

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 19-0705.01 Duane Gall x4335

HOUSE BILL 19-1313

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A BILL FOR AN ACT

101 CONCERNING PLANS TO REDUCE CARBON DIOXIDE EMISSIONS BY
102 QUALIFYING RETAIL UTILITIES, AND, IN CONNECTION
103 THEREWITH, ENCOURAGING THE ACHIEVEMENT OF ZERO
104 CARBON DIOXIDE EMISSIONS BY **2050** AND MAKING AN
105 **APPROPRIATION.**

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>.)

Section 1 of the bill repeals laws that allow an electric utility to own, as rate-based property, new eligible energy resources without

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.

HOUSE
Amended 3rd Reading
April 27, 2019

HOUSE
Amended 2nd Reading
April 25, 2019

competitive bidding if certain conditions are satisfied.

Section 2 supplements the existing renewable energy standards statute by establishing targets for the reduction of carbon dioxide emissions from electricity generation by utilities serving more than 500,000 customers, with the opportunity for other utilities to opt in. The targets are:

- ! By 2030, an 80% reduction in carbon dioxide emission levels compared to 2005 levels; and
- ! For 2050 and thereafter, a goal of a 100% reduction in carbon dioxide emission levels.

Section 2 also directs qualifying retail utilities to submit plans to the public utilities commission (PUC) as part of their ongoing resource acquisition planning process to address the clean energy targets. A clean energy plan must detail the actions and investments the utility intends to undertake, including specifying the new resources and infrastructure proposed to be used; the anticipated effects of the plan on the safety, reliability, and resilience of the overall electric system; the methods proposed for measuring carbon dioxide reductions; and the costs of implementation, which must be reasonable.

The approval process also includes participation by the division of administration within the department of public health and environment regarding the measurement of carbon dioxide emission reductions and predictions as to whether the clean energy plan will achieve the desired reductions.

A utility implementing a clean energy plan may recover its costs of implementation through rates, as approved by the PUC, and own any generating resources and infrastructure necessary to effectuate the plan. The utility is required to use a competitive bidding process to fill the cumulative resource need identified in its next electric resource plan that includes a clean energy plan filed after January 1, 2020.

Each utility that receives approval of a clean energy plan is required to report to the governor, the PUC, and the air quality control commission on a list of matters, including its progress in implementing the plan and in reducing carbon dioxide emissions.

The bill strengthens an existing provision requiring electric resource acquisition decisions to be made with consideration of "best value" employment metrics and the use of Colorado labor by requiring a utility to obtain and provide to the PUC relevant documentation on these topics, including the availability of apprenticeship programs registered with the United States department of labor.

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-2-114, **amend** (2)

1 as follows:

2 **40-2-114. Disposition of fees collected - telecommunications**
3 **utility fund - fixed utility fund.** (2) Moneys in the funds created in
4 subsection (1) of this section shall be expended only to defray the full
5 amount determined by the general assembly for the administrative
6 expenses of the commission for the supervision and regulation of the
7 public utilities paying the fees; ~~and~~ for the financing of the office of
8 consumer counsel created in article 6.5 of this title; AND FOR THE COSTS
9 INCURRED BY ALL AGENCIES PARTICIPATING IN ANY PROCESS PURSUANT
10 TO SECTION 40-2-125.5. The state treasurer shall retain any unexpended
11 balance remaining in either fund at the end of any fiscal year to defray the
12 administrative expenses of the commission during subsequent fiscal
13 years, and the executive director of the department of revenue shall take
14 any such unexpended balance into account when computing the
15 percentage upon which fees for the ensuing fiscal year will be based.

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

18 **40-2-124. Renewable energy standards - qualifying retail and**
19 **wholesale utilities - definitions - net metering - legislative declaration.**

20 (1) Each provider of retail electric service in the state of Colorado, other
21 than municipally owned utilities that serve forty thousand customers or
22 fewer, is a qualifying retail utility. Each qualifying retail utility, with the
23 exception of cooperative electric associations that have voted to exempt
24 themselves from commission jurisdiction pursuant to section 40-9.5-104
25 and municipally owned utilities, is subject to the rules established under
26 this ~~article~~ ARTICLE 2 by the commission. No additional regulatory
27 authority is provided to the commission other than that specifically

1 contained in this section. In accordance with article 4 of title 24, C.R.S.,
2 the commission shall revise or clarify existing rules to establish the
3 following:

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

8 (I) ~~Allowing a qualifying retail utility to develop and own as~~
9 ~~utility rate-based property up to twenty-five percent of the total new~~
10 ~~eligible energy resources the utility acquires from entering into power~~
11 ~~purchase agreements and from developing and owning resources after~~
12 ~~March 27, 2007, if the new eligible energy resources proposed to be~~
13 ~~developed and owned by the utility can be constructed at reasonable cost~~
14 ~~compared to the cost of similar eligible energy resources available in the~~
15 ~~market. The qualifying retail utility shall be allowed to develop and own~~
16 ~~as utility rate-based property more than twenty-five percent but not more~~
17 ~~than fifty percent of total new eligible energy resources acquired after~~
18 ~~March 27, 2007, if the qualifying retail utility shows that its proposal~~
19 ~~would provide significant economic development, employment, energy~~
20 ~~security, or other benefits to the state of Colorado. The qualifying retail~~
21 ~~utility may develop and own these resources either by itself or jointly with~~
22 ~~other owners, and, if owned jointly, the entire jointly owned resource~~
23 ~~shall count toward the percentage limitations in this subparagraph (I). For~~
24 ~~the resources addressed in this subparagraph (I), the qualifying retail~~
25 ~~utility shall not be required to comply with the competitive bidding~~
26 ~~requirements of the commission's rules; except that nothing in this~~
27 ~~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 3.** 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

1 COSTS TO ELECTRIC UTILITY CUSTOMERS; THEREFORE, IT IS HELPFUL TO
2 PROVIDE ALTERNATIVE FINANCING MECHANISMS THAT UTILITIES MAY USE
3 TO REDUCE THE TOTAL AMOUNT OF COSTS BEING INCLUDED IN CUSTOMER
4 RATES RESULTING FROM ACCELERATING THE RETIREMENT OF ELECTRIC
5 GENERATING FACILITIES; AND

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

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

11 (a) "CLEAN ENERGY PLAN" MEANS A PLAN FILED BY A QUALIFYING
12 RETAIL UTILITY AS PART OF ITS ELECTRIC RESOURCE PLAN TO REDUCE THE
13 QUALIFYING RETAIL UTILITY'S CARBON DIOXIDE EMISSIONS ASSOCIATED
14 WITH ELECTRICITY SALES TO THE QUALIFYING RETAIL UTILITY'S
15 ELECTRICITY CUSTOMERS BY EIGHTY PERCENT FROM 2005 LEVELS BY
16 2030, AND THAT SEEKS TO ACHIEVE PROVIDING ITS CUSTOMERS WITH
17 ENERGY GENERATED FROM ONE-HUNDRED-PERCENT CLEAN ENERGY
18 RESOURCES BY 2050.

19 (b) "CLEAN ENERGY RESOURCE" MEANS ANY
20 ELECTRICITY-GENERATING TECHNOLOGY THAT GENERATES OR STORES
21 ELECTRICITY WITHOUT EMITTING CARBON DIOXIDE INTO THE ATMOSPHERE.
22 CLEAN ENERGY RESOURCES INCLUDE, WITHOUT LIMITATION, ELIGIBLE
23 ENERGY RESOURCES AS DEFINED IN SECTION 40-2-124 (1)(a).

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

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

4 (I) BY 2030, THE QUALIFYING RETAIL UTILITY SHALL REDUCE THE
5 CARBONDIOXIDE EMISSIONS ASSOCIATED WITH ELECTRICITY SALES TO THE
6 QUALIFYING RETAIL UTILITY'S █ ELECTRICITY CUSTOMERS BY EIGHTY
7 PERCENT FROM 2005 LEVELS.

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

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

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

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

27 (I) THE ELECTRIC RESOURCE PLAN CONTAINING THE CLEAN

1 ENERGY PLAN MUST UTILIZE A RESOURCE ACQUISITION PERIOD THAT
2 EXTENDS THROUGH 2030.

3 (II) THE CLEAN ENERGY PLAN SUBMITTED TO THE COMMISSION
4 MUST SET FORTH A PLAN OF ACTIONS AND INVESTMENTS BY THE
5 QUALIFYING RETAIL UTILITY PROJECTED TO ACHIEVE COMPLIANCE WITH
6 THE CLEAN ENERGY TARGETS IN SUBSECTIONS (3)(a)(I) AND (3)(a)(II) OF
7 THIS SECTION AND THAT RESULT IN AN AFFORDABLE, RELIABLE, AND
8 CLEAN ELECTRIC SYSTEM.

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

19 (IV) AFTER CONDUCTING ANY PROCUREMENT PROCESS PURSUANT
20 TO SUBSECTION (5)(b) OF THIS SECTION OR OTHERWISE, THE QUALIFYING
21 RETAIL UTILITY SHALL SET FORTH THE ACTIONS AND INVESTMENTS
22 REQUIRED TO FILL THE ADDITIONAL RESOURCE NEED IDENTIFIED FOR THE
23 CLEAN ENERGY PLAN TO SATISFY THE CLEAN ENERGY TARGET IN
24 SUBSECTION (3)(a)(I) OF THIS SECTION. THESE ACTIONS AND INVESTMENTS
25 MAY INCLUDE DEVELOPMENT OF NEW CLEAN ENERGY RESOURCES,
26 DEVELOPMENT OF NEW TRANSMISSION AND OTHER SUPPORTING
27 INFRASTRUCTURE, AND CLEAN ENERGY RESOURCE ACQUISITIONS. ANY

1 NEW TRANSMISSION DEVELOPMENT IS SUBJECT TO EXISTING COMMISSION
2 AND STAKEHOLDER TRANSMISSION PLANNING PROCESSES, AS APPLICABLE.

3 (V) THE CLEAN ENERGY PLAN MUST DESCRIBE THE EFFECT OF THE
4 ACTIONS AND INVESTMENTS INCLUDED IN THE CLEAN ENERGY PLAN ON
5 THE SAFETY, RELIABILITY, RENEWABLE ENERGY INTEGRATION, AND
6 RESILIENCE OF ELECTRIC SERVICE IN THE STATE OF COLORADO.

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

10 (VII) IF THE CLEAN ENERGY PLAN INCLUDES ACCELERATED
11 RETIREMENT OF ANY EXISTING GENERATING FACILITIES, THE CLEAN
12 ENERGY PLAN MUST INCLUDE A WORKFORCE TRANSITION PLAN FOR
13 UTILITY WORKERS IMPACTED BY ANY CLEAN ENERGY PLAN, AND THE
14 QUALIFYING RETAIL UTILITY MAY PROPOSE A COST-RECOVERY MECHANISM
15 TO RECOVER THE PRUDENTLY INCURRED COSTS OF ANY WORKFORCE
16 TRANSITION PLAN. THE WORKFORCE TRANSITION PLAN MUST INCLUDE, TO
17 THE EXTENT FEASIBLE, ESTIMATES OF:

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

20 (B) THE TOTAL NUMBER OF EXISTING WORKERS WITH JOBS THAT
21 WILL BE RETAINED AND THE TOTAL NUMBER OF EXISTING WORKERS WITH
22 JOBS THAT WILL BE ELIMINATED DUE TO THE RETIREMENT OF THE
23 ELECTRIC GENERATING FACILITY;

24 (C) WITH RESPECT TO THE EXISTING WORKERS WITH JOBS THAT
25 WILL BE ELIMINATED DUE TO THE RETIREMENT OF THE ELECTRIC
26 GENERATING FACILITY, THE TOTAL NUMBER AND NUMBER BY JOB
27 CLASSIFICATION OF WORKERS FOR WHOM: EMPLOYMENT WILL END

1 WITHOUT BEING OFFERED OTHER EMPLOYMENT BY THE UTILITY; THE
2 WORKERS WILL RETIRE AS PLANNED, BE OFFERED EARLY RETIREMENT, OR
3 LEAVE VOLUNTARILY; THE WORKERS WILL BE RETAINED BY BEING
4 TRANSFERRED TO OTHER ELECTRIC GENERATING FACILITIES OR OFFERED
5 OTHER EMPLOYMENT BY THE UTILITY; AND THE WORKERS WILL BE
6 RETAINED TO CONTINUE TO WORK FOR THE UTILITY IN A NEW JOB
7 CLASSIFICATION;

8 (D) IF THE UTILITY IS REPLACING THE ELECTRIC GENERATING
9 FACILITY BEING RETIRED WITH A NEW ELECTRIC GENERATING FACILITY:
10 THE NUMBER OF WORKERS FROM THE RETIRED ELECTRIC GENERATING
11 FACILITY THAT WILL BE OFFERED EMPLOYMENT AT THE NEW ELECTRIC
12 GENERATING FACILITY; AND THE NUMBER OF JOBS AT THE NEW ELECTRIC
13 GENERATING FACILITY THAT WILL BE OUTSOURCED TO SUBCONTRACTORS.
14 THE UTILITY SHALL DEVELOP A TRAINING OR APPRENTICESHIP PROGRAM,
15 UNDER THE TERMS OF AN APPLICABLE COLLECTIVE BARGAINING
16 AGREEMENT, IF ANY, FOR THE MAINTENANCE AND OPERATION OF ANY NEW
17 COMBINATION GENERATION AND STORAGE FACILITY OWNED BY THE
18 UTILITY THAT DOES NOT EMIT CARBON DIOXIDE, TO WHICH FACILITY
19 DISPLACED WORKERS MAY TRANSFER AS APPROPRIATE.

20 (VIII) IF THE MINIMUM AMOUNTS OF ELECTRICITY FROM ELIGIBLE
21 ENERGY RESOURCES SET FORTH IN SECTION 40-2-124 (1)(c) ARE
22 SATISFIED, A QUALIFYING RETAIL UTILITY MAY PROPOSE TO USE UP TO
23 ONE-HALF OF THE FUNDS COLLECTED ANNUALLY UNDER SECTION 40-2-124
24 (1)(g), AS WELL AS ANY ACCRUED FUNDS, TO RECOVER THE INCREMENTAL
25 COST OF CLEAN ENERGY RESOURCES AND THEIR DIRECTLY RELATED
26 INTERCONNECTION FACILITIES. THE UTILITY MAY ACCOUNT FOR THESE
27 FUNDS IN CALCULATING THE COST OF THE PLAN.

1 (b) THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF
2 PUBLIC HEALTH AND ENVIRONMENT SHALL PARTICIPATE IN ANY
3 PROCEEDING SEEKING APPROVAL OF A CLEAN ENERGY PLAN DEVELOPED
4 BY A QUALIFYING RETAIL UTILITY PURSUANT TO THIS SECTION. THE
5 DIVISION SHALL DESCRIBE THE METHODS OF MEASURING CARBON DIOXIDE
6 EMISSIONS AND SHALL VERIFY THE PROJECTED CARBON DIOXIDE EMISSION
7 REDUCTIONS AS A RESULT OF THE CLEAN ENERGY PLAN.

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

21 (d) THE COMMISSION SHALL APPROVE THE CLEAN ENERGY PLAN IF
22 THE COMMISSION FINDS IT TO BE IN THE PUBLIC INTEREST AND CONSISTENT
23 WITH THE CLEAN ENERGY TARGET IN SUBSECTION (3)(a)(I) OF THIS
24 SECTION, AND THE COMMISSION MAY MODIFY THE PLAN IF THE
25 MODIFICATION IS NECESSARY TO ENSURE THAT THE PLAN IS IN THE PUBLIC
26 INTEREST. IN EVALUATING WHETHER A CLEAN ENERGY PLAN SUBMITTED
27 TO THE COMMISSION IS IN THE PUBLIC INTEREST, THE COMMISSION SHALL

1 CONSIDER THE FOLLOWING FACTORS, AMONG OTHER RELEVANT FACTORS
2 AS DEFINED BY THE COMMISSION:

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

6 (II) THE FEASIBILITY OF THE CLEAN ENERGY PLAN AND THE CLEAN
7 ENERGY PLAN'S IMPACT ON THE RELIABILITY AND RESILIENCE OF THE
8 ELECTRIC SYSTEM. THE COMMISSION SHALL NOT APPROVE ANY PLAN THAT
9 DOES NOT PROTECT SYSTEM RELIABILITY.

10 (III) WHETHER THE CLEAN ENERGY PLAN WILL RESULT IN A
11 REASONABLE COST TO CUSTOMERS, AS EVALUATED ON A NET PRESENT
12 VALUE BASIS. IN EVALUATING THE COST IMPACTS OF THE CLEAN ENERGY
13 PLAN, THE COMMISSION SHALL CONSIDER THE EFFECT ON CUSTOMERS OF
14 THE PROJECTED COSTS ASSOCIATED WITH THE PLAN AS SET FORTH IN
15 SUBSECTION (4)(a)(VI) OF THIS SECTION AS WELL AS ANY PROJECTED
16 SAVINGS ASSOCIATED WITH THE PLAN, INCLUDING PROJECTED AVOIDED
17 FUEL COSTS.

18 (e) IF THE COMMISSION FINDS THAT APPROVAL OF THE CLEAN
19 ENERGY PLAN IS NOT IN THE PUBLIC INTEREST, OR IF THE COMMISSION
20 MODIFIES THE PLAN, THE UTILITY MAY CHOOSE TO SUBMIT AN AMENDED
21 PLAN TO THE COMMISSION FOR APPROVAL IN LIEU OF HAVING NO PLAN OR
22 IMPLEMENTING THE MODIFIED PLAN. NO CLEAN ENERGY PLAN IS
23 EFFECTIVE WITHOUT COMMISSION APPROVAL, AND A QUALIFYING RETAIL
24 UTILITY SHALL NOT BE REQUIRED TO SUBMIT MORE THAN ONE PLAN FOR
25 COMMISSION APPROVAL.

26 (5) **Regulatory matters. (a) Ensuring retail rate stability.**

27 (I) THE COMMISSION SHALL ESTABLISH A MAXIMUM ELECTRIC RETAIL

1 RATE IMPACT OF ONE AND ONE-HALF PERCENT OF THE TOTAL ELECTRIC
2 BILL ANNUALLY FOR EACH CUSTOMER FOR IMPLEMENTATION OF THE
3 APPROVED ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES, CONSISTENT
4 WITH THIS SUBSECTION (5). NOTHING IN THIS SUBSECTION (5)(a)
5 SUPERSEDES SUBSECTION (3)(a)(I) OF THIS SECTION.

6 (II) A QUALIFYING RETAIL UTILITY SHALL COLLECT REVENUES FOR
7 THE ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THROUGH A CLEAN
8 ENERGY PLAN REVENUE RIDER ASSESSED ON A PERCENTAGE BASIS ON ALL
9 RETAIL CUSTOMER BILLS, AS DEEMED PRUDENT BY THE COMMISSION. THE
10 REVENUE RIDER MAY BE ESTABLISHED AS EARLY AS THE YEAR FOLLOWING
11 APPROVAL OF A CLEAN ENERGY PLAN BY THE COMMISSION, AND THE
12 QUALIFYING RETAIL UTILITY MAY PROPOSE A COMMENCEMENT DATE AND
13 LEVEL NO GREATER THAN THE MAXIMUM ELECTRIC RETAIL RATE IMPACT.
14 THE REVENUE RIDER SHALL AFFORD THE QUALIFYING RETAIL UTILITY COST
15 RECOVERY TREATMENT UP TO THE MAXIMUM ELECTRIC RETAIL RATE
16 IMPACT UNTIL THE FIRST RATE CASE FOLLOWING THE FINAL
17 IMPLEMENTATION OF THE CLEAN ENERGY PLAN, AT WHICH TIME THE
18 REMAINING COSTS AND SAVINGS ASSOCIATED WITH THE CLEAN ENERGY
19 PLAN WILL BE INCORPORATED INTO BASE RATES. THE QUALIFYING RETAIL
20 UTILITY MAY PROPOSE TO ADJUST THE LEVEL OF THE RETAIL RATE RIDER
21 OVER TIME SO LONG AS IT DOES NOT EXCEED THE MAXIMUM RETAIL RATE
22 IMPACT AND AS DEEMED PRUDENT BY THE COMMISSION. NOTHING IN THIS
23 SUBSECTION (5) AFFECTS THE COMMISSION'S AUTHORITY TO EVALUATE
24 THE PRUDENCE OF COSTS ASSOCIATED WITH APPROVED CLEAN ENERGY
25 PLAN ACTIVITIES.

26 (III) THE CLEAN ENERGY PLAN REVENUE RIDER WILL BE UTILIZED
27 FOR COSTS OF A QUALIFYING RETAIL UTILITY'S CLEAN ENERGY PLAN

1 CAPITAL INVESTMENTS AND OPERATING AND RELATED EXPENSES,
2 EXCLUSIVE OF:

3 (A) FUEL AND TRANSMISSION COSTS;

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

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

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

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

25 (A) THE AMOUNT OF RIDER COLLECTIONS;

26 (B) THE REVENUE REQUIREMENT ASSOCIATED WITH THE APPROVED
27 ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES TO BE PAID FOR FROM THE

1 RIDER COLLECTIONS;

2 (C) ANY POSITIVE OR NEGATIVE RIDER ACCOUNT BALANCE;

3 (D) INTEREST EXPENSE ASSOCIATED WITH THE REVENUE RIDER

4 BALANCE; AND

5 (E) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.

6 (V) IN THE FIRST RATE CASE FOLLOWING THE FINAL

7 IMPLEMENTATION OF THE CLEAN ENERGY PLAN, THE COMMISSION SHALL

8 CONDUCT A FINAL RECONCILIATION OF THE CLEAN ENERGY PLAN REVENUE

9 RIDER AND DETERMINE HOW TO ACCOUNT FOR ANY POSITIVE OR NEGATIVE

10 RIDER BALANCE. IN THE MANNER DETERMINED BY THE COMMISSION, ANY

11 REMAINING POSITIVE BALANCE SHALL BE RETURNED TO CUSTOMERS OR

12 USED TO REDUCE CUSTOMER RATES AND ANY NEGATIVE BALANCE SHALL

13 BE INCORPORATED INTO THE QUALIFYING RETAIL UTILITY'S RATES.

14 (b) THE QUALIFYING RETAIL UTILITY SHALL UTILIZE A

15 COMPETITIVE BIDDING PROCESS, AS DEFINED BY THE COMMISSION IN

16 RULES, TO PROCURE ANY ENERGY RESOURCES TO FILL THE CUMULATIVE

17 RESOURCE NEED DERIVED FROM THE ELECTRIC RESOURCE PLAN AND THE

18 CLEAN ENERGY PLAN IN SUBSECTION (4)(a)(III) OF THIS SECTION. THE

19 COMMISSION SHALL ALLOW THE QUALIFYING RETAIL UTILITY, INCLUSIVE

20 OF ANY OWNERSHIP BY ITS AFFILIATES, TO OWN A TARGET OF FIFTY

21 PERCENT OF THE ENERGY AND CAPACITY ASSOCIATED WITH THE CLEAN

22 ENERGY RESOURCES AND ANY OTHER ENERGY RESOURCES DEVELOPED OR

23 ACQUIRED TO MEET THE RESOURCE NEED, AS WELL AS ALL ASSOCIATED

24 INFRASTRUCTURE, IF THE COMMISSION FINDS THE COST OF UTILITY OR

25 AFFILIATE OWNERSHIP OF THE GENERATION ASSETS COMES AT A

26 REASONABLE COST AND RATE IMPACT. UTILITY OWNERSHIP MAY COME

27 FROM UTILITY OR AFFILIATE SELF-BUILDS, BUILD-TRANSFERS FROM

1 INDEPENDENT POWER PRODUCERS, OR SALES OF EXISTING ASSETS FROM
2 INDEPENDENT POWER PRODUCERS OR SIMILAR COMMERCIAL
3 ARRANGEMENTS. ■ ■

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

8 (d) FOR THE PURPOSES OF THIS SECTION, THE CLEAN ENERGY
9 TARGET EVALUATION WILL BE BASED UPON THE QUALIFYING RETAIL
10 UTILITY'S ELECTRICITY SALES WITHIN ITS ELECTRIC SERVICE TERRITORY
11 AS IT EXISTED ON JANUARY 1, 2019. IN THE EVENT OF A SIGNIFICANT
12 ACQUISITION, THE QUALIFYING RETAIL UTILITY MAY FILE WITHIN ONE
13 YEAR AFTER THE ACQUISITION AN ADDITIONAL CLEAN ENERGY PLAN TO
14 ADDRESS THAT ACQUISITION, AND THE COMMISSION SHALL CONSIDER THE
15 ADDITIONAL CLEAN ENERGY PLAN CONSISTENT WITH THE GOALS OF THIS
16 SECTION.

17 (e) THE COMMISSION MAY, ON ITS OWN MOTION OR UPON
18 APPLICATION BY A QUALIFYING RETAIL UTILITY, AMEND AN APPROVED
19 CLEAN ENERGY PLAN IF AMENDMENT IS NECESSARY TO ENSURE THE
20 RELIABILITY AND RESILIENCY OF THE ELECTRIC SYSTEM. THE COMMISSION
21 MAY REQUIRE THE QUALIFYING RETAIL UTILITY TO PROVIDE SUCH
22 PERIODIC REPORTS ON THE RELIABILITY AND RESILIENCY OF THE ELECTRIC
23 SYSTEM AS IT MAY DEEM APPROPRIATE TO ENSURE THE CLEAN ENERGY
24 PLAN DOES NOT ADVERSELY IMPACT RELIABILITY OR RESILIENCY.

25 (f) (I) A CLEAN ENERGY PLAN VOLUNTARILY FILED BY A
26 MUNICIPAL UTILITY OR A COOPERATIVE ELECTRIC ASSOCIATION THAT HAS
27 VOTED TO EXEMPT ITSELF FROM REGULATION BY THE COMMISSION

1 PURSUANT TO ARTICLE 9.5 OF THIS TITLE 40 SHALL BE DEEMED APPROVED
2 BY THE COMMISSION AS FILED IF:

3 (A) THE DIVISION OF ADMINISTRATION, IN CONSULTATION WITH
4 THE COMMISSION, VERIFIES THAT THE PLAN DEMONSTRATES THAT, BY
5 2030, THE MUNICIPAL UTILITY OR COOPERATIVE ELECTRIC ASSOCIATION
6 WILL ACHIEVE AT LEAST AN EIGHTY PERCENT REDUCTION IN GREENHOUSE
7 GAS EMISSIONS CAUSED BY THE ENTITY'S COLORADO ELECTRICITY SALES
8 RELATIVE TO 2005 LEVELS; AND

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

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

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

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

1 REPORT MUST ALSO IDENTIFY THE NEED FOR NEW OR ADDITIONAL
2 TECHNOLOGY DEVELOPMENT NECESSARY TO ACHIEVE THE CLEAN ENERGY
3 TARGETS OF THIS SECTION.

4 (7) **Future electric resource plans.** ANY ELECTRIC RESOURCE
5 PLAN SUBMITTED TO THE COMMISSION AFTER APPROVAL OF THE CLEAN
6 ENERGY PLAN MUST INCLUDE AN UPDATE ON THE PROGRESS MADE
7 TOWARD THE APPROVED CLEAN ENERGY PLAN, AS WELL AS ACTIONS AND
8 INVESTMENTS BY THE QUALIFYING RETAIL UTILITY PROJECTED TO ACHIEVE
9 COMPLIANCE WITH THE EMISSION REDUCTION TARGET IDENTIFIED IN
10 SUBSECTION (3)(a)(I) OF THIS SECTION AND MAKE PROGRESS TOWARD THE
11 ONE-HUNDRED-PERCENT CLEAN ENERGY GOAL SET FORTH IN SUBSECTION
12 (3)(a)(II) OF THIS SECTION. THE COMMISSION MAY SOLICIT INPUT FROM
13 THE DIVISION OF ADMINISTRATION FOR ASSISTANCE IN EVALUATING THE
14 EMISSION REDUCTIONS ASSOCIATED WITH ANY FUTURE ELECTRIC
15 RESOURCE PLAN AND CONSISTENT WITH THE CLEAN ENERGY TARGETS OF
16 THIS SECTION. THE COMMISSION SHALL REVIEW THE QUALIFYING RETAIL
17 UTILITY'S ACTIONS AND INVESTMENTS IN ACCORDANCE WITH THE
18 STANDARDS SET FORTH IN SUBSECTION (4)(d) OF THIS SECTION.

19 (8) **Regional transmission investigation.** THE COMMISSION
20 SHALL OPEN AN INVESTIGATORY PROCEEDING FOR PURPOSES OF
21 EVALUATING AND CONSIDERING THE COSTS AND BENEFITS ASSOCIATED
22 WITH REGIONAL TRANSMISSION ORGANIZATIONS, ENERGY IMBALANCE
23 MARKETS, JOINT TARIFFS, AND POWER POOLS.

24 **SECTION 4.** In Colorado Revised Statutes, **amend** 40-2-129 as
25 follows:

26 **40-2-129. New resource acquisitions - factors in determination**
27 **- local employment - "best value" metrics.** (1) (a) When evaluating

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

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

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

1 (II) IN THE ALTERNATIVE, CERTIFY COMPLIANCE WITH OBJECTIVE
2 BEST VALUE EMPLOYMENT METRICS PERFORMANCE STANDARDS SET FORTH
3 IN THE SOLICITATION DOCUMENT.

4 (c) THE COMMISSION MAY WAIVE THE REQUIREMENTS OF THIS
5 SECTION IF A UTILITY AGREES TO USE A PROJECT LABOR AGREEMENT FOR
6 CONSTRUCTION OR EXPANSION OF A GENERATING FACILITY.

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

16 (a) THE DESIGN, PLANNING, OR ENGINEERING OF THE
17 INFRASTRUCTURE;

18 (b) MANAGEMENT FUNCTIONS TO OPERATE THE INFRASTRUCTURE;

19 OR

20 (c) ANY WORK INCLUDED IN A WARRANTY.

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

25 **SECTION 5.** In Colorado Revised Statutes, **add 40-2-132 as**
26 **follows:**

27 **40-2-132. Distributed generation - rights of retail electric**

1 **utility customers.** A RETAIL ELECTRIC UTILITY CUSTOMER IS ENTITLED TO
2 GENERATE, CONSUME, STORE, AND EXPORT ELECTRICITY PRODUCED FROM
3 ELIGIBLE ENERGY RESOURCES TO THE ELECTRIC GRID THROUGH THE USE
4 OF CUSTOMER-SITED RETAIL DISTRIBUTED GENERATION AS DEFINED IN
5 SECTION 40-2-124 (1)(a)(VIII), SUBJECT TO RELIABILITY STANDARDS,
6 INTERCONNECTION RULES, AND PROCEDURES AS DETERMINED BY THE
7 COMMISSION.

8 **SECTION 6.** In Colorado Revised Statutes, **add** article 41 to title
9 40 as follows:

10 **ARTICLE 41**

11 **Colorado Energy Impact Bond Act**

12 **40-41-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 41 IS
13 THE "COLORADO ENERGY IMPACT BOND ACT".

14 **40-41-102. Definitions.** AS USED IN THIS ARTICLE 41, UNLESS THE
15 CONTEXT OTHERWISE REQUIRES:

16 (1) "ADJUSTMENT MECHANISM" MEANS A FORMULA-BASED
17 MECHANISM FOR MAKING AUTOMATIC ADJUSTMENTS TO CO-EI CHARGES
18 AUTHORIZED IN A FINANCING ORDER AND FOR MAKING ANY ADJUSTMENTS
19 THAT ARE NECESSARY TO CORRECT FOR OVERCOLLECTION OR
20 UNDERCOLLECTION OF SUCH CHARGES OR OTHERWISE ENSURE THE TIMELY
21 AND COMPLETE PAYMENT OF THE CO-EI BONDS AND ALL FINANCING
22 COSTS.

23 (2) "ANCILLARY AGREEMENT" MEANS ANY BOND, INSURANCE
24 POLICY, LETTER OF CREDIT, RESERVE ACCOUNT, SURETY BOND, INTEREST
25 RATE LOCK OR SWAP ARRANGEMENT, HEDGING ARRANGEMENT, LIQUIDITY
26 OR CREDIT SUPPORT ARRANGEMENT, OR OTHER FINANCIAL ARRANGEMENT
27 ENTERED INTO IN CONNECTION WITH CO-EI BONDS THAT IS DESIGNED TO

1 PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE CO-EI
2 BONDS OR TO MITIGATE THE RISK OF AN INCREASE IN INTEREST RATES.

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

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

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

22 (6) "CO-EI CHARGE" MEANS A CHARGE IN AN AMOUNT
23 AUTHORIZED BY THE COMMISSION IN A FINANCING ORDER IN ORDER TO
24 PROVIDE A SOURCE OF REVENUE SOLELY TO REPAY, FINANCE, OR
25 REFINANCE CO-EI COSTS AND FINANCING COSTS THAT ARE IMPOSED ON
26 AND ARE A PART OF ALL CUSTOMER BILLS AND ARE COLLECTED IN FULL BY
27 THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES, ITS

1 SUCCESSORS OR ASSIGNEES, OR A COLLECTION AGENT THROUGH A
2 NONBYPASSABLE CHARGE THAT IS SEPARATE AND APART FROM THE
3 ELECTRIC UTILITY'S BASE RATES.

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

5 (I) (A) AT THE OPTION OF AND UPON PETITION BY AN ELECTRIC
6 UTILITY, AND AS APPROVED BY THE COMMISSION, ANY OF THE PRETAX
7 COSTS THAT THE ELECTRIC UTILITY HAS INCURRED OR WILL INCUR THAT
8 ARE CAUSED BY, ASSOCIATED WITH, OR REMAIN AS A RESULT OF THE
9 RETIREMENT OF AN ELECTRIC GENERATING FACILITY LOCATED IN THE
10 STATE.

11 (B) AS USED IN THIS SUBSECTION (7), "PRETAX COSTS", IF
12 APPROVED BY THE COMMISSION, INCLUDE, BUT ARE NOT LIMITED TO, THE
13 UNRECOVERED CAPITALIZED COST OF A RETIRED ELECTRIC GENERATING
14 FACILITY, COSTS OF DECOMMISSIONING AND RESTORING THE SITE OF THE
15 ELECTRIC GENERATING FACILITY, AND OTHER APPLICABLE CAPITAL AND
16 OPERATING COSTS, ACCRUED CARRYING CHARGES, DEFERRED EXPENSES,
17 REDUCTIONS FOR APPLICABLE INSURANCE AND SALVAGE PROCEEDS AND
18 THE COSTS OF RETIRING ANY EXISTING INDEBTEDNESS, FEES, COSTS, AND
19 EXPENSES TO MODIFY EXISTING DEBT AGREEMENTS OR FOR WAIVERS OR
20 CONSENTS RELATED TO EXISTING DEBT AGREEMENTS.

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

23 (III) PRETAX COSTS THAT AN ELECTRIC UTILITY HAS PREVIOUSLY
24 INCURRED RELATED TO THE COMMISSION-APPROVED CLOSURE OF AN
25 ELECTRIC GENERATING FACILITY OCCURRING BEFORE THE EFFECTIVE DATE
26 OF THIS SECTION.

27 (b) "CO-EI COSTS" DO NOT INCLUDE ANY MONETARY PENALTY,

1 FINE, OR FORFEITURE ASSESSED AGAINST AN ELECTRIC UTILITY BY A
2 GOVERNMENT AGENCY OR COURT UNDER A FEDERAL OR STATE
3 ENVIRONMENTAL STATUTE, RULE, OR REGULATION.

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

5 (a) ALL RIGHTS AND INTERESTS OF AN ELECTRIC UTILITY OR
6 SUCCESSOR OR ASSIGNEE OF AN ELECTRIC UTILITY UNDER A FINANCING
7 ORDER FOR THE RIGHT TO IMPOSE, BILL, COLLECT, AND RECEIVE CO-EI
8 CHARGES AS IT IS AUTHORIZED TO DO SOLELY UNDER THE FINANCING
9 ORDER AND TO OBTAIN PERIODIC ADJUSTMENTS TO SUCH CO-EI CHARGES
10 AS PROVIDED IN THE FINANCING ORDER; AND

11 (b) ALL REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENTS,
12 PAYMENTS, MONEY, OR PROCEEDS ARISING FROM THE RIGHTS AND
13 INTERESTS SPECIFIED IN SUBSECTION (8)(a) OF THIS SECTION, REGARDLESS
14 OF WHETHER SUCH REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENT,
15 PAYMENTS, MONEY, OR PROCEEDS ARE IMPOSED, BILLED, RECEIVED,
16 COLLECTED, OR MAINTAINED TOGETHER WITH OR COMMINGLED WITH
17 OTHER REVENUE, COLLECTIONS, RIGHTS TO PAYMENT, PAYMENTS, MONEY,
18 OR PROCEEDS.

19 (9) "CO-EI REVENUE" MEANS ALL REVENUE, RECEIPTS,
20 COLLECTIONS, PAYMENTS, MONEY, CLAIMS, OR OTHER PROCEEDS ARISING
21 FROM CO-EI PROPERTY.

22 (10) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF
23 THE STATE OF COLORADO.

24 (11) "CUSTOMER" MEANS A PERSON THAT TAKES ELECTRIC
25 DISTRIBUTION OR ELECTRIC TRANSMISSION SERVICE FROM AN ELECTRIC
26 UTILITY OR ITS SUCCESSORS OR ASSIGNEES UNDER COMMISSION-APPROVED
27 RATE SCHEDULES OR PURSUANT TO SPECIAL CONTRACTS FOR

1 CONSUMPTION OF ELECTRICITY IN THE STATE. THE TERM INCLUDES A
2 CUSTOMER'S SUCCESSORS AND ASSIGNEES.

3 (12) "ELECTRIC UTILITY" MEANS AN ENTITY OPERATING FOR THE
4 PURPOSE OF SUPPLYING ELECTRICITY TO THE PUBLIC FOR DOMESTIC,
5 MECHANICAL, OR PUBLIC USES AND INCLUDES AN INVESTOR-OWNED
6 ELECTRIC UTILITY SUBJECT TO REGULATION UNDER ARTICLES 1 TO 7 OF
7 THIS TITLE 40, A MUNICIPALLY OWNED UTILITY, AND A COOPERATIVE
8 ELECTRIC ASSOCIATION.

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

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

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

21 (c) ANY OTHER COSTS RELATED TO ISSUING, SUPPORTING,
22 REPAYING, REFUNDING, AND SERVICING CO-EI BONDS, INCLUDING, BUT
23 NOT LIMITED TO, SERVICING FEES, ACCOUNTING AND AUDITING FEES,
24 TRUSTEE FEES, LEGAL FEES, CONSULTING FEES, FINANCIAL ADVISOR FEES,
25 ADMINISTRATIVE FEES, PLACEMENT AND UNDERWRITING FEES,
26 CAPITALIZED INTEREST, RATING AGENCY FEES, STOCK EXCHANGE LISTING
27 AND COMPLIANCE FEES, SECURITY REGISTRATION FEES, FILING FEES,

1 INFORMATION TECHNOLOGY PROGRAMMING COSTS, AND ANY OTHER
2 DEMONSTRABLE COSTS NECESSARY TO OTHERWISE ENSURE AND
3 GUARANTEE THE TIMELY PAYMENT OF CO-EI BONDS OR OTHER AMOUNTS
4 OR CHARGES PAYABLE IN CONNECTION WITH CO-EI BONDS;

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

7 (e) ANY STATE AND LOCAL TAXES, INCLUDING FRANCHISE, SALES
8 AND USE, AND OTHER TAXES OR SIMILAR CHARGES, INCLUDING, BUT NOT
9 LIMITED TO, REGULATORY ASSESSMENT FEES, WHETHER PAID, PAYABLE,
10 OR ACCRUED; AND

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

16 (14) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION
17 ISSUED PURSUANT TO SECTION 40-41-106 THAT GRANTS, IN WHOLE OR IN
18 PART, AN APPLICATION FILED PURSUANT TO SECTION 40-41-103 AND THAT
19 AUTHORIZES THE ISSUANCE OF CO-EI BONDS IN ONE OR MORE SERIES, THE
20 IMPOSITION, CHARGING, AND COLLECTION OF CO-EI CHARGES, AND THE
21 CREATION OF CO-EI PROPERTY.

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

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

1 (17) "NONBYPASSABLE" MEANS THAT THE PAYMENT OF A CO-EI
2 CHARGE MAY NOT BE AVOIDED BY ANY FUTURE OR EXISTING CUSTOMER
3 LOCATED WITHIN AN ELECTRIC UTILITY SERVICE AREA AS SUCH SERVICE
4 AREA EXISTED AS OF THE DATE OF THE FINANCING ORDER OR, IF THE
5 FINANCING ORDER SO PROVIDES, AS SUCH SERVICE AREA MAY BE
6 EXPANDED, EVEN IF THE CUSTOMER ELECTS TO PURCHASE ELECTRICITY
7 FROM A SUPPLIER OTHER THAN THE ELECTRIC UTILITY.

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

22 **40-41-103. Financing orders - application requirements.**

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

25 (2) (a) AN INVESTOR-OWNED OR OTHER REGULATED ELECTRIC
26 UTILITY MAY FILE AN APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS
27 IN ONE OR MORE SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES,

1 AND CREATE CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN
2 ELECTRIC GENERATING FACILITY IN COLORADO THAT HAS PREVIOUSLY
3 BEEN APPROVED BY THE COMMISSION.

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

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

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

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

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

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

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

27 (V) A DESCRIPTION OF THE NONBYPASSABLE CO-EI CHARGE

1 REQUIRED TO BE PAID BY CUSTOMERS WITHIN THE ELECTRIC UTILITY'S
2 SERVICE AREA FOR RECOVERY OF CO-EI COSTS AND A PROPOSED
3 ADJUSTMENT MECHANISM REFLECTING THE ALLOCATION METHODOLOGY
4 REFERRED TO IN SUBSECTION (3)(a)(IV) OF THIS SECTION;

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

7 (VII) AN ESTIMATE OF THE NET PROJECTED COST SAVINGS OR A
8 DEMONSTRATION OF HOW THE ISSUANCE OF CO-EI BONDS AND THE
9 IMPOSITION OF CO-EI CHARGES WOULD AVOID OR SIGNIFICANTLY
10 MITIGATE RATE IMPACTS TO CUSTOMERS AS COMPARED WITH TRADITIONAL
11 METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM
12 CUSTOMERS.

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

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

22 (II) PROVIDE DIRECT TESTIMONY SUPPORTING THE APPLICATION.

23 **40-41-104. Issuance of financing orders.** (1) FOLLOWING
24 NOTICE AND HEARING ON AN APPLICATION FOR A FINANCING ORDER AS
25 REQUIRED BY THE COMMISSION'S RULES, PRACTICE, AND PROCEDURE, THE
26 COMMISSION MAY ISSUE A FINANCING ORDER IF THE COMMISSION FINDS
27 THAT:

1 (a) THE CO-EI COSTS DESCRIBED IN THE APPLICATION RELATED TO
2 THE RETIREMENT OF THE ELECTRIC GENERATING FACILITIES ARE
3 REASONABLE;

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

6 (I) ARE JUST AND REASONABLE;

7 (II) ARE CONSISTENT WITH THE PUBLIC INTEREST;

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

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

14 (c) THE PROVISIONS OF THE FINANCING ORDER WILL ENSURE THAT
15 THE PROPOSED STRUCTURING, MARKETING, AND PRICING OF THE CO-EI
16 BONDS WILL:

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

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

25 (2) THE FINANCING ORDER MUST:

26 (a) DETERMINE THE MAXIMUM AMOUNT OF CO-EI COSTS THAT
27 MAY BE FINANCED FROM PROCEEDS OF CO-EI BONDS AUTHORIZED TO BE

- 1 ISSUED BY THE FINANCING ORDER;
- 2 (b) APPROVE A METHODOLOGY FOR ALLOCATING THE REVENUE
3 REQUIREMENT FOR THE CO-EI CHARGE AMONG CUSTOMER CLASSES;
- 4 (c) DESCRIBE THE PROPOSED CUSTOMER BILLING MECHANISM FOR
5 CO-EI CHARGES AND INCLUDE A FINDING THAT THE MECHANISM IS JUST
6 AND REASONABLE;
- 7 (d) DESCRIBE AND ESTIMATE THE FINANCING COSTS THAT MAY BE
8 RECOVERED THROUGH CO-EI CHARGES AND THE PERIOD OVER WHICH THE
9 COSTS MAY BE RECOVERED, SUBJECT TO SECTION 40-41-105;
- 10 (e) DETERMINE WHETHER THE PROPOSED STRUCTURING, EXPECTED
11 PRICING, AND FINANCING COSTS OF CO-EI BONDS HAVE A SIGNIFICANT
12 LIKELIHOOD OF LOWERING OVERALL COSTS TO CUSTOMERS OR AVOIDING
13 OR SIGNIFICANTLY MITIGATING RATE IMPACTS TO CUSTOMERS AS
14 COMPARED WITH TRADITIONAL METHODS OF FINANCING AND RECOVERING
15 CO-EI COSTS FROM CUSTOMERS. A FINANCING ORDER MUST PROVIDE
16 DETAILED FINDINGS OF FACT ADDRESSING COST-EFFECTIVENESS AND
17 ASSOCIATED RATE IMPACTS UPON CUSTOMERS AND CUSTOMER CLASSES.
- 18 (f) REQUIRE THE IMPOSITION AND COLLECTION OF THE
19 NON-BYPASSABLE CO-EI CHARGES AUTHORIZED UNDER A FINANCING
20 ORDER FOR THE PERIOD SPECIFIED IN SUBSECTION (2)(d) OF THIS SECTION;
- 21 (g) DESCRIBE THE CO-EI PROPERTY THAT MAY BE CREATED IN
22 FAVOR OF THE UTILITY AND ITS SUCCESSORS AND ASSIGNEES AND THAT
23 WILL BE USED TO PAY, AND SECURE THE PAYMENT OF, THE CO-EI BONDS
24 AND FINANCING COSTS AUTHORIZED IN THE FINANCING ORDER;
- 25 (h) AUTHORIZE AND APPROVE AN ADJUSTMENT MECHANISM
26 REFLECTING THE ALLOCATION METHODOLOGY SPECIFIED IN SUBSECTION
27 (2)(b) OF THIS SECTION;

1 (i) AUTHORIZE THE APPLICANT ELECTRIC UTILITY TO FINANCE
2 CO-EI COSTS THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF CO-EI
3 BONDS. AN ELECTRIC UTILITY IS NOT REQUIRED TO SECURE A SEPARATE
4 FINANCING ORDER FOR EACH ISSUANCE OF CO-EI BONDS OR FOR EACH
5 SCHEDULED PHASE OF THE PREVIOUSLY APPROVED RETIREMENT OF
6 ELECTRIC GENERATING FACILITIES APPROVED IN THE FINANCING ORDER.

7 (j) INCLUDE ANY ADDITIONAL FINDINGS OR CONCLUSIONS DEEMED
8 APPROPRIATE BY THE COMMISSION;

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

13 (l) SPECIFY THE TIMING OF ACTIONS REQUIRED BY THE ORDER,
14 INCLUDING:

15 (I) THE TIMING OF ISSUANCE OF THE CO-EI BONDS, INDEPENDENT
16 OF THE SCHEDULE OF RETIREMENT OF THE ELECTRIC GENERATING
17 FACILITY;

18 (II) THE ENERGY ASSISTANCE FUNDS, IF INCLUDED IN THE BOND
19 ISSUE, MAY BE TRANSFERRED TO A THIRD-PARTY ENTITY DESIGNATED BY
20 THE COMMISSION TO ADMINISTER TRANSITION ASSISTANCE ON BEHALF OF
21 DISPLACED WORKERS AND AFFECTED COMMUNITIES NO LATER THAN THE
22 DATE ON WHICH THE ELECTRIC GENERATING FACILITY CEASES OPERATION;
23 AND

24 (III) THE APPLICANT ELECTRIC UTILITY FILES TO REDUCE ITS RATES
25 AS REQUIRED IN SUBSECTION (4) OF THIS SECTION SIMULTANEOUSLY WITH
26 THE INCEPTION OF THE CO-EI CHARGES AND INDEPENDENTLY OF THE
27 SCHEDULE OF CLOSING AND DECOMMISSIONING OF THE ELECTRIC

1 GENERATING FACILITY; AND

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

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

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

21 (5) IN A FINANCING ORDER, THE COMMISSION MAY INCLUDE ANY
22 CONDITIONS THAT ARE NECESSARY TO PROMOTE THE PUBLIC INTEREST
23 AND MAY GRANT RELIEF THAT IS DIFFERENT FROM THAT WHICH WAS
24 REQUESTED IN THE APPLICATION SO LONG AS THE RELIEF IS WITHIN THE
25 SCOPE OF THE MATTERS ADDRESSED IN THE COMMISSION'S NOTICE OF THE
26 APPLICATION.

27 **40-41-105. Effect of financing order.** (1) A FINANCING ORDER

1 REMAINS IN EFFECT UNTIL THE CO-EI BONDS ISSUED AS AUTHORIZED BY
2 THE FINANCING ORDER HAVE BEEN PAID IN FULL AND ALL FINANCING
3 COSTS RELATING TO THE CO-EI BONDS HAVE BEEN PAID IN FULL.

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

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

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

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

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

27 **40-41-106. Effect on commission jurisdiction. (1) EXCEPT AS**

1 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF THE
2 COMMISSION ISSUES A FINANCING ORDER TO AN ELECTRIC UTILITY, THE
3 COMMISSION SHALL NOT, IN EXERCISING ITS POWERS AND CARRYING OUT
4 ITS DUTIES PURSUANT TO THIS ARTICLE 41:

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

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

10 (c) CONSIDER THE CO-EI COSTS OR FINANCING COSTS SPECIFIED
11 IN THE FINANCING ORDER TO BE THE REGULATED COSTS OR ASSETS OF THE
12 ELECTRIC UTILITY; OR

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

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

17 (a) PREVENTS OR PRECLUDES THE COMMISSION FROM
18 INVESTIGATING THE COMPLIANCE OF AN ELECTRIC UTILITY WITH THE
19 TERMS AND CONDITIONS OF A FINANCING ORDER AND REQUIRING
20 COMPLIANCE WITH THE FINANCING ORDER; OR

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

25 (3) THE COMMISSION MAY NOT REFUSE TO ALLOW THE RECOVERY
26 OF ANY COSTS ASSOCIATED WITH THE RETIREMENT OF ELECTRIC
27 GENERATING FACILITIES BY AN ELECTRIC UTILITY SOLELY BECAUSE THE

1 ELECTRIC UTILITY HAS ELECTED TO RECOVER THOSE COSTS THROUGH
2 TRADITIONAL RATEMAKING METHODS OR TO FINANCE THOSE ACTIVITIES
3 THROUGH A FINANCING MECHANISM OTHER THAN CO-EI BONDS, WHETHER
4 OR NOT A FINANCING ORDER WITH RESPECT TO SUCH COSTS HAS BEEN
5 APPLIED FOR BY THE UTILITY OR ISSUED BY THE COMMISSION.

6 (4) THE COMMISSION MAY ADOPT RULES TO IMPLEMENT THIS
7 ARTICLE 41.

8 **40-41-107. Electric utility customer protection.** (1) IN
9 ADDITION TO ANY OTHER AUTHORITY OF THE COMMISSION:

10 (a) THE COMMISSION MAY ATTACH SUCH CONDITIONS TO THE
11 APPROVAL OF A FINANCING ORDER AS THE COMMISSION DEEMS
12 APPROPRIATE TO MAXIMIZE THE BENEFITS AND MINIMIZE THE RISKS OF THE
13 TRANSACTION TO CUSTOMERS, DIRECTLY IMPACTED COLORADO WORKERS
14 AND COMMUNITIES, AND THE ELECTRIC UTILITY;

15 (b) THE COMMISSION SHALL SPECIFY IN THE FINANCING ORDER A
16 PROCESS TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS, INCLUDING
17 THE SELECTION OF THE UNDERWRITER OR UNDERWRITERS, IN A MANNER
18 CONSISTENT WITH THE PUBLIC INTEREST AND THE LEGAL OBLIGATIONS OF
19 THE ELECTRIC UTILITY;

20 (c) THE COMMISSION SHALL REVIEW AND DETERMINE THE
21 REASONABLENESS OF ALL PROPOSED UP-FRONT AND ONGOING FINANCING
22 COSTS; AND

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

27 (2) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ISSUANCE OF

1 CO-EI BONDS, THE APPLICANT SHALL FILE WITH THE COMMISSION
2 INFORMATION REGARDING THE ACTUAL UP-FRONT ISSUANCE COSTS OF THE
3 CO-EI BONDS. THE COMMISSION SHALL REVIEW, ON A REASONABLY
4 COMPARABLE BASIS, SUCH INFORMATION TO DETERMINE IF THE ISSUANCE
5 RESULTED IN THE LOWEST OVERALL COSTS THAT WERE REASONABLY
6 CONSISTENT WITH BOTH MARKET CONDITIONS AT THE TIME OF THE PRICING
7 AND THE TERMS OF THE FINANCING ORDER. THE COMMISSION MAY
8 DISALLOW INCREMENTAL UP-FRONT ISSUANCE COSTS IN EXCESS OF THE
9 LOWEST OVERALL COSTS BY REQUIRING THE ELECTRIC UTILITY TO MAKE
10 A CREDIT IN AN AMOUNT EQUAL TO THE EXCESS OF ACTUAL ISSUANCE
11 COSTS INCURRED, AND PAID FOR OUT OF CO-EI BOND PROCEEDS, AND THE
12 LOWEST OVERALL ISSUANCE COSTS AS DETERMINED BY THE COMMISSION.
13 THE COMMISSION MAY NOT MAKE ADJUSTMENTS TO THE CO-EI CHARGES
14 FOR ANY SUCH EXCESS UP-FRONT ISSUANCE COSTS.

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

27 (4) IF AN ELECTRIC UTILITY'S APPLICATION FOR A FINANCING

1 ORDER IS DENIED OR WITHDRAWN OR FOR ANY REASON NO CO-EI BONDS
2 ARE ISSUED, ANY COSTS OF RETAINING EXPERT CONSULTANTS AND
3 COUNSEL ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY
4 SUBSECTION (3) OF THIS SECTION AND APPROVED BY THE COMMISSION,
5 SHALL BE PAID BY THE APPLICANT ELECTRIC UTILITY AND SHALL BE
6 ELIGIBLE FOR RECOVERY BY THE ELECTRIC UTILITY, INCLUDING CARRYING
7 COSTS, IN THE ELECTRIC UTILITY'S FUTURE RATES.

8 **40-41-108. Judicial review of financing orders.** A FINANCING
9 ORDER IS A FINAL ORDER OF THE COMMISSION. NOTWITHSTANDING
10 SECTION 40-6-115 (5) SPECIFYING PROPER VENUE FOR PETITION FILINGS,
11 A PARTY AGGRIEVED BY THE ISSUANCE OF A FINANCING ORDER MAY
12 PETITION FOR SUSPENSION AND REVIEW OF THE FINANCING ORDER ONLY IN
13 THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER. IN THE CASE
14 OF ANY PETITION FOR SUSPENSION AND REVIEW, THE COURT SHALL
15 PROCEED TO HEAR AND DETERMINE THE ACTION AS EXPEDITIOUSLY AS
16 PRACTICABLE AND SHALL GIVE THE ACTION PRECEDENCE OVER OTHER
17 MATTERS NOT ACCORDED SIMILAR PRECEDENCE BY LAW.

18 **40-41-109. Electric utilities - duties.** (1) THE ELECTRIC BILLS OF
19 AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER AND
20 CAUSED CO-EI BONDS TO BE ISSUED:

21 (a) MUST EXPLICITLY REFLECT THAT A PORTION OF THE CHARGES
22 ON THE BILL REPRESENTS CO-EI CHARGES APPROVED IN A FINANCING
23 ORDER ISSUED TO THE ELECTRIC UTILITY AND, IF THE CO-EI PROPERTY
24 HAS BEEN TRANSFERRED TO AN ASSIGNEE, MUST INCLUDE A STATEMENT
25 THAT THE ASSIGNEE IS THE OWNER OF THE RIGHTS TO CO-EI CHARGES
26 AND THAT THE ELECTRIC UTILITY OR OTHER ENTITY, IF APPLICABLE, IS
27 ACTING AS A COLLECTION AGENT OR SERVICER FOR THE ASSIGNEE;

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

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

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

20 **40-41-110. CO-EI property.** (1) CO-EI PROPERTY THAT IS
21 DESCRIBED IN A FINANCING ORDER CONSTITUTES AN EXISTING PRESENT
22 PROPERTY RIGHT OR INTEREST IN AN EXISTING PRESENT PROPERTY RIGHT
23 EVEN THOUGH THE IMPOSITION AND COLLECTION OF CO-EI CHARGES
24 DEPENDS ON THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER IS
25 ISSUED PERFORMING ITS SERVICING FUNCTIONS RELATING TO THE
26 COLLECTION OF CO-EI CHARGES AND ON FUTURE ELECTRICITY
27 CONSUMPTION. THE PROPERTY RIGHT OR INTEREST EXISTS REGARDLESS OF

1 WHETHER THE REVENUES OR PROCEEDS ARISING FROM THE CO-EI
2 PROPERTY HAVE BEEN BILLED, HAVE ACCRUED, OR HAVE BEEN COLLECTED
3 AND NOTWITHSTANDING THE FACT THAT THE VALUE OR AMOUNT OF THE
4 PROPERTY RIGHT OR INTEREST IS DEPENDENT ON THE FUTURE PROVISION
5 OF SERVICE TO CUSTOMERS BY THE ELECTRIC UTILITY OR A SUCCESSOR OR
6 ASSIGNEE OF THE ELECTRIC UTILITY.

7 (2) CO-EI PROPERTY DESCRIBED IN A FINANCING ORDER EXISTS
8 UNTIL ALL CO-EI BONDS ISSUED PURSUANT TO THE FINANCING ORDER ARE
9 PAID IN FULL AND ALL FINANCING COSTS AND OTHER COSTS OF THE CO-EI
10 BONDS HAVE BEEN RECOVERED IN FULL.

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

25 (4) IF AN ELECTRIC UTILITY DEFAULTS ON ANY REQUIRED PAYMENT
26 OF CHARGES ARISING FROM CO-EI PROPERTY DESCRIBED IN A FINANCING
27 ORDER, A COURT, UPON APPLICATION BY AN INTERESTED PARTY AND

1 WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE APPLYING
2 PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE
3 REVENUE ARISING FROM THE CO-EI PROPERTY TO THE FINANCING
4 PARTIES. ANY SUCH FINANCING ORDER REMAINS IN FULL FORCE AND
5 EFFECT NOTWITHSTANDING ANY REORGANIZATION, BANKRUPTCY, OR
6 OTHER INSOLVENCY PROCEEDINGS WITH RESPECT TO THE ELECTRIC
7 UTILITY OR ITS SUCCESSORS OR ASSIGNEES.

8 (5) THE INTEREST OF A TRANSFEREE, PURCHASER, ACQUIRER,
9 ASSIGNEE, OR PLEDGEE IN CO-EI PROPERTY SPECIFIED IN A FINANCING
10 ORDER ISSUED TO AN ELECTRIC UTILITY, AND IN THE REVENUE AND
11 COLLECTIONS ARISING FROM THAT PROPERTY, IS NOT SUBJECT TO SETOFF,
12 COUNTERCLAIM, SURCHARGE, OR DEFENSE BY THE ELECTRIC UTILITY OR
13 ANY OTHER PERSON OR IN CONNECTION WITH THE REORGANIZATION,
14 BANKRUPTCY, OR OTHER INSOLVENCY OF THE ELECTRIC UTILITY OR ANY
15 OTHER ENTITY.

16 (6) A SUCCESSOR TO AN ELECTRIC UTILITY, WHETHER PURSUANT
17 TO ANY REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY
18 PROCEEDING OR WHETHER PURSUANT TO ANY MERGER OR ACQUISITION,
19 SALE, OTHER BUSINESS COMBINATION, OR TRANSFER BY OPERATION OF
20 LAW, AS A RESULT OF ELECTRIC UTILITY RESTRUCTURING OR OTHERWISE,
21 SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF, AND HAS THE SAME
22 DUTIES AND RIGHTS UNDER A FINANCING ORDER AS, THE ELECTRIC UTILITY
23 TO WHICH THE FINANCING ORDER APPLIES AND SHALL PERFORM THE
24 DUTIES AND EXERCISE THE RIGHTS IN THE SAME MANNER AND TO THE
25 SAME EXTENT AS THE ELECTRIC UTILITY, INCLUDING COLLECTING AND
26 PAYING TO ANY PERSON ENTITLED TO RECEIVE THEM THE REVENUES,
27 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

1 IMPOSED, COLLECTED, AND REMITTED FOR THE BENEFIT OF HOLDERS OF
2 CO-EI BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES, UNTIL ANY
3 PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM PAYABLE ON CO-EI
4 BONDS, ALL FINANCING COSTS, AND ALL AMOUNTS TO BE PAID TO AN
5 ASSIGNEE OR FINANCING PARTY UNDER AN ANCILLARY AGREEMENT ARE
6 PAID IN FULL.

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

11 **40-41-112. Assignee or financing party not automatically**
12 **subject to commission regulation.** AN ELECTRIC UTILITY, ASSIGNEE, OR
13 FINANCING PARTY THAT IS NOT ALREADY REGULATED BY THE COMMISSION
14 DOES NOT BECOME SUBJECT TO COMMISSION REGULATION SOLELY AS A
15 RESULT OF ENGAGING IN ANY TRANSACTION AUTHORIZED BY OR
16 DESCRIBED IN THIS ARTICLE 41.

17 **40-41-113. Effect of other laws and judicial decisions.** (1) IF
18 ANY PROVISION OF THIS ARTICLE 41 CONFLICTS WITH ANY OTHER LAW
19 REGARDING THE ATTACHMENT, ASSIGNMENT, PERFECTION, EFFECT OF
20 PERFECTION, OR PRIORITY OF ANY SECURITY INTEREST IN OR TRANSFER OF
21 CO-EI PROPERTY, THE PROVISION OF THIS ARTICLE 41 GOVERNS TO THE
22 EXTENT OF THE CONFLICT.

23 (2) EFFECTIVE ON THE DATE THAT CO-EI BONDS ARE FIRST ISSUED,
24 IF ANY PROVISION OF THIS ARTICLE 41 IS HELD TO BE INVALID OR IS
25 INVALIDATED, SUPERSEDED, REPLACED, REPEALED, OR EXPIRES, THAT
26 OCCURRENCE DOES NOT AFFECT ANY ACTION ALLOWED UNDER THIS
27 ARTICLE 41 THAT WAS LAWFULLY TAKEN BY THE COMMISSION, AN

1 ELECTRIC UTILITY, AN ASSIGNEE, A COLLECTION AGENT, A FINANCING
2 PARTY, A BONDHOLDER, OR A PARTY TO AN ANCILLARY AGREEMENT
3 BEFORE THE OCCURRENCE, AND ANY SUCH ACTION REMAINS IN FULL FORCE
4 AND EFFECT.

5 (3) NOTHING IN SUBSECTION (1) OR (2) OF THIS SECTION
6 PRECLUDES AN ELECTRIC UTILITY FOR WHICH THE COMMISSION HAS
7 INITIALLY ISSUED A FINANCING ORDER FROM APPLYING TO THE
8 COMMISSION FOR:

9 (a) A SUBSEQUENT FINANCING ORDER AMENDING THE FINANCING
10 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR

11 (b) APPROVAL OF THE ISSUANCE OF CO-EI BONDS TO REFUND ALL
12 OR A PORTION OF AN OUTSTANDING SERIES OF CO-EI BONDS.

13 **40-41-114. Choice of law.** THE LAWS OF THIS STATE GOVERN THE
14 VALIDITY, ENFORCEABILITY, ATTACHMENT, PERFECTION, PRIORITY, AND
15 EXERCISE OF REMEDIES WITH RESPECT TO THE TRANSFER OF AN INTEREST
16 OR RIGHT OR CREATION OF A SECURITY INTEREST IN ANY CO-EI PROPERTY,
17 CO-EI CHARGE, OR FINANCING ORDER.

18 **40-41-115. Security interests in CO-EI property.** (1) THE
19 CREATION, PERFECTION, AND ENFORCEMENT OF ANY SECURITY INTEREST
20 IN CO-EI PROPERTY TO SECURE THE REPAYMENT OF THE PRINCIPAL OF
21 AND INTEREST ON CO-EI BONDS, AMOUNTS PAYABLE UNDER ANY
22 ANCILLARY AGREEMENT, AND OTHER FINANCING COSTS ARE GOVERNED BY
23 THIS SECTION AND NOT BY THE "UNIFORM COMMERCIAL CODE", TITLE 4,
24 TO THE EXTENT OF ANY CONFLICT.

25 (2) THE DESCRIPTION OR INDICATION OF CO-EI PROPERTY IN A
26 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS
27 SUFFICIENT ONLY IF THE DESCRIPTION OR INDICATION REFERS TO THIS

1 ARTICLE 41 AND THE FINANCING ORDER CREATING THE CO-EI PROPERTY.

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

5 (I) THE FINANCING ORDER THAT DESCRIBES THE CO-EI PROPERTY
6 IS ISSUED;

7 (II) A SECURITY AGREEMENT IS EXECUTED AND DELIVERED; AND

8 (III) VALUE IS RECEIVED FOR THE CO-EI BONDS.

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

25 (4) A SECURITY INTEREST IN CO-EI PROPERTY IS A CONTINUOUSLY
26 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN,
27 CREATED BY OPERATION OF LAW OR OTHERWISE, WHICH MAY

1 SUBSEQUENTLY ATTACH TO THE CO-EI PROPERTY UNLESS THE HOLDER OF
2 THE SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

3 (5) THE PRIORITY OF A SECURITY INTEREST IN CO-EI PROPERTY IS
4 NOT AFFECTED BY THE COMMINGLING OF CO-EI PROPERTY OR CO-EI
5 REVENUE WITH OTHER MONEY. AN ASSIGNEE, BONDHOLDER, OR
6 FINANCING PARTY HAS A PERFECTED SECURITY INTEREST IN THE AMOUNT
7 OF ALL CO-EI PROPERTY OR CO-EI REVENUE THAT IS PLEDGED FOR THE
8 PAYMENT OF CO-EI BONDS EVEN IF THE CO-EI PROPERTY OR CO-EI
9 REVENUE IS DEPOSITED IN A CASH OR DEPOSIT ACCOUNT OF THE ELECTRIC
10 UTILITY IN WHICH THE CO-EI REVENUE IS COMMINGLED WITH OTHER
11 MONEY, AND ANY OTHER SECURITY INTEREST THAT APPLIES TO THE OTHER
12 MONEY DOES NOT APPLY TO THE CO-EI REVENUE.

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

18 **40-41-116. Sales of CO-EI property.** (1) (a) A SALE,
19 ASSIGNMENT, OR TRANSFER OF CO-EI PROPERTY IS AN ABSOLUTE
20 TRANSFER AND TRUE SALE OF, AND NOT A PLEDGE OF OR SECURED
21 TRANSACTION RELATING TO, THE SELLER'S RIGHT, TITLE, AND INTEREST IN,
22 TO, AND UNDER THE CO-EI PROPERTY IF THE DOCUMENTS GOVERNING THE
23 TRANSACTION EXPRESSLY STATE THAT THE TRANSACTION IS A SALE OR
24 OTHER ABSOLUTE TRANSFER. A TRANSFER OF AN INTEREST IN CO-EI
25 PROPERTY MAY BE CREATED ONLY WHEN ALL OF THE FOLLOWING HAVE
26 OCCURRED:

27 (I) THE FINANCING ORDER CREATING AND DESCRIBING THE CO-EI

1 PROPERTY HAS BECOME EFFECTIVE;

2 (II) THE DOCUMENTS EVIDENCING THE TRANSFER OF THE CO-EI
3 PROPERTY HAVE BEEN EXECUTED AND DELIVERED TO THE ASSIGNEE; AND

4 (III) VALUE IS RECEIVED.

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

20 (2) THE CHARACTERIZATION OF A SALE, ASSIGNMENT, OR
21 TRANSFER AS AN ABSOLUTE TRANSFER AND TRUE SALE AND THE
22 CORRESPONDING CHARACTERIZATION OF THE PROPERTY INTEREST OF THE
23 ASSIGNEE IS NOT AFFECTED OR IMPAIRED BY THE EXISTENCE OR
24 OCCURRENCE OF ANY OF THE FOLLOWING:

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

26 (b) THE RETENTION BY THE SELLER OF:

27 (I) A PARTIAL OR RESIDUAL INTEREST, INCLUDING AN EQUITY

1 INTEREST, IN THE CO-EI PROPERTY, WHETHER DIRECT OR INDIRECT, OR
2 WHETHER SUBORDINATE OR OTHERWISE; OR

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

6 (c) ANY RECOURSE THAT THE PURCHASER MAY HAVE AGAINST THE
7 SELLER;

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

10 (e) AN OBLIGATION OF THE SELLER TO COLLECT CO-EI REVENUES
11 ON BEHALF OF AN ASSIGNEE;

12 (f) THE TREATMENT OF THE SALE, ASSIGNMENT, OR TRANSFER FOR
13 TAX, FINANCIAL REPORTING, OR OTHER PURPOSES;

14 (g) ANY SUBSEQUENT FINANCING ORDER AMENDING A FINANCING
15 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR

16 (h) ANY APPLICATION OF AN ADJUSTMENT MECHANISM AS
17 AUTHORIZED BY SECTION 40-41-104 (2)(h).

18 **SECTION 7. Severability.** If any provision of this act or the
19 application thereof to any person, circumstance, or transaction is held by
20 a court of competent jurisdiction to be unconstitutional or invalid, the
21 unconstitutionality or invalidity does not affect the constitutionality or
22 validity of any other provision of this act or its application or validity to
23 any person, circumstance, or transaction, including, without limitation,
24 the irrevocability of a financing order issued pursuant to this act, the
25 validity of the issuance of CO-EI bonds, the imposition of CO-EI charges,
26 the transfer or assignment of CO-EI property, or the collection and
27 recovery of CO-EI charges. To these ends, the general assembly hereby

1 declares that the provisions of this act are intended to be severable and
2 that the general assembly would have enacted this section even if any
3 provision of this act held to be unconstitutional or invalid had not been
4 included in the act.

5 **SECTION 8. Appropriation.** (1) For the 2019-20 state fiscal
6 year, \$171,541 is appropriated to the department of public health and
7 environment for use by the air pollution control division. This
8 appropriation is from the general fund. To implement this act, the division
9 may use this appropriation as follows:

10 (a) \$160,140 for personal services related to stationary sources,
11 which amount is based on an assumption that the division will require an
12 additional 1.9 FTE; and

13 (b) \$11,401 for operating expenses related to stationary sources.

14 **SECTION 9. Applicability.** This act applies to conduct,
15 including power purchase agreements entered into and utility rate-based
16 property development, occurring on or after the effective date of this act.

17 **SECTION 10. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.