS AND AFFECTED COMMUNITIES NO LATER THAN THE
36 DATE ON WHICH THE ELECTRIC GENERATING FACILITY CEASES OPERATION;
37 AND

38 (III) THE APPLICANT ELECTRIC UTILITY FILES TO REDUCE ITS RATES
39 AS REQUIRED IN SUBSECTION (4) OF THIS SECTION SIMULTANEOUSLY WITH
40 THE INCEPTION OF THE CO-EI CHARGES AND INDEPENDENTLY OF THE
41 SCHEDULE OF CLOSING AND DECOMMISSIONING OF THE ELECTRIC
42 GENERATING FACILITY; AND

43 (m) SPECIFY A FUTURE RATEMAKING PROCESS TO RECONCILE ANY

1 DIFFERENCE BETWEEN THE ACTUAL CO-EI COSTS FINANCED BY CO-EI
2 BONDS AND THE FINAL CO-EI COSTS INCURRED BY THE UTILITY OR THE
3 ASSIGNEE. THE RECONCILIATION MAY AFFECT THE ELECTRIC UTILITY'S
4 BASE RATES OR ANY RIDER ADOPTED PURSUANT TO SUBSECTION (4) OF
5 THIS SECTION, BUT SHALL NOT AFFECT THE AMOUNT OF THE BONDS OR THE
6 ASSOCIATED CO-EI CHARGES PAID BY CUSTOMERS.

7 (3) A FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MUST
8 PERMIT AND MAY REQUIRE THE CREATION OF AN ELECTRIC UTILITY'S
9 CO-EI PROPERTY PURSUANT TO SUBSECTION (2)(g) OF THIS SECTION TO BE
10 CONDITIONED UPON, AND SIMULTANEOUS WITH, THE SALE OR OTHER
11 TRANSFER OF THE CO-EI PROPERTY TO AN ASSIGNEE AND THE PLEDGE OF
12 THE CO-EI PROPERTY TO SECURE CO-EI BONDS.

13 (4) A FINANCING ORDER MUST REQUIRE THE APPLICANT ELECTRIC
14 UTILITY, SIMULTANEOUSLY WITH THE INCEPTION OF THE COLLECTION OF
15 CO-EI CHARGES, TO REDUCE ITS RATES THROUGH A REDUCTION IN BASE
16 RATES OR BY A NEGATIVE RIDER ON CUSTOMER BILLS IN AN AMOUNT
17 EQUAL TO THE REVENUE REQUIREMENT ASSOCIATED WITH THE UTILITY
18 ASSETS BEING FINANCED BY CO-EI BONDS.

19 (5) IF THE VOTERS OF A LOCAL GOVERNMENT OR SCHOOL DISTRICT
20 HAVE APPROVED PROJECTS THE COSTS OF WHICH ARE EXPECTED TO BE
21 PAID FOR FROM PROPERTY TAXES THAT ARE DIRECTLY IMPACTED BY THE
22 RETIREMENT OF AN ELECTRIC GENERATING FACILITY PURSUANT TO THE
23 TERMS OF A FINANCING ORDER, THE FINANCING ORDER MUST PROVIDE FOR
24 THE PAYMENT OF COMMUNITY ASSISTANCE TO THE LOCAL GOVERNMENT
25 IN AN AMOUNT EQUAL TO THE COSTS OF THE VOTER-APPROVED PROJECTS
26 THAT WERE EXPECTED TO BE PAID FROM THE REVENUE SOURCES DIRECTLY
27 IMPACTED BY THE RETIREMENT OF AN ELECTRIC GENERATING FACILITY
28 PURSUANT TO THE TERMS OF THE FINANCING ORDER, INCLUDING THE
29 COSTS OF FINANCING SUCH PROJECTS, INCLUDING BUT NOT LIMITED TO THE
30 PAYMENT OF BONDS, NOTES, OR OTHER MULTIPLE-FISCAL YEAR
31 OBLIGATIONS OR LEASE PURCHASE AGREEMENTS THAT HAVE BEEN ISSUED
32 OR ENTERED INTO TO PAY THE COSTS OF SUCH PROJECTS. ANY PAYMENT
33 OF COMMUNITY ASSISTANCE SHALL BE REDUCED ON AN EQUIVALENT BASIS
34 TO THE EXTENT THAT PROPERTY TAX IS DERIVED FROM NEW ELECTRIC
35 INFRASTRUCTURE DEVELOPED IN THE SAME IMPACTED COMMUNITY.

36 (6) IN A FINANCING ORDER, THE COMMISSION MAY INCLUDE ANY
37 CONDITIONS THAT ARE NECESSARY TO PROMOTE THE PUBLIC INTEREST
38 AND MAY GRANT RELIEF THAT IS DIFFERENT FROM THAT WHICH WAS
39 REQUESTED IN THE APPLICATION SO LONG AS THE RELIEF IS WITHIN THE
40 SCOPE OF THE MATTERS ADDRESSED IN THE COMMISSION'S NOTICE OF THE
41 APPLICATION.

42 **40-41-105. Effect of financing order.** (1) A FINANCING ORDER
43 REMAINS IN EFFECT UNTIL THE CO-EI BONDS ISSUED AS AUTHORIZED BY

1 THE FINANCING ORDER HAVE BEEN PAID IN FULL AND ALL FINANCING
2 COSTS RELATING TO THE CO-EI BONDS HAVE BEEN PAID IN FULL.

3 (2) A FINANCING ORDER REMAINS IN EFFECT AND UNABATED
4 NOTWITHSTANDING THE BANKRUPTCY, REORGANIZATION, OR INSOLVENCY
5 OF THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES OR
6 ANY AFFILIATE OF THE ELECTRIC UTILITY OR SUCCESSOR ENTITY OR
7 ASSIGNEE.

8 (3) SUBJECT TO JUDICIAL REVIEW AS PROVIDED FOR IN SECTION
9 40-41-108, A FINANCING ORDER IS IRREVOCABLE. THEREFORE,
10 NOTWITHSTANDING SECTION 40-6-112 (1), THE COMMISSION MAY NOT
11 REDUCE, IMPAIR, POSTPONE, OR TERMINATE CO-EI CHARGES APPROVED
12 IN A FINANCING ORDER OR IMPAIR CO-EI PROPERTY OR THE COLLECTION
13 OR RECOVERY OF CO-EI REVENUE.

14 (4) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, UPON
15 THE REQUEST OF AN ELECTRIC UTILITY OR AT THE REQUEST OF PARTIES IN
16 THE COMMISSION PROCEEDING, THE COMMISSION MAY COMMENCE A
17 PROCEEDING AND ISSUE A SUBSEQUENT FINANCING ORDER THAT PROVIDES
18 FOR REFINANCING, RETIRING, OR REFUNDING CO-EI BONDS ISSUED
19 PURSUANT TO THE ORIGINAL FINANCING ORDER IF:

20 (a) THE COMMISSION MAKES ALL OF THE FINDINGS SPECIFIED IN
21 SECTION 40-41-104 (1) WITH RESPECT TO THE SUBSEQUENT FINANCING
22 ORDER; AND

23 (b) THE SUBSEQUENT FINANCING ORDER DOES NOT IMPAIR IN ANY
24 WAY THE COVENANTS AND TERMS OF THE CO-EI BONDS TO BE
25 REFINANCED, RETIRED, OR REFUNDED.

26 **40-41-106. Effect on commission jurisdiction.** (1) EXCEPT AS
27 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF THE
28 COMMISSION ISSUES A FINANCING ORDER TO AN ELECTRIC UTILITY, THE
29 COMMISSION SHALL NOT, IN EXERCISING ITS POWERS AND CARRYING OUT
30 ITS DUTIES PURSUANT TO THIS ARTICLE 41:

31 (a) CONSIDER THE CO-EI BONDS ISSUED PURSUANT TO THE
32 FINANCING ORDER TO BE DEBT OF THE ELECTRIC UTILITY OTHER THAN FOR
33 INCOME TAX PURPOSES;

34 (b) CONSIDER THE CO-EI CHARGES PAID UNDER THE FINANCING
35 ORDER TO BE REVENUE OF THE ELECTRIC UTILITY;

36 (c) CONSIDER THE CO-EI COSTS OR FINANCING COSTS SPECIFIED
37 IN THE FINANCING ORDER TO BE THE REGULATED COSTS OR ASSETS OF THE
38 ELECTRIC UTILITY; OR

39 (d) DETERMINE ANY PRUDENT ACTION TAKEN BY AN ELECTRIC
40 UTILITY THAT IS CONSISTENT WITH THE FINANCING ORDER TO BE UNJUST
41 OR UNREASONABLE.

42 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION:

43 (a) PREVENTS OR PRECLUDES THE COMMISSION FROM

1 INVESTIGATING THE COMPLIANCE OF AN ELECTRIC UTILITY WITH THE
2 TERMS AND CONDITIONS OF A FINANCING ORDER AND REQUIRING
3 COMPLIANCE WITH THE FINANCING ORDER; OR

4 (b) PREVENTS OR PRECLUDES THE COMMISSION FROM IMPOSING
5 REGULATORY SANCTIONS AGAINST A REGULATED ELECTRIC UTILITY FOR
6 FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF A FINANCING
7 ORDER OR THE REQUIREMENTS OF THIS ARTICLE 41.

8 (3) THE COMMISSION MAY NOT REFUSE TO ALLOW THE RECOVERY
9 OF ANY COSTS ASSOCIATED WITH THE RETIREMENT OF ELECTRIC
10 GENERATING FACILITIES BY AN ELECTRIC UTILITY SOLELY BECAUSE THE
11 ELECTRIC UTILITY HAS ELECTED TO RECOVER THOSE COSTS THROUGH
12 TRADITIONAL RATEMAKING METHODS OR TO FINANCE THOSE ACTIVITIES
13 THROUGH A FINANCING MECHANISM OTHER THAN CO-EI BONDS, WHETHER
14 OR NOT A FINANCING ORDER WITH RESPECT TO SUCH COSTS HAS BEEN
15 APPLIED FOR BY THE UTILITY OR ISSUED BY THE COMMISSION.

16 (4) THE COMMISSION MAY ADOPT RULES TO IMPLEMENT THIS
17 ARTICLE 41.

18 **40-41-107. Electric utility customer protection.** (1) IN
19 ADDITION TO ANY OTHER AUTHORITY OF THE COMMISSION:

20 (a) THE COMMISSION MAY ATTACH SUCH CONDITIONS TO THE
21 APPROVAL OF A FINANCING ORDER AS THE COMMISSION DEEMS
22 APPROPRIATE TO MAXIMIZE THE BENEFITS AND MINIMIZE THE RISKS OF THE
23 TRANSACTION TO CUSTOMERS, DIRECTLY IMPACTED COLORADO WORKERS
24 AND COMMUNITIES, AND THE ELECTRIC UTILITY;

25 (b) THE COMMISSION SHALL SPECIFY IN THE FINANCING ORDER A
26 PROCESS TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS, INCLUDING
27 THE SELECTION OF THE UNDERWRITER OR UNDERWRITERS, IN A MANNER
28 CONSISTENT WITH THE PUBLIC INTEREST AND THE LEGAL OBLIGATIONS OF
29 THE ELECTRIC UTILITY;

30 (c) THE COMMISSION SHALL REVIEW AND DETERMINE THE
31 REASONABLENESS OF ALL PROPOSED UP-FRONT AND ONGOING FINANCING
32 COSTS; AND

33 (d) THE COMMISSION HAS THE AUTHORITY REQUIRED TO PERFORM
34 COMPREHENSIVE DUE DILIGENCE IN ITS EVALUATION OF AN APPLICATION
35 FOR A FINANCING ORDER AND HAS THE AUTHORITY TO OVERSEE THE
36 PROCESS USED TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS.

37 (2) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ISSUANCE OF
38 CO-EI BONDS, THE APPLICANT SHALL FILE WITH THE COMMISSION
39 INFORMATION REGARDING THE ACTUAL UP-FRONT ISSUANCE COSTS OF THE
40 CO-EI BONDS. THE COMMISSION SHALL REVIEW, ON A REASONABLY
41 COMPARABLE BASIS, SUCH INFORMATION TO DETERMINE IF THE ISSUANCE
42 RESULTED IN THE LOWEST OVERALL COSTS THAT WERE REASONABLY
43 CONSISTENT WITH BOTH MARKET CONDITIONS AT THE TIME OF THE PRICING

1 AND THE TERMS OF THE FINANCING ORDER. THE COMMISSION MAY
2 DISALLOW INCREMENTAL UP-FRONT ISSUANCE COSTS IN EXCESS OF THE
3 LOWEST OVERALL COSTS BY REQUIRING THE ELECTRIC UTILITY TO MAKE
4 A CREDIT IN AN AMOUNT EQUAL TO THE EXCESS OF ACTUAL ISSUANCE
5 COSTS INCURRED, AND PAID FOR OUT OF CO-EI BOND PROCEEDS, AND THE
6 LOWEST OVERALL ISSUANCE COSTS AS DETERMINED BY THE COMMISSION.
7 THE COMMISSION MAY NOT MAKE ADJUSTMENTS TO THE CO-EI CHARGES
8 FOR ANY SUCH EXCESS UP-FRONT ISSUANCE COSTS.

9 (3) IN PERFORMING ITS RESPONSIBILITIES UNDER THIS ARTICLE
10 41, THE COMMISSION MAY ENGAGE OUTSIDE CONSULTANTS AND COUNSEL,
11 SELECTED BY THE COMMISSION, WHO ARE EXPERIENCED IN SECURITIZED
12 ELECTRIC UTILITY RATEPAYER-BACKED BOND FINANCING SIMILAR TO
13 CO-EI BONDS. THESE OUTSIDE CONSULTANTS AND COUNSEL HAVE A DUTY
14 OF LOYALTY SOLELY TO THE COMMISSION, MUST NOT HAVE ANY
15 FINANCIAL INTEREST IN THE CO-EI BONDS, AND SHALL NOT PARTICIPATE
16 IN THE UNDERWRITING OR SECONDARY MARKET TRADING OF THE CO-EI
17 BONDS. THE EXPENSES ASSOCIATED WITH ANY ENGAGEMENT SHALL BE
18 PAID BY THE APPLICANT UTILITY AND SHALL BE INCLUDED AS FINANCING
19 COSTS AND INCLUDED IN THE CO-EI CHARGE, ARE NOT AN OBLIGATION OF
20 THE STATE, AND ARE ASSIGNED SOLELY TO THE TRANSACTION.

21 (4) IF AN ELECTRIC UTILITY'S APPLICATION FOR A FINANCING
22 ORDER IS DENIED OR WITHDRAWN OR FOR ANY REASON NO CO-EI BONDS
23 ARE ISSUED, ANY COSTS OF RETAINING EXPERT CONSULTANTS AND
24 COUNSEL ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY
25 SUBSECTION (3) OF THIS SECTION AND APPROVED BY THE COMMISSION,
26 SHALL BE PAID BY THE APPLICANT ELECTRIC UTILITY AND SHALL BE
27 ELIGIBLE FOR RECOVERY BY THE ELECTRIC UTILITY, INCLUDING CARRYING
28 COSTS, IN THE ELECTRIC UTILITY'S FUTURE RATES.

29 **40-41-108. Judicial review of financing orders.** A FINANCING
30 ORDER IS A FINAL ORDER OF THE COMMISSION. NOTWITHSTANDING
31 SECTION 40-6-115 (5) SPECIFYING PROPER VENUE FOR PETITION FILINGS,
32 A PARTY AGGRIEVED BY THE ISSUANCE OF A FINANCING ORDER MAY
33 PETITION FOR SUSPENSION AND REVIEW OF THE FINANCING ORDER ONLY IN
34 THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER. IN THE CASE
35 OF ANY PETITION FOR SUSPENSION AND REVIEW, THE COURT SHALL
36 PROCEED TO HEAR AND DETERMINE THE ACTION AS EXPEDITIOUSLY AS
37 PRACTICABLE AND SHALL GIVE THE ACTION PRECEDENCE OVER OTHER
38 MATTERS NOT ACCORDED SIMILAR PRECEDENCE BY LAW.

39 **40-41-109. Electric utilities - duties.** (1) THE ELECTRIC BILLS OF
40 AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER AND
41 CAUSED CO-EI BONDS TO BE ISSUED:

42 (a) MUST EXPLICITLY REFLECT THAT A PORTION OF THE CHARGES
43 ON THE BILL REPRESENTS CO-EI CHARGES APPROVED IN A FINANCING

1 ORDER ISSUED TO THE ELECTRIC UTILITY AND, IF THE CO-EI PROPERTY
2 HAS BEEN TRANSFERRED TO AN ASSIGNEE, MUST INCLUDE A STATEMENT
3 THAT THE ASSIGNEE IS THE OWNER OF THE RIGHTS TO CO-EI CHARGES
4 AND THAT THE ELECTRIC UTILITY OR OTHER ENTITY, IF APPLICABLE, IS
5 ACTING AS A COLLECTION AGENT OR SERVICER FOR THE ASSIGNEE;

6 (b) MUST INCLUDE THE CO-EI CHARGE ON EACH CUSTOMER'S BILL
7 AS A SEPARATE LINE ITEM TITLED "ENERGY IMPACT ASSISTANCE CHARGE"
8 AND MAY INCLUDE BOTH THE RATE AND THE AMOUNT OF THE CHARGE ON
9 EACH BILL. THE FAILURE OF AN ELECTRIC UTILITY TO COMPLY WITH THIS
10 SUBSECTION (1) DOES NOT INVALIDATE, IMPAIR, OR AFFECT ANY
11 FINANCING ORDER, CO-EI PROPERTY, CO-EI CHARGE, OR CO-EI BONDS,
12 BUT MAY SUBJECT THE ELECTRIC UTILITY TO PENALTIES UNDER
13 APPLICABLE COMMISSION RULES; AND

14 (c) MUST EXPLAIN TO CUSTOMERS IN AN ANNUAL FILING WITH THE
15 COMMISSION THE RATE IMPACT THAT FINANCING THE RETIREMENT OF
16 ELECTRIC GENERATING FACILITIES WILL HAVE ON CUSTOMER RATES.

17 (2) AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER
18 AND CAUSED CO-EI BONDS TO BE ISSUED MUST DEMONSTRATE IN AN
19 ANNUAL FILING WITH THE COMMISSION THAT CO-EI BOND PROCEEDS ARE
20 APPLIED SOLELY TO THE REPAYMENT OF CO-EI COSTS AND THAT CO-EI
21 REVENUES ARE APPLIED SOLELY TO THE REPAYMENT OF CO-EI BONDS AND
22 OTHER FINANCING COSTS IN ACCORDANCE WITH THE FINANCING ORDER.
23 THE COST OF SUCH ANNUAL FILING IS A FINANCING COST RECOVERABLE BY
24 THE ELECTRIC UTILITY FROM THE CO-EI CHARGE.

25 **40-41-110. CO-EI property.** (1) CO-EI PROPERTY THAT IS
26 DESCRIBED IN A FINANCING ORDER CONSTITUTES AN EXISTING PRESENT
27 PROPERTY RIGHT OR INTEREST IN AN EXISTING PRESENT PROPERTY RIGHT
28 EVEN THOUGH THE IMPOSITION AND COLLECTION OF CO-EI CHARGES
29 DEPENDS ON THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER IS
30 ISSUED PERFORMING ITS SERVICING FUNCTIONS RELATING TO THE
31 COLLECTION OF CO-EI CHARGES AND ON FUTURE ELECTRICITY
32 CONSUMPTION. THE PROPERTY RIGHT OR INTEREST EXISTS REGARDLESS OF
33 WHETHER THE REVENUES OR PROCEEDS ARISING FROM THE CO-EI
34 PROPERTY HAVE BEEN BILLED, HAVE ACCRUED, OR HAVE BEEN COLLECTED
35 AND NOTWITHSTANDING THE FACT THAT THE VALUE OR AMOUNT OF THE
36 PROPERTY RIGHT OR INTEREST IS DEPENDENT ON THE FUTURE PROVISION
37 OF SERVICE TO CUSTOMERS BY THE ELECTRIC UTILITY OR A SUCCESSOR OR
38 ASSIGNEE OF THE ELECTRIC UTILITY.

39 (2) CO-EI PROPERTY DESCRIBED IN A FINANCING ORDER EXISTS
40 UNTIL ALL CO-EI BONDS ISSUED PURSUANT TO THE FINANCING ORDER ARE
41 PAID IN FULL AND ALL FINANCING COSTS AND OTHER COSTS OF THE CO-EI
42 BONDS HAVE BEEN RECOVERED IN FULL.

43 (3) ALL OR ANY PORTION OF CO-EI PROPERTY DESCRIBED IN A

1 FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MAY BE TRANSFERRED,
2 SOLD, CONVEYED, OR ASSIGNED TO A SUCCESSOR OR ASSIGNEE THAT IS
3 WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY THE ELECTRIC UTILITY
4 AND IS CREATED FOR THE LIMITED PURPOSE OF ACQUIRING, OWNING, OR
5 ADMINISTERING CO-EI PROPERTY OR ISSUING CO-EI BONDS AS
6 AUTHORIZED BY THE FINANCING ORDER. ALL OR ANY PORTION OF CO-EI
7 PROPERTY MAY BE PLEDGED TO SECURE CO-EI BONDS ISSUED PURSUANT
8 TO A FINANCING ORDER, AMOUNTS PAYABLE TO FINANCING PARTIES AND
9 TO COUNTERPARTIES UNDER ANY ANCILLARY AGREEMENTS, AND OTHER
10 FINANCING COSTS. EACH TRANSFER, SALE, CONVEYANCE, ASSIGNMENT, OR
11 PLEDGE BY AN ELECTRIC UTILITY OR AN AFFILIATE OF AN ELECTRIC
12 UTILITY IS A TRANSACTION IN THE NORMAL COURSE OF BUSINESS FOR
13 PURPOSES OF SECTION 40-5-105 (1)(a).

14 (4) IF AN ELECTRIC UTILITY DEFAULTS ON ANY REQUIRED PAYMENT
15 OF CHARGES ARISING FROM CO-EI PROPERTY DESCRIBED IN A FINANCING
16 ORDER, A COURT, UPON APPLICATION BY AN INTERESTED PARTY AND
17 WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE APPLYING
18 PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE
19 REVENUE ARISING FROM THE CO-EI PROPERTY TO THE FINANCING
20 PARTIES. ANY SUCH FINANCING ORDER REMAINS IN FULL FORCE AND
21 EFFECT NOTWITHSTANDING ANY REORGANIZATION, BANKRUPTCY, OR
22 OTHER INSOLVENCY PROCEEDINGS WITH RESPECT TO THE ELECTRIC
23 UTILITY OR ITS SUCCESSORS OR ASSIGNEES.

24 (5) THE INTEREST OF A TRANSFeree, PURCHASER, ACQUIRER,
25 ASSIGNEE, OR PLEDGEE IN CO-EI PROPERTY SPECIFIED IN A FINANCING
26 ORDER ISSUED TO AN ELECTRIC UTILITY, AND IN THE REVENUE AND
27 COLLECTIONS ARISING FROM THAT PROPERTY, IS NOT SUBJECT TO SETOFF,
28 COUNTERCLAIM, SURCHARGE, OR DEFENSE BY THE ELECTRIC UTILITY OR
29 ANY OTHER PERSON OR IN CONNECTION WITH THE REORGANIZATION,
30 BANKRUPTCY, OR OTHER INSOLVENCY OF THE ELECTRIC UTILITY OR ANY
31 OTHER ENTITY.

32 (6) A SUCCESSOR TO AN ELECTRIC UTILITY, WHETHER PURSUANT
33 TO ANY REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY
34 PROCEEDING OR WHETHER PURSUANT TO ANY MERGER OR ACQUISITION,
35 SALE, OTHER BUSINESS COMBINATION, OR TRANSFER BY OPERATION OF
36 LAW, AS A RESULT OF ELECTRIC UTILITY RESTRUCTURING OR OTHERWISE,
37 SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF, AND HAS THE SAME
38 DUTIES AND RIGHTS UNDER A FINANCING ORDER AS, THE ELECTRIC UTILITY
39 TO WHICH THE FINANCING ORDER APPLIES AND SHALL PERFORM THE
40 DUTIES AND EXERCISE THE RIGHTS IN THE SAME MANNER AND TO THE
41 SAME EXTENT AS THE ELECTRIC UTILITY, INCLUDING COLLECTING AND
42 PAYING TO ANY PERSON ENTITLED TO RECEIVE THEM THE REVENUES,
43 COLLECTIONS, PAYMENTS, OR PROCEEDS OF CO-EI PROPERTY DESCRIBED

1 IN THE FINANCING ORDER.

2 **40-41-111. CO-EI bonds - legal investments - not public debt**

3 **- pledge of state.** (1) BANKS, TRUST COMPANIES, SAVINGS AND LOAN
4 ASSOCIATIONS, INSURANCE COMPANIES, EXECUTORS, ADMINISTRATORS,
5 GUARDIANS, TRUSTEES, AND OTHER FIDUCIARIES MAY LEGALLY INVEST
6 ANY MONEY WITHIN THEIR CONTROL IN CO-EI BONDS. PUBLIC ENTITIES,
7 AS DEFINED IN SECTION 24-75-601 (1), MAY INVEST PUBLIC FUNDS IN
8 CO-EI BONDS ONLY IF THE CO-EI BONDS SATISFY THE INVESTMENT
9 REQUIREMENTS ESTABLISHED IN PART 6 OF ARTICLE 75 OF TITLE 24.

10 (2) CO-EI BONDS ISSUED AS AUTHORIZED BY A FINANCING ORDER
11 ARE NOT DEBT OF OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING
12 POWER OF THE STATE, ANY AGENCY OF THE STATE, OR ANY COUNTY,
13 MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE. HOLDERS
14 OF CO-EI BONDS HAVE NO RIGHT TO HAVE TAXES LEVIED BY THE STATE
15 OR BY ANY COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF
16 THE STATE FOR THE PAYMENT OF THE PRINCIPAL OR INTEREST ON CO-EI
17 BONDS. THE ISSUANCE OF CO-EI BONDS DOES NOT DIRECTLY, INDIRECTLY,
18 OR CONTINGENTLY OBLIGATE THE STATE OR A POLITICAL SUBDIVISION OF
19 THE STATE TO LEVY ANY TAX OR MAKE ANY APPROPRIATION FOR PAYMENT
20 OF PRINCIPAL OR INTEREST ON THE CO-EI BONDS.

21 (3) (a) THE STATE PLEDGES TO AND AGREES WITH HOLDERS OF
22 CO-EI BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES THAT THE
23 STATE WILL NOT:

24 (I) TAKE OR PERMIT ANY ACTION THAT IMPAIRS THE VALUE OF
25 CO-EI PROPERTY; OR

26 (II) REDUCE, ALTER, OR IMPAIR CO-EI CHARGES, EXCEPT
27 THROUGH APPLICATION OF THE ADJUSTMENT MECHANISM, THAT ARE
28 IMPOSED, COLLECTED, AND REMITTED FOR THE BENEFIT OF HOLDERS OF
29 CO-EI BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES, UNTIL ANY
30 PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM PAYABLE ON CO-EI
31 BONDS, ALL FINANCING COSTS, AND ALL AMOUNTS TO BE PAID TO AN
32 ASSIGNEE OR FINANCING PARTY UNDER AN ANCILLARY AGREEMENT ARE
33 PAID IN FULL.

34 (b) A PERSON WHO ISSUES CO-EI BONDS MAY INCLUDE THE
35 PLEDGE SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION IN THE CO-EI
36 BONDS, ANCILLARY AGREEMENTS, AND DOCUMENTATION RELATED TO THE
37 ISSUANCE AND MARKETING OF THE CO-EI BONDS.

38 **40-41-112. Assignee or financing party not automatically**
39 **subject to commission regulation.** AN ELECTRIC UTILITY, ASSIGNEE, OR
40 FINANCING PARTY THAT IS NOT ALREADY REGULATED BY THE COMMISSION
41 DOES NOT BECOME SUBJECT TO COMMISSION REGULATION SOLELY AS A
42 RESULT OF ENGAGING IN ANY TRANSACTION AUTHORIZED BY OR
43 DESCRIBED IN THIS ARTICLE 41.

1 **40-41-113. Effect of other laws and judicial decisions.** (1) IF
2 ANY PROVISION OF THIS ARTICLE 41 CONFLICTS WITH ANY OTHER LAW
3 REGARDING THE ATTACHMENT, ASSIGNMENT, PERFECTION, EFFECT OF
4 PERFECTION, OR PRIORITY OF ANY SECURITY INTEREST IN OR TRANSFER OF
5 CO-EI PROPERTY, THE PROVISION OF THIS ARTICLE 41 GOVERNS TO THE
6 EXTENT OF THE CONFLICT.

7 (2) EFFECTIVE ON THE DATE THAT CO-EI BONDS ARE FIRST ISSUED,
8 IF ANY PROVISION OF THIS ARTICLE 41 IS HELD TO BE INVALID OR IS
9 INVALIDATED, SUPERSEDED, REPLACED, REPEALED, OR EXPIRES, THAT
10 OCCURRENCE DOES NOT AFFECT ANY ACTION ALLOWED UNDER THIS
11 ARTICLE 41 THAT WAS LAWFULLY TAKEN BY THE COMMISSION, AN
12 ELECTRIC UTILITY, AN ASSIGNEE, A COLLECTION AGENT, A FINANCING
13 PARTY, A BONDHOLDER, OR A PARTY TO AN ANCILLARY AGREEMENT
14 BEFORE THE OCCURRENCE, AND ANY SUCH ACTION REMAINS IN FULL FORCE
15 AND EFFECT.

16 (3) NOTHING IN SUBSECTION (1) OR (2) OF THIS SECTION
17 PRECLUDES AN ELECTRIC UTILITY FOR WHICH THE COMMISSION HAS
18 INITIALLY ISSUED A FINANCING ORDER FROM APPLYING TO THE
19 COMMISSION FOR:

20 (a) A SUBSEQUENT FINANCING ORDER AMENDING THE FINANCING
21 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR
22 (b) APPROVAL OF THE ISSUANCE OF CO-EI BONDS TO REFUND ALL
23 OR A PORTION OF AN OUTSTANDING SERIES OF CO-EI BONDS.

24 **40-41-114. Choice of law.** THE LAWS OF THIS STATE GOVERN THE
25 VALIDITY, ENFORCEABILITY, ATTACHMENT, PERFECTION, PRIORITY, AND
26 EXERCISE OF REMEDIES WITH RESPECT TO THE TRANSFER OF AN INTEREST
27 OR RIGHT OR CREATION OF A SECURITY INTEREST IN ANY CO-EI PROPERTY,
28 CO-EI CHARGE, OR FINANCING ORDER.

29 **40-41-115. Security interests in CO-EI property.** (1) THE
30 CREATION, PERFECTION, AND ENFORCEMENT OF ANY SECURITY INTEREST
31 IN CO-EI PROPERTY TO SECURE THE REPAYMENT OF THE PRINCIPAL OF
32 AND INTEREST ON CO-EI BONDS, AMOUNTS PAYABLE UNDER ANY
33 ANCILLARY AGREEMENT, AND OTHER FINANCING COSTS ARE GOVERNED BY
34 THIS SECTION AND NOT BY THE "UNIFORM COMMERCIAL CODE", TITLE 4,
35 TO THE EXTENT OF ANY CONFLICT.

36 (2) THE DESCRIPTION OR INDICATION OF CO-EI PROPERTY IN A
37 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS
38 SUFFICIENT ONLY IF THE DESCRIPTION OR INDICATION REFERS TO THIS
39 ARTICLE 41 AND THE FINANCING ORDER CREATING THE CO-EI PROPERTY.

40 (3) (a) A SECURITY INTEREST IN CO-EI PROPERTY IS CREATED,
41 VALID, AND BINDING AS SOON AS ALL OF THE FOLLOWING EVENTS HAVE
42 OCCURRED:

43 (I) THE FINANCING ORDER THAT DESCRIBES THE CO-EI PROPERTY

1 IS ISSUED;
2 (II) A SECURITY AGREEMENT IS EXECUTED AND DELIVERED; AND
3 (III) VALUE IS RECEIVED FOR THE CO-EI BONDS.

4 (b) ONCE A SECURITY INTEREST IN CO-EI PROPERTY IS CREATED
5 UNDER SUBSECTION (3)(a) OF THIS SECTION, THE SECURITY INTEREST
6 ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF COLLATERAL OR ANY
7 OTHER ACT. THE LIEN OF THE SECURITY INTEREST IS VALID, BINDING, AND
8 PERFECTED AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT,
9 CONTRACT, OR OTHERWISE AGAINST THE PERSON GRANTING THE SECURITY
10 INTEREST, REGARDLESS OF WHETHER SUCH PARTIES HAVE NOTICE OF THE
11 LIEN, UPON THE FILING OF A FINANCING STATEMENT WITH THE SECRETARY
12 OF STATE. THE SECRETARY OF STATE SHALL MAINTAIN A FINANCING
13 STATEMENT FILED PURSUANT TO THIS SUBSECTION (3)(b) IN THE SAME
14 MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE SAME
15 RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS
16 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE
17 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION
18 (3)(b) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF
19 FINANCING STATEMENTS.

20 (4) A SECURITY INTEREST IN CO-EI PROPERTY IS A CONTINUOUSLY
21 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN,
22 CREATED BY OPERATION OF LAW OR OTHERWISE, WHICH MAY
23 SUBSEQUENTLY ATTACH TO THE CO-EI PROPERTY UNLESS THE HOLDER OF
24 THE SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

25 (5) THE PRIORITY OF A SECURITY INTEREST IN CO-EI PROPERTY IS
26 NOT AFFECTED BY THE COMMINGLING OF CO-EI PROPERTY OR CO-EI
27 REVENUE WITH OTHER MONEY. AN ASSIGNEE, BONDHOLDER, OR
28 FINANCING PARTY HAS A PERFECTED SECURITY INTEREST IN THE AMOUNT
29 OF ALL CO-EI PROPERTY OR CO-EI REVENUE THAT IS PLEDGED FOR THE
30 PAYMENT OF CO-EI BONDS EVEN IF THE CO-EI PROPERTY OR CO-EI
31 REVENUE IS DEPOSITED IN A CASH OR DEPOSIT ACCOUNT OF THE ELECTRIC
32 UTILITY IN WHICH THE CO-EI REVENUE IS COMMINGLED WITH OTHER
33 MONEY, AND ANY OTHER SECURITY INTEREST THAT APPLIES TO THE OTHER
34 MONEY DOES NOT APPLY TO THE CO-EI REVENUE.

35 (6) NEITHER A SUBSEQUENT ORDER OF THE COMMISSION
36 AMENDING A FINANCING ORDER AS AUTHORIZED BY SECTION 40-41-105
37 (4), NOR APPLICATION OF AN ADJUSTMENT MECHANISM AS AUTHORIZED BY
38 SECTION 40-41-104 (2)(h), AFFECTS THE VALIDITY, PERFECTION, OR
39 PRIORITY OF A SECURITY INTEREST IN OR TRANSFER OF CO-EI PROPERTY.

40 **40-41-116. Sales of CO-EI property.** (1) (a) A SALE,
41 ASSIGNMENT, OR TRANSFER OF CO-EI PROPERTY IS AN ABSOLUTE
42 TRANSFER AND TRUE SALE OF, AND NOT A PLEDGE OF OR SECURED
43 TRANSACTION RELATING TO, THE SELLER'S RIGHT, TITLE, AND INTEREST IN,

1 TO, AND UNDER THE CO-EI PROPERTY IF THE DOCUMENTS GOVERNING THE
2 TRANSACTION EXPRESSLY STATE THAT THE TRANSACTION IS A SALE OR
3 OTHER ABSOLUTE TRANSFER. A TRANSFER OF AN INTEREST IN CO-EI
4 PROPERTY MAY BE CREATED ONLY WHEN ALL OF THE FOLLOWING HAVE
5 OCCURRED:

6 (I) THE FINANCING ORDER CREATING AND DESCRIBING THE CO-EI
7 PROPERTY HAS BECOME EFFECTIVE;

8 (II) THE DOCUMENTS EVIDENCING THE TRANSFER OF THE CO-EI
9 PROPERTY HAVE BEEN EXECUTED AND DELIVERED TO THE ASSIGNEE; AND
10 (III) VALUE IS RECEIVED.

11 (b) UPON THE FILING OF A FINANCING STATEMENT WITH THE
12 SECRETARY OF STATE, A TRANSFER OF AN INTEREST IN CO-EI PROPERTY
13 IS PERFECTED AGAINST ALL THIRD PERSONS, INCLUDING ANY JUDICIAL LIEN
14 OR OTHER LIEN CREDITORS OR ANY CLAIMS OF THE SELLER OR CREDITORS
15 OF THE SELLER, OTHER THAN CREDITORS HOLDING A PRIOR SECURITY
16 INTEREST, OWNERSHIP INTEREST, OR ASSIGNMENT IN THE CO-EI PROPERTY
17 PREVIOUSLY PERFECTED IN ACCORDANCE WITH THIS SUBSECTION (1) OR
18 SECTION 40-41-115. THE SECRETARY OF STATE SHALL MAINTAIN A
19 FINANCING STATEMENT FILED PURSUANT TO THIS SUBSECTION (1)(b) IN
20 THE SAME MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE
21 SAME RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS
22 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE
23 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION
24 (1)(b) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF
25 FINANCING STATEMENTS.

26 (2) THE CHARACTERIZATION OF A SALE, ASSIGNMENT, OR
27 TRANSFER AS AN ABSOLUTE TRANSFER AND TRUE SALE AND THE
28 CORRESPONDING CHARACTERIZATION OF THE PROPERTY INTEREST OF THE
29 ASSIGNEE IS NOT AFFECTED OR IMPAIRED BY THE EXISTENCE OR
30 OCCURRENCE OF ANY OF THE FOLLOWING:

31 (a) COMMINGLING OF CO-EI REVENUE WITH OTHER MONEY;

32 (b) THE RETENTION BY THE SELLER OF:

33 (I) A PARTIAL OR RESIDUAL INTEREST, INCLUDING AN EQUITY
34 INTEREST, IN THE CO-EI PROPERTY, WHETHER DIRECT OR INDIRECT, OR
35 WHETHER SUBORDINATE OR OTHERWISE; OR

36 (II) THE RIGHT TO RECOVER COSTS ASSOCIATED WITH TAXES,
37 FRANCHISE FEES, OR LICENSE FEES IMPOSED ON THE COLLECTION OF CO-EI
38 REVENUE;

39 (c) ANY RE COURSE THAT THE PURCHASER MAY HAVE AGAINST THE
40 SELLER;

41 (d) ANY INDEMNIFICATION RIGHTS, OBLIGATIONS, OR REPURCHASE
42 RIGHTS MADE OR PROVIDED BY THE SELLER;

43 (e) AN OBLIGATION OF THE SELLER TO COLLECT CO-EI REVENUES

1 ON BEHALF OF AN ASSIGNEE;
2 (f) THE TREATMENT OF THE SALE, ASSIGNMENT, OR TRANSFER FOR
3 TAX, FINANCIAL REPORTING, OR OTHER PURPOSES;
4 (g) ANY SUBSEQUENT FINANCING ORDER AMENDING A FINANCING
5 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR
6 (h) ANY APPLICATION OF AN ADJUSTMENT MECHANISM AS
7 AUTHORIZED BY SECTION 40-41-104 (2)(h).".

8 Renumber succeeding sections accordingly.

9 Page 28, after line 14 insert:

10 **"SECTION 25. Severability.** If any provision of this act or the
11 application thereof to any person, circumstance, or transaction is held by
12 a court of competent jurisdiction to be unconstitutional or invalid, the
13 unconstitutionality or invalidity does not affect the constitutionality or
14 validity of any other provision of this act or its application or validity to
15 any person, circumstance, or transaction, including, without limitation,
16 the irrevocability of a financing order issued pursuant to this act, the
17 validity of the issuance of CO-EI bonds, the imposition of CO-EI charges,
18 the transfer or assignment of CO-EI property, or the collection and
19 recovery of CO-EI charges. To these ends, the general assembly hereby
20 declares that the provisions of this act are intended to be severable and
21 that the general assembly would have enacted this section even if any
22 provision of this act held to be unconstitutional or invalid had not been
23 included in the act.".

24 Renumber succeeding sections accordingly.

25 Page 29, strike lines 13 and 14 and substitute:

26 "(3) For the 2019-20 state fiscal year, \$163,820 is appropriated to
27 the department of public health and environment for use by the air
28 pollution control division. This appropriation is from the general fund. To
29 implement this act, the division may use this appropriation as follows:

30 (a) \$152,514 for personal services related to stationary sources,
31 which amount is based on an assumption that the division will require an
32 additional 1.8 FTE; and

33 (b) \$11,306 for operating expenses related to stationary sources.

34 **SECTION 27. Applicability.** This act applies to conduct,
35 including power purchase agreements entered into and utility rate-based
36 property development, occurring on or after the".

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