

## CHAPTER 63

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**PUBLIC UTILITIES**


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**SENATE BILL 05-143**

BY SENATOR(S) Veiga, Bacon, Evans, Fitz-Gerald, Gordon, Groff, Grossman, Hanna, Keller, Sandoval, Shaffer, Takis, Tapia, Tochtrop, Tupa, and Williams;  
 also REPRESENTATIVE(S) McFadyen, Borodkin, Boyd, Carroll T., Coleman, Frangas, Green, Hodge, Jahn, Madden, Marshall, Merrifield, Paccione, Plant, Pommer, Weissmann, and Romanoff.

**AN ACT****CONCERNING THE IMPLEMENTATION OF THE INITIATED MEASURE CALLING FOR RENEWABLE ENERGY STANDARDS.**

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

**SECTION 1.** 40-2-124, Colorado Revised Statutes, is amended to read:

**40-2-124. Renewable energy standard.** (1) Each provider of retail electric service in the state of Colorado that serves over ~~40,000~~ FORTY THOUSAND customers shall be considered a qualifying retail utility. ~~and EACH QUALIFYING RETAIL UTILITY,~~ WITH THE EXCEPTION OF COOPERATIVE ELECTRIC ASSOCIATIONS THAT HAVE VOTED TO EXEMPT THEMSELVES FROM COMMISSION JURISDICTION PURSUANT TO SECTION 40-9.5-104 AND MUNICIPALLY OWNED UTILITIES, shall be subject to the rules established under this article by the ~~Public Utilities~~ commission. ~~of the State of Colorado (Commission).~~ No additional regulatory authority of the commission other than that specifically contained herein is provided or implied. In accordance with article 4 of title 24, C.R.S., on or before April 1, 2005, the commission shall initiate one or more rule-making processes to establish the following:

(a) Definitions of eligible renewable energy resources that can be used to meet the standards. Eligible renewable energy resources are solar, wind, geothermal, biomass, ~~and~~ NEW hydroelectricity with a nameplate rating of ~~10~~ TEN megawatts or less, AND HYDROELECTRICITY IN EXISTENCE ON JANUARY 1, 2005, WITH A NAMEPLATE RATING OF THIRTY MEGAWATTS OR LESS. The commission shall determine, following an evidentiary hearing, the extent ~~that~~ TO WHICH such electric generation technologies utilized in an optional pricing program may be used to comply with this standard. A fuel cell using hydrogen derived from these eligible resources is also an eligible

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

electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible resources. Further, "biomass" shall be defined to mean:

(I) Nontoxic plant matter ~~that is the byproduct~~ CONSISTING of agricultural crops OR THEIR BYPRODUCTS, urban wood waste, mill residue, slash, or brush;

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

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

(b) Standards for the design, placement, and management of electric generation technologies that use eligible renewable energy resources to ensure that the environmental impacts of such facilities are minimized.

(c) (I) Electric resource standards for renewable energy resources. The electric resource ~~standard~~ STANDARDS shall require each qualifying retail utility to generate, or cause to be generated, electricity from eligible renewable energy resources in the following minimum amounts:

(A) ~~3%~~ THREE PERCENT of its retail electricity sales in Colorado for the years 2007 through 2010;

(B) ~~6%~~ SIX PERCENT of its retail electricity sales in Colorado for the years 2011 through 2014;

(C) ~~10%~~ TEN PERCENT of its retail electricity sales in Colorado for the years 2015 and thereafter.

(II) Of the amounts in ~~subpart (c)(I)~~ SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION (1), at least ~~4%~~ FOUR PERCENT shall be derived from solar electric generation technologies. At least one-half of this ~~4%~~ FOUR PERCENT shall be derived from solar electric technologies located on-site at customers' facilities.

(III) Each kilowatt-hour of renewable electricity generated in Colorado shall be counted as ~~1.25~~ ONE AND ONE-QUARTER kilowatt-hours for the purposes of compliance with this standard.

(IV) To the extent that the ability of a qualifying retail utility to acquire eligible renewable electric generation is limited by a requirements contract with a wholesale electric supplier, the qualifying retail utility shall acquire the maximum amount allowed by the contract. For any shortfalls to the amounts established by the commission pursuant to ~~part (c)(I)~~ SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION (1), the qualifying retail utility shall acquire an equivalent amount of either ~~(I)~~ renewable energy credits; ~~(II)~~ documented and verified energy savings through energy efficiency and conservation programs; or ~~(III)~~ a combination of both. Any contract entered into by a qualifying retail utility after ~~the effective date of this article~~ DECEMBER 1, 2004, shall not conflict with this article.

(d) A system of tradable renewable energy credits that may be used by a qualifying retail utility to comply with this standard. The commission shall also analyze the

effectiveness of utilizing any regional system of renewable energy credits in existence at the time of its rule-making process and determine ~~if~~ ~~WHETHER~~ the system is governed by rules that are consistent with the rules established for this article.

(e) A standard rebate offer program. Each qualifying retail utility shall make available to its retail electricity customers a standard rebate offer of a minimum of ~~\$2.00~~ TWO DOLLARS per watt for the installation of eligible solar electric generation on customers' premises up to a maximum of one hundred kilowatts per installation. Such offer shall allow THE customer's retail electricity consumption to be offset by the solar electricity generated. To the extent that solar electricity generation exceeds the customer's consumption during a billing month, such excess electricity shall be carried forward as a credit to the following month's consumption. To the extent that solar electricity generation exceeds the customer's consumption during a calendar year, the customer shall be reimbursed by the qualifying retail utility at its average hourly incremental cost of electricity supply over the prior twelve-month period. The qualifying retail utility shall not apply unreasonably burdensome interconnection requirements in connection with this standard rebate offer. Electricity generated under this program shall be eligible for the qualifying retail utility's compliance with this article.

(f) Policies for the recovery of costs incurred with respect to these standards for qualifying retail utilities that are subject to rate regulation by the commission. Such policies shall include:

(I) Allowing qualifying retail utilities to earn an extra profit on their investment in renewable energy technologies if these investments provide net economic benefits to customers as determined by the commission. The allowable extra profit in any year shall be the qualifying retail utility's most recent commission authorized rate of return plus a bonus limited to ~~50%~~ FIFTY PERCENT of the net economic benefit.

(II) Allowing qualifying retail utilities to earn their most recent commission authorized rate of return, but no bonus, on investments in renewable energy technologies if these investments do not provide a net economic benefit to customers.

(III) If the commission approves the terms and conditions of a renewable energy contract between the qualifying retail utility and another party, the renewable energy contract and its terms and conditions shall be deemed to be a prudent investment, and the commission shall approve retail rates sufficient to recover all just and reasonable costs associated with the contract. All contracts for acquisition of eligible renewable electricity shall have a minimum term of ~~20~~ TWENTY years; EXCEPT THAT THE CONTRACT TERM MAY BE SHORTENED AT THE SOLE DISCRETION OF THE SELLER. All contracts for the acquisition of renewable energy credits from solar electric technologies located on site at customer facilities shall also have a minimum term of twenty years.

(IV) A requirement that qualifying retail utilities consider proposals offered by third parties for the sale of renewable energy ~~and/or~~ OR renewable energy credits. The commission may develop standard terms for the submission of such proposals.

(g) Retail rate impact rule:

(I) FOR EACH QUALIFYING UTILITY, the commission shall ~~annually~~ establish a maximum retail rate impact for this section of ~~50 cents (\$0.50) per month~~ ONE PERCENT OF THE TOTAL ELECTRIC BILL ANNUALLY for ~~the average residential~~ EACH customer. ~~of a qualifying retail utility.~~ The retail rate impact shall be determined net of new nonrenewable alternative sources of electricity supply reasonably available at the time of the determination.

(II) IF A WHOLESALE CUSTOMER AGREES TO PAY THE FULL COSTS ASSOCIATED WITH THE ACQUISITION OF RENEWABLE RESOURCES AND ASSOCIATED RENEWABLE ENERGY CREDITS BY ITS WHOLESALE PROVIDER, THE WHOLESALE CUSTOMER SHALL BE ENTITLED TO RECEIVE THE APPROPRIATE CREDIT TOWARD THE RENEWABLE ENERGY STANDARD AS WELL AS ANY ASSOCIATED RENEWABLE ENERGY CREDITS. TO THE EXTENT THAT THE FULL COSTS ARE NOT RECOVERED FROM WHOLESALE CUSTOMERS, A QUALIFYING RETAIL UTILITY SHALL BE ENTITLED TO RECOVER THOSE COSTS FROM RETAIL CUSTOMERS.

(h) Annual reports. Each qualifying retail utility shall submit to the commission an annual report that provides information relating to the actions taken to comply with this article including the costs and benefits of expenditures for renewable energy. The report shall be within the time prescribed and in a format approved by the commission.

(i) Rules necessary for the administration of this article including enforcement mechanisms necessary to ensure that each qualifying retail utility complies with this standard, and provisions governing the imposition of administrative penalties assessed after a hearing held by the commission pursuant to section 40-6-109. THE COMMISSION SHALL EXEMPT A QUALIFYING RETAIL UTILITY FROM ADMINISTRATIVE PENALTIES FOR AN INDIVIDUAL COMPLIANCE YEAR IF THE UTILITY DEMONSTRATES THAT THE RETAIL RATE IMPACT CAP DESCRIBED IN PARAGRAPH (g) OF THIS SUBSECTION (1) HAS BEEN REACHED AND THE UTILITY HAS NOT ACHIEVED FULL COMPLIANCE WITH PARAGRAPH (c) OF THIS SUBSECTION (1). Under no circumstances shall the costs of administrative penalties be recovered from Colorado retail customers.

(2) The commission shall establish all rules called for in ~~subsections~~ PARAGRAPHS (a) ~~through~~ TO (g) of SUBSECTION (1) OF this section by March 31, 2006.

(3) ~~If a~~ EACH municipally owned electric utility ~~or a~~ AND EACH ~~rural electric cooperative implements~~ ELECTRIC ASSOCIATION THAT HAS VOTED TO EXEMPT ITSELF FROM COMMISSION JURISDICTION BUT IS A QUALIFYING RETAIL UTILITY SHALL IMPLEMENT a renewable energy standard substantially similar to this section. ~~40-2-124, then the governing body of the municipally owned electric utility or rural electric cooperative may self-certify its renewable energy standard and upon self-certification will have no obligations under this article.~~ The municipally owned utility or cooperative ELECTRIC ASSOCIATION shall submit a statement to the commission that demonstrates such MUNICIPAL utility or cooperative ELECTRIC ASSOCIATION has a substantially similar renewable energy standard. ~~In order for such utility or cooperative to self-certify, such~~ THE STATEMENT SUBMITTED BY THE MUNICIPALLY OWNED UTILITY OR COOPERATIVE ELECTRIC ASSOCIATION IS FOR INFORMATIONAL PURPOSES AND IS NOT SUBJECT TO APPROVAL BY THE COMMISSION. UPON FILING OF THE CERTIFICATION STATEMENT, THE MUNICIPALLY OWNED UTILITY

OR COOPERATIVE ELECTRIC ASSOCIATION SHALL HAVE NO FURTHER OBLIGATIONS UNDER SUBSECTION (1) OF THIS SECTION. THE renewable energy standard OF A MUNICIPALLY OWNED UTILITY OR COOPERATIVE ELECTRIC ASSOCIATION shall, at a minimum, meet the following criteria:

(a) The eligible renewable energy resources must be limited to those identified in ~~subsection 40-2-124(1)(a)~~ PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION;

(b) The percentage requirements must be equal to or greater in the same years than those identified in ~~subsection 40-2-124(1)(c)(i)~~ SUBPARAGRAPH (I) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, COUNTED IN THE MANNER ALLOWED BY SUBPARAGRAPH (III) OF SAID PARAGRAPH (c); and

(c) The utility must have an optional pricing program in effect that allows retail customers the option to support through utility rates emerging renewable energy technologies.

(4) FOR MUNICIPAL UTILITIES AND COOPERATIVE ELECTRIC ASSOCIATIONS THAT BECOME QUALIFYING RETAIL UTILITIES AFTER DECEMBER 31, 2006, THE PERCENTAGE REQUIREMENTS IDENTIFIED IN SUBPARAGRAPH (I) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION SHALL BEGIN IN THE FIRST CALENDAR YEAR FOLLOWING QUALIFICATION AS FOLLOWS:

(a) YEARS ONE THROUGH FOUR: THREE PERCENT OF RETAIL ELECTRICITY SALES;

(b) YEARS FIVE THROUGH EIGHT: SIX PERCENT OF RETAIL ELECTRICITY SALES; AND

(c) YEAR NINE AND THEREAFTER: TEN PERCENT OF RETAIL ELECTRICITY SALES.

~~(4)~~ (5) **Procedure for exemption and inclusion - election.** (a) The board of directors of each qualifying retail utility subject to THIS section ~~40-2-124~~ may, at its option, submit the question of its exemption from THIS section ~~40-2-124 CRS~~, to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such exemption, providing that a minimum of ~~25%~~ TWENTY-FIVE PERCENT of eligible consumers participates in the election.

(b) The board of directors of each municipally owned electric utility or ~~rural electric~~ cooperative ELECTRIC ASSOCIATION not subject to THIS section ~~40-2-124~~ may, at its option, submit the question of its inclusion in THIS section ~~40-2-124 CRS~~, to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such inclusion, providing that a minimum of ~~25%~~ TWENTY-FIVE PERCENT of eligible consumers participates in the election.

**SECTION 2.** 40-2-125, Colorado Revised Statutes, is amended to read:

**40-2-125. Eminent domain restrictions.** A qualifying retail utility shall not have the authority to condemn or exercise the power of eminent domain over any real estate, right-of-way, easement, or other right pursuant to section 38-2-101, C.R.S., to site the generation facilities of a renewable energy system used in whole or in part to meet the electric resource standards set forth in section 40-2-124. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE AUTHORITY OF A HOME RULE MUNICIPALITY

UNDER ARTICLE XX OF THE COLORADO CONSTITUTION.

**SECTION 3.** 40-9.5-107 (5), Colorado Revised Statutes, is amended to read:

**40-9.5-107. Duties of cooperative electric associations.** (5) Cooperative electric associations shall continue to file with the public utilities commission those items required by sections 40-2-111, 40-3-110, and 40-5-106 (2) AND SHALL COMPLY WITH SECTION 40-2-124 (3) AND (4). The records and accounts of cooperative electric associations shall be kept in accordance with procedures established by the commission pursuant to section 40-4-111.

**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 (August 10, 2005, if adjournment sine die is on May 11, 2005); 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: April 14, 2005