

## CHAPTER 300

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**PUBLIC UTILITIES**

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**HOUSE BILL 06-1281**

BY REPRESENTATIVE(S) Pommer, Berens, Borodkin, Boyd, Buescher, Butcher, Frangas, Gardner, Hodge, Hoppe, Kerr J., McCluskey, McFadyen, McGihon, Paccione, Penry, Ragsdale, Riesberg, Solano, Stafford, Sullivan, Todd, Witwer, Cerbo, Larson, and Merrifield;  
also SENATOR(S) Gordon, Bacon, Fitz-Gerald, Groff, Keller, Mitchell, Sandoval, Shaffer, Tapia, Taylor, Tochtrop, Tupa, Veiga, Williams, and Windels.

**AN ACT**

**CONCERNING THE ESTABLISHMENT OF A PROGRAM TO DEMONSTRATE THE USE OF BREAKTHROUGH ADVANCED COAL TECHNOLOGY TO PROMOTE LOW-EMITTING COAL-FUELED ELECTRICITY GENERATION.**

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

**SECTION 1. Legislative declaration.** The general assembly hereby finds, determines, and declares that the deployment of advanced coal technologies, such as integrated gasification combined cycle technology, may have significant environmental benefits over conventional coal-fired electric generating technologies. In addition, the deployment of advanced coal technologies may allow the state's electric utilities to generate electricity from western coal resources with greater thermal efficiency, less consumption of water, lower emissions including decreased emissions of greenhouse gases such as carbon dioxide, and reduced costs of complying with existing and future environmental protections. Because such advanced coal technologies involve risks and uncertainties that inhibit rapid commercialization, it is in the public interest of the state to support the deployment of breakthrough integrated gasification combined cycle electric generation facilities that utilize Colorado or other western coal and that capture and sequester carbon dioxide emissions.

**SECTION 2.** 40-2-123, Colorado Revised Statutes, is amended to read:

**40-2-123. New energy technologies - consideration by commission - incentives - demonstration projects.** (1) The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and

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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.*

energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases. The commission shall consider utility investments in energy efficiency to be an acceptable use of ratepayer moneys.

(2) (a) THE COMMISSION SHALL CONSIDER PROPOSALS BY COLORADO ELECTRIC UTILITIES TO PROPOSE, FUND, AND CONSTRUCT INTEGRATED GASIFICATION COMBINED CYCLE GENERATION FACILITIES TO DEMONSTRATE THE FEASIBILITY OF THIS CLEAN COAL TECHNOLOGY WITH THE USE OF WESTERN COAL AND WITH CARBON DIOXIDE CAPTURE AND SEQUESTRATION.

(b) AS USED IN THIS SUBSECTION (2):

(I) "IGCC PROJECT" MEANS AN IGCC FACILITY THAT:

(A) DEMONSTRATES THE USE OF IGCC TECHNOLOGY TO GENERATE ELECTRICITY USING COLORADO OR OTHER WESTERN COAL;

(B) DOES NOT EXCEED THREE HUNDRED FIFTY MEGAWATTS NAMEPLATE CAPACITY; EXCEPT THAT IT MAY EXCEED THIS CAPACITY IF THE COMMISSION DETERMINES THAT A LARGER SIZE IS NECESSARY TO OBTAIN THE BENEFITS OF FEDERAL COST-SHARING, FINANCIAL GRANTS OR TAX BENEFITS, OR OTHER FINANCIAL OPPORTUNITIES OR ARRANGEMENTS BENEFITTING THE PROJECT, INCLUDING OPPORTUNITIES TO JOINTLY DEVELOP THE PROJECT WITH OTHER ELECTRIC UTILITIES;

(C) DEMONSTRATES THE CAPTURE AND SEQUESTRATION OF A PORTION OF THE PROJECT'S CARBON DIOXIDE EMISSIONS;

(D) INCLUDES METHODS AND PROCEDURES TO MONITOR THE FATE OF THE CARBON DIOXIDE CAPTURED AND SEQUESTERED FROM THE FACILITY; AND

(E) IS LOCATED IN COLORADO.

(II) "INTEGRATED GASIFICATION COMBINED CYCLE GENERATION FACILITY" OR "IGCC FACILITY" MEANS A FACILITY THAT CONVERTS COAL TO A GASEOUS FUEL FROM WHICH IMPURITIES ARE REMOVED PRIOR TO COMBUSTION, USES THE GASEOUS FUEL IN A COMBUSTION TURBINE TO PRODUCE ELECTRICITY, AND CAPTURES THE WASTE HEAT FROM THE COMBUSTION TURBINE TO DRIVE A STEAM TURBINE TO PRODUCE MORE ELECTRICITY. AN IGCC FACILITY MAY ALSO USE NATURAL GAS, IN ADDITION TO GASIFIED COAL, AS A FUEL IN THE COMBUSTION TURBINE.

(c) A PUBLIC UTILITY MAY APPLY UNDER THIS SUBSECTION (2) TO THE COMMISSION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FOR COST RECOVERY FOR ONE IGCC PROJECT. THE UTILITY'S APPLICATION SHALL DEMONSTRATE WHY THE UTILITY SHOULD BE GRANTED A WAIVER OF THE COMMISSION'S RULES REQUIRING COMPETITIVE RESOURCE ACQUISITION. IN ADDITION, IN ITS APPLICATION, THE UTILITY SHALL SET FORTH INFORMATION CONCERNING:

(I) THE PROPOSED IGCC PROJECT'S ECONOMIC AND TECHNICAL FEASIBILITY;

(II) ITS NEAR-TERM AND FUTURE COMMERCIAL DEVELOPMENT POTENTIAL;

(III) ITS PROJECTED EFFICIENCY;

(IV) THE PROJECTED COST OF THE PROJECT, THE PROJECTED INCREMENTAL AVERAGE RATE IMPACT EXPECTED FROM THE PROJECT, AND THE FORM OF RATE RECOVERY REQUESTED BY THE UTILITY; AND

(V) OTHER RELEVANT INFORMATION AS THE COMMISSION MAY REQUIRE.

(d) IN ITS APPLICATION, THE PUBLIC UTILITY SEEKING TO BUILD AN IGCC PROJECT SHALL ALSO PROVIDE INFORMATION CONCERNING THE FOLLOWING ENVIRONMENTAL MATTERS:

(I) THE IGCC PROJECT'S PROJECTED WATER SAVINGS, EMISSION RATES, AND OTHER ENVIRONMENTAL BENEFITS;

(II) ANY ENVIRONMENTAL AND PUBLIC SAFETY IMPACTS OF THE PROJECT;

(III) THE CAPTURE AND SEQUESTRATION OF A PORTION OF THE PROJECT'S CARBON DIOXIDE EMISSIONS AND THE PROPOSED LEVEL OF CARBON DIOXIDE TO BE CAPTURED AND SEQUESTERED FROM THE IGCC PROJECT;

(IV) AN ANALYSIS OF THE ECONOMIC IMPLICATIONS AND TECHNICAL FEASIBILITY OF DIFFERENT LEVELS OF CARBON CAPTURE AND SEQUESTRATION; AND

(V) OTHER RELEVANT INFORMATION AS MAY BE REQUIRED BY THE COMMISSION.

(e) (I) THE COMMISSION SHALL PROVIDE AN OPPORTUNITY FOR PUBLIC COMMENT AND EVIDENTIARY HEARING ON THE PUBLIC UTILITY'S APPLICATION. THE COMMISSION SHALL DETERMINE WHETHER THE PURPOSES OF THIS SECTION AND THE PUBLIC INTEREST ARE SERVED BY WAIVING THE COMMISSION'S RULES TO GRANT THE UTILITY A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT THE IGCC PROJECT INSTEAD OF REQUIRING THE UTILITY TO ACQUIRE RESOURCES IN ACCORDANCE WITH THE COMMISSION'S RULES REQUIRING COMPETITIVE RESOURCE ACQUISITION. IF THE COMMISSION GRANTS THE UTILITY A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE PROPOSED IGCC PROJECT, THE COMMISSION SHALL ISSUE A DECLARATORY ORDER FOR COST RECOVERY IN ACCORDANCE WITH PARAGRAPHS (f) AND (g) OF THIS SUBSECTION (2). IN MAKING ITS DETERMINATION, THE COMMISSION SHALL CONSIDER WHETHER THE PROJECT CAN BE CONSTRUCTED FOR REASONABLE COST AND RATE IMPACT, TAKING INTO ACCOUNT THE BREAKTHROUGH NATURE OF THE PROJECT.

(II) IN EVALUATING A PROJECT UNDER THIS SECTION, IN ADDITION TO THE CONSIDERATIONS SET FORTH IN SUBSECTION (1) OF THIS SECTION, THE COMMISSION SHALL CONSIDER THE FACTORS SET FORTH IN PARAGRAPHS (c) AND (d) OF THIS SUBSECTION (2) AND THE AMOUNT OF FEDERAL, STATE, OR OTHER MONEYS AVAILABLE FOR THE PROJECT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE COMMISSION TO MONETIZE THE POTENTIAL ENVIRONMENTAL BENEFITS ASSOCIATED WITH A PROPOSED IGCC PROJECT.

(f) (I) A PUBLIC UTILITY SHALL BE ENTITLED TO FULLY RECOVER, THROUGH A SEPARATE RATE ADJUSTMENT CLAUSE FROM ITS COLORADO RETAIL CUSTOMERS, THE COSTS THAT IT PRUDENTLY INCURS IN PLANNING, DEVELOPING, CONSTRUCTING, AND OPERATING AN APPROVED IGCC PROJECT, NET OF ANY FEDERAL OR STATE FUNDS RECEIVED FOR SUCH IGCC PROJECT. THE RATE ADJUSTMENT CLAUSE MAY BE TERMINATED BY THE COMMISSION IF ALL OF THE PLANNING, DEVELOPMENT, CONSTRUCTION, AND OPERATING COSTS OF THE IGCC PROJECT HAVE BEEN INCLUDED IN THE PUBLIC UTILITY'S BASE RATES AS A RESULT OF A RATE CASE FILED AFTER THE IGCC PLANT COMMENCES OPERATION. CAPITAL INVESTMENTS MADE BY A UTILITY IN CONNECTION WITH AN APPROVED IGCC PROJECT SHALL BE RECOVERABLE OVER THE USEFUL LIFE OF THE PROJECT. TO PROVIDE ADDITIONAL ENCOURAGEMENT TO UTILITIES TO PURSUE THE DEVELOPMENT OF AN IGCC PROJECT, THE COMMISSION SHALL APPROVE CURRENT RECOVERY BY THE UTILITY THROUGH THE RATE ADJUSTMENT CLAUSE OF THE UTILITY'S WEIGHTED AVERAGE COST OF CAPITAL, INCLUDING ITS MOST RECENTLY AUTHORIZED RATE OF RETURN ON EQUITY, FOR EXPENDITURES ON AN IGCC PROJECT DURING THE CONSTRUCTION, STARTUP, AND IMPLEMENTATION PHASES OF THE IGCC PROJECT.

(II) IF A PUBLIC UTILITY'S WHOLESALE SALES ARE SUBJECT TO REGULATION BY THE FEDERAL ENERGY REGULATORY COMMISSION, AND IF THE PUBLIC UTILITY SELLS POWER ON THE WHOLESALE MARKET FROM AN IGCC PROJECT DEVELOPED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE COMMISSION SHALL DETERMINE WHETHER TO ASSIGN A PORTION OF THE IGCC PROJECT'S COST OF SERVICE TO BE RECOVERED FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. THE COMMISSION MAY MAKE SUCH ASSIGNMENT TO THE EXTENT THAT IT DOES NOT CONFLICT WITH THE PUBLIC UTILITY'S WHOLESALE CONTRACTS ENTERED INTO BEFORE APRIL 1, 2006.

(III) IF THE COMMISSION MAKES AN ASSIGNMENT OF COSTS PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (f), THE PUBLIC UTILITY MAY APPLY TO THE FEDERAL ENERGY REGULATORY COMMISSION FOR RECOVERY, EFFECTIVE ON THE DATE OF FILING OF THE APPLICATION, OF THE PORTION OF THE IGCC PROJECT'S COSTS ASSIGNED TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. DURING THE PENDENCY OF SUCH APPLICATION, THE COMMISSION SHALL PERMIT THE PUBLIC UTILITY TO RECOVER THE PORTION OF COSTS ASSIGNED TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS FROM ITS RETAIL CUSTOMERS.

(IV) NOTWITHSTANDING SUBPARAGRAPH (III) OF THIS PARAGRAPH (f), IF THE PUBLIC UTILITY FAILS TO APPLY TO THE FEDERAL ENERGY REGULATORY COMMISSION WITHIN SIX MONTHS AFTER THE COMMISSION'S FINAL ORDER ASSIGNING A PORTION OF THE IGCC PROJECT'S COSTS TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, OR IF THE PUBLIC UTILITY FAILS TO MAKE A DILIGENT, GOOD FAITH EFFORT TO PERSUADE THE FEDERAL ENERGY REGULATORY COMMISSION TO APPROVE THE COST RECOVERY FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY SHALL NOT BE ENTITLED TO RECOVER THE ASSIGNED PORTION OF THE IGCC PROJECT COSTS FROM ITS RETAIL CUSTOMERS.

(V) ALL REVENUES THAT A PUBLIC UTILITY RECEIVES FROM ITS WHOLESALE CUSTOMERS FOR THE IGCC PROJECT'S COSTS SHALL BE CREDITED AS AN OFFSET TO THE IGCC PROJECT'S COSTS CHARGED TO THE PUBLIC UTILITY'S RETAIL CUSTOMERS.

(g) IF THE COMMISSION APPROVES THE UTILITY'S APPLICATION, THE UTILITY SHALL BE ENTITLED TO RECOVER THE FULL LIFE-CYCLE CAPITAL AND OPERATING COSTS ASSOCIATED WITH AN IGCC PROJECT UNLESS THE COMMISSION FINDS SUCH COSTS TO BE IMPRUDENT AFTER FULLY TAKING INTO ACCOUNT THE TECHNICAL AND FINANCIAL CHALLENGES AND UNCERTAINTIES ASSOCIATED WITH THE PROJECT. DURING THE INITIAL STARTUP AND TESTING PERIOD, TO BE DETERMINED BY THE COMMISSION AS PART OF THE APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, THE UTILITY SHALL BE ENTITLED TO RECOVER THROUGH AN ADJUSTMENT CLAUSE ANY ADDITIONAL COSTS FOR ELECTRICITY PURCHASED AS A RESULT OF PLANNED AND UNPLANNED OUTAGES OF AN IGCC PROJECT. IN STRUCTURING THE ADJUSTMENT CLAUSE, THE UTILITY'S RETURN ON INVESTMENT IN AN IGCC PROJECT FROM TIME TO TIME SHALL BE LIMITED TO THE UTILITY'S MOST RECENT COMMISSION-APPROVED RETURN ON INVESTMENT IN OTHER UTILITY GENERATION FACILITIES.

(h) FOLLOWING THE INITIAL STARTUP AND TESTING PERIOD, THE PUBLIC UTILITY SHALL BE ENTITLED TO RECOVER THROUGH AN ADJUSTMENT CLAUSE ANY ADDITIONAL COSTS FOR ELECTRICITY PURCHASED AS A RESULT OF PLANNED AND UNPLANNED OUTAGES OF AN IGCC PROJECT IN THE SAME MANNER, AND UNDER THE SAME TERMS AND CONDITIONS, AS ARE APPLICABLE TO NON-IGCC PROJECTS. AFTER THE IGCC PROJECT ACHIEVES COMMERCIAL OPERATION, THE PUBLIC UTILITY SHALL REPORT ON THE COST AND PERFORMANCE OF THE IGCC PROJECT. AFTER INVESTIGATION AND PUBLIC HEARING, THE COMMISSION MAY, ON ITS OWN MOTION, ORDER SHUTDOWN, DECOMMISSIONING, OR REPOWERING OF THE IGCC PROJECT IF IT FINDS THAT CONTINUED OPERATION WOULD BE CONTRARY TO THE PUBLIC INTEREST. THE PUBLIC UTILITY SHALL BE ENTITLED TO FULL RECOVERY OF THE PRUDENTLY INCURRED COSTS ASSOCIATED WITH THE SHUTDOWN, DECOMMISSIONING, OR REPOWERING OF THE IGCC PROJECT.

(i) IF THE COMMISSION DETERMINES THAT THE PUBLIC UTILITY SHOULD BE GRANTED A WAIVER OF THE COMMISSION'S RULES REQUIRING COMPETITIVE RESOURCE ACQUISITION AND THAT THE INCREMENTAL COST AND RATE IMPACT OF THE IGCC FACILITY TO BE REASONABLE, TAKING INTO ACCOUNT THE BREAKTHROUGH NATURE OF THE PROJECT, THE FACTORS SET FORTH IN PARAGRAPHS (c) AND (d) OF THIS SUBSECTION (2), AND THE AMOUNT OF FEDERAL, STATE, OR OTHER MONEYS AVAILABLE FOR THE PROJECT, THE COMMISSION SHALL AUTHORIZE THE PROJECT AS AN APPROPRIATE COMPONENT OF A UTILITY'S RESOURCE PLAN.

(j) IN ORDER TO REDUCE THE COST TO COLORADO CONSUMERS OF AN IGCC PROJECT, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT, AND THE GOVERNOR'S OFFICE OF ENERGY MANAGEMENT AND CONSERVATION MAY PROVIDE PUBLIC UTILITIES WITH REASONABLE ASSISTANCE IN SEEKING AND OBTAINING FINANCIAL AND OTHER SUPPORT AND SPONSORSHIP FOR A PROJECT FROM THE UNITED STATES CONGRESS, THE UNITED STATES DEPARTMENT OF ENERGY, AND OTHER APPROPRIATE FEDERAL AND STATE AGENCIES AND INSTITUTIONS. TO OBTAIN THIS ASSISTANCE, THE UTILITY MAY PROVIDE TO THESE STATE AGENCIES COPIES OF ITS IGCC PROJECT PROPOSAL. THE GOVERNOR'S OFFICE OF ENERGY MANAGEMENT AND CONSERVATION SHALL MANAGE AND DISTRIBUTE TO THE UTILITY SOME OR ALL OF ANY FUNDS PROVIDED BY THE STATE OF COLORADO OR BY THE UNITED STATES GOVERNMENT TO THE STATE OF COLORADO FOR PURPOSES OF STUDY OR DEVELOPMENT OF AN IGCC PROJECT.

(k) TO ENCOURAGE ADVANCED COAL TECHNOLOGY, WHICH SHOULD LEAD TO LOWER EMISSIONS AND OTHER ENVIRONMENTAL BENEFITS COMPARED TO CONVENTIONAL COAL-FIRED GENERATION, FINANCIAL SUPPORT FOR THE STUDY, ENGINEERING, AND DEVELOPMENT OF AN IGCC FACILITY SHALL BE APPROPRIATED FROM THE CLEAN ENERGY DEVELOPMENT FUND CREATED IN SECTION 24-22-118, C.R.S. THE UTILITY SHALL REPORT TO THE COMMISSION THE RESULTS OF ITS STUDY, IRRESPECTIVE OF WHETHER THE UTILITY FILES AN APPLICATION WITH THE COMMISSION UNDER PARAGRAPH (c) OF THIS SUBSECTION (2).

(l) TO FACILITATE FINANCING OF AN IGCC PROJECT, ONE OR MORE PUBLIC UTILITIES MAY DEVELOP, CONSTRUCT, OR OWN AN IGCC FACILITY THROUGH A SPECIAL PURPOSE ENTITY OR OTHER AFFILIATED PARTNERSHIP OR CORPORATION. IF SUCH AN OWNERSHIP STRUCTURE IS EMPLOYED, THE UTILITY OR UTILITIES MAY APPLY TO THE COMMISSION FOR A WAIVER OF THE COMMISSION'S RULES REQUIRING COMPETITIVE RESOURCE ACQUISITION. IF THE COMMISSION DETERMINES THAT THE PURPOSES OF THIS SECTION AND THE PUBLIC INTEREST ARE SERVED BY GRANTING THE WAIVER, THE UTILITY OR UTILITIES MAY ENTER INTO A POWER PURCHASE AGREEMENT WITH THE OWNER OF THE IGCC FACILITY THAT PROVIDES COMPENSATION TO THE FACILITY OWNER FOR ITS COSTS AND PROVIDES A REASONABLE RETURN ON INVESTMENT. PUBLIC UTILITY PAYMENTS MADE UNDER SUCH A POWER PURCHASE AGREEMENT SHALL BE RECOVERABLE THROUGH A RATE ADJUSTMENT CLAUSE ON A TIMELY BASIS.

(m) (I) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO PROHIBIT A UTILITY FROM PROPOSING TO ACQUIRE, THROUGH THE COMMISSION-APPROVED RESOURCE PLANNING AND ACQUISITION PROCESSES, POWER AND ENERGY DERIVED FROM AN IGCC FACILITY DEVELOPED BY THE UTILITY OR BY CONTRACT FROM AN AFFILIATE OF THE UTILITY OR FROM AN OWNER OF AN IGCC FACILITY NOT AFFILIATED WITH THE UTILITY. NOTHING IN THIS SECTION SHALL PREVENT A UTILITY FROM APPLYING FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT MORE THAN ONE IGCC FACILITY.

(II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (m), A UTILITY MAY REQUEST A WAIVER OF THE COMMISSION'S RULES REQUIRING COMPETITIVE RESOURCE ACQUISITION PURSUANT TO THIS SUBSECTION (2) FOR ONLY ONE IGCC PROJECT.

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

Approved: June 1, 2006