

CHAPTER 243

PUBLIC UTILITIES

SENATE BILL 99-153

BY SENATORS Owen, Andrews, Blickensderfer, Dennis, Feeley, Phillips, Powers, Reeves, Chlouber, and Hernandez;
also REPRESENTATIVES Spradley, George, Hagedorn, Johnson, Lee, Mitchell, Paschall, Tool, Hefley, May, McKay, and
Stengel.

AN ACT

CONCERNING THE VOLUNTARY RESTRUCTURING OF THE RETAIL MARKET FOR NATURAL GAS.

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

SECTION 1. Article 2 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

40-2-122. Natural gas - deregulation of supply - voluntary separation of service offerings - consumer protection - legislative declaration. (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT NATURAL GAS SERVICE IS ESSENTIAL TO THE HEALTH AND WELL-BEING OF ALL COLORADO NATURAL GAS CUSTOMERS. THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT NATURAL GAS IS TRADED IN COMPETITIVE MARKETS AT THE WELLHEAD AND IN DOWNSTREAM MARKETS FOR SALE TO UTILITIES, INDUSTRIAL CUSTOMERS, AND LARGE COMMERCIAL CUSTOMERS AND THERE MAY BE THE POTENTIAL FOR NATURAL GAS ALSO TO BE TRADED COMPETITIVELY FOR SALE TO ALL OTHER CLASSES OF CONSUMERS. AS A RESULT, IT MAY BE PREDICTED THAT COMPETITION IN THE NATURAL GAS SUPPLY MARKET MAY INCREASE THE CHOICES AVAILABLE TO CONSUMERS AND REDUCE THE PRICE OF SUCH SERVICE. ACCORDINGLY, IT IS THE POLICY OF THE STATE OF COLORADO TO ENCOURAGE COMPETITION AFTER A REASONABLE TRANSITION PERIOD DURING WHICH CONSUMERS ARE EDUCATED ABOUT CHOICES IN NATURAL GAS SUPPLY THAT ARE NOW AVAILABLE OR WILL BE AVAILABLE IN THE FUTURE. THE COMMISSION IS AUTHORIZED TO APPROVE VOLUNTARY PLANS CONSISTENT WITH THIS SECTION THAT SEPARATE THE SALE OF NATURAL GAS TO RETAIL CUSTOMERS INTO NATURAL GAS DELIVERY AND NATURAL GAS SUPPLY AND, AFTER A TRANSITION PERIOD, DEREGULATE THE CHARGE FOR NATURAL GAS SUPPLY WHERE THE COMMISSION FINDS THAT THE PLAN PROVIDES CUSTOMERS WITH ADEQUATE CHOICES, ENSURES THE PROVISION OF RELIABLE NATURAL GAS SUPPLY ON

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

A FALLBACK BASIS ON TERMS AND CONDITIONS THAT ARE JUST AND REASONABLE TO ALL CUSTOMERS, PROMOTES THE DEVELOPMENT OF A COMPETITIVE MARKET FOR GAS SUPPLY, LIMITS THE UNREASONABLE EXERCISE OF MARKET POWER, AND RETAINS AND ENHANCES PROGRAMS TO SUPPORT LOW-INCOME CONSUMERS.

(2) (a) NATURAL GAS PUBLIC UTILITIES SHALL CONTINUE TO BE REGULATED WITH RESPECT TO THEIR DELIVERY FUNCTIONS AND SHALL BE REQUIRED TO CONTINUE TO OFFER NONDISCRIMINATORY NATURAL GAS DELIVERY SERVICES OVER THEIR PIPELINE SYSTEMS SO THAT COLORADO NATURAL GAS CONSUMERS, BOTH INDIVIDUALLY AND ON AN AGGREGATED BASIS, SHALL HAVE READY ACCESS TO NATURAL GAS SUPPLY FROM AMONG COMPETING SOURCES.

(b) ANY NATURAL GAS PUBLIC UTILITY PROVIDING FOR INDIVIDUAL CONSUMER CHOICE BETWEEN COMPETING SUPPLIERS SHALL IMPLEMENT A SEPARATELY STATED DISTRIBUTION CHARGE, APPLICABLE TO ALL CUSTOMERS REGARDLESS OF THE IDENTITY OF THE NATURAL GAS SUPPLIER AND DENOTED AS A "PUBLIC BENEFITS CHARGE", TO HELP DEFRAY THE COSTS ASSOCIATED WITH FUNDING LOW-INCOME ENERGY ASSISTANCE PROGRAMS SUCH AS BILL ASSISTANCE AND WEATHERIZATION FOR RESIDENTIAL ENERGY CONSUMERS IN COLORADO, SUBJECT TO THE FOLLOWING CONDITIONS:

(I) THE TOTAL AMOUNT COLLECTED ANNUALLY THROUGH SUCH PUBLIC BENEFITS CHARGE SHALL BE AT LEAST THREE-QUARTERS OF ONE PERCENT OF THE REAL DOLLAR EQUIVALENT OF EACH UTILITY'S 1998 NOMINAL-DOLLAR REGULATED GAS REVENUES RECEIVED FOR THE GEOGRAPHIC AREA OR GROUP OF CUSTOMERS THAT IS SUBJECT TO THE PLAN. ADDITIONALLY, WITHIN ONE YEAR FOLLOWING THE IMPLEMENTATION OF THE FIRST NATURAL GAS SUPPLIER CHOICE PROGRAM BY A NATURAL GAS UTILITY THAT AFFECTS A SIGNIFICANT NUMBER OF LOW-INCOME HOUSEHOLDS, THE PUBLIC BENEFITS CHARGES FOR ALL NATURAL GAS PUBLIC UTILITIES THAT HAVE IMPLEMENTED A VOLUNTARY PLAN SHALL BE SET AT A LEVEL SUFFICIENT TO RAISE A TOTAL ADDITIONAL SUM OF ONE HUNDRED FIFTY THOUSAND DOLLARS TO FUND THE STUDY PROVIDED FOR IN SUBSECTION (12) OF THIS SECTION.

(II) THE PUBLIC BENEFITS CHARGE SHALL BE SEPARATELY STATED ON EACH CUSTOMER'S BILL FOR NATURAL GAS DELIVERY SERVICE IN THE SAME MANNER AND WITH THE SAME PROMINENCE AS IS THE CHARGE TO DEFRAY THE UTILITY'S TRANSITION COSTS; AND

(III) THE PUBLIC BENEFITS CHARGE SHALL BE IMPOSED ON ALL NATURAL GAS DELIVERED BY THE UTILITY IN A MANNER THAT IS COMPETITIVELY NEUTRAL AND NONBYPASSABLE.

(c) THE GOVERNING BODY OF EACH MUNICIPAL UTILITY PROVIDING NATURAL GAS SERVICE SHALL HAVE THE AUTHORITY TO CONSIDER AND APPROVE OR REJECT A VOLUNTARY PLAN SUBMITTED BY THE NATURAL GAS MUNICIPAL UTILITY, FOR ALL OR A PORTION OF ITS SERVICE TERRITORY, THAT PROVIDES FOR:

(I) THE SEPARATION OF NATURAL GAS SERVICE INTO NATURAL GAS SUPPLY SERVICE AND NATURAL GAS DELIVERY SERVICE; AND

(II) THE DEREGULATION OF MUNICIPAL NATURAL GAS SUPPLY SERVICE. IN MAKING

A DETERMINATION TO APPROVE OR REJECT THE VOLUNTARY PLAN SUBMITTED, THE GOVERNING BODY SHALL APPLY THE CRITERIA SET FORTH IN PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION, BUT ONLY TO THE EXTENT APPLICABLE TO MUNICIPAL UTILITY OPERATIONS.

(d) (I) IF THE GOVERNING BODY OF A MUNICIPALITY APPROVES A PLAN FOR THE VOLUNTARY SEPARATION OF NATURAL GAS SERVICE OFFERINGS AND THE DEREGULATION OF NATURAL GAS SUPPLY, THE MUNICIPAL UTILITY MAY REQUEST AUTHORITY FROM THE GOVERNING BODY OF THE MUNICIPALITY TO TREAT ANY PROPOSED CONTRACTS OR AGREEMENTS FOR NATURAL GAS SUPPLY SERVICE BEING NEGOTIATED BY THE MUNICIPAL UTILITY AS CONFIDENTIAL INFORMATION UNTIL SUCH CONTRACTS OR AGREEMENTS ARE FORMALLY EXECUTED. UPON SUCH REQUEST, THE GOVERNING BODY OF THE MUNICIPALITY SHALL HOLD A HEARING TO DETERMINE WHETHER CONFIDENTIAL TREATMENT OF SUCH CONTRACTS IS WARRANTED IN ORDER TO ALLOW THE MUNICIPAL UTILITY TO COMPETE EFFECTIVELY AS A PROVIDER OF NATURAL GAS SUPPLY SERVICE.

(II) IF, AFTER A HEARING PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), THE GOVERNING BODY DETERMINES THAT CONFIDENTIAL TREATMENT OF THE CONTRACTS IS WARRANTED, THEN:

(A) SUCH CONTRACTS SHALL NOT BE SUBJECT TO PUBLIC DISCLOSURE UNDER SECTION 24-72-203, C.R.S., UNTIL FORMALLY EXECUTED BY THE PARTIES; AND

(B) DISCUSSION BY THE GOVERNING BODY OF SUCH CONTRACTS OR THE CONTENTS THEREOF PRIOR TO EXECUTION MAY PROPERLY BE THE SUBJECT OF AN EXECUTIVE SESSION, AS THE TERM IS USED IN SECTION 24-6-402, C.R.S. THIS PARAGRAPH (d) SHALL NOT BE CONSTRUED TO LIMIT OR CONDITION THE GOVERNING BODY'S AUTHORITY TO MEET IN EXECUTIVE SESSION FOR ANY OTHER REASON ENUMERATED IN SECTION 24-6-402, C.R.S.

(e) THE COMMISSION OR OTHER GOVERNING BODY SHALL RETAIN THE AUTHORITY TO ESTABLISH GUIDELINES REGARDING GAS TRANSPORTATION SERVICE. SUCH GUIDELINES MAY INCLUDE, BUT ARE NOT LIMITED TO, PROVISIONS CONCERNING THE ESTABLISHMENT OF RATES, TERMS, AND CONDITIONS FOR THE PROVISIONING OF GAS TRANSPORTATION SERVICES BY A NATURAL GAS PUBLIC UTILITY, REGARDLESS OF WHETHER THE UTILITY HAS AN APPROVED VOLUNTARY PLAN.

(3) (a) THE COMMISSION IS HEREBY GRANTED THE AUTHORITY TO CONSIDER AND APPROVE, REJECT, OR APPROVE WITH MODIFICATIONS A VOLUNTARY PLAN SUBMITTED BY A NATURAL GAS PUBLIC UTILITY, FOR ALL OR A PORTION OF ITS SERVICE TERRITORY, THAT:

(I) PROVIDES FOR THE SEPARATION OF NATURAL GAS SERVICE INTO NATURAL GAS SUPPLY SERVICE AND NATURAL GAS DELIVERY SERVICE; AND

(II) ALLOWS FOR COMPETITION IN NATURAL GAS SUPPLY SERVICE.

(b) THE COMMISSION MAY ALSO CONSIDER AND APPROVE, REJECT, OR APPROVE WITH MODIFICATIONS AS A PART OF ANY PLAN SUBMITTED IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (3), THE PROPOSAL OF A NATURAL GAS PUBLIC

UTILITY TO PARTICIPATE AS A COMPETING SUPPLIER OF NATURAL GAS. IF THE COMMISSION FINDS THAT A UTILITY'S PLAN MEETS THE CRITERIA SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (3) AND IS IN THE PUBLIC INTEREST, THE COMMISSION SHALL APPROVE THE PLAN. IF THE PLAN IS APPROVED OR APPROVED WITH MODIFICATIONS, THE COMMISSION SHALL DETERMINE THE REQUIREMENTS OR CONDITIONS UNDER WHICH THE NATURAL GAS PUBLIC UTILITY SHALL BE PERMITTED TO OFFER SUPPLY SERVICE. THE COMMISSION MAY, WITHOUT LIMITATION, DETERMINE THAT THE NATURAL GAS PUBLIC UTILITY SHALL BE PERMITTED TO COMPETE AS A SUPPLIER OF NATURAL GAS ON AN UNREGULATED BASIS OR DETERMINE THAT THE NATURAL GAS PUBLIC UTILITY SHALL BE PERMITTED TO COMPETE AS A SUPPLIER OF NATURAL GAS ON AN UNREGULATED BASIS ONLY THROUGH AN AFFILIATE. ALTERNATIVELY, THE COMMISSION MAY ESTABLISH SUCH REQUIREMENTS OR CONDITIONS AS ARE IN THE PUBLIC INTEREST CONSIDERING THE MARKET POSITION OF THE NATURAL GAS PUBLIC UTILITY. AFTER THE PLAN IS APPROVED, ALL NATURAL GAS SUPPLY SERVICE, OTHER THAN FALLBACK SERVICE, ESTABLISHED UNDER THE PLAN AS A COMPETITIVE SERVICE SHALL THEREAFTER BE SOLD ON AN UNREGULATED BASIS WITHOUT AN OBLIGATION TO SERVE.

(c) THE COMMISSION SHALL NOT APPROVE A PLAN SUBMITTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) UNLESS THE PRICE CHARGED FOR NATURAL GAS DELIVERY SERVICES DOES NOT SUBSIDIZE NATURAL GAS SUPPLY SERVICE UNDER THE PLAN AND, IN ADDITION, THE PLAN:

(I) PROVIDES FOR NONDISCRIMINATORY NATURAL GAS DELIVERY SERVICE OVER THE PUBLIC UTILITY'S PIPELINES SO THAT ALL NATURAL GAS CONSUMERS COVERED BY THE PLAN, INCLUDING THOSE WHO ARE CURRENTLY TRANSPORTATION CUSTOMERS OF THE NATURAL GAS PUBLIC UTILITY, SHALL HAVE READY ACCESS TO NATURAL GAS SUPPLY SERVICE FROM COMPETING SOURCES;

(II) DOES NOT PRESENT ANY UNNECESSARY BARRIERS THAT PREVENT OR REDUCE READY ACCESS TO NATURAL GAS SUPPLY SERVICE FOR ALL CLASSES OF CONSUMERS, INCLUDING ENSURING NONDISCRIMINATORY ACCESS TO UPSTREAM CAPACITY AND STORAGE SERVICES BY ALL COMPETITORS;

(III) ESTABLISHES SAFEGUARDS TO ELIMINATE THE UNREASONABLE EXERCISE OF MARKET POWER BY ANY PERSON TO THE DETRIMENT OF CONSUMERS OR COMPETITORS;

(IV) PROVIDES FOR CONSUMER PROTECTION DEEMED NECESSARY BY THE COMMISSION TO ASSURE RELIABLE NATURAL GAS SUPPLY SERVICE, TAKING INTO CONSIDERATION THE NEEDS OF CONSUMERS. SUCH PROTECTIONS MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, BACKUP GAS SUPPLY AVAILABILITY, EXCESS PEAK DAY SUPPLY MARGINS, STANDARDS OF CONDUCT, AND FULL-RATE RECOVERY OF ANY PRUDENT COSTS INCURRED BY A NATURAL GAS PUBLIC UTILITY RELATED TO ANY REASONABLE EFFORTS THE UTILITY MAY UNDERTAKE TO AVOID GAS SUPPLY INTERRUPTIONS TO CONSUMERS SERVED BY ITS DELIVERY SYSTEM.

(V) FURTHER PROVIDES FOR THOSE CONSUMER PROTECTIONS DEEMED NECESSARY BY THE COMMISSION TO ASSURE THAT FALLBACK RETAIL NATURAL GAS SUPPLY SERVICE, ON A FIRM BASIS WITH ADEQUATE BACKUP, IS AVAILABLE TO CUSTOMERS UNDER REASONABLE TERMS AND CONDITIONS. SUCH FALLBACK RETAIL NATURAL GAS

SUPPLY SERVICE PROTECTION MAY OR MAY NOT BE PROVIDED BY THE INCUMBENT NATURAL GAS PUBLIC UTILITY. THESE PROTECTIONS SHALL INCLUDE, BUT ARE NOT LIMITED TO, THE DEVELOPMENT OF A COMMISSION-APPROVED STANDARD OFFER GAS SUPPLY SERVICE OR THE USE OF A COMMISSION-APPROVED COMPETITIVE BIDDING PROCESS TO ASSURE THAT NATURAL GAS SUPPLY IS AVAILABLE AT FAIR AND REASONABLE PRICES FOR THOSE CUSTOMERS WHO DO NOT RECEIVE SUPPLY OFFERS, WHO DO NOT SELECT A COMPETITIVE NATURAL GAS PROVIDER, WHO ARE REFUSED SERVICE BY A SUPPLIER, WHOSE SERVICE IS CANCELED BY A SUPPLIER, WHO NEED SERVICE WHILE MOVING OR DURING OTHER TRANSITIONS, OR WHOSE SUPPLIER FAILS TO SUPPLY SERVICE. IF A UTILITY PROVIDES REGULATED FALLBACK SERVICE, THE UTILITY SHALL BE ALLOWED TO RECOVER ALL PRUDENTLY INCURRED COSTS RELATED TO THE PROVISION OF FALLBACK SUPPLIES THROUGH REGULATED STANDARD OFFER GAS SUPPLY SERVICE.

(VI) PROVIDES FOR CONSUMER EDUCATION CONCERNING THE NATURAL GAS PUBLIC UTILITY'S RESTRUCTURING OF ITS RATES AND THE CHOICES THAT WILL BE MADE AVAILABLE TO CONSUMERS IN THE COMPETITIVE SUPPLY MARKET;

(VII) DOES NOT DEGRADE THE INTEGRITY OR RELIABILITY OF NATURAL GAS DELIVERY SERVICE OR OF ANY UPSTREAM THIRD-PARTY PIPELINE AND STORAGE SERVICES THAT ARE NECESSARY TO MAINTAIN SUCH RELIABILITY AND THAT MAY BE HELD BY THE PUBLIC UTILITY AS PART OF THE PLAN; EXCEPT THAT THIS SUBPARAGRAPH (VII) SHALL NOT PRECLUDE THE NECESSARY UPSTREAM THIRD-PARTY PIPELINE AND STORAGE SERVICES FROM BEING HELD BY COMPETITIVE NATURAL GAS PROVIDERS UNLESS THE COMMISSION FINDS THAT SUCH CONDITION RESULTS IN A DEGRADATION OF THE INTEGRITY OR RELIABILITY OF NATURAL GAS DISTRIBUTION SERVICE;

(VIII) PROVIDES FOR FUNDING OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS SUCH AS BILL ASSISTANCE AND WEATHERIZATION THROUGH THE ASSESSMENT OF A SEPARATELY STATED DISTRIBUTION CHARGE, DENOTED A "PUBLIC BENEFITS CHARGE", CONSISTENT WITH THE AUTHORITY OF THE UTILITY TO COLLECT THE PUBLIC BENEFITS CHARGE AS ESTABLISHED IN THIS SECTION. THE MONEYS RECEIVED THROUGH THE IMPLEMENTATION OF THE PUBLIC BENEFITS CHARGE SHALL BE ADMINISTERED BY THE COLORADO ENERGY ASSISTANCE FOUNDATION, WHICH IS THE ENTITY CREATED UNDER SECTION 40-8.5-104, OR ITS SUCCESSOR, TO BE USED FOR THE PURPOSES OF LOW-INCOME ENERGY ASSISTANCE PAYMENTS AND PROGRAMS, LOW-INCOME WEATHERIZATION ASSISTANCE AND PROGRAMS, LOW-INCOME ENERGY EDUCATION, AND ENERGY CONSERVATION. THE COLORADO ENERGY ASSISTANCE FOUNDATION SHALL FILE A REPORT WITH THE COMMISSION ANNUALLY SHOWING AMOUNTS OF MONEY COLLECTED UNDER THE PUBLIC BENEFITS CHARGE, AND DEMONSTRATING THAT THE MONEYS WERE USED TO FUND LOW-INCOME ENERGY ASSISTANCE PROGRAMS AS ESTABLISHED HEREIN.

(IX) CONTAINS ALL TERMS AND CONDITIONS THAT THE COMMISSION DEEMS NECESSARY TO PROTECT THE PUBLIC INTEREST AND TO FOSTER COMPETITION IN THE SUPPLY OF NATURAL GAS, INCLUDING, WITHOUT LIMITATION, TERMS AND CONDITIONS THAT ADDRESS THE FOLLOWING ISSUES:

(A) THE MANNER IN WHICH PRICE AND TERMS AND CONDITIONS SHOULD BE DISCLOSED;

(B) THE EXTENT TO WHICH NATURAL GAS UTILITIES AND SUPPLIERS ARE OBLIGATED TO SERVE ALL CUSTOMERS;

(C) APPROPRIATE CREDIT AND COLLECTION PRACTICES;

(D) THE TERMS UNDER WHICH SERVICE MAY BE DISCONTINUED;

(E) HOW PARTIAL PAYMENTS ARE ALLOCATED;

(F) PROTECTING CUSTOMER PRIVACY;

(G) PROHIBITING UNFAIR AND DECEPTIVE MARKETING PRACTICES; AND

(H) THE DEGREE OF ACCESS TO CUSTOMER INFORMATION NEEDED BY SUPPLIERS TO PROMOTE COMPETITION;

(X) PROVIDES THAT, AS AN ASPECT OF IMPLEMENTING THE PLAN, NO CONSUMER'S NATURAL GAS SUPPLIER MAY BE CHANGED WITHOUT THE CONSUMER'S PRIOR EXPRESS CONSENT EXCEPT AS ORDERED BY THE COMMISSION. EITHER THROUGH RULE-MAKING OR THROUGH CONSIDERATION OF METHODOLOGY PROPOSED IN THE PLAN, THE COMMISSION SHALL ESTABLISH ALLOWABLE EXPRESS CONSENT VERIFICATION METHODS WHICH MAY INCLUDE WRITTEN CONFIRMATION, THIRD-PARTY ORAL CONFIRMATION, OR OTHER APPROPRIATE PROCEDURES.

THE COMMISSION SHALL ALSO ESTABLISH AND DETERMINE THE EXTENT TO WHICH A SUPPLIER WHO CAUSES CONSUMERS TO BE CHANGED WITHOUT THEIR CONSENT IS LIABLE TO THOSE CONSUMERS AND THEIR CHOSEN PROVIDERS.

(XI) PROVIDES FOR FUNDING OF THE COMMISSION AND THE OFFICE OF CONSUMER COUNSEL BASED UPON A CHARGE TO END-USE CUSTOMERS, AS DETERMINED BY THE COMMISSION, AS A PART OF THE NATURAL GAS DELIVERY FUNCTION, REGARDLESS OF THE IDENTITY OF THE NATURAL GAS SUPPLIER. SUCH NEW FUNDING METHOD SHALL BE COMPETITIVELY NEUTRAL AND SHALL BE DESIGNED TO GENERATE ANNUAL REVENUES EQUIVALENT TO THE AVERAGE ANNUAL REVENUES GENERATED UNDER SECTIONS 40-2-109 TO 40-2-114 DURING CALENDAR YEARS 1994 TO 1998 ASSOCIATED WITH THE SALE OF NATURAL GAS SERVICE FROM THE GEOGRAPHIC AREA OR GROUP OF CUSTOMERS AFFECTED BY THE PLAN. WHENEVER SUCH NEW FUNDING METHOD IS INSTITUTED FOR ANY SPECIFIC GEOGRAPHIC AREA OR GROUP OF CUSTOMERS, THE NATURAL GAS PUBLIC UTILITIES SERVING SUCH AREA OR GROUP SHALL NO LONGER PAY THE FEES THAT WOULD OTHERWISE HAVE BEEN REQUIRED UNDER SAID SECTIONS.

(XII) (A) MAINTAINS REGULATED, COST-BASED RATES FOR GAS SUPPLY SERVICE FROM THE PUBLIC UTILITY UNTIL SUCH TIME AS, IN THE AGGREGATE, NO LESS THAN THIRTY-THREE AND ONE-THIRD PERCENT OF THE CUSTOMERS COVERED BY A PLAN ARE SERVED BY COMPETITIVE NATURAL GAS PROVIDERS, WHICH MAY INCLUDE AFFILIATES OF THE PUBLIC UTILITY; THERE ARE A MINIMUM OF FIVE COMPETITIVE NATURAL GAS PROVIDERS NOT AFFILIATED WITH THE PUBLIC UTILITY UNLESS THE COMMISSION DETERMINES THAT, IN GEOGRAPHIC AREAS COVERED BY THE PLAN, LESS THAN FIVE COMPETITIVE NATURAL GAS SUPPLIERS PROVIDE EFFECTIVE COMPETITION; AND THE COMPETITIVE NATURAL GAS SUPPLIERS NOT AFFILIATED WITH THE PUBLIC UTILITY SERVE NO LESS THAN EIGHTEEN PERCENT OF THE CUSTOMERS COVERED BY A PLAN.

WHEN THESE CONDITIONS ARE MET, THE PUBLIC UTILITY SUPPLY SERVICE TO THE GEOGRAPHIC AREA OR TO CUSTOMERS COVERED BY A PLAN MAY BE DEREGULATED AND THE FALLBACK SUPPLY PROVISION OF THE PLAN SHALL BECOME EFFECTIVE.

(B) FOR PURPOSES OF THIS SUBPARAGRAPH (XII), THE NUMBER OF CUSTOMERS SERVED BY COMPETITIVE NATURAL GAS SUPPLIERS SHALL BE DETERMINED BASED ON THE NUMBER OF NATURAL GAS METERS SERVED BY COMPETITIVE NATURAL GAS SUPPLIERS IN THE GEOGRAPHIC AREA COVERED BY THE PLAN, OTHER THAN THOSE METERS SERVED UNDER THE NATURAL GAS UTILITY'S GAS TRANSPORTATION TARIFFS AT THE TIME THE PLAN IS IMPLEMENTED, WHETHER DIRECTLY OR THROUGH A MARKETER OR BROKER, COMPARED TO THE TOTAL NUMBER OF NATURAL GAS METERS IN THE GEOGRAPHIC AREA COVERED BY THE PLAN.

(4) IF THE COMMISSION APPROVES A NATURAL GAS PUBLIC UTILITY'S VOLUNTARY PLAN WITH MODIFICATIONS, THE UTILITY SHALL HAVE THE OPTION TO REJECT THE MODIFIED PLAN AND CONTINUE TO BE REGULATED AS BEFORE. HOWEVER, IF A NATURAL GAS PUBLIC UTILITY EXERCISES THIS OPTION, IT MAY NOT FILE ANOTHER VOLUNTARY PLAN FOR A MINIMUM OF TWO YEARS UNLESS OTHERWISE PERMITTED BY THE COMMISSION AND IT MAY NOT RECOVER IN RATES THE COSTS AND ADMINISTRATIVE CHARGES INCURRED ASSOCIATED WITH THE DESIGN AND LITIGATION OF ITS VOLUNTARY PLAN PROPOSAL.

(5) THE DEPARTMENT OF REVENUE IS HEREBY AUTHORIZED TO COLLECT FUNDING FOR THE COMMISSION AND THE OFFICE OF CONSUMER COUNSEL IN ACCORDANCE WITH SUBPARAGRAPH (XI) OF PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION.

(6) THE COMMISSION SHALL ESTABLISH, BY RULE OR BY ALTERNATIVE FILING BY NATURAL GAS PUBLIC UTILITIES OR GAS SUPPLY COMPANIES, SUCH CERTIFICATION REQUIREMENTS, TERMS AND CONDITIONS FOR GAS SUPPLY SERVICE, REPORTING REQUIREMENTS, AND COMPLIANCE PROCEDURES FOR COMPETITIVE SUPPLIERS, AGGREGATORS OTHER THAN MUNICIPALITIES OR COUNTIES OPERATING AS AGGREGATORS WITHIN THEIR JURISDICTIONAL BOUNDARIES, OR BROKERS AS THE COMMISSION DEEMS NECESSARY TO PROVIDE COLORADO RETAIL CONSUMERS WITH RELIABLE NATURAL GAS SUPPLY SERVICE. SUCH REQUIREMENTS MAY INCLUDE, WITHOUT LIMITATION, COMPLAINT PROCEDURES FOR ENFORCEMENT OF THE COMMISSION'S RULES AND PROCEDURES FOR THE SUSPENSION OR REVOCATION OF CERTIFICATION AND OPERATING AUTHORITY OF COMPETITIVE SUPPLIERS, AGGREGATORS OTHER THAN MUNICIPALITIES OR COUNTIES OPERATING AS AGGREGATORS WITHIN THEIR JURISDICTIONAL BOUNDARIES, OR BROKERS FOR VIOLATION OF COMMISSION RULES AS WELL AS THE ASSESSMENT OF FINES AND PENALTIES FOR VIOLATIONS OF COMMISSION RULES AND STANDARDS OF CONDUCT, IN ADDITION TO OTHER COMMISSION RULES AND ENFORCEMENT MECHANISMS. IN THE CERTIFICATION REQUIREMENTS THE COMMISSION SHALL REQUIRE NATURAL GAS SUPPLIERS TO OPERATE A CUSTOMER SERVICE LOCATION IN THE STATE AND PROVIDE CUSTOMERS WITH A TOLL-FREE TELEPHONE NUMBER TO REACH THE NATURAL GAS SUPPLIER.

(7) (a) THE COMMISSION SHALL PERMIT EACH NATURAL GAS PUBLIC UTILITY RECOVERY, THROUGH ITS TARIFF RATES FOR DELIVERY OF NATURAL GAS, OF ALL OR A PORTION OF THE UTILITY'S TRANSITION COSTS AS MAY BE JUST AND REASONABLE IF SUCH RECOVERY, FOR TRANSITION COSTS OTHER THAN COSTS IDENTIFIED IN

SUB-SUBPARAGRAPHS (G) AND (H) OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (7), DOES NOT INCREASE THE ANNUAL CHARGES FOR REGULATED GAS DELIVERY SERVICE IN EXCESS OF ONE PERCENT OF THE UTILITY'S JURISDICTIONAL GAS REVENUES BOOKED OR RECORDED IN CALENDAR YEAR 1998 UNLESS THE UTILITY IS THEREBY UNABLE TO RECOVER SUCH TRANSITION COSTS AS MAY BE APPROVED BY THE COMMISSION PURSUANT TO THIS SUBSECTION (7) WITHIN FIFTEEN YEARS. IN SUCH A CASE, THE COMMISSION SHALL ENSURE THAT THE RECOVERY OF THE UTILITY'S TRANSITION COSTS, EXCLUDING THOSE IDENTIFIED IN SUB-SUBPARAGRAPHS (G) AND (H) OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (7), DOES NOT INCREASE THE ANNUAL CHARGES FOR REGULATED GAS DELIVERY SERVICE IN EXCESS OF TWO PERCENT OF THE UTILITY'S JURISDICTIONAL GAS REVENUES BOOKED OR RECORDED IN CALENDAR YEAR 1998. TO THE EXTENT THE COMMISSION APPROVES THE RECOVERY OF TRANSITION COSTS IDENTIFIED IN SUB-SUBPARAGRAPHS (G) AND (H) OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (7), THOSE COSTS SHALL BE RECOVERED OVER A REASONABLE PERIOD OF TIME, AS DETERMINED BY THE COMMISSION.

(b) (I) AS USED IN THIS SUBSECTION (7), "TRANSITION COSTS" MEANS ALL COSTS DETERMINED BY THE COMMISSION TO BE LEGITIMATE, VERIFIABLE, AND PRUDENTLY INCURRED IN THE PROVISION OF NATURAL GAS SERVICE TO CUSTOMERS IN COLORADO THAT ARISE FROM OR ARE RELATED TO CONTRACTS, INVESTMENTS, OR OTHER OBLIGATIONS EXISTING ON OR BEFORE THE DATE OF IMPLEMENTATION OF THE VOLUNTARY PLAN AND NO LONGER RECOVERABLE UNDER THE PLAN, WHETHER SUCH COSTS ARE IN THE FORM OF DIRECT EXPENDITURES FOR CAPITAL ASSETS, OPERATING EXPENSES, INVESTMENTS, LONG-TERM SUPPLY CONTRACTS OR OTHER FUTURE OBLIGATIONS, OR ANY OTHER FORM.

(II) TRANSITION COSTS MAY INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(A) COSTS AND ADMINISTRATIVE CHARGES INCURRED BY A NATURAL GAS PUBLIC UTILITY RESULTING FROM THE DESIGN AND IMPLEMENTATION OF ITS VOLUNTARY PLAN;

(B) COSTS INCURRED BEFORE, ON, OR AFTER THE DATE OF IMPLEMENTATION OF THE VOLUNTARY PLAN AND THAT ARE RELATED TO PREEXISTING GAS SUPPLY, TRANSPORTATION, OR STORAGE SERVICE CONTRACTS, INCLUDING ANY CONTRACT BUYOUT OR BUYDOWN COSTS, CONTRACT REFORMATION OR TERMINATION COSTS, CONTRACT LITIGATION COSTS, FEES, JUDGMENTS, OR SETTLEMENTS, OTHER THAN THOSE COSTS THAT HAVE BEEN THE SUBJECT OF LITIGATION PRIOR TO JANUARY 1, 1999, AS IDENTIFIED IN SUB-SUBPARAGRAPH (H) OF THIS SUBPARAGRAPH (II);

(C) INVESTMENTS IN ASSETS THAT ARE STRANDED BY COMPETITION FOR NATURAL GAS SUPPLY SERVICE;

(D) INTERSTATE OR INTRASTATE THIRD-PARTY PIPELINE COSTS;

(E) BALANCING COSTS;

(F) UNDERGROUND STORAGE COSTS;

(G) DEFERRED OR PRIOR-PERIOD GAS COSTS NOT YET RECOVERED AT THE TIME OF

CONVERSION TO COMPETITION IN THE PROVISION OF NATURAL GAS SUPPLY SERVICE;

(H) COSTS INCURRED BEFORE, ON, OR AFTER THE DATE OF IMPLEMENTATION OF THE VOLUNTARY PLAN AND THAT ARE RELATED TO PREEXISTING GAS SUPPLY CONTRACTS THAT HAVE BEEN THE SUBJECT OF LITIGATION PRIOR TO JANUARY 1, 1999, INCLUDING ANY ABOVE MARKET COSTS, CONTRACT BUYOUT, BUYDOWN, REFORMATION, OR TERMINATION COSTS, LITIGATION COSTS, FEES, JUDGMENTS, OR SETTLEMENTS; AND

(I) ANY OTHER COSTS THAT THE COMMISSION DETERMINES TO BE RECOVERABLE TRANSITION COSTS.

(III) TRANSITION COSTS SHALL NOT INCLUDE:

(A) COSTS THAT ARE OR COULD BE INCLUDED WITHIN THE EXISTING RATES OF THE NATURAL GAS PUBLIC UTILITY AND THAT WOULD RESULT IN DOUBLE RECOVERY OF SUCH COSTS IF THEY WERE SO INCLUDED; OR

(B) COSTS COMMITTED TO OR INCURRED AFTER THE IMPLEMENTATION DATE OF THE VOLUNTARY PLAN UNLESS THE COMMISSION DETERMINES THAT ALLOWING RECOVERY OF SUCH COSTS IS IN THE PUBLIC INTEREST OR THAT THE INCURRENCE OF SUCH COSTS IS REASONABLE AND PRUDENT FOR THE PURPOSE OF RESOLVING OR MITIGATING OTHER TRANSITION COSTS.

(IV) A NATURAL GAS PUBLIC UTILITY SHALL NOT BE ENTITLED TO RECOVER ITS TRANSITION COSTS UNLESS THE COMMISSION FINDS THAT THE UTILITY HAS MADE REASONABLE EFFORTS TO MITIGATE TRANSITION COSTS. THE COMMISSION SHALL DETERMINE THE APPROPRIATE METHOD AND AMORTIZATION PERIOD FOR A UTILITY'S RECOVERY OF TRANSITION COSTS AND MAY ESTABLISH SUCH OTHER REASONABLE PROCEDURES AND CONDITIONS FOR THE RECOVERY OF TRANSITION COSTS AS THE COMMISSION MAY DETERMINE ARE CONSISTENT WITH THIS SECTION AND IN THE PUBLIC INTEREST.

(c) EXCEPT TO THE EXTENT PROVIDED IN PLAN PROVISIONS OR RULES ADOPTED BY THE COMMISSION GOVERNING THE RELATIONSHIP BETWEEN THE PUBLIC UTILITY AND ITS AFFILIATES, THE COMMISSION SHALL NOT IMPOSE ON A NATURAL GAS PUBLIC UTILITY OR ITS AFFILIATE, WITH RESPECT TO COMPETITIVE NATURAL GAS SUPPLY SERVICES, ANY REQUIREMENT THAT IS NOT IMPOSED UPON COMPETING, NON-UTILITY PROVIDERS OF NATURAL GAS SUPPLY SERVICES, UNLESS THE COMMISSION DETERMINES THAT THE IMPOSITION OF SUCH REQUIREMENT IS NECESSARY TO PROTECT THE PUBLIC INTEREST.

(8) THE PUBLIC BENEFITS CHARGE AND ITS FUNDING METHOD SHALL CONTINUE IN EFFECT UNTIL AT LEAST DECEMBER 31, 2005, AND SHALL REMAIN IN EFFECT THEREAFTER UNTIL AND UNLESS REPLACED WITH A DIFFERENT LEGISLATIVELY ADOPTED FUNDING MECHANISM FOR STATEWIDE LOW-INCOME ENERGY ASSISTANCE PROGRAMS THAT ASSURES THE AVAILABILITY OF ADEQUATE RESOURCES AND THAT IS CONSISTENT WITH THE RECOMMENDATIONS OF THE 1998 GOVERNOR'S ENERGY ASSISTANCE REFORM TASK FORCE FOR THE PURPOSE OF DEFRAYING THE COSTS OF LOW-INCOME ENERGY ASSISTANCE. ON OR BEFORE DECEMBER 1, 2004, THE COLORADO ENERGY ASSISTANCE FOUNDATION, WHICH IS THE ENTITY CREATED UNDER

SECTION 40-8.5-104, OR ITS SUCCESSOR, IN CONJUNCTION WITH ANY INTERESTED NATURAL GAS UTILITY OR NATURAL GAS SUPPLIER, SHALL RECOMMEND SUCH A DIFFERENT FUNDING MECHANISM FOR LOW-INCOME ENERGY ASSISTANCE PROGRAMS TO THE GENERAL ASSEMBLY FOR ADOPTION.

(9) ON OR BEFORE DECEMBER 1, 2000, THE COMMISSION SHALL REPORT TO THE GENERAL ASSEMBLY ON VOLUNTARY PLANS FILED AND ACTIONS TAKEN BY NATURAL GAS PUBLIC UTILITIES PURSUANT TO THIS SECTION AND MAY MAKE RECOMMENDATIONS FOR LEGISLATION TO FURTHER THE PROVISION OF NATURAL GAS TO CUSTOMERS BY COMPETITIVE SUPPLIERS. SUCH RECOMMENDATIONS MAY INCLUDE, BUT ARE NOT LIMITED TO, COMMISSION AUTHORITY TO MANDATE THE FILING OF COMPETITIVE SUPPLY PLANS. IN ADDITION, THE COMMISSION SHALL REPORT ON WHETHER IT WILL INITIATE A RULE-MAKING PROCEEDING TO PROVIDE FOR CONSISTENT CONSUMER PROTECTION MECHANISMS FOR ALL NATURAL GAS CUSTOMERS FOR THOSE ISSUES ADDRESSED IN SUBPARAGRAPH (IX) OF PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION AND REQUIREMENTS, TERMS, AND CONDITIONS OF GAS SUPPLY SERVICE.

(10) THE GENERAL ASSEMBLY DETERMINES THAT A NEW FUNDING FORMULA SHOULD BE DEvised TO ADEQUATELY FUND THE COMMISSION'S AND OFFICE OF CONSUMER COUNSEL'S ADMINISTRATIVE EXPENSES. ON OR BEFORE DECEMBER 1, 2000, THE COMMISSION AND THE OFFICE OF CONSUMER COUNSEL SHALL RECOMMEND TO THE GENERAL ASSEMBLY THOSE LEGISLATIVE CHANGES NEEDED TO DEVELOP APPROPRIATE FUNDING MECHANISMS FOR THE PUBLIC UTILITIES COMMISSION AND THE OFFICE OF CONSUMER COUNSEL. THIS PROVISION IS INTENDED TO PROVIDE A COMPREHENSIVE REPLACEMENT FOR THE FUNDING METHOD CONTAINED IN THE UTILITY PLAN UNDER SUBPARAGRAPH (XI) OF PARAGRAPH (c) SUBSECTION (3) OF THIS SECTION.

(11) THE COMMISSION IS SPECIFICALLY AUTHORIZED AT ITS SOLE DISCRETION TO ADOPT ALL NECESSARY RULES IN FURTHERANCE OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO, STANDARDS OF CONDUCT, UNFAIR AND DECEPTIVE MARKETING PRACTICES, AND CONSUMER PROTECTIONS.

(12) NOTWITHSTANDING THE ESTABLISHMENT OF THE PUBLIC BENEFITS CHARGE AS A MEANS OF DEFRAYING THE COST OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS IN COLORADO, THE GENERAL ASSEMBLY BELIEVES IT PRUDENT TO SEPARATELY EVALUATE THE EFFECTS OF NATURAL GAS SUPPLIER CHOICE ON THE LOW-INCOME POPULATION. THEREFORE, THE COLORADO ENERGY ASSISTANCE FOUNDATION, WHICH IS THE ENTITY CREATED UNDER SECTION 40-8.5-104, OR ITS SUCCESSOR SHALL, WITHIN ONE YEAR FOLLOWING THE IMPLEMENTATION OF THE FIRST NATURAL GAS SUPPLIER CHOICE PROGRAM BY A NATURAL GAS UTILITY TO AFFECT A SIGNIFICANT NUMBER OF LOW-INCOME HOUSEHOLDS, CONTRACT WITH A PRIVATE PARTY TO STUDY THE EFFECTS OF GAS SUPPLIER CHOICE ON COLORADO'S LOW-INCOME POPULATION. THE PRIVATE PARTY CONDUCTING THE STUDY SHALL GIVE NATURAL GAS UTILITIES AND SUPPLIERS, NATURAL GAS CUSTOMERS, THE PUBLIC UTILITIES COMMISSION, AND OTHER INTERESTED PARTIES AN OPPORTUNITY TO COMMENT ON THE RESULTS OF THE STUDY ONCE COMPLETED. THE COLORADO ENERGY ASSISTANCE FOUNDATION SHALL REPORT THE RESULTS OF THE STUDY, TOGETHER WITH ANY RECOMMENDATIONS TO ALLEVIATE ANY ADVERSE IMPACTS ON NATURAL GAS SUPPLIER CHOICE ON COLORADO'S LOW-INCOME POPULATION, TO THE GENERAL ASSEMBLY ON OR BEFORE THE DATE THAT IS TWO YEARS FOLLOWING THE

IMPLEMENTATION OF THE FIRST NATURAL GAS SUPPLIER CHOICE PROGRAM BY A NATURAL GAS UTILITY TO AFFECT A SIGNIFICANT NUMBER OF LOW-INCOME HOUSEHOLDS.

(13) IN ANY AREA WHERE COMPETITIVE GAS SUPPLY CHOICES ARE AFFORDED TO CUSTOMERS, ANY MUNICIPALITY OR COUNTY OR COMBINATION THEREOF MAY SERVE AS A COMPETITIVE SUPPLIER OR, WITHOUT BUYING AND SELLING GAS, ACT AS AN AGGREGATOR OF THE LOADS OF ITS RESIDENTS AND BUSINESSES AND CONTRACT WITH A CERTIFIED SUPPLIER FOR ITS GAS SUPPLY NEEDS AND THE GAS SUPPLY NEEDS OF ITS RESIDENTS OR BUSINESSES OR BOTH SUCH RESIDENTS AND BUSINESSES; EXCEPT THAT NOTHING IN THIS SUBSECTION (13) SHALL REQUIRE EITHER A RESIDENT OR BUSINESS TO BUY NATURAL GAS SUPPLY SERVICE FROM A MUNICIPALITY SERVING AS A SUPPLIER OR ACTING AS AN AGGREGATOR OF THE LOADS OF ITS RESIDENTS OR BUSINESSES.

(14) EACH PROVIDER OF NATURAL GAS SUPPLY SERVICE AND NATURAL GAS DELIVERY SERVICE SHALL COLLECT AND REMIT ALL APPLICABLE SALES AND USE TAXES. IN A TRANSACTION INVOLVING THE SALE OR FURNISHING OF NATURAL GAS SERVICE, THE TRANSACTION SHALL BE DEEMED TO OCCUR WHERE THE NATURAL GAS IS USED OR CONSUMED.

SECTION 2. 40-3.5-102, Colorado Revised Statutes, is amended to read:

40-3.5-102. Regulation of rates. The power and authority is hereby vested in the governing body of each municipal utility and it is hereby made the duty of each such governing body to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of its municipal utility within its authorized electric and natural gas service areas which lie outside the jurisdictional limits of the municipality. No rate, charge, ~~or~~ tariff, OR VOLUNTARY PLAN APPROVED PURSUANT TO SECTION 40-2-122 shall unjustly discriminate between or among those customers or recipients of any commodity, service, or product of the municipal utility within the authorized service area. In the event that any rate, charge, ~~or~~ tariff, OR VOLUNTARY PLAN established within the authorized service area which lies outside the jurisdictional limits of the municipality varies from the rate, charge, ~~or~~ tariff, OR VOLUNTARY PLAN established for the same class of customers or recipients of any such service within the authorized service area which lies inside the jurisdictional limits of the municipality, such rate, charge, ~~or~~ tariff, OR VOLUNTARY PLAN shall not become effective until reviewed and approved by the commission. Such review and approval shall be in accordance with the provisions of article 3 of this title; except that in no event shall the commission modify or establish such rate, charge, or tariff to an amount lower than that established by the municipality, OR APPROVE A VOLUNTARY PLAN THAT DIFFERS FROM THE VOLUNTARY PLAN, for the same class of customers or recipients of any utility service within the authorized service area which lies inside the jurisdictional limits of the municipality.

SECTION 3. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 4. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 28, 1999