Colorado Revised Statutes 2020

TITLE 40

UTILITIES

Cross references: For excavation requirements for underground utility facilities, see article 1.5 of title 9; for requests for criminal activity information from public utilities, see article 15.5 of title 16; for authority and procedure for the valuation and assessment of public utilities, see article 4 of title 39; for organization and operation of special districts, see title 32.

PUBLIC UTILITIES

General and Administrative

ARTICLE 1

Definitions

Editor's note: Pursuant to §§ 40-1.1-101 and 40-1.1-104, people service transportation regulated by article 1.1 of this title is not subject to the laws and regulations of the public utilities commission.

40-1-101. Public utilities law. Articles 1 to 7 of this title shall be known and may be cited as the "Public Utilities Law" and shall apply to the public utilities and public services described in said articles 1 to 7 and to the commission referred to in article 2 of this title.

Source: L. 13: p. 464, § 1. **C.L.** § 2911. **CSA:** C. 137, § 1. **CRS 53:** § 115-1-1. **C.R.S. 1963:** § 115-1-1.

40-1-102. Definitions. As used in articles 1 to 7 of this title 40, unless the context otherwise requires:

(1) "Alternative fuel vehicle" means any automobile, truck, motor bus, boat, airplane, train, tractor, or other type of motorized off-highway equipment or other self-propelled device or vessel that is capable of moving itself or being moved from place to place utilizing, in whol e or in part, liquefied petroleum gas, natural gas, electricity, or a combination of natural gas and electricity as transportation fuel, whether or not the vehicle is used in agricultural, commercial, domestic, or industrial operations.

(1.3) "Charge" includes any consideration, however denominated, paid or provided by a retail cooperative electric association to a wholesale electric cooperative in connection with an agreement by which the retail cooperative electric association terminates a wholesale electric service contract with the wholesale electric cooperative.

(1.5) "Commission" means the public utilities commission of the state of Colorado.

(2) "Commissioner" means one of the members of the commission.

(3) (a) "Common carrier" means:

(I) Every person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within this state by motor vehicle or other vehicle whatever by indiscriminately accepting and carrying passengers for compensation; and

(II) Every person affording a means of transportation within this state by railroad by indiscriminately accepting and carrying for compensation passengers or property.

(b) "Common carrier" does not include a motor carrier that provides transportation not subject to regulation pursuant to section 40-10.1-105, a motor carrier that is subject to part 3, 4, 5, or 7 of article 10.1 of this title 40, a transportation network company, as defined in section 40-10.1-602 (3), or a transportation network company driver, as defined in section 40-10.1-602 (4).

(4) "Compensation" means any money, property, service, or thing of value charged or received, or to be charged or received, whether directly or indirectly.

(5) (a) "Cost-effective", with reference to a natural gas or electric demand-side management program or related measure, means having a benefit-cost ratio greater than one.

(b) In calculating the benefit-cost ratio, the benefits shall include, but are not limited to, the following, as applicable:

(I) The utility's avoided generation, transmission, distribution, capacity, and energy costs;

(II) The valuation of avoided emissions; and

(III) Nonenergy benefits as determined by the commission.

(c) In calculating the benefit-cost ratio, the costs shall include, but are not limited to, utility and participant expenditures for the following, as applicable:

(I) Program design, administration, evaluation, advertising, and promotion;

(II) Customer education;

(III) Incentives and discounts;

(IV) Capital costs; and

(V) Operation and maintenance expenses.

(6) "Demand-side management programs" or "DSM programs" means energy efficiency, conservation, load management, and demand response programs or any combination of these programs.

(7) "Education program" means a program, including, but not limited to, an energy audit, that contributes indirectly to a cost-effective demand-side management program. Education programs shall not be subject to independent cost-effectiveness requirements.

(8) "Full service customer" means a residential or commercial customer that purchases natural gas or electric supply from an investor-owned utility.

(9) "Net present value of revenue requirements" means the current worth of the expected stream of future revenue requirements associated with a particular resource portfolio, expressed in dollars in the year the plan is filed. To determine the current worth of the expected stream of future revenue requirements, a discount rate at the utility's weighted average cost of capital shall be applied to the expected stream of future revenue requirements.

(10) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity.

(11) "Renewable energy" means useful electrical, thermal, or mechanical energy converted directly or indirectly from resources of continuous energy flow or that are perpetually replenished and whose utilization is sustainable indefinitely. The term includes, without limitation, sunlight, the wind, geothermal energy, hydrodynamic forces, and organic matter available on a renewable basis such as forest residues, agricultural crops and wastes, wood and wood wastes, animal wastes, livestock operation residue, aquatic plants, and municipal wastes.

Source: L. 13: p. 464, § 2. **L. 15:** p. 393, § 1. **C.L.** § 2912. **CSA:** C. 137, § 2. **CRS 53:** § 115-1-2. **C.R.S. 1963:** § 115-1-2. **L. 69:** p. 927, § 1. **L. 79:** (3) amended, p. 1561, § 28, effective June 20. **L. 80:** (3) amended, p. 742, § 1, effective June 30. **L. 84:** (3) amended, p. 1051, § 2, effective April 12. **L. 85:** (3) amended, p. 1307, § 2, effective May 29. **L. 94:** (6) added, p. 611, § 2, effective April 8. **L. 95:** (3) amended, p. 1209, § 21, effective May 31. **L. 96:** (3) amended, p. 143, § 1, effective April 8. **L. 2004:** (3)(b) amended, p. 905, § 31, effective May 21. **L. 2007:** (5) and (6) amended and (7) to (11) added, p. 982, § 1, effective May 22. **L. 2011:** (3)(a)(I) and (3)(b) amended, (HB 11-1198), ch. 127, p. 418, § 11, effective August 10. **L. 2012:** (1) amended and (1.5) added, (HB 12-1258), ch. 147, p. 529, § 1, effective August 8. **L. 2014:** (3)(b) amended, (SB 14-125), ch. 323, p. 1408, § 1, effective June 5. **L. 2018:** IP and (3)(b) amended, (HB 18-1320), ch. 363, p. 2164, § 1, effective August 8. **L. 2020:** (1.3) added, (HB 20-1225), ch. 94, p. 372, § 2, effective March 27.

Cross references: (1) For further definition of common carriers, see § 40-9-102.

(2) For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 102, Session Laws of Colorado 1994. For the legislative declaration in HB 20-1225, see section 1 of chapter 94, Session Laws of Colorado 2020.

40-1-103. Public utility defined. (1) (a) (I) The term "public utility", when used in articles 1 to 7 of this title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, water corporation, person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest, and each of the preceding is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

(II) As used in this paragraph (a), "water corporation" includes a combined water and sewer corporation, whether as a single entity or as different entities under common ownership.

(b) Nothing in articles 1 to 7 of this title shall be construed to apply to:

(I) Irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(II) Exemptions provided for in the constitution of the state of Colorado relating to municipal utilities;

(III) Hotels, motels, or other lodging-type entities that resell intrastate toll services to their lodging patrons and not to the general public;

(IV) Any consumer who owns pay telephone terminal equipment and who resells local exchange and toll service paid for by coin deposit, credit card, or otherwise by using the tariff services and facilities of regulated telephone utilities;

(V) The provision or resale to the general public of communications services over a cellular radio system. For purposes of this subparagraph (V), a "cellular radio" means a mobile communications system in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within that service area.

(VI) Providers of telephone or telecommunications service from inmates at penal institutions.

(2) (a) Every cooperative electric association, or nonprofit electric corporation or association, and every other supplier of electric energy, whether supplying electric energy for the use of the public or for the use of its own members, is hereby declared to be affected with a public interest and to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

(b) (I) Paragraph (a) of this subsection (2) requiring regulation by the commission shall not be applicable to a cooperative electric association which has voted to exempt itself from regulation pursuant to the provisions of section 40-9.5-103. Regulation of such cooperative electric associations shall be in the manner provided in part 1 of article 9.5 of this title.

(II) Repealed.

(c) The supply of electricity or heat to a consumer of the electricity or heat from solar generating equipment located on the site of the consumer's property, which equipment is owned or operated by an entity other than the consumer, shall not subject the owner or operator of the on-site solar generating equipment to regulation as a public utility by the commission if the solar generating equipment is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the consumer at that site. For purposes of this paragraph (c), the consumer's site shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(3) For the purposes of articles 1 to 7 of this title 40, a motor carrier that provides transportation not subject to regulation pursuant to section 40-10.1-105 or that is subject to part 3, 4, 5, or 7 of article 10.1 of this title 40 is not a public utility.

(4) Repealed.

Source: L. 13: p. 465, § 3. **C.L.** § 2913. **CSA:** C. 137, § 3. **CRS 53:** § 115-1-3. **L. 61:** p. 627, § 1. **C.R.S. 1963:** § 115-1-3. **L. 80:** (3) added, p. 742, § 2, effective June 30. **L. 83:** (1) amended, p. 1547, § 1, effective May 25; (2) amended, p. 1572, § 2, effective July 1. **L. 84:** (1) amended, p. 1032, § 1, effective April 2; (3) amended, p. 1051, § 3, effective April 12. **L. 85:** (2)(b)(I) amended and (2)(b)(II) repealed, pp. 1301, 1303, §§ 1, 6, effective April 5; (1)(b)(IV) and (1)(b)(V) added, pp. 1293, 1294, §§ 1, 1, effective April 30; (3) amended, p. 1308, § 3, effective May 29. **L. 86:** (2)(b)(I) amended, p. 1161, § 2, effective May 27. **L. 90:** (4) added, p. 1811, § 2, effective June 7. **L. 91:** (3) amended, p. 1758, § 1, effective March 12. **L. 95:** (3) amended, p. 1209, § 22, effective May 31. **L. 98:** (1)(b)(III) amended, p. 845, § 4, effective May 26. **L. 2003:** (1)(b)(VI) added, p. 2592, § 3, effective June 5. **L. 2008:** (1)(a) amended, p. 1792, § 4, effective July 1. **L. 2009:** (2)(c) added, (SB 09-051), ch. 157, p. 678, § 10, effective September 1. **L. 2011:** (3) amended, (HB 11-1198), ch. 127, p. 418, § 12, effective August 10. **L. 2012:** (4) repealed, (HB 12-1258), ch. 147, p. 529, § 2, effective August 8. **L. 2018:** (3) amended, (HB 18-1320), ch. 363, p. 2164, § 2, effective August 8.

Cross references: For constitutional provisions relating to exemption of municipally owned utilities, see article XXV of the Colorado Constitution; for the regulation of rates and charges by municipal utilities, see article 3.5 of this title.

40-1-103.3. Alternative fuel vehicles - definition. (1) As used in this section, "property or premises", with respect to an electric, natural gas, or liquefied petroleum gas extension or connection of service, includes alternative fuel vehicle charging and fueling facilities in addition to buildings and other improvements.

(2) For the purposes of articles 1 to 7 of this title 40, persons generating electricity for use in alternative fuel vehicle charging or fueling facilities as authorized by subsection (4) of this section, persons reselling electricity supplied by a public utility, or persons reselling compressed or liquefied natural gas, liquefied petroleum gas, or any component parts or by-products to governmental entities or to the public for use as fuel in alternative fuel vehicles or buying electricity stored in such vehicles for resale are not subject to regulation as a public utility. Electric public utilities may provide the services described in this subsection (2) as unregulated or regulated services. Natural gas public utilities may provide these services as unregulated services.

(3) Owners or operators of property or premises containing an alternative fuel vehicle charging or fueling facility, or the owners or operators of the facility, shall purchase the electricity required for the facility from a public utility with the right to sell electricity to the property, premises, or facility except when the owners or operators of the property, premises, or facility generate electricity on the property or premises for use in alternative fuel vehicles as authorized by subsection (4) of this section.

(4) The owner or operator of a facility that generates electricity for use in alternative fuel vehicle charging or fueling facilities is not subject to regulation as a public utility, if:

(a) The electricity is generated on the property or premises where the charging or fueling facilities are located; and

(b) The electricity is generated from a renewable resource that:

(I) Qualifies as "retail distributed generation" as defined in section 40-2-124 (1)(a)(VIII), if located on the system of an entity subject to the requirements of section 40-2-124. The electric power requirements for the property pursuant to section 40-2-124 (1) include the demand for existing or proposed alternative fuel vehicle charging or fueling facilities in addition to buildings and other improvements.

(II) Complies with section 40-9.5-118, if located on the system of a cooperative electric association; or

(III) Complies with section 40-2-124 (7), if located on the system of a municipally owned utility.

(5) Sale of electricity or natural gas by a public utility to the owner or operator of an alternative fuel vehicle charging or fueling facility is a retail transaction.

(6) An electric public utility may recover the costs of distribution system investments to accommodate alternative fuel vehicle charging, subject to evaluation and cost recovery provisions that are comparable to other regulated investments in the distribution grid; except that distribution system investments that are a component of a transportation electrification plan submitted in accordance with section 40-5-107 are subject to sections 40-3-116 and 40-5-107. The commission shall consider revenues from electric vehicles in the utility's service territory in

evaluating the retail rate impact. The retail rate impact from the development of electric vehicle infrastructure must not exceed one-half of one percent of the total annual revenue requirements of the utility.

Source: L. 2012: Entire section added, (HB 12-1258), ch. 147, p. 530, § 3, effective August 8. **L. 2014:** (4)(b)(I) amended, (HB 14-1363), ch. 302, p. 1275, § 45, effective May 31. **L. 2019:** (2) and (6) amended, (SB 19-077), ch. 383, p. 3434, § 2, effective May 31.

Cross references: For the legislative declaration in SB 19-077, see section 1 of chapter 383, Session Laws of Colorado 2019.

40-1-103.5. Limited exemption of master meter operators - conditions - rules. (1) Upon its own motion or upon application by any person who purchases gas or electric service from a regulated public utility for the purpose of delivery of such service to end users whose aggregate usage is to be measured by a master meter or other composite measurement device, the commission may exempt such person from regulation of rates under the "Public Utilities Law", articles 1 to 7 of this title, as the commission deems appropriate, so long as all of the following conditions are met:

(a) Such person, referred to in this section as a "master meter operator" or "MMO", does not charge the end users, as part of its billing for utility service, for any costs in addition to the actual cost billed to the MMO by the serving utility, including without limitation costs of construction, maintenance, financing, administration, metering, or billing for the utility distribution system owned by the MMO;

(b) If the MMO bills the end users separately for service, the sum of such billings does not exceed the amount billed to the MMO by the serving utility;

(c) If the MMO bills the end users separately for service, the MMO passes on to the end users any refunds, rebates, rate reductions, or similar adjustments it receives from the serving utility;

(d) Any other conditions deemed necessary by the commission.

(2) In passing on refunds, rebates, rate reductions, or similar adjustments to end users, the MMO shall notify its current end users, either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication, of such adjustments and inform the end users that they may claim the adjustments within ninety days after receipt of the notice. The MMO may retain any portion of such adjustments which rightfully belongs to the MMO. Upon the expiration of the ninety-day claims period, the MMO shall identify any such adjustments which are unclaimed and, if the aggregate amount unclaimed exceeds one hundred dollars, the MMO shall contribute such unclaimed amount to the fund established by the commission on low-income energy assistance pursuant to section 40-8.5-104.

(3) The commission shall adopt such rules as it deems necessary to implement this section.

Source: L. 93: Entire section added, p. 291, § 1, effective April 7.

40-1-104. Securities - issuance. (1) (a) The term "securities", when used in articles 1 to 7 of this title, includes stocks, bonds, notes, and other evidences of indebtedness.

(b) The requirements of this section apply only to public utilities providing electricity or gas service.

(2) The power of every gas corporation and of every electrical corporation operating as a public utility as defined in section 40-1-103 that derives more than five percent of its consolidated gross revenues in the state of Colorado as a public utility, or derives a lesser percentage if said revenues are realized by supplying an amount of energy which equals five percent or more of this state's consumption, to issue or assume securities and to create liens on its property situated within this state is a special privilege, hereby subjected to the supervision and control of the commission. Such public utility, when authorized by order of the commission and not otherwise, may issue or assume securities with a maturity date of more than twelve months after the date of issuance for the following purposes: The acquisition of property; the construction, completion, extension, or improvement of its facilities; the improvement or maintenance of its service; the discharge or lawful refunding of its obligations; the reimbursement of moneys actually expended for said purposes from income or from any other moneys in the treasury not secured by or obtained from the issue of securities within five years next prior to the filing of an application with the commission for the required authorization; or any of such purposes or any other lawful purpose authorized by the commission.

(3) Such public utility, by written petition filed with the commission setting forth the pertinent facts involved, shall make application to the commission for an order authorizing the proposed issue or assumption of securities and the application of the proceeds therefrom to the purpose specified. The commission, with or without a hearing and upon such notice as the commission may prescribe, shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission finds that such transactions are inconsistent with the public interest or that the purpose thereof is not permitted or is inconsistent with the provisions of this section.

(4) Such public utility may issue or renew, extend, or assume liability on securities, other than stocks, with a maturity date of not more than twelve months after the date of issuance and secured or unsecured, without application to or order of the commission; but no such securities so issued shall in whole or in part be refunded by any issue of securities having a maturity of more than twelve months except on application to and approval of the commission.

(5) All applications for the issuance or assumption of securities shall be placed at the head of the commission's docket and shall be disposed of promptly, within thirty days after the petition is filed with the commission unless it is necessary for good cause to continue the same for a longer period. Whenever such application is continued beyond thirty days after the time it is filed, the commission shall enter an order making such continuance and stating fully the facts necessitating the continuance.

(6) No provision of this section nor any act or deed performed in connection therewith shall be construed to obligate the state of Colorado to pay or guarantee in any manner whatsoever any security authorized, issued, or assumed under the provisions of this section.

(7) All securities issued or assumed without application to and approval of the commission, except the securities mentioned in subsection (4) of this section, shall be void.

(8) The commission shall provide for a serial number or other device to be placed on the face of any such securities for the proper and easy identification thereof.

(9) Notwithstanding any provision of law to the contrary, the commission may approve a petition from a public utility proposing an investment in any of the following if the commission

determines that such investment is not otherwise inconsistent with the public interest or that such investment is not otherwise inconsistent with this section:

(a) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;

(b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.; or

(c) Repealed.

(d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

Source: L. 13: p. 465, § 3. **C.L.** § 2913. **CSA:** C. 137, § 3. **L. 47:** p. 701, § 1. **CRS 53:** § 115-1-4. **C.R.S. 1963:** § 115-1-4. **L. 81:** (2) amended, p. 1905, § 1, effective March 27; (3) amended, p. 1922, § 1, effective July 1. **L. 98:** (9) added, p. 446, § 7, effective August 5. **L. 2000:** (2), (3), (5), (6), and (7) amended, p. 131, § 1, effective August 2. **L. 2005:** (9)(c) repealed, p. 289, § 40, effective August 8. **L. 2016:** (1) amended, (HB 16-1035), ch. 129, p. 369, § 1, effective April 21.

Cross references: For the legislative declaration contained in the 1998 act amending this section, see section 1 of chapter 154, Session Laws of Colorado 1998.

ARTICLE 1.1

People Service Transportation

40-1.1-101. Legislative declaration. In order to promote improved transportation for the elderly, for persons with disabilities, and for the residents of rural areas and small towns through an expanded and coordinated transportation network, the general assembly hereby declares it to be the policy of the state to legally define and to recognize people service transportation and volunteer transportation as separate but contributing components of the transportation system. Therefore, it is the policy of the state to remove barriers to low-cost people service transportation and volunteer transportation. For this purpose, transportation systems meeting the criteria prescribed in this article will not be classified as public utilities or as any form of carrier subject to regulation by the commission but as people service transportation and volunteer transportation subject to appropriate regulation and administration.

Source: L. 81: Entire article added, p. 1907, § 1, effective July 1. **L. 93:** Entire section amended, p. 1671, § 89, effective July 1.

40-1.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Charitable organization" means any charitable unit primarily supported by private donation and not for profit, including but not limited to churches, civic groups, clubs, scout troops, or the American red cross.

(2) "Nonprofit" as applied to people service transportation or volunteer transportation means motor vehicle transportation provided for purposes other than for pecuniary gain, whether or not compensation is paid in connection with such transportation.

(3) "People service agency" means any people service unit primarily supported by public funds and not for profit, such as clinics, day care centers, job programs, congregate meal centers, senior citizen programs, and other government funded bodies.

(4) "People service organization" means a people service agency or a charitable organization.

(5) "People service transportation" means motor vehicle transportation provided on a nonprofit basis by a people service organization generally for the purpose of transporting clients or program beneficiaries in connection with people service programs sponsored by the organization, or by another people service organization. The motor vehicle may be owned, leased, borrowed, or contracted for use by the people service organization.

(6) "Volunteer transportation" means motor vehicle transportation provided on a nonprofit basis by an individual, company, firm, partnership, agency, or corporation under the direction, sponsorship, or supervision of a people service organization. The volunteers may receive an allowance to defray the expected cost of operating the vehicle but may not receive compensation for their time.

Source: L. 81: Entire article added, p. 1907, § 1, effective July 1.

40-1.1-103. Classification of transportation. People service transportation and volunteer transportation, as defined in section 40-1.1-102, shall be classified as such for purposes of regulation, insurance, and general administration.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1.

40-1.1-104. Inapplicable laws and regulations. (1) People service transportation and volunteer transportation shall not be considered transportation for compensation, commercial transportation, or any form of carrier. Thus, the following laws and regulations do not apply to motor vehicles while being used for the purpose of people service transportation or volunteer transportation:

(a) Articles 1 and 2 to 9 of this title, concerning public utilities and common carriers;

(b) Article 10.1 of this title, concerning motor carriers; and

(c) and (d) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 419, § 13, effective August 10, 2011.)

(e) Articles 20 to 33 of this title, concerning railroads.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1. **L. 2011:** IP(1), (1)(b), (1)(c), and (1)(d) amended, (HB 11-1198), ch. 127, p. 419, § 13, effective August 10.

40-1.1-105. Insurance for volunteers. People service agencies of the state or any political subdivision thereof are authorized to purchase insurance to cover volunteers when they provide volunteer transportation.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1.

40-1.1-106. Safety and insurance regulation. (1) The provisions of parts 2, 3, and 5 of article 4 of title 42, C.R.S., shall be applicable to motor vehicles used in people service transportation or volunteer transportation.

(2) Before a motor vehicle designed to transport more than sixteen passengers and used in people service transportation or volunteer transportation is operated or permitted to operate on any public highway of this state, the owner of such vehicle shall file with the department of revenue a certificate, in a form as approved by said department, evidencing a motor vehicle liability insurance policy issued by an insurance carrier or insurer authorized to do business in the state of Colorado or a surety bond issued by a company authorized to do a surety business in the state of Colorado with a minimum sum of fifty thousand dollars for damages to property of others, a minimum sum of one hundred thousand dollars for damages for or on account of bodily injury or death of one person as a result of any one accident, and, subject to such limit as to one person, a minimum sum of three hundred thousand dollars for or on account of bodily injury to or death of all persons as a result of any one accident.

(3) Any state agency which provides public funds to a people service agency may establish insurance and safety requirements which are in addition to and consistent with any other applicable insurance and safety requirements and which shall apply to people service transportation or volunteer transportation which it funds.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1. **L. 94:** (1) amended, p. 2570, § 92, effective January 1, 1995.

ARTICLE 2

Public Utilities Commission -
Renewable Energy Standard

PART 1

GENERAL AND ADMINISTRATIVE PROVISIONS

40-2-101. Creation - appointment - term - subject to termination - repeal of part. (1) A public utilities commission is hereby created, which shall be known as the public utilities commission of the state of Colorado, to consist of three members who shall be appointed by the governor with the consent of the senate. Persons holding office on July 1, 1993, shall continue to serve in such office, but the term of one of these persons shall expire on the Monday preceding the second Tuesday of January, 1995, of another, the Monday preceding the second Tuesday of January, 1996, and of the third, the Monday preceding the second Tuesday of January, 1997, all as the governor shall designate; except that such designation shall not result in the extension of the term of any member to more than four years' duration. Thereafter, appointments shall be made for terms of four years.

(2) No more than two members of the public utilities commission shall be affiliated with the same political party, and any appointment to fill a vacancy shall be for the unexpired term. Each commissioner shall be a qualified elector of this state. The governor shall designate one member of the commission as chair of the commission. The commissioners shall devote their

entire time to the duties of their office to the exclusion of any other employment and shall receive such compensation as is designated by law. A majority of the commission shall constitute a quorum for the transaction of its business.

(3) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the public utilities commission created by this section.

(b) (I) This part 1 is repealed, effective September 1, 2026.

(II) Before the repeal, the public utilities commission is scheduled for review in accordance with section 24-34-104.

Source: L. 13: p. 465, § 4. **C.L.** § 2915. **CSA:** C. 137, § 5. **CRS 53:** § 115-2-1. **C.R.S. 1963:** § 115-2-1. **L. 69:** p. 928, § 2. **L. 76:** (3) added, p. 627, § 40, effective July 1. **L. 87:** (1) amended, p. 914, § 31, effective June 15. **L. 91:** (3) amended, p. 691, § 71, effective April 20. **L. 93:** (1) and (3)(b) amended, p. 2057, § 4, effective July 1. **L. 98:** (3)(b) amended, p. 404, § 1, effective July 1. **L. 2003:** (3)(b) amended, p. 731, § 3, effective March 20; (2) amended, p. 1698, § 1, effective May 14. **L. 2008:** (3)(b)(I) amended, p. 1791, § 1, effective July 1. **L. 2018:** (3)(b)(I) amended, (HB 18-1270), ch. 360, p. 2153, § 3, effective August 8. **L. 2019:** (3)(b) amended, (SB 19-236), ch. 359, p. 3290, § 1, effective May 30.

Cross references: (1) For salaries of commissioners, see § 24-9-102; for the powers and duties of the public utilities commission in regard to motor vehicle carriers, see article 10.1 of this title.

(2) For the short title ("Energy Storage Procurement Act") in HB 18-1270, see section 1 of chapter 360, Session Laws of Colorado 2018.

40-2-102. Oath - qualifications. Each commissioner, before entering upon the duties of his office, shall take the constitutional oath of office. No person in the employ of or holding any official relation to any corporation or person, which said corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission; but if any such person becomes the owner of such stocks or bonds or becomes pecuniarily interested in such corporation otherwise than voluntarily, he shall divest himself of such ownership or interest within six months; failing to do so, his office or employment shall become vacant.

Source: L. 13: p. 466, § 5. **C.L.** § 2916. **CSA:** C. 137, § 6. **CRS 53:** § 115-2-2. **C.R.S. 1963:** § 115-2-2. **L. 69:** p. 928, § 3.

Cross references: For the oath of office, see § 8 of article XII of the Colorado Constitution.

40-2-103. Director - duties. (1) The executive director of the department of regulatory agencies, pursuant to section 13 of article XII of the state constitution, and with the approval of the commission, shall appoint a director of the commission. The director shall manage the operations of the agency in order to carry out the public utilities law, to carry out and implement

policies, procedures, and decisions made by the commission, and to meet the requirements of the commission concerning any matters within the authority of an agency transferred by a **type 1** transfer, as defined in section 24-1-105, C.R.S., and which requirements are under the jurisdiction of the commission. The director has all the powers and responsibilities of the division director for this purpose, including the power to issue all necessary process, writs, warrants, and notices. The director has the requisite power to serve warrants and other process in any county or city and county of this state and to delegate such actions to duly authorized employees or agents of the agency as appropriate.

(2) Repealed.

Source: L. 13: p. 466, § 6. **C.L.** § 2917. **CSA:** C. 137, § 7. **CRS 53:** § 115-2-3. **C.R.S. 1963:** § 115-2-3. **L. 69:** p. 928, § 4. **L. 89:** Entire section amended, p. 1524, § 2, effective April 12. **L. 93:** Entire section amended, p. 2057, § 5, effective July 1. **L. 2013:** Entire section amended, (HB 13-1027), ch. 83, p. 267, § 1, effective August 7. **L. 2017:** (2) repealed, (SB 17-044), ch. 4, p. 7, § 5, effective August 9.

40-2-104. Assistants and employees. (1) The director of the commission may appoint such experts, engineers, statisticians, accountants, investigative personnel, clerks, and other employees as are necessary to carry out the provisions of this title or to perform the duties and exercise the powers conferred by law upon the commission.

(2) (Deleted by amendment, L. 93, p. 2058, § 6, effective July 1, 1993.)

(3) The director of the commission shall hire and designate employees of the commission as administrative law judges who shall have the power to administer oaths, examine witnesses, receive evidence, and conduct hearings, investigations, and other proceedings on behalf of the commission.

Source: L. 13: p. 466, § 7. **C.L.** § 2918. **CSA:** C. 137, § 8. **CRS 53:** § 115-2-4. **C.R.S. 1963:** § 115-2-4. **L. 69:** p. 928, § 5. **L. 89:** (1) and (3) amended, p. 1524, § 3, effective April 12. **L. 93:** Entire section amended, p. 2058, § 6, effective July 1.

40-2-105. Office - sessions - seal - supplies. (1) The office of the commission shall be in the city and county of Denver. The office shall be open every day, legal holidays, Saturdays, and Sundays excepted. Hearings under this title may be held in such places within this state as shall be determined by the commission. It is the duty of the office of state planning and budgeting to provide suitable quarters for the commission and its employees.

(2) The commission shall have a seal bearing the following inscription: "The public utilities commission of the state of Colorado". The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

(3) Necessary expenses of the commission shall be paid from appropriations made by the general assembly to the commission.

Source: L. 13: p. 467, § 8. **C.L.** § 2919. **CSA:** C. 137, § 9. **CRS 53:** § 115-2-5. **C.R.S. 1963:** § 115-2-5. **L. 69:** p. 929, § 6. **L. 75:** (1) amended, p. 821, § 18, effective July 18. **L. 89:** (1) amended, p. 1525, § 4, effective April 12.

Cross references: For legal holidays, see article 11 of title 24; for payment of expenses, see § 40-2-107.

40-2-106. Reports and decisions of the commission. Whenever an investigation is made, a hearing is held, or a decision is entered by the commission, it is the duty of the commission to make a report or decision in writing in respect thereto which shall state its findings of fact and conclusions thereon, together with its decision or requirement in the premises. All such reports and decisions shall be entered of record and a copy thereof shall be furnished to all parties to the proceedings and to such other persons as the commission may deem advisable.

Source: L. 13: p. 467, § 9. **C.L.** § 2920. **CSA:** C. 137, § 10. **L. 45:** p. 525, § 1. **CRS 53:** § 115-2-6. **C.R.S. 1963:** § 115-2-6. **L. 69:** p. 929, § 7.

40-2-107. Compensation and expenses of employees. (1) All employees of the commission shall receive such compensation as may be fixed pursuant to law.

(2) Repealed.

(3) All expenses incurred by the commission pursuant to the provisions of this title, including the actual and necessary traveling expenses and other expenses and disbursements of the commissioners, their officers, and employees shall be paid by the controller from the funds appropriated for the use of the commission upon vouchers of the commission therefor.

Source: L. 13: p. 468, § 10. **C.L.** § 2921. **CSA:** C. 137, § 11. **CRS 53:** § 115-2-7. **C.R.S. 1963:** § 115-2-7. **L. 69:** p. 930, § 8. **L. 89:** (3) amended, p. 1525, § 5, effective April 12. **L. 93:** (2) repealed, p. 2058, § 7, effective July 1.

Cross references: For appropriations, see part 1 of article 75 of title 24.

40-2-108. Rules. (1) The commission shall promulgate such rules as are necessary for the proper administration and enforcement of this title and shall furnish, without charge, copies of the appropriate rules to each public utility under its jurisdiction and, upon request, to any public officer, agency, political subdivision, association of officers, agencies, or political subdivisions and to any representative of twenty-five or more consumers. The commission shall be governed by the provisions of article 4 of title 24, C.R.S., for the promulgation and adoption of rules; except that, notwithstanding any provision of the said article 4 of title 24, C.R.S., to the contrary, the commission shall issue a decision whenever it adopts rules in accordance with this section.

(2) Notwithstanding section 24-4-103 (6), C.R.S., any temporary or emergency rule adopted by the commission shall be effective until a permanent rule that replaces the temporary or emergency rule is effective but not for more than two hundred ten days after the date of adoption.

Source: L. 13: p. 468, § 12. **C.L.** § 2923. **CSA:** C. 137, § 13. **CRS 53:** § 115-2-9. **C.R.S. 1963:** § 115-2-9. **L. 64:** p. 166, § 124. **L. 69:** p. 930, § 9. **L. 89:** Entire section amended, p. 1525,

§ 6, effective April 12. **L. 93:** Entire section amended, p. 2058, § 8, effective July 1. **L. 95:** Entire section amended, p. 232, § 1, effective April 17.

40-2-109. Report to executive director of the department of revenue.

(1) Repealed.

(2) (a) On March 1 of each year, the public utilities commission shall furnish the executive director of the department of revenue with a list of those public utilities subject to its jurisdiction, supervision, and regulation on January 1 of each year. The provisions of this subsection (2) shall not apply to:

(I) Motor carriers subject to the passenger-mile tax imposed by sections 42-3-304 and 42-3-306, so long as the cost of regulation of such motor carriers is defrayed from the proceeds of such passenger-mile tax; and

(II) Rail fixed guideway systems that are regulated by the public utilities commission pursuant to part 1 of article 18 of this title.

(b) The director of the public utilities commission shall provide written notice to the revisor of statutes once the federal grant moneys made available under the "Moving Ahead for Progress in the 21st Century Act", 49 U.S.C. sec. 5329, have been awarded to the state. This subsection (2) takes effect upon the receipt by the revisor of statutes of such written notice.

Source: L. 55: p. 695, § 1. **CRS 53:** § 115-2-10. **C.R.S. 1963:** § 115-2-10. **L. 89:** Entire section amended, p. 1597, § 14, effective January 1, 1990. **L. 94:** Entire section amended, p. 2570, § 93, effective January 1, 1995. **L. 2005:** Entire section amended, p. 1184, § 37, effective August 8. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 419, § 14, effective August 10. **L. 2013:** Entire section amended, (HB 13-1103), ch. 96, p. 309, § 1, effective August 7. **L. 2018:** (2)(a)(I) amended, (HB 18-1375), ch. 274, p. 1723, § 85, effective May 29.

Editor's note: (1) The revisor of statutes received the notice referred to in subsection (1)(b) resulting in the repeal of subsection (1), effective May 1, 2017. (See L. 2013, p. 309.)

(2) The revisor of statutes received the notice referred to in subsection (2)(b) resulting in subsection (2) becoming effective May 1, 2017.

40-2-109.5. Incentives for distributed generation - definition. (1) The commission shall develop a policy to establish incentives for consumers who produce distributed generation, including, but not limited to, small wind turbines, thermal biomass, electric biomass, and solar thermal energy. The commission shall consider whether a credit program similar to the renewable energy standard set forth in section 40-2-124 would work for consumers who produce distributed generation. The commission shall present the policy and findings regarding a credit program to the house of representatives transportation and energy committee and the senate agriculture, natural resources, and energy committee, or their successor committees.

(2) As used in this section, "distributed generation" means a system by which a consumer generates heat or electricity using renewable energy resources for his or her own needs and may also send surplus electrical power back into the power grid.

(3) Effective January 1, 2012, all photovoltaic installations funded wholly or partially through financial incentives under this section shall be subject to the requirements set forth in section 40-2-128.

Source: L. 2007: Entire section added, p. 1761, § 7, effective June 1. **L. 2010:** (3) added, (HB 10-1001), ch. 37, p. 154, § 7, effective August 11.

40-2-110. Appropriation and fees. (1) At each regular session, the general assembly shall determine the amounts to be expended by the public utilities commission for its administrative expenses in supervising and regulating the public utilities which are under its jurisdiction, a list of which the commission is required by section 40-2-109 to furnish to the department of revenue, and shall appropriate to the public utilities commission from the public utilities commission fixed utility fund, established in section 40-2-114, the full amount so determined, and such amount shall be defrayed out of the fees to be paid by such public utilities, as provided in section 40-2-112.

(2) (a) (I) At each regular session, the general assembly shall determine the amounts to be expended by the public utilities commission for its administrative expenses in the supervision and regulation of motor carriers as provided by law and shall appropriate such amounts from the public utilities commission motor carrier fund established in section 40-2-110.5 as are necessary to be expended by the commission to accomplish said purposes.

(II) Repealed.

(b) Repealed.

Source: L. 55: p. 695, § 1. **CRS 53:** § 115-2-11. **L. 57:** p. 599, § 1. **C.R.S. 1963:** § 115-2-11. **L. 69:** p. 930, § 10. **L. 82:** (2) amended, p. 584, § 1, effective July 1. **L. 85:** (2)(a)(II) and (2)(b)(II) amended, p. 1295, § 1, effective July 1. **L. 88:** (2)(a)(I) amended and (2)(a)(II) and (2)(b) repealed, pp. 1351, 1352, §§ 1, 3, effective July 1.

40-2-110.5. Annual fees - public utilities commission motor carrier fund - created.

(1) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 419, § 15, effective August 10, 2011.)

(2) (a) (Deleted by amendment, L. 2003, p. 2380, § 2, effective August 6, 2003.)

(b) to (e) (Deleted by amendment, L. 93, p. 2059, § 9, effective July 1, 1993.)

(2.5) (Deleted by amendment, L. 2005, p. 31, § 1, effective August 8, 2005.)

(3) Repealed.

(4) and (5) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 419, § 15, effective August 10, 2011.)

(6) The public utilities commission motor carrier fund is hereby created in the state treasurer's office. The moneys in the fund shall be subject to annual appropriation by the general assembly for the purposes specified in section 40-2-110 (2)(a)(I). Any unexpended balance remaining in said fund at the end of any fiscal year shall remain in the fund.

(6.5) and (7) Repealed.

(8) Notwithstanding the amount specified for any fee in section 40-10.1-111, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(9) (a) For the 2013-14 fiscal year and for each fiscal year thereafter, if the amount of uncommitted reserves in the motor carrier fund at the conclusion of any given fiscal year exceeds ten percent of the fund's expenditures during that fiscal year, the amount of the excess that is attributable to revenues received from any motor carrier, motor private carrier, broker, freight forwarder, leasing company, or any other person required to register with the United States department of transportation under the unified carrier registration system as authorized by federal law and as provided for in section 40-10.5-102 shall be transferred to the motor carrier safety fund created in section 42-4-235 (6), C.R.S.

(b) The distribution required by paragraph (a) of this subsection (9) is in lieu of, and shall supersede, any provision to the contrary in section 24-75-402, C.R.S.

Source: L. 82: Entire section added, p. 585, § 2, effective July 1. **L. 83:** (1) and (2) amended and (2.5) added, p. 1548, § 1, effective June 1; (2.5) amended, p. 2056, § 38, effective October 14. **L. 84:** (2) amended, p. 1034, § 1, effective April 2; (1) and (2) amended, p. 1051, § 4, effective April 12. **L. 85:** (1) amended, p. 1308, § 4, effective May 29; (7) amended, p. 1295, § 2, effective July 1. **L. 88:** (3) and (6) amended and (7) repealed, pp. 1351, 1352, §§ 2, 3, effective July 1; (3) repealed, p. 1351, § 2, effective July 1, 1989. **L. 93:** (2) and (4) amended, p. 2059, § 9, effective July 1. **L. 95:** (1) amended, p. 1211, § 27, effective May 31. **L. 98:** (8) added, p. 1348, § 86, effective June 1. **L. 2003:** (6.5) added, p. 458, § 20, effective March 5; (1) and (2)(a) amended, p. 2380, § 2, effective August 6. **L. 2005:** (1) and (2.5) amended, p. 31, § 1, effective August 8. **L. 2006:** (6.5) repealed and (9) added, pp. 1102, 1094, §§ 24, 4, effective August 7. **L. 2008:** (1) amended, p. 1792, § 5, effective July 1. **L. 2009:** (1) and (4) amended, (SB 09-292), ch. 369, p. 1981, § 119, effective August 5. **L. 2011:** (1), (4), (5), and (8) amended, (HB 11-1198), ch. 127, p. 419, § 15, effective August 10. **L. 2014:** (9)(a) amended, (HB 14-1081), ch. 8, p. 90, § 1, effective February 27.

Editor's note: Amendments to subsection (2) by Senate Bill 84-85 and House Bill 84-1252 were harmonized.

40-2-111. Report of utilities to department of revenue. Each public utility required to pay such fees shall, on or before May 15 of each year, file a return with the department of revenue on such forms as shall be prescribed by the executive director of the department of revenue and the public utilities commission setting forth the gross operating revenues of such public utility from intrastate utility business only transacted in the state of Colorado during the preceding calendar year. Such return shall be executed and verified by two of the executive officers of the utility making the return and shall contain or be verified by a written declaration that it is made under the penalties of perjury in the second degree, and any officer who knowingly and willfully makes and signs a false return is guilty of perjury in the second degree.

Source: L. 55: p. 166, § 1. **CRS 53:** § 115-2-12. **C.R.S. 1963:** § 115-2-12. **L. 69:** p. 964, § 75. **L. 72:** p. 565, § 39.

Cross references: For perjury in the second degree, see § 18-8-503.

40-2-112. Computation of fees. (1) On or before June 1 of each year, the executive director of the department of revenue shall ascertain the aggregate amount of gross operating revenues of all public utilities filing returns as provided in section 40-2-111. The executive director shall then compute the percentage which the full amount determined by the general assembly for administrative expenses of the public utilities commission for the supervision and regulation of such public utilities is of the aggregate amount of gross operating revenues of such public utilities derived from intrastate utility business transacted during the preceding calendar year, and the percentage so computed shall be the basis upon which fees for the ensuing year shall be fixed.

(2) In recognition of the fact that nonprofit generation and transmission electric corporations or associations may be subject to less regulation and to no rate regulation by the commission, the executive director of the department of revenue shall disregard any revenues reported by such entities in making the computations required under subsection (1) of this section. In addition, the executive director of the department of revenue shall, in consultation with the director of the commission, enter into an agreement with each nonprofit generation and transmission electric corporation or association whereby such entity agrees to pay an amount equal to the administrative expenses reasonably anticipated to be incurred by the commission for the regulation of such entity. Said agreement shall be made by May 1 of the year in which it is to become effective and shall remain effective for not less than two and not more than five years. In the event that the anticipated amount set forth in the agreement proves to be substantially higher or lower than the commission's actual expenses incurred, the agreement for the next following year or years shall be adjusted so as to take such fact into account. If no such agreement is made as provided in this subsection (2), the commission, on its own motion or upon application by the executive director of the department of revenue or by such entity, shall set the matter for hearing and determine the amount to be paid by the entity. Amounts paid under agreements as contemplated by this subsection (2) or by order of the commission shall be used to reduce amounts paid by other utilities under subsection (1) of this section.

Source: L. 55: p. 696, § 1. **CRS 53:** § 115-2-13. **L. 57:** p. 599, § 1. **C.R.S. 1963:** § 115-2-13. **L. 93:** Entire section amended, p. 2060, § 10, effective July 1.

40-2-113. Collection of fees - limitation. On or before June 15 of each year, the department of revenue shall notify each public utility subject to this article of the amount of its fee for the ensuing fiscal year beginning July 1, computed by multiplying its gross intrastate utility operating revenues for the preceding calendar year, as set forth in its return filed for that purpose, by the percentage determined in accordance with section 40-2-112; but the department of revenue shall not require a public utility that is a telephone corporation to pay a fee in excess of one-fifth of one percent of its gross intrastate utility operating revenues for the preceding calendar year and shall not require any other public utility to pay a fee in excess of one-quarter of one percent of its gross intrastate utility operating revenues for the preceding calendar year. Each public utility shall pay the fee assessed against it to the department of revenue in equal quarterly installments on or before July 15, October 15, January 15, and April 15 in each fiscal year. If a public utility does not make a payment by one of the quarterly deadlines, the department of revenue shall charge the public utility a penalty of ten percent of the installment due, together with interest at the rate of one percent per month on the amount of the unpaid

installment until the full amount of the installment, penalty, and interest has been paid. Upon failure, refusal, or neglect of any public utility to pay the fee, or any penalty or interest, the attorney general shall bring suit in the name of the state to collect the amount due.

Source: L. 55: p. 696, § 1. **CRS 53:** § 115-2-14. **C.R.S. 1963:** § 115-2-14. **L. 2015:** Entire section amended, (HB 15-1372), ch. 247, p. 906, § 1, effective May 29.

40-2-114. Disposition of fees collected - telecommunications utility fund - fixed utility fund. (1) (a) Three percent of the fees collected under section 40-2-113 by the department of revenue shall be remitted to the state treasurer and credited by the state treasurer as follows:

(I) Notwithstanding any other provision of this paragraph (a), for the 2016-17 fiscal year and for any fiscal year thereafter in which a grant match is required for the receipt of federal money under the federal "Moving Ahead for Progress in the 21st Century Act", Pub.L. 112-141, 126 Stat. 405, for rail fixed guideway system safety oversight responsibilities under article 18 of this title, the lesser of all of the fees or up to one hundred fifty thousand dollars of the fees, or as much thereof as the commission deems necessary, to the public utilities commission fixed utility fund created in paragraph (b) of this subsection (1);

(II) For the 2017-18 fiscal year and for each fiscal year thereafter, the lesser of all of the fees remaining after fees are credited as required by subparagraph (I) of this paragraph (a) or an amount of the fees equal to two hundred forty thousand dollars plus a cumulative inflation adjustment of two percent for each fiscal year beginning with the 2017-18 fiscal year to the highway-rail crossing signalization fund created in section 40-29-116 (1); and

(III) Any remaining fees to the general fund.

(b) For the remaining ninety-seven percent of the fees collected, the state treasurer shall credit:

(I) Fees paid by public utilities that are telephone corporations to the telecommunications utility fund, which fund is hereby created; and

(II) Fees paid by other public utilities to the public utilities commission fixed utility fund, which fund is hereby created.

(2) Moneys in the funds created in subsection (1) of this section shall be expended only to defray the full amount determined by the general assembly for the administrative expenses of the commission for the supervision and regulation of the public utilities paying the fees and for the financing of the office of consumer counsel created in article 6.5 of this title. The state treasurer shall retain any unexpended balance remaining in either fund at the end of any fiscal year to defray the administrative expenses of the commission during subsequent fiscal years, and the executive director of the department of revenue shall take any such unexpended balance into account when computing the percentage upon which fees for the ensuing fiscal year will be based.

Source: L. 55: p. 697, § 1. **CRS 53:** § 115-2-15. **L. 57:** p. 600, § 1. **C.R.S. 1963:** § 115-2-15. **L. 64:** p. 654, § 10. **L. 69:** p. 930, § 11. **L. 84:** Entire section amended, p. 1047, § 4, effective July 1. **L. 2015:** Entire section amended, (HB 15-1372), ch. 247, p. 907, § 2, effective May 29. **L. 2016:** (1) amended, (HB 16-1186), ch. 212, p. 820, § 1, effective June 6; (1)(a) amended, (SB 16-087), ch. 217, p. 831, § 1, effective June 6.

40-2-115. Cooperation with other states and with the United States. (1) The commission is authorized to confer with or hold joint hearings with the authorities of any state or any agency of the United States in connection with any matter arising in proceedings under this title, under the laws of any state, or under the laws of the United States; to avail itself of the cooperation, services, records, and facilities of authorities of this state, any other state, or any agency of the United States as may be practicable in the enforcement or administration of the provisions of this title; and to enter into cooperative agreements with the various states and with any agency of the United States to enforce the economic and safety laws and rules of this state and of the United States. The commission is authorized to provide for the exchange of information concerning the enforcement of the economic and safety laws and rules of this state, any other state, and the United States relating to public utilities or to safety of transportation of gas by any person including a municipality; and, in particular, the commission may enforce the rules of the United States department of transportation concerning pipeline safety drug testing promulgated under the federal "Natural Gas Pipeline Safety Act", 49 U.S.C. sec. 60101 et seq., and may adopt such rules as are necessary and proper to comply with federal requirements under said act.

(1.5) The commission is authorized to adopt such rules as may be necessary to enforce and administer, in cooperation with the United States department of transportation, the provisions of the "Natural Gas Pipeline Safety Act", 49 U.S.C. sec. 60101 et seq., for the purpose of gas pipeline safety. Such rules shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, as defined in 49 CFR 191.3, and all operators of pipelines transporting gas in intrastate commerce.

(2) As used in this section:

(a) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline or its storage as defined in 49 CFR 192.3.

(b) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.

(c) "Manufacturing goods" does not include farming or activities associated with the production of oil or natural gas.

Source: L. 55: p. 697, § 1. **CRS 53:** § 115-2-16. **L. 57:** p. 600, § 1. **C.R.S. 1963:** § 115-2-16. **L. 69:** p. 931, § 12. **L. 71:** p. 1098, § 1. **L. 89:** (1) amended, p. 1526, § 7, effective April 12. **L. 93:** Entire section amended, p. 2061, § 11, effective July 1. **L. 2000:** (1) and (1.5) amended, p. 1868, § 95, effective August 2. **L. 2003:** (1), (1.5), and (2)(a) amended, p. 1699, § 5, effective May 14.

40-2-116. Motor carriers - motor vehicle carriers exempt from regulation as public utilities - safety regulations. (Repealed)

Source: L. 69: p. 931, § 13. **C.R.S. 1963:** § 115-2-17. **L. 78:** Entire section amended, p. 518, § 1, effective July 1. **L. 85:** Entire section amended, p. 1308, § 5, effective May 29. **L. 96:** Entire section amended, p. 1546, § 2, effective July 1. **L. 2003:** (1) amended, p. 2381, § 5, effective August 6. **L. 2010:** (1) amended, (HB 10-1167), ch. 125, p. 415, § 1, effective April 15. **L. 2011:** Entire section repealed, (HB 11-1198), ch. 127, p. 416, § 3, effective August 10.

40-2-117. Legislative declaration - commission to conduct review of rate structures. (Repealed)

Source: L. 77: Entire section added, p. 1856, § 1, effective July 1.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 1979. (See L. 77, p. 1856.)

40-2-118. Comprehensive energy report. (Repealed)

Source: L. 79: Entire section added, p. 1510, § 1, effective June 22.

Editor's note: Subsection (6) provided for the repeal of this section, effective March 1, 1984. (See L. 79, p. 1510.)

40-2-119. Exemption of rail carrier transportation. (1) The commission shall by rule or regulation establish standards and procedures to be used in determining whether certain transportation provided by a rail carrier in this state should be exempted, in whole or in part, from one or more provisions of this title. Such rules and regulations shall provide for such exemption when the commission finds that:

(a) Jurisdiction, regulation, and control by the commission are not necessary to carry out the transportation policy of this title; and

(b) Either the transaction or service is of limited scope or the application of a provision of this title is not needed to protect shippers from the abuse of market power.

Source: L. 84: Entire section added, p. 1036, § 1, effective July 1.

40-2-120. Rail transportation policy. In regulating rail carriers, the state of Colorado hereby adopts the rail transportation policy of 49 U.S.C. sec. 10101; except that the references therein to the United States government and its agencies shall refer to the state of Colorado and its agencies.

Source: L. 84: Entire section added, p. 1036, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1281, § 59, effective June 5.

40-2-121. Transportation of natural gas report - legislative declaration. (Repealed)

Source: L. 96: Entire section added, p. 985, § 1, effective May 23.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 1998. (See L. 96, p. 985.)

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 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 buy-down 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, buy-down, 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) Repealed.

(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) of 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) Repealed.

(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.

(15) The commission shall undertake an investigation into natural gas public utilities' supply acquisition practices. The investigation shall examine, among other items, how public utilities currently acquire supply and their ability to manage the risk of price spikes in natural gas markets. Based on the investigation's findings, the commission may provide recommendations as

to how natural gas portfolios might be structured in the future so as to provide greater long-term natural gas price stability for consumers. Information from the investigation shall be made available to interested parties at the commission's office. Such portfolio shall include a comparison of costs of natural gas contracts to the cost of coal syngas contracts that may become available in the future.

Source: L. 99: Entire section added, p. 954, § 1, effective August 4. **L. 2001:** (15) added, p. 1523, § 2, effective August 8. **L. 2002:** (9) and (12) repealed, p. 260, § 1, effective August 7. **L. 2004:** (15) amended, p. 585, § 2, effective August 4.

40-2-123. New energy technologies - consideration by commission - incentives - definitions - legislative declaration. (1) (a) The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and 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, insulation from fuel price increases, and environmental protection, including risk mitigation in areas of high wildfire risk as designated by the state forest service. The commission shall consider utility investments in energy efficiency to be an acceptable use of ratepayer moneys.

(b) The commission may give consideration to the likelihood of new environmental regulation and the risk of higher future costs associated with the emission of greenhouse gases such as carbon dioxide when it considers utility proposals to acquire resources. Where utilities eliminate or reduce carbon dioxide emissions through the use of capture and sequestration, the commission may consider the benefits of using carbon dioxide for enhanced oil recovery or other uses.

(c) The commission shall give the fullest possible consideration to proposals under the reenergize Colorado program, created in section 24-33-115, C.R.S., with particular attention to those projects offering the prospect of job creation and local economic growth.

(2) Repealed.

(3) (a) (I) Energy is critically important to Colorado's welfare and development and its use has a profound impact on the economy and environment. In order to diversify Colorado's energy resources, attract new businesses and jobs, promote development of rural economies, minimize water use for electric generation, reduce the impact of volatile fuel prices, and improve the natural environment of the state, the general assembly finds it in the best interests of the citizens of Colorado to develop and utilize solar energy resources in increasing amounts.

(II) For purposes of this subsection (3), "utility-scale" means projects with nameplate ratings in excess of two megawatts.

(b) The commission may consider whether acquisition of utility-scale solar resources is in the public interest, taking into account the associated costs and benefits, and, if so, the appropriate amount of utility-scale solar resources that should be acquired. In making this determination, the commission may consider the following potential attributes of utility-scale solar electric generation:

(I) Whether the proposed generation could provide energy storage to match the times during which utility generation is generally higher cost;

(II) Whether the proposed generation, due to modularity, scalability, and rapid deployment, could result in reduction of performance and financial risk for the utility;

(III) Whether utility-scale solar electric generation could reduce the consumption of water for electric generation;

(IV) Whether future costs can be stabilized through mitigation of the impact of unpredictable fossil fuel prices; and

(V) Whether carbon-free generation reduces long-term costs and risks related to potential carbon regulation or taxation.

(3.2) In its consideration of generation acquisitions for electric utilities, the commission may give the fullest possible consideration, at a utility's request, to the cost-effective implementation of new energy technologies for the generation of electricity from:

(a) Geothermal energy;

(b) The combustion of biomass, biosolids derived from the treatment of wastewater, and municipal solid waste. For purposes of this paragraph (b), "biomass" has the meaning established in section 40-2-124 (1)(a), as clarified by the commission.

(c) Hydroelectricity and pumped hydroelectricity, taking into account the associated costs and benefits. For purposes of this paragraph (c):

(I) "Hydroelectricity" means the generation and delivery to the interconnection meter of any source of electrical or mechanical energy by harnessing the kinetic energy of water that is:

(A) A new facility that is an addition to water infrastructure such as a reservoir, ditch, or pipeline that existed before January 1, 2011, and does not result in any change in the quantity or timing of diversions or releases for purposes of peak power generation; or

(B) A new facility that is placed into production as part of new water infrastructure such as a reservoir, ditch, or pipeline constructed on or after January 1, 2011, and operated for primary beneficial uses of water other than solely for production of electricity.

(II) "Pumped hydroelectricity" means electricity that is generated during periods of high electrical demand from water that has been pumped during periods of low electrical demand from a lower-elevation reservoir to a higher-elevation reservoir taking into account the potential benefits or impacts of the proposed facility on fishery health.

(3.3) In its consideration of generation acquisitions for electric utilities, the commission may give the fullest possible consideration to the cost-effective implementation of new energy technologies for the generation of electricity from methane produced biogenically in geologic strata as a result of human intervention.

(3.5) Repealed.

(4) This section does not expand or contract the commission's jurisdiction over cooperative electric associations under this title.

Source: L. 2001: Entire section added, p. 1524, § 4, effective August 8. **L. 2006:** Entire section amended, p. 1413, § 2, effective June 1. **L. 2008:** (2)(j) amended, p. 75, § 16, effective March 18; (1) amended and (3) and (4) added, p. 1686, § 1, effective June 2. **L. 2009:** (3.5) added, (SB 09-297), ch. 285, p. 1297, § 3, effective May 20. **L. 2010:** (1)(c) added, (HB 10-1349), ch. 387, p. 1816, § 4, effective June 8; (3.2) added, (SB 10-174), ch. 189, p. 815, § 11, effective August 11; (3.2) added, (SB 10-177), ch. 392, p. 1864, § 6, effective August 11; (3.3) added, ch. 389, p. 1825, § 1, effective August 11. **L. 2011:** (3.2)(c) added, (HB 11-1083), ch. 68, p. 179, § 1, effective August 10. **L. 2012:** (2)(j) amended, (HB 12-1315), ch. 224, p. 980, § 48,

effective July 1. **L. 2013:** (1)(a) amended, (SB 13-273), ch. 406, p. 2375, § 6, effective June 5. **L. 2017:** (2)(k) repealed, (SB 17-294), ch. 264, p. 1415, § 110, effective May 25. **L. 2019:** (2) repealed, (SB 19-236), ch. 359, p. 3291, § 3, effective May 30.

Editor's note: (1) Amendments to subsection (3.2) by Senate Bill 10-174 and Senate Bill 10-177 were harmonized.

(2) Subsection (3.5)(e) provided for the repeal of subsection (3.5), effective July 1, 2013. (See L. 2009, p. 1297.)

Cross references: For the legislative declaration contained in the 2006 act amending this section, see section 1 of chapter 300, Session Laws of Colorado 2006.

40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration. (1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, is a qualifying retail utility. 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, is subject to the rules established under this article 2 by the commission. No additional regulatory authority is provided to the commission other than that specifically contained in this section. In accordance with article 4 of title 24, the commission shall revise or clarify existing rules to establish the following:

(a) Definitions of eligible energy resources that can be used to meet the standards. "Eligible energy resources" means recycled energy and renewable energy resources. In addition, resources using coal mine methane and synthetic gas produced by pyrolysis of municipal solid waste are eligible energy resources if the commission determines that the electricity generated by those resources is greenhouse gas neutral. The commission shall determine, following an evidentiary hearing, the extent 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 an eligible energy resource is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible energy resources. For purposes of this section:

(I) "Biomass" means:

(A) Nontoxic plant matter consisting of agricultural crops or their by-products, urban wood waste, mill residue, slash, or brush;

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

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

(II) "Coal mine methane" means methane captured from active and inactive coal mines where the methane is escaping to the atmosphere. In the case of methane escaping from active mines, only methane vented in the normal course of mine operations that is naturally escaping to the atmosphere is coal mine methane for purposes of eligibility under this section.

(III) "Distributed renewable electric generation" or "distributed generation" means:

(A) Retail distributed generation; and

(B) Wholesale distributed generation.

(IV) "Greenhouse gas neutral", with respect to electricity generated by a coal mine methane or synthetic gas facility, means that the volume of greenhouse gases emitted into the atmosphere from the conversion of fuel to electricity is no greater than the volume of greenhouse gases that would have been emitted into the atmosphere over the next five years, beginning with the planned date of operation of the facility, if the fuel had not been converted to electricity, where greenhouse gases are measured in terms of carbon dioxide equivalent.

(V) "Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

(VI) "Recycled energy" means energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel. "Recycled energy" does not include energy produced by any system that uses energy, lost or otherwise, from a process whose primary purpose is the generation of electricity, including, without limitation, any process involving engine-driven generation or pumped hydroelectricity generation.

(VII) "Renewable energy resources" means solar, wind, geothermal, biomass, new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less.

(VIII) "Retail distributed generation" means a renewable energy resource that is located on the site of a customer's facilities and is interconnected on the customer's side of the utility meter. In addition, retail distributed generation shall provide electric energy primarily to serve the customer's load and shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the customer at that site. For purposes of this subparagraph (VIII), the customer's "site" includes all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(IX) "Wholesale distributed generation" means a renewable energy resource with a nameplate rating of thirty megawatts or less and that does not qualify as retail distributed generation.

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

(c) Electric resource standards:

(I) Except as provided in subparagraph (V) of this paragraph (c), the electric resource standards shall require each qualifying retail utility to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

(A) Three percent of its retail electricity sales in Colorado for the year 2007;

(B) Five percent of its retail electricity sales in Colorado for the years 2008 through 2010;

(C) Twelve percent of its retail electricity sales in Colorado for the years 2011 through 2014, with distributed generation equaling at least one percent of its retail electricity sales in 2011 and 2012 and one and one-fourth percent of its retail electricity sales in 2013 and 2014;

(D) Twenty percent of its retail electricity sales in Colorado for the years 2015 through 2019, with distributed generation equaling at least one and three-fourths percent of its retail

electricity sales in 2015 and 2016 and two percent of its retail electricity sales in 2017, 2018, and 2019; and

(E) Thirty percent of its retail electricity sales in Colorado for the years 2020 and thereafter, with distributed generation equaling at least three percent of its retail electricity sales.

(II) (A) Of the amounts of distributed generation in sub-subparagraphs (C), (D), and (E) of subparagraph (I), sub-subparagraph (D) of subparagraph (V), and subparagraph (V.5) of this paragraph (c), at least one-half must be derived from retail distributed generation; except that this sub-subparagraph (A) does not apply to a qualifying retail utility that is a municipal utility.

(A.5) Notwithstanding sub-subparagraph (A) of this subparagraph (II), a qualifying retail utility that is a cooperative electric association may subtract industrial retail sales from total retail sales in calculating its minimum retail distributed generation requirement.

(B) Solar generating equipment located on-site at customers' facilities shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the consumer at that site. For purposes of this sub-subparagraph (B), the consumer's "site" shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(C) Distributed generation amounts in the electric resource standard for the years 2015 and thereafter may be changed by the commission for the period after December 31, 2014, if the commission finds, upon application by a qualifying retail utility, that these percentage requirements are no longer in the public interest. If such a finding is made, the commission may set the lower distributed generation requirements, if any, that shall apply after December 31, 2014. If the commission finds that the public interest requires an increase in the distributed generation requirements, the commission shall report its findings to the general assembly.

(D) For purposes of a cooperative electric association's compliance with the retail distributed generation requirement set forth in sub-subparagraph (A) of this subparagraph (II), an electric generation facility constitutes retail distributed generation if it uses only renewable energy resources; has a nameplate rating of two megawatts or less; is located within the service territory of a cooperative electric association; generates electricity for the beneficial use of subscribers who are members of the cooperative electric association in the service territory in which the facility is located; and has at least four subscribers if the facility has a nameplate rating of fifty kilowatts or less and at least ten subscribers if the facility has a nameplate rating of more than fifty kilowatts. A subscriber's share of the production from the facility may not exceed one hundred twenty percent of the subscriber's average annual consumption. Each cooperative electric association may establish, in the manner it deems appropriate, the: Subscriber; subscription; pricing, including consideration of low-income members; metering; accounting; renewable energy credit ownership; and other requirements and terms associated with electric generation facilities described in this sub-subparagraph (D).

(III) Each kilowatt-hour of electricity generated from eligible energy resources, other than retail distributed generation and other than eligible energy resources beginning operation on or after January 1, 2015, counts as one and one-fourth 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 energy resources 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 subparagraph (I) of this paragraph (c), the qualifying retail utility shall acquire an equivalent amount of either renewable energy credits; documented and verified energy savings through energy efficiency and conservation programs; or a combination of both. Any contract entered into by a qualifying retail utility after December 1, 2004, shall not conflict with this section.

(V) Notwithstanding any other provision of law but subject to subsection (4) of this section, the electric resource standards must require each cooperative electric association that is a qualifying retail utility and that provides service to fewer than one hundred thousand meters, and each municipally owned utility that is a qualifying retail utility, to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

(A) One percent of its retail electricity sales in Colorado for the years 2008 through 2010;

(B) Three percent of retail electricity sales in Colorado for the years 2011 through 2014;

(C) Six percent of retail electricity sales in Colorado for the years 2015 through 2019; and

(D) Ten percent of retail electricity sales in Colorado for the years 2020 and thereafter.

(V.5) Notwithstanding any other provision of law, each cooperative electric association that provides electricity at retail to its customers and serves one hundred thousand or more meters shall generate or cause to be generated at least twenty percent of the energy it provides to its customers from eligible energy resources in the years 2020 and thereafter.

(VI) Each kilowatt-hour of electricity generated from eligible energy resources at a community-based project must be counted as one and one-half kilowatt-hours. For purposes of this subparagraph (VI), "community-based project" means a project:

(A) That is owned by individual residents of a community, by an organization or cooperative that is controlled by individual residents of the community, or by a local government entity or tribal council;

(B) The generating capacity of which does not exceed thirty megawatts; and

(C) For which there is a resolution of support adopted by the local governing body of each local jurisdiction in which the project is to be located.

(VII) (A) For purposes of compliance with the standards set forth in subparagraphs (V) and (V.5) of this paragraph (c), each kilowatt-hour of renewable electricity generated from solar electric generation technologies shall be counted as three kilowatt-hours.

(B) For each qualifying retail utility that is a cooperative electric association, sub-subparagraph (A) of this subparagraph (VII) applies only to solar electric technologies that begin producing electricity prior to July 1, 2015, and for solar electric technologies that begin producing electricity on or after July 1, 2015, each kilowatt-hour of renewable electricity shall be counted as one kilowatt-hour for purposes of compliance with the renewable energy standard.

(C) For each qualifying retail utility that is a municipally owned utility, sub-subparagraph (A) of this subparagraph (VII) applies only to solar electric technologies that are under contract for development prior to August 1, 2015, and begin producing electricity prior to December 31, 2016, and for solar electric technologies that are not under contract for development prior to August 1, 2015, and begin producing electricity on or after December 31, 2016, each kilowatt-hour of renewable electricity shall be counted as one kilowatt-hour for purposes of compliance with the renewable energy standard.

(VIII) Electricity from eligible energy resources shall be subject to only one of the methods for counting kilowatt-hours set forth in subparagraphs (III), (VI), and (VII) of this paragraph (c).

(IX) For purposes of stimulating rural economic development and for projects up to thirty megawatts of nameplate capacity that have a point of interconnection rated at sixty-nine kilovolts or less, each kilowatt hour of electricity generated from renewable energy resources that interconnects to electric transmission or distribution facilities owned by a cooperative electric association or municipally owned utility may be counted for the life of the project as two kilowatt hours for compliance with the requirements of this paragraph (c) by qualifying retail utilities. This multiplier shall not be claimed for interconnections that first occur after December 31, 2014, and shall not be used in conjunction with another compliance multiplier. For qualifying retail utilities other than investor-owned utilities, the benefits described in this subparagraph (IX) apply only to the aggregate first one hundred megawatts of nameplate capacity of projects statewide that report having achieved commercial operations to the commission pursuant to the procedure described in this subparagraph (IX). To the extent that a qualifying retail utility claims the benefit described in this subparagraph (IX), those kilowatt-hours of electricity do not qualify for satisfaction of the distributed generation requirement of subparagraph (I) of this paragraph (c). The commission shall analyze the implementation of this subparagraph (IX) and submit a report to the senate local government and energy committee and the house of representatives committee on transportation and energy, or their successor committees, by December 31, 2011, regarding implementation of this subparagraph (IX), including how many megawatts of electricity have been installed or are subject to a power purchase agreement pursuant to this subparagraph (IX) and whether the commission recommends that the multiplier established by this subparagraph (IX) should be changed either in magnitude or expiration date. Any entity that owns or develops a project that will take advantage of the benefits of this subparagraph (IX) shall notify the commission within thirty days after signing a power purchase agreement and within thirty days after beginning commercial operations of an applicable project.

(X) Of the minimum amounts of electricity required to be generated or caused to be generated by qualifying retail utilities in accordance with subparagraph (V.5) and sub-subparagraph (D) of subparagraph (V) of this paragraph (c), one-tenth, or one percent of total retail electricity sales, must be from distributed generation; except that:

(A) For a cooperative electric association that is a qualifying retail utility and that provides service to fewer than ten thousand meters, the distributed generation component may be three-quarters of one percent of total retail electricity sales; and

(B) This subparagraph (X) does not apply to a qualifying retail utility that is a municipal utility.

(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 whether the system is governed by rules that are consistent with the rules established for this article. The commission shall not restrict the qualifying retail utility's ownership of renewable energy credits if the qualifying retail utility complies with the electric resource standard of paragraph (c) of this subsection (1), uses definitions of eligible energy resources that are limited to those identified in paragraph (a) of this subsection (1), as

clarified by the commission, and does not exceed the retail rate impact established by paragraph (g) of this subsection (1). Once a qualifying retail utility either receives a permit pursuant to article 7 or 8 of title 25, C.R.S., for a generation facility that relies on or is affected by the definitions of eligible energy resources or enters into a contract that relies on or is affected by the definitions of eligible energy resources, such definitions apply to the contract or facility notwithstanding any subsequent alteration of the definitions, whether by statute or rule. For purposes of compliance with the renewable energy standard, if a generation system uses a combination of fossil fuel and eligible renewable energy resources to generate electricity, a qualified retail utility that is not an investor-owned utility may count as eligible renewable energy only the proportion of the total electric output of the generation system that results from the use of eligible renewable energy resources.

(e) A standard rebate offer program, under which:

(I) (A) Each qualifying retail utility, except for cooperative electric associations and municipally owned utilities, shall make available to its retail electricity customers a standard rebate offer of a specified amount per watt for the installation of eligible solar electric generation on customers' premises up to a maximum of one hundred kilowatts per installation.

(B) The standard rebate 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 unless the customer makes a one-time election, in writing, to request that the excess electricity be carried forward as a credit from month to month indefinitely until the customer terminates service with the qualifying retail utility, at which time no payment shall be required from the qualifying retail utility for any remaining excess electricity supplied by the customer. 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.

(I.5) The amount of the standard rebate offer shall be two dollars per watt; except that the commission may set the rebate at a lower amount if the commission determines, based upon a qualifying retail utility's renewable resource plan or application, that market changes support the change.

(II) Sales of electricity to a consumer may be made by the owner or operator of the solar electric generation facilities located on the site of the consumer's property if the solar generating equipment is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the consumer at that site. For purposes of this subparagraph (II), the consumer's site shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way. If the solar electric generation facility is not owned by the consumer, then the qualifying retail utility shall not be required by the commission to pay for the renewable energy credits generated by the facility on any basis other than a metered basis. The owner or operator of the solar electric generation facility shall pay the cost of installing the production meter.

(III) The qualifying retail utility may establish one or more standard offers to purchase renewable energy credits generated from the eligible solar electric generation on the customer's premises so long as the generation meets the size and location requirements set forth in subparagraph (II) of this paragraph (e) and so long as the generation is five hundred kilowatts or less in size. When establishing the standard offers, the prices for renewable energy credits should be set at levels sufficient to encourage increased customer-sited solar generation in the size ranges covered by each standard offer, but at levels that will still allow the qualifying retail utility to comply with the electric resource standards set forth in paragraph (c) of this subsection (1) without exceeding the retail rate impact limit in paragraph (g) of this subsection (1). The commission shall encourage qualifying retail utilities to design solar programs that allow consumers of all income levels to obtain the benefits offered by solar electricity generation and shall allow programs that are designed to extend participation to customers in market segments that have not been responding to the standard offer program.

(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. These policies must provide incentives to qualifying retail utilities to invest in eligible energy resources and must include:

(I) Repealed.

(II) Allowing qualifying retail utilities to earn an extra profit on their investment in eligible energy resource 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 fifty percent of the net economic benefit.

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

(IV) Considering, when the qualifying retail utility applies for a certificate of public convenience and necessity under section 40-5-101, rate recovery mechanisms that provide for earlier and timely recovery of costs prudently and reasonably incurred by the qualifying retail utility in developing, constructing, and operating the eligible energy resource, including:

(A) Rate adjustment clauses until the costs of the eligible energy resource can be included in the utility's base rates; and

(B) A current return on the utility's capital expenditures during construction at the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, during the construction, startup, and operation phases of the eligible energy resource.

(V) If the commission approves the terms and conditions of an eligible energy resource contract between the qualifying retail utility and another party, the 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 energy resources shall have a minimum term of 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; except that such contracts for systems of between one hundred kilowatts and one megawatt may have a different term if mutually agreed to by the parties.

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

(VII) A requirement that all distributed renewable electric generation facilities with a nameplate rating of one megawatt or more be registered with a renewable energy generation information tracking system designated by the commission.

(g) Retail rate impact rule:

(I) (A) Except as otherwise provided in subparagraph (IV) of this paragraph (g), for each qualifying utility, the commission shall establish a maximum retail rate impact for this section for compliance with the electric resource standards of two percent of the total electric bill annually for each customer. The retail rate impact shall be determined net of new alternative sources of electricity supply from noneligible energy resources that are reasonably available at the time of the determination.

(B) If the retail rate impact does not exceed the maximum impact permitted by this paragraph (g), the qualifying utility may acquire more than the minimum amount of eligible energy resources and renewable energy credits required by this section. At the request of the qualifying retail utility and upon the commission's approval, the qualifying retail utility may advance funds from year to year to augment the amounts collected from retail customers under this paragraph (g) for the acquisition of more eligible energy resources. Such funds shall be repaid from future retail rate collections, with interest calculated at the qualifying retail utility's after-tax weighted average cost of capital, so long as the retail rate impact does not exceed two percent of the total annual electric bill for each customer.

(C) As between residential and nonresidential retail distributed generation, the commission shall direct the utility to allocate its expenditures according to the proportion of the utility's revenue derived from each of these customer groups; except that the utility may acquire retail distributed generation at levels that differ from these group allocations based upon market response to the utility's programs.

(II) Each wholesale energy provider shall offer to its wholesale customers that are cooperative electric associations the opportunity to purchase their load ratio share of the wholesale energy provider's electricity from eligible energy resources. If a wholesale customer agrees to pay the full costs associated with the acquisition of eligible energy resources and associated renewable energy credits by its wholesale provider by providing notice of its intent to pay the full costs within sixty days after the wholesale provider extends the offer, 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.

(III) Subject to the maximum retail rate impact permitted by this paragraph (g), the qualifying retail utility shall have the discretion to determine, in a nondiscriminatory manner, the price it will pay for renewable energy credits from on-site customer facilities that are no larger than five hundred kilowatts.

(IV) (A) For cooperative electric associations, the maximum retail rate impact for this section is two percent of the total electric bill annually for each customer.

(B) Notwithstanding subparagraph (I) of this paragraph (g), the commission may ensure that customers who install distributed generation continue to contribute, in a nondiscriminatory

fashion, their fair share to their utility's renewable energy program fund or equivalent renewable energy support mechanism even if such contribution results in a charge that exceeds two percent of such customers' annual electric bills.

(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). The qualifying retail utility's actions under an approved compliance plan shall carry a rebuttable presumption of prudence. Under no circumstances shall the costs of administrative penalties be recovered from Colorado retail customers.

(1.5) Notwithstanding any provision of law to the contrary, paragraph (e) of subsection (1) of this section shall not apply to a municipally owned utility or to a cooperative electric association.

(2) (Deleted by amendment, L. 2007, p. 257, § 1, effective March 27, 2007.)

(3) Each municipally owned electric utility that is a qualifying retail utility shall implement a renewable energy standard substantially similar to this section. The municipally owned utility shall submit a statement to the commission that demonstrates such municipal utility has a substantially similar renewable energy standard. The statement submitted by the municipally owned utility is for informational purposes and is not subject to approval by the commission. Upon filing of the certification statement, the municipally owned utility shall have no further obligations under subsection (1) of this section. The renewable energy standard of a municipally owned utility shall, at a minimum, meet the following criteria:

(a) The eligible energy resources shall be limited to those identified in paragraph (a) of subsection (1) of this section;

(b) The percentage requirements shall be equal to or greater in the same years than those identified in subparagraph (V) of paragraph (c) of subsection (1) of this section, counted in the manner allowed by 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 that become qualifying retail utilities after December 31, 2006, the percentage requirements identified in subparagraph (V) of paragraph (c) of subsection (1) of this section shall begin in the first calendar year following qualification as follows:

(a) Years one through three: One percent of retail electricity sales;

(b) Years four through seven: Three percent of retail electricity sales;

(c) Years eight through twelve: Six percent of retail electricity sales; and

(d) Years thirteen and thereafter: Ten percent of retail electricity sales.

(5) **Procedure for exemption and inclusion - election.**

(a) (Deleted by amendment, L. 2007, p. 257, § 1, effective March 27, 2007.)

(b) The board of directors of each municipally owned electric utility not subject to this section may, at its option, submit the question of its inclusion in this section 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 twenty-five percent of eligible consumers participates in the election.

(5.5) Each cooperative electric association that is a qualifying retail utility shall submit an annual compliance report to the commission no later than June 1 of each year in which the cooperative electric association is subject to the renewable energy standard requirements established in this section. The annual compliance report shall describe the steps taken by the cooperative electric association to comply with the renewable energy standards and shall include the same information set forth in the rules of the commission for jurisdictional utilities. Cooperative electric associations shall not be subject to any part of the compliance report review process as provided in the rules for jurisdictional utilities. Cooperative electric associations shall not be required to obtain commission approval of annual compliance reports, and no additional regulatory authority of the commission other than that specifically contained in this subsection (5.5) is created or implied by this subsection (5.5).

(6) (Deleted by amendment, L. 2007, p. 257, § 1, effective March 27, 2007.)

(7) (a) **Definitions.** For purposes of this subsection (7), unless the context otherwise requires:

(I) "Customer-generator" means an end-use electricity customer that generates electricity on the customer's side of the meter using eligible energy resources.

(II) "Municipally owned utility" means a municipally owned utility that serves five thousand customers or more.

(b) Each municipally owned utility shall allow a customer-generator's retail electricity consumption to be offset by the electricity generated from eligible energy resources on the customer-generator's side of the meter that are interconnected with the facilities of the municipally owned utility, subject to the following:

(I) **Monthly excess generation.** If a customer-generator generates electricity in excess of the customer-generator's monthly consumption, all such excess energy, expressed in kilowatt-hours, shall be carried forward from month to month and credited at a ratio of one to one against the customer-generator's energy consumption, expressed in kilowatt-hours, in subsequent months.

(II) **Annual excess generation.** Within sixty days after the end of each annual period, or within sixty days after the customer-generator terminates its retail service, the municipally owned utility shall account for any excess energy generation, expressed in kilowatt-hours, accrued by the customer-generator and shall credit such excess generation to the customer-generator in a manner deemed appropriate by the municipally owned utility.

(III) **Nondiscriminatory rates.** A municipally owned utility shall provide net metering service at nondiscriminatory rates.

(IV) **Interconnection standards.** Each municipally owned utility shall adopt and post small generation interconnection standards and insurance requirements that are functionally similar to those established in the rules promulgated by the public utilities commission pursuant to this section; except that the municipally owned utility may reduce or waive any of the insurance requirements. If any customer-generator subject to the size specifications specified in subparagraph (V) of this paragraph (b) is denied interconnection by the municipally owned

utility, the utility shall provide a written technical or economic explanation of such denial to the customer.

(V) **Size specifications.** Each municipally owned utility may allow customer-generators to generate electricity subject to net metering in amounts in excess of those specified in this subparagraph (V), and shall allow:

(A) Residential customer-generators to generate electricity subject to net metering up to ten kilowatts; and

(B) Commercial or industrial customer-generators to generate electricity subject to net metering up to twenty-five kilowatts.

(8) **Qualifying wholesale utilities - definition - electric resource standard - tradable credits - reports.** (a) **Definition.** Each generation and transmission cooperative electric association that provides wholesale electric service directly to Colorado electric associations that are its members is a qualifying wholesale utility. Commission rules adopted under subsections (1) to (7) of this section do not apply directly to qualifying wholesale utilities, and this subsection (8) does not provide the commission with additional regulatory authority over qualifying wholesale utilities.

(b) **Electric resource standard.** Notwithstanding any other provision of law, each qualifying wholesale utility shall generate, or cause to be generated, at least twenty percent of the energy it provides to its Colorado members at wholesale from eligible energy resources in the year 2020 and thereafter. If, and to the extent that, the purchase of energy generated from eligible energy resources by a Colorado member from a qualifying wholesale utility would cause an increase in rates for the Colorado member that exceeds the retail rate impact limitation in sub-subparagraph (A) of subparagraph (IV) of paragraph (g) of subsection (1) of this section, the obligation imposed on the qualifying wholesale utility is reduced by the amount of such energy necessary to enable the Colorado member to comply with the rate impact limitation.

(c) A qualifying wholesale utility may count the energy generated or caused to be generated from eligible energy resources by its Colorado members or by the qualifying wholesale utility on behalf of its Colorado members pursuant to subparagraph (V) of paragraph (c) of subsection (1) of this section toward compliance with the energy resource standard established in this subsection (8).

(d) Preferences for certain eligible energy resources and the limit on their applicability established in subparagraph (VIII) of paragraph (c) of subsection (1) of this section may be used by a qualifying wholesale utility in meeting the energy resource standard established in this subsection (8).

(e) **Tradable renewable energy credits.** A qualifying wholesale utility shall use a system of tradable renewable energy credits to comply with the electric resource standard established in this subsection (8); except that a renewable energy credit acquired under this subsection (8) expires at the end of the fifth calendar year following the calendar year in which it was generated.

(f) In implementing the electric resource standard established in this subsection (8), a qualifying wholesale utility shall assure that the costs, both direct and indirect, attributable to compliance with the standard are recovered from its Colorado members. The qualifying wholesale utility shall employ such cost allocation methods as are required to assure that any direct or indirect costs attributable to compliance with the standard established in this subsection

(8) do not affect the cost or price of the qualifying wholesale utility's sales to customers outside of Colorado.

(g) **Reports.** Each qualifying wholesale utility shall submit an annual report to the commission no later than June 1, 2014, and June 1 of each year thereafter. In addition, the qualifying wholesale utility shall post an electronic copy of each report on its website and shall provide the commission with an electronic copy of the report. In each report, the qualifying wholesale utility shall:

(I) Describe the steps it took during the immediately preceding twelve months to comply with the electric resource standard established in this subsection (8);

(II) In the years before 2020, describe whether it is making sufficient progress toward meeting the standard in 2020 or is likely to meet the 2020 standard early. If it is not making sufficient progress toward meeting the standard in 2020, it shall explain why and shall indicate the steps it intends to take to increase the pace of progress; and

(III) In 2020 and thereafter, describe whether it has achieved compliance with the electric resource standard established in this subsection (8) and whether it anticipates continuing to do so. If it has not achieved such compliance or does not anticipate continuing to do so, it shall explain why and shall indicate the steps it intends to take to meet the standard and by what date.

(h) Nothing in this subsection (8) amends or waives any provision of subsections (1) to (7) of this section.

Source: Initiated 2004: Entire section added, see L. 2005, p. 2337, effective December 1, 2004, proclamation of the Governor issued December 1, 2004. **L. 2005:** Entire section amended, p. 234, § 1, effective August 8; (6) added by revision, see L. 2005, p. 2340, § 3. **L. 2007:** Entire section amended, p. 257, § 1, effective March 27. **L. 2008:** (7) added, p. 190, § 3, effective August 5. **L. 2009:** (1)(c)(II), (1)(e), and (1)(f)(V) amended and (1.5) added, (SB 09-051), ch. 157, p. 678, § 11, effective September 1. **L. 2010:** IP(1), (1)(a), (1)(c)(I), (1)(c)(II), (1)(c)(III), (1)(c)(IV), (1)(c)(VIII), (1)(e)(I), (1)(f)(IV), (1)(g)(I), (1)(g)(III), (1)(g)(IV), and (1)(i) amended and (1)(e)(I.5) and (1)(f)(VII) added, (HB 10-1001), ch. 37, pp. 144, 147, 148, §§ 1, 2, 3, effective August 11; (1)(c)(VI)(A) amended and (1)(c)(IX) added, (HB 10-1418), ch. 406, p. 2007, § 1, effective August 11; (1)(d) amended, (SB 10-177), ch. 392, p. 1864, § 7, effective August 11. **L. 2013:** IP(1), (1)(a), (1)(c)(II)(A), (1)(c)(III), IP(1)(c)(V), IP(1)(c)(VI), (1)(c)(VII)(A), IP(1)(f), (1)(g)(I)(A), and (1)(g)(IV)(A) amended and (1)(c)(V.5), (1)(c)(X), and (8) added, (SB 13-252), ch. 414, p. 2452, § 1, effective July 1. **L. 2015:** (1)(c)(VII) amended, (SB 15-254), ch. 257, p. 934, § 1, effective May 29; (1)(c)(II)(A.5) added, (SB 15-046), ch. 142, p. 433, § 1, effective August 5; (1)(c)(II)(D) added, (HB 15-1377), ch. 200, p. 691, § 1, effective August 5. **L. 2019:** IP(1) amended and (1)(f)(I) repealed, (SB 19-236), ch. 359, p. 3291, § 4, effective May 30.

Editor's note: (1) A declaration of intent was contained in the initiated measure, Amendment 37, and is reproduced below:

SECTION 1. Legislative declaration of intent:

Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Colorado's renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

(2) This initiated measure was approved by a vote of the registered electors of the state of Colorado on November 2, 2004. The vote count for the measure was as follows:

FOR: 1,066,023

AGAINST: 922,577

40-2-125. Eminent domain restrictions. (1) 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.

(2) Section 3 of this initiated measure provides that this section and section 40-2-124 shall be effective December 1, 2004.

Source: Initiated 2004: Entire section added, see L. 2005, p. 2337, effective December 1, 2004, proclamation of the Governor issued December 1, 2004. **L. 2005:** Entire section amended, p. 238, § 2, effective August 8; (2) added by revision, see L. 2005, p. 2340, § 3.

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FOR: 1,066,023

AGAINST: 922,577

40-2-125.5. Carbon dioxide emission reductions - goal to eliminate by 2050 - legislative declaration - interim targets - submission and approval of plans - definitions - cost recovery - reports - rules. (1) **Legislative declaration.** The general assembly finds and declares that:

(a) It is a matter of statewide importance to promote the development of cost-effective clean energy and new technologies and reduce the carbon dioxide emissions from the Colorado electric generating system;

(b) The creation of a low-cost, reliable, and clean electricity system is critical to achieving the level of greenhouse gas emissions necessary to avoid the worst impacts of climate change and advancing a robust and efficient low-carbon economy for the state of Colorado and the nation;

(c) Technology advancement has already allowed Colorado to achieve reductions in carbon dioxide emissions from the electric utility sector, and continued technology development is key to extend progress toward a reliable, low-cost, clean energy future;

(d) Alternative financing mechanisms may result in lower costs to electric utility customers; therefore, it is helpful to provide alternative financing mechanisms that utilities may use to reduce the total amount of costs being included in customer rates resulting from accelerating the retirement of electric generating facilities; and

(e) A bold clean energy policy will support this progress and allow Coloradans to enjoy the benefits of reliable clean energy at an affordable cost.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Clean energy plan" means a plan filed by a qualifying retail utility as part of its electric resource plan to reduce the qualifying retail utility's carbon dioxide emissions associated with electricity sales to the qualifying retail utility's electricity customers by eighty percent from 2005 levels by 2030, and that seeks to achieve providing its customers with energy generated from one-hundred-percent clean energy resources by 2050.

(b) "Clean energy resource" means any electricity-generating technology that generates or stores electricity without emitting carbon dioxide into the atmosphere. Clean energy resources include, without limitation, eligible energy resources as defined in section 40-2-124 (1)(a).

(c) (I) "Qualifying retail utility" means a retail utility providing electric service to more than five hundred thousand customers in this state or any other electric utility that opts in pursuant to subsection (3)(b) of this section.

(II) "Qualifying retail utility" does not include a municipally owned utility.

(3) **Clean energy targets.** (a) In addition to the other requirements of this section, a qualifying retail utility shall meet the following clean energy targets:

(I) By 2030, the qualifying retail utility shall reduce the carbon dioxide emissions associated with electricity sales to the qualifying retail utility's electricity customers by eighty percent from 2005 levels.

(II) For the years 2050 and thereafter, or sooner if practicable, the qualifying retail utility shall seek to achieve the goal of providing its customers with energy generated from one-hundred-percent clean energy resources so long as doing so is technically and economically feasible, in the public interest, and consistent with the requirements of this section.

(III) The qualifying retail utility shall retire renewable energy credits established under section 40-2-124 (1)(d), in the year generated, by any eligible energy resources used to comply with the requirements of this section.

(b) Any other electric public utility may opt into the full terms of this entire section upon notification to the commission.

(4) **Submission and approval of plans.** (a) The first electric resource plan that a qualifying retail utility files with the commission after January 1, 2020, must include a clean energy plan that will achieve the clean energy target set forth in subsection (3)(a)(I) of this section and make progress toward the one-hundred-percent clean energy goal set forth in subsection (3)(a)(II) of this section in accordance with the following:

(I) The electric resource plan containing the clean energy plan must utilize a resource acquisition period that extends through 2030.

(II) The clean energy plan submitted to the commission must set forth a plan of actions and investments by the qualifying retail utility projected to achieve compliance with the clean energy targets in subsections (3)(a)(I) and (3)(a)(II) of this section and that result in an affordable, reliable, and clean electric system.

(III) In the electric resource plan that includes the clean energy plan, the qualifying retail utility shall clearly distinguish between the set of resources necessary to meet customer demands in the resource acquisition period and the additional clean energy plan activities that may be undertaken to meet the clean energy target in subsection (3)(a)(I) of this section, which may create an additional resource need for the clean energy plan. These activities may include retirement of existing generating facilities, changes in system operation, or any other necessary actions.

(IV) After conducting any procurement process pursuant to subsection (5)(b) of this section or otherwise, the qualifying retail utility shall set forth the actions and investments required to fill the additional resource need identified for the clean energy plan to satisfy the clean energy target in subsection (3)(a)(I) of this section. These actions and investments may include development of new clean energy resources, development of new transmission and other supporting infrastructure, and clean energy resource acquisitions. Any new transmission development is subject to existing commission and stakeholder transmission planning processes, as applicable.

(V) The clean energy plan must describe the effect of the actions and investments included in the clean energy plan on the safety, reliability, renewable energy integration, and resilience of electric service in the state of Colorado.

(VI) The clean energy plan must set forth the projected cost of its implementation and anticipated reductions in carbon dioxide and other emissions.

(VII) If the clean energy plan includes accelerated retirement of any existing generating facilities, the clean energy plan must include workforce transition and community assistance plans for utility workers impacted by any clean energy plan and a plan to pay community assistance to any local government or school district, the voters of which have approved projects the costs of which are expected to be paid for from property taxes that are directly impacted by the accelerated retirement of the electric generating facility in an amount equal to the costs of the voter-approved projects that were expected to be paid from the revenue sources directly impacted by the accelerated retirement of the projects, including but not limited to the payment of bonds, notes, or other multiple-fiscal year obligations or lease purchase agreements that have

been issued or entered into to pay the costs of such projects. Any payment of community assistance shall be reduced on an equivalent basis to the extent that property tax is derived from new electric infrastructure developed in the same impacted community. The qualifying retail utility may propose a cost-recovery mechanism to recover the prudently incurred costs of any workforce transition and community assistance plans, while giving due consideration to the impact on low-income customers. The qualifying retail utility will not earn its authorized rate of return on any noncapital costs incurred as part of any workforce transition plan. The workforce transition and community assistance plans must include, to the extent feasible, estimates of:

(A) The number of workers employed by the utility or a contractor of the utility at the electric generating facility;

(B) The total number of existing workers with jobs that will be retained and the total number of existing workers with jobs that will be eliminated due to the retirement of the electric generating facility;

(C) With respect to the existing workers with jobs that will be eliminated due to the retirement of the electric generating facility, the total number and number by job classification of workers for whom: Employment will end without being offered other employment by the utility; the workers will retire as planned, be offered early retirement, or leave voluntarily; the workers will be retained by being transferred to other electric generating facilities or offered other employment by the utility; and the workers will be retrained to continue to work for the utility in a new job classification;

(D) If the utility is replacing the electric generating facility being retired with a new electric generating facility: The number of workers from the retired electric generating facility that will be offered employment at the new electric generating facility and the number of jobs at the new electric generating facility that will be outsourced to subcontractors. The utility shall develop a training or apprenticeship program, under the terms of an applicable collective bargaining agreement, if any, for the maintenance and operation of any new combination generation and storage facility owned by the utility that does not emit carbon dioxide, to which facility displaced workers may transfer as appropriate.

(VIII) If the minimum amounts of electricity from eligible energy resources set forth in section 40-2-124 (1)(c) are satisfied, a qualifying retail utility may propose to use up to one-half of the funds collected annually under section 40-2-124 (1)(g), as well as any accrued funds, to recover the incremental cost of clean energy resources and their directly related interconnection facilities. The utility may account for these funds in calculating the cost of the plan.

(b) The division of administration in the department of public health and environment shall participate in any proceeding seeking approval of a clean energy plan developed by a qualifying retail utility pursuant to this section. The division shall describe the methods of measuring carbon dioxide emissions and shall verify the projected carbon dioxide emission reductions as a result of the clean energy plan.

(c) After consulting with the air quality control commission, the division of administration shall determine whether a clean energy plan as filed under this section will result in an eighty-percent reduction, relative to 2005 levels, in carbon dioxide emissions from the qualifying retail utility's Colorado electricity sales by 2030 and is otherwise consistent with any greenhouse gas emission reduction goals established by the state of Colorado. The division shall publish, and shall report to the public utilities commission, the division's calculation of carbon dioxide emission reductions attributable to any approved clean energy plan. Nothing in the

division's engagement in this process shall be construed to diminish or override the commission's authority under this title 40.

(d) The commission shall approve the clean energy plan if the commission finds it to be in the public interest and consistent with the clean energy target in subsection (3)(a)(I) of this section, and the commission may modify the plan if the modification is necessary to ensure that the plan is in the public interest. In evaluating whether a clean energy plan submitted to the commission is in the public interest, the commission shall consider the following factors, among other relevant factors as defined by the commission:

(I) Reductions in carbon dioxide and other emissions that will be achieved through the clean energy plan and the environmental and health benefits of those reductions;

(II) The feasibility of the clean energy plan and the clean energy plan's impact on the reliability and resilience of the electric system. The commission shall not approve any plan that does not protect system reliability.

(III) Whether the clean energy plan will result in a reasonable cost to customers, as evaluated on a net present value basis. In evaluating the cost impacts of the clean energy plan, the commission shall consider the effect on customers of the projected costs associated with the plan as set forth in subsection (4)(a)(VI) of this section as well as any projected savings associated with the plan, including projected avoided fuel costs.

(e) If the commission finds that approval of the clean energy plan is not in the public interest, or if the commission modifies the plan, the utility may choose to submit an amended plan to the commission for approval in lieu of having no plan or implementing the modified plan. No clean energy plan is effective without commission approval.

(5) **Regulatory matters.** (a) **Ensuring retail rate stability.** (I) The commission shall establish a maximum electric retail rate impact of one and one-half percent of the total electric bill annually for each customer for implementation of the approved additional clean energy plan activities, consistent with this subsection (5). Nothing in this subsection (5)(a) supersedes subsection (3)(a)(I) of this section.

(II) A qualifying retail utility shall collect revenues for the additional clean energy plan activities through a clean energy plan revenue rider assessed on a percentage basis on all retail customer bills, as deemed prudent by the commission. The revenue rider may be established as early as the year following approval of a clean energy plan by the commission, and the qualifying retail utility may propose a commencement date and level no greater than the maximum electric retail rate impact. The revenue rider shall afford the qualifying retail utility cost-recovery treatment up to the maximum electric retail rate impact until the first rate case following the final implementation of the clean energy plan, at which time the remaining costs and savings associated with the clean energy plan will be incorporated into base rates. The qualifying retail utility may propose to adjust the level of the retail rate rider over time so long as it does not exceed the maximum retail rate impact and as deemed prudent by the commission. Nothing in this subsection (5) affects the commission's authority to evaluate the prudence of costs associated with approved clean energy plan activities.

(III) The clean energy plan revenue rider will be utilized for costs of a qualifying retail utility's clean energy plan capital investments and operating and related expenses, exclusive of:

(A) Fuel and transmission costs;

(B) Costs associated with the capital investments and operating and related expenses within the overall approved resource portfolio necessary to fully satisfy the resource need identified for the electric resource plan without the clean energy plan;

(C) The incremental costs of eligible energy resources recovered with funds collected under section 40-2-124 (1)(g); and

(D) The incremental costs of any clean energy resources and their directly related interconnection facilities that, subject to commission approval, are recovered with funds collected under section 40-2-124 (1)(g) in accordance with subsection (4)(a)(VIII) of this section. Savings associated with the plan will return to customers through existing rate riders and base rate adjustments.

(IV) The clean energy plan revenue rider shall afford customers certainty on the maximum rate impact of the approved additional clean energy plan activities through at least calendar year 2030. Annually, the qualifying retail utility shall file a report with the commission indicating, at a minimum:

(A) The amount of rider collections;

(B) The revenue requirement associated with the approved additional clean energy plan activities to be paid for from the rider collections;

(C) Any positive or negative rider account balance;

(D) Interest expense associated with the revenue rider balance; and

(E) Any other information required by the commission.

(V) In the first rate case following the final implementation of the clean energy plan, the commission shall conduct a final reconciliation of the clean energy plan revenue rider and determine how to account for any positive or negative rider balance. In the manner determined by the commission, any remaining positive balance shall be returned to customers or used to reduce customer rates and any negative balance shall be incorporated into the qualifying retail utility's rates.

(b) The qualifying retail utility shall utilize a competitive bidding process, as defined by the commission in rules, to procure any energy resources to fill the cumulative resource need derived from the electric resource plan and the clean energy plan in subsection (4)(a)(III) of this section. The commission shall allow the qualifying retail utility, inclusive of any ownership by its affiliates, to own a target of fifty percent of the energy and capacity associated with the clean energy resources and any other energy resources developed or acquired to meet the resource need, as well as all associated infrastructure, if the commission finds the cost of utility or affiliate ownership of the generation assets comes at a reasonable cost and rate impact. Utility ownership may come from utility or affiliate self-builds, build-transfers from independent power producers, or sales of existing assets from independent power producers or similar commercial arrangements. Nothing in this subsection (5)(b) alters the commission's authority under subsection (4)(d) of this section.

(c) Any actions, including transmission development, taken by the qualifying retail utility shall be presumed prudent to the extent those actions are a part of an approved clean energy plan.

(d) For the purposes of this section, the clean energy target evaluation will be based upon the qualifying retail utility's electricity sales within its electric service territory as it existed on January 1, 2019. In the event of a significant acquisition, the qualifying retail utility may file within one year after the acquisition an additional clean energy plan to address that acquisition,

and the commission shall consider the additional clean energy plan consistent with the goals of this section.

(e) The commission may, on its own motion or upon application by a qualifying retail utility, amend an approved clean energy plan if amendment is necessary to ensure the reliability and resilience of the electric system. The commission may require the qualifying retail utility to provide such periodic reports on the reliability and resiliency of the electric system as it may deem appropriate to ensure the clean energy plan does not adversely impact reliability or resiliency.

(f) The commission shall consider affected communities within the filing qualifying retail utility's service territory with a tangible and pecuniary interest, and organizations representing those communities shall be presumed to have standing in a proceeding seeking approval of any clean energy plan filed pursuant to this section.

(g) (I) A clean energy plan voluntarily filed by a municipal utility or a cooperative electric association that has voted to exempt itself from regulation by the commission pursuant to article 9.5 of this title 40 shall be deemed approved by the commission as filed if:

(A) The division of administration, in consultation with the commission, verifies that the plan demonstrates that, by 2030, the municipal utility or cooperative electric association will achieve at least an eighty-percent reduction in greenhouse gas emissions caused by the entity's Colorado electricity sales relative to 2005 levels; and

(B) The clean energy plan has previously been approved by a vote of the entity's governing body.

(II) Voluntary submission of a clean energy plan by a municipal utility or a cooperative electric association does not alter the entity's regulatory status with respect to the commission, including under article 9.5 of this title 40.

(h) Nothing in this subsection (5) precludes the use of bonds as a mechanism for recovering utility capital in a retired electric generating facility.

(6) **Reports.** One year after approval of any electric resource plan that incorporates a clean energy plan, the qualifying retail utility shall prepare a report to the governor, the general assembly, the public utilities commission, and the air quality control commission outlining progress toward the clean energy targets set forth in this section. The report must set forth the clean energy resources developed under any clean energy plan, the cost and customer impact of those clean energy resources, the effect of any approved clean energy plan on system reliability, and any other relevant information. The report must also identify the need for new or additional technology development necessary to achieve the clean energy targets of this section.

(7) **Future electric resource plans.** Any electric resource plan submitted to the commission after approval of the clean energy plan must include an update on the progress made toward the approved clean energy plan, as well as actions and investments by the qualifying retail utility projected to achieve compliance with the emission reduction target identified in subsection (3)(a)(I) of this section and make progress toward the one-hundred-percent clean energy goal set forth in subsection (3)(a)(II) of this section. The commission may solicit input from the division of administration for assistance in evaluating the emission reductions associated with any future electric resource plan and consistent with the clean energy targets of this section. The commission shall review the qualifying retail utility's actions and investments in accordance with the standards set forth in subsection (4)(d) of this section.

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3291, § 5, effective May 30.

40-2-126. Transmission facilities - biennial review - energy resource zones - definitions - plans - approval - cost recovery. (1) As used in this section, "energy resource zone" means a geographic area in which transmission constraints hinder the delivery of electricity to Colorado consumers, the development of new electric generation facilities to serve Colorado consumers, or both.

(2) Biennially, on or before a date determined by the commission, commencing in 2016, each Colorado electric utility subject to rate regulation by the commission shall:

(a) Designate energy resource zones;

(b) Develop plans for the construction or expansion of transmission facilities necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near such zones;

(c) Consider how transmission can be provided to encourage local ownership of renewable energy facilities, whether through renewable energy cooperatives as provided in section 7-56-210, C.R.S., or otherwise; and

(d) Submit proposed plans, designations, and applications for certificates of public convenience and necessity to the commission for review pursuant to subsection (3) of this section.

(3) The commission shall approve a utility's application for a certificate of public convenience and necessity for the construction or expansion of transmission facilities pursuant to paragraph (b) of subsection (2) of this section if the commission finds that:

(a) The construction or expansion is required to ensure the reliable delivery of electricity to Colorado consumers or to enable the utility to meet the renewable energy standards set forth in section 40-2-124; and

(b) The present or future public convenience and necessity require such construction or expansion.

(4) Repealed.

Source: L. 2007: Entire section added, p. 266, § 2, effective March 27. **L. 2016:** IP(2) and (2)(d) amended and (4) repealed, (HB 16-1091), ch. 48, p. 114, § 1, effective August 10.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 61, Session Laws of Colorado 2007.

40-2-127. Community energy funds - community solar gardens - definitions - rules - legislative declaration - repeal. (1) **Legislative declaration.** The general assembly hereby finds and declares that:

(a) Local communities can benefit from the further development of renewable energy, energy efficiency, conservation, and environmental improvement projects, and the general assembly hereby encourages electric utilities to establish community energy funds for the development of such projects;

(b) It is in the public interest that broader participation in solar electric generation by Colorado residents and commercial entities be encouraged by the development and deployment of distributed solar electric generating facilities known as community solar gardens, in order to:

(I) Provide Colorado residents and commercial entities with the opportunity to participate in solar generation in addition to the opportunities available for rooftop solar generation on homes and businesses;

(II) Allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities;

(III) Allow interests in solar generation facilities to be portable and transferrable; and

(IV) Leverage Colorado's solar generating capacity through economies of scale.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) The definitions in section 40-2-124 apply; and

(b) In addition:

(I) (A) "Community solar garden" means a solar electric generation facility with a nameplate rating within the range specified under subsection (2)(b)(I)(D) of this section that is located in or near a community served by a qualifying retail utility where the beneficial use of the electricity generated by the facility belongs to the subscribers to the community solar garden. There shall be at least ten subscribers. The owner of the community solar garden may be the qualifying retail utility or any other for-profit or nonprofit entity or organization, including a subscriber organization organized under this section, that contracts to sell the output from the community solar garden to the qualifying retail utility. A community solar garden shall be deemed to be "located on the site of customer facilities".

(B) A community solar garden shall constitute "retail distributed generation" within the meaning of section 40-2-124, as amended by House Bill 10-1001, enacted in 2010.

(C) Notwithstanding any provision of this section or section 40-2-124 to the contrary, a community solar garden constitutes retail distributed generation for purposes of a cooperative electric association's compliance with the applicable renewable energy standard under section 40-2-124.

(D) A community solar garden must have a nameplate rating of five megawatts or less; except that the commission may, in rules adopted pursuant to subsection (3)(b) of this section, approve the formation of a community solar garden with a nameplate rating of up to ten megawatts on or after July 1, 2023.

(II) "Subscriber" means a retail customer of a qualifying retail utility who owns a subscription and who has identified one or more physical locations to which the subscription is attributed. Such physical locations must be within the service territory of the same qualifying retail utility as the community solar garden. The subscriber may change from time to time the premises to which the community solar garden electricity generation shall be attributed, so long as the premises are within the same service territory.

(III) "Subscription" means a proportional interest in solar electric generation facilities installed at a community solar garden, together with the renewable energy credits associated with or attributable to such facilities under section 40-2-124. Each subscription shall be sized to represent at least one kilowatt of the community solar garden's generating capacity and to supply no more than one hundred twenty percent of the average annual consumption of electricity by each subscriber at the premises to which the subscription is attributed, with a deduction for the amount of any existing solar facilities at such premises. Subscriptions in a community solar

garden may be transferred or assigned to a subscriber organization or to any person or entity who qualifies to be a subscriber under this section.

(3) **Subscriber organization - subscriber qualifications - transferability of subscriptions.** (a) The community solar garden may be owned by a subscriber organization, whose sole purpose shall be beneficially owning and operating a community solar garden. The subscriber organization may be any for-profit or nonprofit entity permitted by Colorado law. The community solar garden may also be built, owned, and operated by a third party under contract with the subscriber organization.

(b) The commission shall adopt rules as necessary to implement this section, including rules to facilitate the financing of subscriber-owned community solar gardens. The rules must include:

(I) Minimum capitalization;

(II) The share of a community solar garden's eligible solar electric generation facilities that a subscriber organization may at any time own in its own name; and

(III) Authorizing subscriber organizations to enter into leases, sale-and-leaseback transactions, operating agreements, and other ownership arrangements with third parties.

(c) If a subscriber ceases to be a customer at the premises on which the subscription is based but, within a reasonable period as determined by the commission, becomes a customer at another premises in the service territory of the qualifying retail utility and within the geographic area served by the community solar garden, the subscription shall continue in effect but the bill credit and other features of the subscription shall be adjusted as necessary to reflect any differences between the new and previous premises' customer classification and average annual consumption of electricity.

(3.5) **Standards for construction and operation.** The following requirements apply to any community solar garden exceeding two megawatts:

(a) The initial installation of any photovoltaic module or associated electrical equipment is subject to final inspection and approval in accordance with section 12-115-120.

(b) Following the development or acquisition by a qualifying retail utility of a community solar garden in which the qualifying retail utility retains ownership, the qualifying retail utility shall either use its own employees to operate and maintain the community solar garden or contract for operation and maintenance of the community solar garden by a contractor whose employees have access to an apprenticeship program registered with the United States department of labor's office of apprenticeship or with a state apprenticeship council recognized by that office; except that this apprenticeship requirement does not apply to:

(I) The design, planning, or engineering of the infrastructure;

(II) Management functions to operate the infrastructure; or

(III) Any work included in a warranty.

(4) **Community solar gardens not subject to regulation.** Neither the owners of nor the subscribers to a community solar garden shall be considered public utilities subject to regulation by the commission solely as a result of their interest in the community solar garden. Prices paid for subscriptions in community solar gardens shall not be subject to regulation by the commission.

(5) **Purchases of the output from community solar gardens.** (a) (I) Each qualifying retail utility shall set forth in its plan for acquisition of renewable resources a plan to purchase

the electricity and renewable energy credits generated from one or more community solar gardens over the period covered by the plan.

(II) For the first three compliance years commencing with the 2011 compliance year, each qualifying retail utility shall issue one or more standard offers to purchase the output from community solar gardens of five hundred kilowatts or less at prices that are comparable to the prices offered by the qualifying retail utility under standard offers issued for on-site solar generation. During these three compliance years, the qualifying retail utility shall acquire, through these standard offers, one-half of the solar garden generation it plans to acquire, to the extent the qualifying retail utility receives responses to its standard offers. Notwithstanding any provision of this subparagraph (II) to the contrary, renewable energy credits generated from solar gardens shall not be used to achieve more than twenty percent of the retail distributed generation standard in years 2011 through 2013.

(III) For the first three compliance years commencing with the 2011 compliance year, a qualifying retail utility shall not be obligated to purchase the output from more than six megawatts of newly installed community solar garden generation.

(III.5) Subsections (5)(a)(II) and (5)(a)(III) of this section and this subsection (5)(a)(III.5) are repealed, effective July 1, 2043.

(IV) For each qualifying retail utility's compliance years commencing in 2014 and thereafter, the commission shall determine the minimum and maximum purchases of electrical output from newly installed community solar gardens of different output capacity that the qualifying retail utility shall plan to acquire, without regard to the six-megawatt ceiling of the first three compliance years. In addition, as necessary, the commission shall formulate and implement policies consistent with this section that simultaneously encourage:

(A) The ownership by customers of subscriptions in community solar gardens and of other forms of distributed generation, to the extent the commission finds there to be customer demand for such ownership;

(B) Ownership in community solar gardens by residential retail customers and agricultural producers, including low-income customers, to the extent the commission finds there to be demand for such ownership;

(C) The development of community solar gardens with attributes that the commission finds result in lower overall total costs for the qualifying retail utility's customers;

(D) Successful financing and operation of community solar gardens owned by subscriber organizations; and

(E) The achievement of the goals and objectives of section 40-2-124.

(b) (I) (A) The output from a community solar garden shall be sold only to the qualifying retail utility serving the geographic area where the community solar garden is located.

(B) Once a community solar garden is part of a qualifying retail utility's plan for acquisition of renewable resources, as approved by the commission, the commission shall, by January 30, 2020, initiate a proceeding, or consider in an active proceeding, to determine whether the qualifying retail utility shall purchase all of the electricity and renewable energy credits generated by the community solar garden or whether a subscriber may, upon becoming a subscriber, choose to retain or sell to the qualifying retail utility the subscriber's renewable energy credits.

(C) The amount of electricity and renewable energy credits generated by each community solar garden shall be determined by a production meter installed by the qualifying

retail utility or third-party system owner and paid for by the owner of the community solar garden.

(II) The purchase of the output of a community solar garden by a qualifying retail utility shall take the form of a net metering credit against the qualifying retail utility's electric bill to each community solar garden subscriber at the premises set forth in the subscriber's subscription. The net metering credit shall be calculated by multiplying the subscriber's share of the electricity production from the community solar garden by the qualifying retail utility's total aggregate retail rate as charged to the subscriber, minus a reasonable charge as determined by the commission to cover the utility's costs of delivering to the subscriber's premises the electricity generated by the community solar garden, integrating the solar generation with the utility's system, and administering the community solar garden's contracts and net metering credits. The commission shall ensure that this charge does not reflect costs that are already recovered by the utility from the subscriber through other charges. If, and to the extent that, a subscriber's net metering credit exceeds the subscriber's electric bill in any billing period, the net metering credit shall be carried forward and applied against future bills. The qualifying retail utility and the owner of the community solar garden shall agree on whether the purchase of the renewable energy credits from subscribers will be accomplished through a credit on each subscriber's electricity bill or by a payment to the owner of the community solar garden.

(c) The owner of the community solar garden shall provide real-time production data to the qualifying retail utility to facilitate incorporation of the community solar garden into the utility's operation of its electric system and to facilitate the provision of net metering credits.

(d) The owner of the community solar garden shall be responsible for providing to the qualifying retail utility, on a monthly basis and within reasonable periods set by the qualifying retail utility, the percentage shares that should be used to determine the net metering credit to each subscriber. If the electricity output of the community solar garden is not fully subscribed, the qualifying retail utility shall purchase the unsubscribed renewable energy and the renewable energy credits at a rate equal to the qualifying retail utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year.

(e) Each qualifying retail utility shall set forth in its plan for acquisition of renewable resources a proposal for including low-income customers as subscribers to a community solar garden. The utility may give preference to community solar gardens that have low-income subscribers.

(f) Qualifying retail utilities shall be eligible for the incentives and subject to the ownership limitations set forth in section 40-2-124 (1)(f) for utility investments in community solar gardens and may recover through rates a margin, in an amount determined by the commission, on all energy and renewable energy credits purchased from community solar gardens. Such incentive payments shall be excluded from the cost analysis required by section 40-2-124 (1)(g).

(6) Nothing in this section shall be construed to waive or supersede the retail rate impact limitations in section 40-2-124 (1)(g). Utility expenditures for unsubscribed energy and renewable energy credits generated by community solar gardens shall be included in the calculations of retail rate impact required by that section.

(7) **Applicability to cooperative electric associations and municipally owned utilities.** This section shall not apply to cooperative electric associations or to municipally owned utilities.

Source: L. 2007: Entire section added, p. 265, § 2, effective March 27. **L. 2010:** Entire section amended, (HB 10-1342), ch. 344, p. 1592, § 1, effective June 5. **L. 2015:** (2)(b)(II) amended, (HB 15-1248), ch. 170, p. 519, § 1, effective May 8; (2)(b)(I)(C) added, (SB 15-046), ch. 142, p. 434, § 2, effective August 5. **L. 2019:** IP(3)(b) amended and (5)(a)(III.5) added, (SB 19-236), ch. 359, p. 3299, § 6, effective May 30; (2)(b)(I)(A), (2)(b)(II), and (5)(b)(I) amended and (2)(b)(I)(D) and (3.5) added, (HB 19-1003), ch. 360, p. 3336, § 2, effective August 2. **L. 2020:** IP(3.5)(b) amended, (HB 20-1402), ch. 216, p. 1058, § 70, effective June 30.

40-2-128. Solar photovoltaic installations - supervision by certified practitioners - qualifications of electrical contractors - definitions. (1) For all photovoltaic installations allowed under section 40-2-124 with a direct current design capacity of less than three hundred kilowatts:

(a) (I) (A) The performance of all photovoltaic electrical work, the installation of photovoltaic modules, and the installation of photovoltaic module mounting equipment is subject to on-site supervision by a certified photovoltaic energy practitioner, as designated by the North American Board of Certified Energy Practitioners (NABCEP), or a licensed master electrician, licensed journeyman electrician, or licensed residential wireman, as defined in section 12-115-103.

(B) In the case of building-integrated photovoltaic technology, if the type of building-integrated photovoltaic technology installed or the scope of the building-integrated photovoltaic installation involved does not require a licensed master electrician, licensed journeyman electrician, or licensed residential wireman to perform the installation work and the installation work concerns the installation of roofing materials, the on-site supervision may be performed by a certified solar energy installer, as designated by NABCEP or Roof Integrated Solar Energy (RISE).

(C) For a building-integrated photovoltaic installation, a licensed master electrician, licensed journeyman electrician, or licensed residential wireman must perform the installation work for any stage of the installation after the installation materials penetrate the roof, a structural wall, or another part of the building, or any stage of the installation in which the building-integrated photovoltaic materials transition to a surface-mounted junction box and utilize types of conduit and building wire that are approved by the national electrical code, as defined in section 12-115-103 (8).

(D) By submitting an initial application for funding or an initial contract proposal, the applicant assumes responsibility for employing or contracting with one or more certified energy practitioners or licensed master electricians, licensed journeyman electricians, or licensed residential wiremen to supervise the installation and as necessary to maintain the three-to-one ratio required by subsection (1)(b) of this section, including during any off-site, preinstallation assembly. Payment of any incentives for the work shall not be approved until the applicant supplies the name and certification number of each certified energy practitioner or the license number of each master electrician, journeyman electrician, or residential wireman who actually provided on-site supervision or was present to maintain the three-to-one ratio required by subsection (1)(d) of this section.

(II) Neither the commission nor the utility shall have responsibility for monitoring or enforcing compliance with this section. It shall be the responsibility of the applicant to obtain the information required by subparagraph (I) of this paragraph (a), and it shall be the responsibility

of the qualifying retail utility to obtain from the applicant and retain, for at least one year after completion of the installation, copies of all documentation submitted by the applicant in connection with the installation.

(b) All work performed on the alternating-current side of the inverter will be performed by an electrical contractor who employs a licensed journeyman electrician or a licensed residential wireman who will perform the work. All electrical work that pertains to article 115 of title 12 will be performed by an electrical apprentice registered with the appropriate state regulatory agency, a licensed journeyman electrician, or a licensed residential wireman. The appropriate ratio of no less than one journeyman or residential wireman for every three electrical apprentices will be maintained.

(c) Repealed.

(d) On a system with a direct current design capacity of less than three hundred kilowatts:

(I) The ratio of the number of persons who are assisting with the work and who are neither licensed electricians nor registered electrical apprentices to the number of persons who are certified as provided in paragraph (a) of this subsection (1) shall never exceed three to one, and a person who is both licensed and certified shall not count double for purposes of measuring this ratio, during the following stages:

(A) The installation of photovoltaic modules;

(B) The installation of photovoltaic module mounting equipment; and

(C) Any photovoltaic electrical work; and

(II) There shall be, at all times, at least one on-site supervisor who is certified as provided in paragraph (a) of this subsection (1).

(2) As used in this section, unless the context otherwise requires:

(a) (I) "Photovoltaic electrical work" means wiring, grounding, or repairing electrical apparatus and equipment in a photovoltaic distributed generation system.

(II) "Photovoltaic electrical work" includes the preinstallation assembly of photovoltaic modules to photovoltaic module mounting equipment for installation on-site.

(III) "Photovoltaic electrical work" does not include site preparation, trenching or excavating, hauling, or other work that is not specifically described in subparagraph (I) or (II) of this paragraph (a).

(b) "Photovoltaic module" means the module or panel that generates electricity through a photovoltaic process.

(c) "Photovoltaic module mounting equipment" means the racking, mounting, apparatus, equipment, or structure that physically supports and secures one or more photovoltaic modules in place or to a roof, wall, foundation, or pedestal.

Source: L. 2010: Entire section added, (HB 10-1001), ch. 37, p. 150, § 4, effective August 11. **L. 2013:** IP(1) and (1)(a)(I) amended, (SB 13-186), ch. 159, p. 513, § 2, effective May 3. **L. 2019:** IP(1), (1)(a)(I)(D), and IP(1)(d) amended and (1)(c) repealed, (HB 19-1003), ch. 360, p. 3338, § 3, effective August 2; (1)(a)(I)(A), (1)(a)(I)(C), and (1)(b) amended, (HB 19-1172), ch. 136, p. 1732, § 258, effective October 1.

40-2-129. New resource acquisitions - factors in determination - local employment - "best value" metrics. (1) (a) When evaluating electric resource acquisitions and requests for a

certificate of convenience and necessity for construction or expansion of generating facilities, including but not limited to pollution control or fuel conversion upgrades and conversion of existing coal-fired plants to natural gas plants, the commission shall consider, in all decisions involved in electric resource acquisition processes, best value regarding employment of Colorado labor, as defined in section 8-17-101 (2)(a), and positive impacts on the long-term economic viability of Colorado communities. To this end, the commission shall require utilities to obtain and provide to the commission the following information regarding "best value" employment metrics: The availability of training programs, including training through apprenticeship programs registered with the United States department of labor's office of apprenticeship or by state apprenticeship councils recognized by that office; employment of Colorado labor as compared to importation of out-of-state workers; long-term career opportunities; and industry-standard wages, health care, and pension benefits. When a utility proposes to construct new facilities of its own, the utility shall supply similar information to the commission.

(b) Any electric resource acquisition decision must be based in part on review of the "best value" employment metrics criteria set forth in any solicitation document. The commission shall not approve any electric resource plan, acquisition, or power purchase agreement that fails to either:

(I) Provide the "best value" employment metrics documentation specified in the solicitation document; or

(II) In the alternative, certify compliance with objective "best value" employment metrics performance standards set forth in the solicitation document.

(c) The commission may waive the requirements of this section if a utility agrees to use a project labor agreement for construction or expansion of a generating facility.

(2) Following development or acquisition of a generating facility by a utility, for all generating facilities owned by the utility that do not emit carbon dioxide, the utility shall use utility employees or qualified contractors if the contractors' employees have access to an apprenticeship program registered with the United States department of labor's office of apprenticeship or by a state apprenticeship council recognized by that office; except that this apprenticeship requirement does not apply to:

(a) The design, planning, or engineering of the infrastructure;

(b) Management functions to operate the infrastructure; or

(c) Any work included in a warranty.

(3) The provisions of this section regarding "best value" employment metrics do not apply to projects involving retail distributed generation, as defined in section 40-2-124 (1)(a)(VIII) or 40-2-127 (2)(b)(I)(B).

Source: L. 2010: Entire section added, (HB 10-1001), ch. 37, p. 150, § 4, effective August 11. **L. 2013:** Entire section amended, (HB 13-1292), ch. 266, p. 1406, § 16, effective May 24. **L. 2019:** Entire section amended, (SB 19-236), ch. 359, p. 3300, § 7, effective May 30. **L. 2020:** (1)(a) and IP(2) amended, (HB 20-1402), ch. 216, p. 1058, § 71, effective June 30.

Cross references: For the short title ("Keep Jobs In Colorado Act of 2013") in HB 13-1292, see section 1 of chapter 266, Session Laws of Colorado 2013.

40-2-130. Distributed resources - energy storage systems - definitions - legislative declaration - rules. (1) **Legislative declaration.** (a) The general assembly finds and determines that:

(I) Colorado's economy, as well as the health and safety of its residents, depends on a reliable and efficient supply of electricity; and

(II) The threat of interruptions in electric supply due to weather, malicious interference, or malfunctions in centralized generation and transmission facilities makes distributed resources, including energy storage systems paired with other distributed resources, an effective way for residents to provide their own reliable and efficient supply of electricity.

(b) Therefore, the general assembly declares that:

(I) It is in the public interest to limit barriers to the installation, interconnection, and use of customer-sited energy storage facilities in Colorado; and

(II) Colorado's consumers of electricity have a right to install, interconnect, and use energy storage systems on their property without the burden of unnecessary restrictions or regulations and without unfair or discriminatory rates or fees.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Energy storage system" means any commercially available, customer-sited system, including batteries and the batteries paired with on-site generation, that is capable of retaining, storing, and delivering energy by chemical, thermal, mechanical, or other means.

(b) "Utility" or "electric utility" means a qualifying retail utility, as described in section 40-2-124 (1); except that the term does not include a municipally owned utility or a cooperative electric association.

(3) **Authority of commission - rules.** The commission shall adopt rules allowing the installation, interconnection, and use of energy storage systems by customers of utilities. The commission shall incorporate the following principles into the rules:

(a) It is in the public interest to limit barriers to the installation, interconnection, and use of customer-sited energy storage systems in Colorado;

(b) Colorado's consumers of electricity have a right to install, interconnect, and use energy storage systems on their property without the burden of unnecessary restrictions or regulations and without discriminatory rates or fees;

(c) Utility approval processes and any required interconnection reviews of energy storage systems shall be simple, streamlined, and affordable for customers; and

(d) Utilities shall not require the installation of customer-sited meters in addition to a single net energy meter for the purposes of monitoring energy storage systems; except that the commission may authorize the requirement of metering for certain large energy storage systems, as determined by the commission.

(4) Nothing in this section alters or supersedes either:

(a) The principles of net metering as described in section 40-2-124; or

(b) Any existing electrical permit requirements or any licensing or certification requirements for installers, manufacturers, or equipment.

Source: L. 2018: Entire section added, (SB 18-009), ch. 45, p. 476, § 1, effective August 8.

40-2-131. State of 911 report. (1) Notwithstanding section 24-1-136 (11)(a)(I), on or before September 15, 2018, and on or before September 15 of each year thereafter, the commission shall publish a "state of 911" report and submit the report to the members of the general assembly. The report must provide an overall understanding of the state of 911 service in Colorado and must address, at a minimum, the following:

(a) The commission's actions related to 911 service in the state during the previous year as well as planned implementation actions related to 911 service for the upcoming year;

(b) The current statewide structure, technology, and general operations of 911 service in Colorado;

(c) 911 network reliability and resiliency;

(d) Identified gaps, vulnerabilities, and needs related to 911 service in the state;

(e) The impact on and involvement of the state in federal activities and national trends affecting 911 service in Colorado;

(f) The state's planning for, transition to, and implementation of next generation 911, including a projected timeline for full statewide implementation; and

(g) A discussion of 911 funding and fiscal outlook, including current funding sources and whether they are adequate for 911 service in the state, and potential funding mechanisms for the transition to and implementation of next generation 911.

(2) In developing the report each year, the commission shall consult with public safety answering points as defined in section 29-11-101 (23), 911 governing bodies as defined in section 29-11-101 (16), and statewide organizations that represent public safety agencies.

(3) On or before February 1, 2019, and on or before February 1 of each year thereafter, the commission shall present the report to the senate committee on business, labor, and technology, or its successor committee, and the house of representatives committee on business affairs and labor or its successor committee.

(4) Nothing in this section shall be interpreted to grant the commission the authority to regulate any providers or services exempt from jurisdiction under section 40-15-401.

Source: L. 2018: Entire section added, (HB 18-1184), ch. 308, p. 1862, § 1, effective May 29. **L. 2020:** (2) amended, (HB 20-1293), ch. 267, p. 1298, § 16, effective July 10.

40-2-132. Distribution system planning - definition - rules. (1) The commission shall promulgate rules establishing the filing of a distribution system plan. The commission's rules must:

(a) Define the following terms:

(I) Distributed energy resources that include:

(A) Distributed renewable electric generation;

(B) Energy storage systems connected to the distribution grid;

(C) Microgrids;

(D) Energy efficiency measures; and

(E) Demand response measures; and

(II) Non-wires alternatives;

(b) Develop a methodology for evaluating the costs and net benefits of using distributed energy resources as non-wires alternatives;

(c) Determine a threshold for the size of a new distribution project, whether in dollars, meters, or another factor, as determined by the commission, for when a qualifying retail utility must consider implementation or use of non-wires alternatives, potentially including energy efficiency measures under utility programs for new electric service to any planned new neighborhoods or housing developments;

(d) Direct each qualifying retail utility to file a distribution system plan;

(e) Determine what shall be included in a distribution system plan, which at a minimum must include the following:

(I) Information regarding:

(A) System and substation historical data;

(B) Peak demand;

(C) Adoption of distributed energy resources; and

(D) Distribution system investments;

(II) To provide new electric service to any planned new neighborhoods or housing developments expected to include more than ten thousand new residences, a description of the qualifying retail utility's consideration of non-wires alternatives, potentially including energy efficiency measures under utility programs;

(III) An updated load forecast that includes any new load resulting from projected or forecasted growth from beneficial electrification programs;

(IV) A forecast of the growth of distributed energy resources for the years covered by the plan;

(V) A high-level summary of its planning process for addressing cyber and physical security risks. As part of the summary, the qualifying retail utility need not report any confidential, proprietary, or other information in the plan that could in any way compromise or decrease the qualifying retail utility's ability to prevent, mitigate, or recover from potential system disruptions caused by weather events, physical events, or cyber attacks.

(VI) A proposed cost-recovery method or mechanism for any non-wires alternative investments found to be outside the ordinary course of business;

(VII) A description of the qualifying retail utility's anticipated new distribution system expansion investments for the years covered by the plan;

(VIII) A process to evaluate the plan's feasibility and the economic impacts of using non-wires alternatives for certain projects;

(IX) An estimate of the year in which peak demand growth or distributed energy resource growth would merit analysis of new non-wires alternative projects; and

(X) Any other information that the commission deems relevant.

(2) The commission shall approve a qualifying retail utility's investment in non-wires alternatives if the commission finds the investment to be in the public interest.

(3) (a) The commission shall determine whether a qualifying retail utility's ratepayers would realize benefits from a non-wires alternative investment and whether the associated costs are just and reasonable.

(b) To evaluate the success of any non-wires alternative investment authorized pursuant to a qualifying retail utility's distribution system plan, the commission may adopt criteria, benchmarks, or accountability mechanisms with which the qualifying retail utility must comply.

(4) As used in this section, "qualifying retail utility" has the meaning described in section 40-2-124 (1); except that the term does not mean a municipally owned utility or a cooperative electric association.

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3301, § 8, effective May 30.

40-2-133. Workforce transition planning filing - definition. (1) A qualifying retail utility regulated by the commission that submits a filing, including a resource plan or application, that includes a proposed accelerated retirement of an electric generating facility shall also include a workforce transition plan as part of its filing.

(2) To the extent practicable, a workforce transition plan must include estimates of:

(a) The number of workers employed by the qualifying retail utility or a contractor of the qualifying retail utility at the electric generating facility, which number must include all workers that directly deliver fuel to the electric generating facility;

(b) The total number of workers whose existing jobs, as a result of the retirement of the electric generating facility:

(I) Will be retained; and

(II) Will be eliminated;

(c) With respect to the workers whose existing jobs will be eliminated due to the retirement of the electric generating facility, the total number and the number by job classification of workers:

(I) Whose employment will end without them being offered other employment;

(II) Who will retire as planned, be offered early retirement, or leave on their own;

(III) Who will be retained by being transferred to other electric generating facilities or offered other employment by the qualifying retail utility; and

(IV) Who will be retained to continue to work for the qualifying retail utility in a new job classification; and

(d) If the qualifying retail utility is replacing the electric generating facility being retired with a new electric generating facility, the number of:

(I) Workers from the retired electric generating facility who will be employed at the new electric generating facility; and

(II) Jobs at the new electric generating facility that will be outsourced to contractors or subcontractors.

(3) As used in this section, "qualifying retail utility" has the meaning described in section 40-2-124 (1); except that the term does not mean a municipally owned utility or a cooperative electric association.

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3303, § 8, effective May 30.

40-2-134. Wholesale electric cooperatives - electric resource planning - definition - rules. (1) (a) The commission shall promulgate rules that require each wholesale electric cooperative to submit to the commission an application for approval of an integrated or electric

resource plan. The commission shall evaluate a wholesale electric cooperative plan using rules that the commission has adopted that are applicable to wholesale electric cooperatives.

(b) In developing rules for a wholesale electric cooperative, the commission must consider, among other factors determined by the commission, whether each wholesale electric cooperative:

(I) Serves a multistate operational jurisdiction;

(II) Has a not-for-profit ownership structure; and

(III) Has a resource plan that meets the energy policy goals of the state.

(2) As used in this section, "wholesale electric cooperative" means any generation and transmission cooperative electric association that provides wholesale electric service directly to cooperative electric associations.

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3304, § 8, effective May 30.

40-2-135. Retail distributed generation - customers' rights - rules. A retail electric utility customer is entitled to generate, consume, store, and export electricity produced from eligible energy resources to the electric grid through the use of customer-sited retail distributed generation, as defined in section 40-2-124 (1)(a)(VIII), subject to reliability standards, interconnection rules, and procedures, as determined by the commission.

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3304, § 9, effective May 30.

40-2-136. Energy storage systems - terms and conditions for installation, interconnection, and use by cooperatives - legislative declaration - definitions. (1) (a) The general assembly finds and determines that:

(I) Cardinal principles of cooperative electric associations include democratic member control, autonomy, and independence; and

(II) Rapidly evolving technologies in generation, energy storage, and demand management offer cooperative electric associations a variety of options to meet the needs of their members reliably.

(b) Therefore, the general assembly declares that:

(I) It is in the public interest to limit barriers to the installation, interconnection, and use of energy storage systems by cooperative electric associations in Colorado; and

(II) Cooperative electric associations in Colorado should be able to install, interconnect, and use energy storage systems that are connected to the cooperative electric association's electrical system and will not, at any time, flow onto the transmission facilities of a wholesale electric cooperative or other third party without prior agreement as part of meeting their members' needs for reliable, affordable energy without unfair or discriminatory rates or fees.

(2) A wholesale electric cooperative shall not subject the installation, interconnection, or use of an energy storage system by a retail cooperative electric association to any unjust, unreasonable, discriminatory, or preferential charge, classification, contract, fare, fee, practice, rate, regulation, rule, schedule, service, or toll.

(3) As used in this section, unless the context otherwise requires:

(a) "Cooperative electric association" means a nonprofit electric corporation or association other than a wholesale electric cooperative.

(b) "Energy storage system" has the meaning set forth in section 40-2-202 (2).

(c) "Wholesale electric cooperative" means any generation and transmission cooperative electric association that provides wholesale electric service directly to cooperative electric associations.

Source: L. 2020: Entire section added, (HB 20-1225), ch. 94, p. 372, § 3, effective March 27.

Cross references: For the legislative declaration in HB 20-1225, see section 1 of chapter 94, Session Laws of Colorado 2020.

PART 2

ENERGY STORAGE SYSTEMS

Cross references: For the short title ("Energy Storage Procurement Act") in HB 18-1270, see section 1 of chapter 360, Session Laws of Colorado 2018.

40-2-201. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) Energy storage systems provide potential opportunities to:

(I) Reduce system costs;

(II) Support diversification of energy resources; and

(III) Enhance grid safety and reliability;

(b) For these reasons, it is in the public interest to explore the use of energy storage systems in Colorado and to integrate into the planning process mechanisms for the procurement of energy storage systems by Colorado's electric utilities through evaluation and procurement methodologies.

Source: L. 2018: Entire part added, (HB 18-1270), ch. 360, p. 2151, § 2, effective August 8.

40-2-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Electric utility" means an investor-owned electric utility subject to regulation under articles 1 to 7 of this title 40.

(2) "Energy storage system" means commercially available technology that is capable of retaining energy, storing the energy for a period of time, and delivering the energy after storage by chemical, thermal, mechanical, or other means.

(3) "Procure" or "procurement" means to acquire by ownership or by a contractual right to use the energy from, or the capacity of, an energy storage system.

Source: L. 2018: Entire part added, (HB 18-1270), ch. 360, p. 2152, § 2, effective August 8.

40-2-203. Procurement mechanisms - determination by commission - rules. (1) On or before February 1, 2019, the commission shall establish, by rule, as part of the planning process, mechanisms for the procurement of energy storage systems by an electric utility; except that these mechanisms must not affect any ongoing resource acquisitions or competitive bidding processes that existed on February 1, 2018.

(2) In adopting the rules required by subsection (1) of this section, the commission shall use its best efforts to create conditions under which the procurement of energy storage systems by an electric utility will provide systemic benefits, including:

(a) Increased integration of energy into the grid of the electric utility;

(b) Improved reliability of the grid;

(c) A reduction in the need for the increased generation of electricity during periods of peak demand; and

(d) The avoidance, reduction, or deferral of investment by the electric utility.

(3) Pursuant to subsection (1) of this section, and in consideration of all known and measurable benefits and costs to an electric utility, the commission shall adopt rules:

(a) Establishing mechanisms for the inclusion of benefits and costs associated with energy storage systems into the planning conducted by electric utilities;

(b) Requiring electric utilities to provide to the commission, and allowing electric utilities to provide to third parties as approved by the commission, appropriate data and analysis of potential storage acquisitions in their planning processes, including potential interconnection points. The commission shall treat information provided to the commission or to approved third parties under this subsection (3)(b) as confidential and ensure that the commission and any approved third party manages the information in accordance with all commission rules and federal and state laws concerning customer data and personally identifiable information. If the commission finds that a third party has failed to comply with any applicable rules, laws, or conditions of approval under this subsection (3)(b), the commission may deem that party ineligible to bid or develop storage systems in the subsequent electric resource plan.

(c) Ensuring that any storage system project added to the electric grid will not compromise the security, safety, or reliability of the electric grid or any part of the electric grid;

(d) Establishing that an energy storage system may be owned by an electric utility or by any other person;

(e) (I) Establishing requirements for the filing by an electric utility of acquisition plans containing an analysis of the integration and use of electric storage systems.

(II) The requirements under this subsection (3)(e) must include the requirement that an electric utility provide in its acquisition plans:

(A) Modeling assumptions used to assess the costs and benefits of energy storage systems; and

(B) Model contracts for procurement of energy storage systems.

(f) Requiring the electric utility to include such other information as the commission may require in its documentation relating to planning.

(4) On or before May 1, 2019, electric utilities may file applications for rate-based projects, not to exceed fifteen megawatts of capacity, for energy storage systems. Nothing in this section is intended to prohibit or deter cost-effective storage deployment.

Source: L. 2018: Entire part added, (HB 18-1270), ch. 360, p. 2152, § 2, effective August 8.

ARTICLE 2.1

Transportation of Hazardous Materials

40-2.1-101 to 40-2.1-106. (Repealed)

Source: L. 89: Entire article repealed, p. 1640, § 6, effective July 1.

Editor's note: This article was added in 1979. For amendments to this article prior to its repeal in 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the "Hazardous Materials Transportation Act of 1987", see parts 1, 2, and 3 of article 20 of title 42.

ARTICLE 2.2

Transportation of Nuclear Materials

40-2.2-101 to 40-2.2-213. (Repealed)

Source: L. 93: Entire article repealed, p. 1612, § 14, effective June 6.

Editor's note: This article was added in 1986. For amendments to this article prior to its repeal in 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the "Hazardous Materials Transportation Act of 1987", see parts 1, 2, and 3 of article 20 of title 42.

ARTICLE 2.3

Colorado Transmission Coordination Act

40-2.3-101. Definitions. As used in this article 2.3, unless the context otherwise requires:

(1) "Electric utility" means a public utility as defined in section 40-1-103.

(2) "Energy imbalance market" means a real-time bulk power trading market that provides a means for participating electric utilities to purchase and sell unscheduled energy across a geographic region.

(3) "Joint tariff" means a tariff that contains only joint rates, which are rates that apply for transmission service over the lines or routes of two or more transmission providers, made by an agreement between the transmission providers.

(4) "Power pool" means a system of trading wholesale electricity that determines which generating sets or plants are called to meet demand for power at any particular time and sets the price of power for that period.

(5) "Regional transmission organization" means an independent electric transmission operator that provides wholesale transmission services to more than one provider of electric service within a geographic region by pooling together a number of transmission assets into a single electricity transmission market from which participating electric utilities may purchase wholesale transmission services.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3307, § 12, effective May 30.

40-2.3-102. Commission proceeding - evaluate participation in energy imbalance market, regional transmission organization, power pool, or joint tariff. (1) On or before January 1, 2020, the commission shall open a proceeding to investigate the potential costs and benefits to electric utilities, other generators, and Colorado electric utility customers that would arise from electric utilities participating in any energy imbalance markets, regional transmission organizations, power pools, or joint tariffs. The proceeding must include an investigation of the potential advantages and disadvantages of these options, including the effect on:

(a) Both participating and nonparticipating retail and wholesale Colorado electric service providers;

(b) Wholesale electric energy rates;

(c) Transmission rates;

(d) Retail electric energy rates for both participating and nonparticipating Colorado retail electric service providers;

(e) Commitment and dispatch of generation and real-time dispatch optimization of energy and ancillary services;

(f) Reserve margin requirements;

(g) Short-term and long-term operational costs;

(h) Regional infrastructure investment in response to growth in demand for electric energy or changes in energy production;

(i) Operating reserve procurement; and

(j) Renewable energy resource interconnection and integration.

(2) On or before July 1, 2021, the commission shall hold a hearing for public comment to consider the information received during the commission's investigation and deliberate on whether electric utilities should participate in an energy imbalance market, regional transmission organization, power pool, or joint tariff.

(3) On or before December 1, 2021, the commission shall issue a decision determining whether electric utilities participating in an energy imbalance market, regional transmission organization, power pool, or joint tariff is in the public interest.

(4) If the commission determines that electric utility participation in an energy imbalance market, regional transmission organization, power pool, or joint tariff is in the public

interest, the commission, on or before July 1, 2022, shall direct electric utilities to take appropriate actions and conduct such proceedings as the commission deems appropriate to pursue participation in an energy imbalance market, regional transmission organization, power pool, or joint tariff.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3307, § 12, effective May 30.

40-2.3-103. Repeal of article. This article 2.3 is repealed, effective September 1, 2022.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3309, § 12, effective May 30.

ARTICLE 3

Regulation of Rates and Charges

Cross references: For the regulation of rates and charges by municipal utilities, see article 3.5 of this title.

40-3-101. Reasonable charges - adequate service. (1) All charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful. Rates and charges demanded or received by any public utility for gas transportation service furnished or to be furnished shall not be deemed to be unjust or unreasonable so long as said rate or charge is no greater than a maximum rate and no lower than a minimum rate determined by the commission (or, in the case of a municipal utility, by the governing body of the municipal utility in accordance with sections 40-3-102 and 40-3.5-102) to be just and reasonable, and the provision of such gas transportation service at such rates or charges shall not constitute per se unjust discrimination or the granting of a preference. Nothing in this subsection (1) shall limit or restrict the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination.

(2) Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.

(3) (a) If a retail cooperative electric association, in conjunction with the payment of an applicable charge, withdraws from membership in a wholesale electric cooperative, as defined in section 40-2-136 (3)(c), that withdrawal is deemed to be a matter of statewide concern, and, in relation to such withdrawal:

(I) The wholesale electric cooperative will act in accordance with the obligation of good faith and fair dealing in implementing the withdrawal and shall not require or impose commercially unreasonable contractual terms on the retail cooperative electric association in relation to the withdrawal; and

(II) The wholesale electric cooperative shall, upon request from the withdrawing retail cooperative electric association, facilitate the retail cooperative electric association's transition from native load to a firm service transmission customer without diminishing the withdrawing retail cooperative electric association's native electric load priority for accessing firm transmission capacity.

(b) The commission has the authority to adjudicate complaints about the terms on which a wholesale electric cooperative implements withdrawal pursuant to this subsection (3).

Source: L. 13: p. 468, § 13. **C.L.** § 2924. **CSA:** C. 137, § 14. **CRS 53:** § 115-3-1. **C.R.S. 1963:** § 115-3-1. **L. 91:** (1) amended, p. 1417, § 9, effective April 19. **L. 2020:** (3) added, (HB 20-1225), ch. 94, p. 373, § 4, effective March 27.

Cross references: (1) For hearings on rate schedules, see § 40-6-111; for reparation for excessive charges, see § 40-6-119.

(2) For the legislative declaration in HB 20-1225, see section 1 of chapter 94, Session Laws of Colorado 2020.

40-3-102. Regulation of rates - correction of abuses. The power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in articles 1 to 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power, and to enforce the same by the penalties provided in said articles through proper courts having jurisdiction; except that nothing in this article shall apply to municipal natural gas or electric utilities for which an exemption is provided in the constitution of the state of Colorado, within the authorized service area of each such municipal utility except as specifically provided in section 40-3.5-102.

Source: L. 13: p. 469, § 14. **C.L.** § 2925. **CSA:** C. 137, § 15. **CRS 53:** § 115-3-2. **C.R.S. 1963:** § 115-3-2. **L. 83:** Entire section amended, p. 1552, § 1, effective June 17.

Cross references: For definition of a public utility, see § 40-1-103; for penalties for violation, see article 7 of this title.

40-3-103. Utilities to file rate schedules - rules. (1) Under the rules prescribed by the commission, each public utility shall file with the commission, within the time and in the form designated by the commission, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced, together with all rules, regulations, contracts, privileges, and facilities that in any manner affect or relate to rates, tolls, rentals, classifications, or service.

(2) (a) On or after January 1, 2018, on a schedule determined by the commission, each investor-owned electric utility shall file for the commission's review a comprehensive billing format that the investor-owned electric utility has developed for its monthly billing of customers.

The comprehensive billing format must include the following components of a customer's monthly bill:

(I) A line-item representation of all monthly charges and credits applied to the customer and an indication of whether the charges have changed from the prior month as a result of changes in fuel costs;

(II) For months in which tiered rates are applied, a breakdown of the tiered rates and the amount of usage to which each rate was applied for the month;

(III) The daily average cost for the current month compared to the same month in the previous calendar year;

(IV) A glossary of terms used by the utility in the monthly bill;

(V) A description of each of the monthly fees that the utility may charge the customer;

(VI) The usage for the current month and each of the previous twelve months, as shown in a bar graph or similar visual format; and

(VII) For customers to which demand rates apply, a listing of the applicable demand charge, the peak demand during the billing period, and, provided the utility can reasonably ascertain such data, the date and time at which the peak demand occurred.

(b) Each investor-owned electric utility shall provide its customers, on a biannual basis, with either an onsert or an insert that indicates, as a percentage, each fuel source used in power generation and purchased for that utility, including renewable energy sources, natural gas, and coal.

(c) (I) The commission shall review a filing submitted pursuant to subsection (2)(a) of this section within thirty days after the filing. If the commission determines that the filing does not meet the comprehensive billing format requirements set forth in subsection (2)(a) of this section, the commission may require the investor-owned electric utility to resubmit a comprehensive billing format in compliance with the requirements. The commission shall notify the investor-owned electric utility in writing of the reasons for the deficiency, and the investor-owned electric utility shall resubmit a comprehensive billing format in compliance with the requirements of subsection (2)(a) of this section within sixty days after the date of the commission's notice of deficiency; except that the commission may, upon request, extend the deadline.

(II) After the commission has approved a comprehensive billing format submitted by an investor-owned electric utility pursuant to subsection (2)(a) of this section, the investor-owned electric utility need not resubmit a comprehensive billing format unless the investor-owned electric utility makes changes to its comprehensive billing format.

Source: L. 13: p. 469, § 15. **C.L.** § 2926. **CSA:** C. 137, § 16. **CRS 53:** § 115-3-3. **C.R.S. 1963:** § 115-3-3. **L. 69:** p. 964, § 75. **L. 91:** Entire section amended, p. 2427, § 1, effective June 8. **L. 2006:** Entire section amended, p. 1103, § 26, effective August 7. **L. 2007:** Entire section amended, p. 1244, § 1, effective May 24. **L. 2017:** Entire section amended, (SB 17-105), ch. 224, p. 862, § 1, effective May 22.

40-3-103.5. Medical exemption - tiered electricity rates - rules. (1) Notwithstanding any provision of articles 1 to 7 of this title 40 to the contrary, the commission shall adopt rules to create an exemption from any tiered electricity rate plan based on a customer's medical

condition. The commission's rules must provide a mechanism for the recovery of costs associated with implementing and providing the medical exemption.

(2) The commission may determine the definition of "medical condition"; except that the definition must include multiple sclerosis, epilepsy, quadriplegia, and paraplegia. The medical exemption is for individuals who have the verification of a physician licensed in Colorado of a heat-sensitive medical condition or the need for the use of an essential life support device.

(3) If the commission determines that a means test is necessary for the medical exemption, the commission shall use no less than four hundred percent of the federal poverty level for the customer's household as the maximum income to be eligible for the medical exemption.

(4) If the low-income energy assistance program is used to certify eligibility, the medical exemption under this section must be distinguishable from the heat assistance benefits offered under the low-income energy assistance program because these programs may have different eligibility requirements.

(5) On and after September 1, 2020, the commission shall require utilities periodically to report, pursuant to section 40-3-110, the number of their customers who receive the medical exemption under this section and to describe the efforts the utilities have made during each reporting period to facilitate the enrollment of qualified persons in their medical exemption programs.

Source: L. 2011: Entire section added, (SB 11-087), ch. 80, p. 218, § 1, effective March 29. **L. 2013:** Entire section amended, (SB 13-282), ch. 292, p. 1562, § 1, effective May 28. **L. 2020:** (1) and (3) amended and (5) added, (SB 20-030), ch. 148, p. 637, § 1, effective June 29.

40-3-103.6. Disconnection due to nonpayment - connection and reconnection fees - deposits - standard practices - rules. (1) On or before September 1, 2020, the commission shall commence a rule-making proceeding to adopt standard practices for gas and electric utilities to use when disconnecting service due to nonpayment. At a minimum, the rules must address the following subjects:

(a) Resources to support customers in multiple languages, as appropriate to the geographic areas served;

(b) Limiting shut-off times to reasonable hours of the day Monday through Friday, excluding holidays, so that customers can attempt to reconnect on the same day;

(c) Prescribed terms and conditions for payment plans to cure delinquency;

(d) Referral of delinquent customers to energy payment assistance resources such as Energy Outreach Colorado, charities, nonprofits, and state agencies that provide, or that administer federal funds for, low-income energy assistance;

(e) For each utility, standardized methodology to be used in determining reconnection fees and deposit requirements for reconnection;

(f) Protection policies for customers for whom electricity is medically necessary;

(g) Prohibitions on the disconnection of service during periods of extreme heat or cold, as appropriate to the geographic area served;

(h) A prohibition on the remote disconnection of service for nonpayment, through advanced metering infrastructure or otherwise, without a reasonable attempt to make contact

with the customer of record by telephone or engaging in a personal, physical visit to the premises; and

(i) Reporting requirements, no less frequently than annually, to provide the commission with standardized information from all utilities about disconnections and delinquencies. For the purpose of trend analysis, utilities may disaggregate data by month or by quarter, as the commission deems appropriate. Reporting requirements must take into consideration existing utility reporting and must allow the utilities a reasonable ability to ascertain data.

(2) The commission shall publish on its website, or require utilities to publish on their websites:

(a) Information regarding the standard practices and fees specified in rules adopted pursuant to subsection (1) of this section; and

(b) The information periodically reported in accordance with subsection (1)(i) of this section.

Source: L. 2020: Entire section added, (SB 20-030), ch. 148, p. 638, § 2, effective June 29.

40-3-104. Changes in rates - notice. (1) (a) In the case of a public utility other than a rail carrier, subject to the provisions of paragraph (c) of this subsection (1), no change shall be made by any public utility in any rate, fare, toll, rental, charge, or classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility, except after thirty days' notice to the commission and the public. Notwithstanding the provisions of this paragraph (a), changes in intrastate telecommunications services which have been determined by the commission to be competitive in nature, pursuant to the provisions of article 15 of this title, shall not be subject to any notice requirement, including, but not limited to, any requirement in this section whether or not denoted as a notice requirement.

(b) Repealed.

(c) (I) A public utility shall provide the notice required under subsection (1)(a) of this section by filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect. At the time of the public utility's filing with the commission, the public utility shall post the notice on its public website, including a reference to the docket numbers of relevant rules or adjudicatory matters, which posting must be conspicuously displayed on the website for at least thirty days. The commission may require transportation and water utilities to give additional notice in a manner set forth by order or rule. For public utilities other than transportation and water utilities, the commission shall require additional notice prior to an increase or other change in any rate, fare, toll, rental, charge, classification, or service, which additional notice may be made, at the option of the public utility, by any of the following methods:

(A) Publication of a notice in each newspaper of general circulation in each county in which the public utility provides service, which notice shall be four columns wide and eleven inches high stating plainly the changes and shall be published once each week for two successive weeks during the first twenty days of the thirty-day period prior to the effective date of the increase or change. If notice is given by publication, public utilities other than those providing

intrastate telecommunications services pursuant to section 40-15-104 (1) shall also be required to include, with each regular billing statement mailed to affected customers during the first regular billing cycle following the filing of the application for an increase or other change, a bill insert containing the same information contained in the notice by newspaper publication.

(B) Mailing of a notice to each affected customer of the public utility during the first twenty days of the thirty-day period prior to the effective date of the increase or change;

(C) Inclusion of an insert in, or a clear and conspicuous statement on, the bill mailed to each affected customer of the public utility during a regular billing cycle not later than the twentieth day of the thirty-day period prior to the effective date of the increase or change;

(D) Subject to subsection (1)(c)(VII) of this section, not later than the twentieth day of the thirty-day period before the effective date of the increase or change, sending an e-mail or text message to each affected customer of the public utility for whom the utility has an e-mail address or a mobile telephone number; or

(E) At the request of the public utility, such other manner as the commission may prescribe.

(II) Such additional notice shall be sufficient if it states the total dollar amount sought to be raised by such increased rates or other changes and, if determinable at the time of filing, the average monthly increase, by dollar amount or percentage, to customers served under residential and small business tariffs; states the effective date or dates thereof; contains a general description of the types of services to be affected thereby; informs affected customers, other than residential and small business customers, where they may call to obtain information during the thirty-day period prior to the effective date of the proposed increases or changes concerning how such increases or changes will affect them; and includes the telephone number and address of the commission with instructions regarding the registration of a protest to the proposed increases or changes. Proof of additional notice shall be filed by the public utility with the commission.

(III) Increases in rates, fares, tolls, rentals, or charges associated with electric and gas utility adjustment clauses are subject only to the provisions of subsection (2) of this section.

(IV) For public utilities other than transportation and water utilities, where increases or changes in any rate, fare, toll, rental, charge, classification, or service result from requested increases in revenue requirements and rate restructuring and are contained in a single advice letter or application, the additional notice required under subparagraphs (I) and (II) of this paragraph (c) shall be deemed sufficient if a single notice is given even if more than one proceeding is established by the commission with respect to the increases or changes.

(V) In the case of a public utility that provides regulated intrastate telecommunications services:

(A) Notice of a decrease in a rate or charge for any regulated telecommunications service shall be given by filing with the commission and keeping open for public inspection for a period of fourteen days the new schedule stating plainly the decrease to be made and the time that the decrease will become effective. Such decreases shall not be subject to any additional notice requirements.

(B) Notice of changes in terms and conditions for any regulated telecommunications service shall be given by filing with the commission and keeping open for public inspection for a period of fourteen days the new schedule stating plainly the changes to be made in the terms and conditions and the time that the changes will become effective. Such changes in the terms and conditions shall not be subject to any additional notice requirements unless the commission

determines that such additional notice is in the public interest. Any such additional notice shall be given in a manner specified by the commission.

(VI) A public utility that provides additional notice pursuant to subsection (1)(c)(I) of this section must include in the additional notice:

(A) The public utility's public website address; and

(B) A toll-free telephone number associated with the public utility that a customer may call for additional information or assistance. If a public utility sends additional notice by e-mail or text message pursuant to subsection (1)(c)(I)(D) of this section, the e-mail or text message need not include all information required by this subsection (1)(c)(VI); however, the e-mail or text message must include a link to the portion of the public utility's public website where that information is posted.

(VII) A public utility may provide additional notice pursuant to subsection (1)(c)(I)(D) of this section only if the public utility provides its customers with a mechanism by which a customer may opt out of receiving e-mail or text message notifications. For any customer that opts out, the public utility shall provide an alternate method of additional notice authorized under subsection (1)(c)(I) of this section.

(2) The commission, for good cause shown, may allow changes with less notice than is required by subsection (1) of this section by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(3) When any change is proposed in any rate, fare, toll, rental, charge, or classification or in any form of contract or agreement or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission immediately preceding or following the item.

(4) and (5) Repealed.

Source: L. 13: p. 470, § 16. **C.L.** § 2927. **CSA:** C. 137, § 17. **CRS 53:** § 115-3-4. **C.R.S. 1963:** § 115-3-4. **L. 84:** Entire section amended, p. 1036, § 2, effective July 1. **L. 85:** (1)(a) and (1)(c) amended, p. 1296, § 1, effective May 19. **L. 2000:** (1)(b), (4), and (5) repealed, p. 215, § 1, effective March 29. **L. 2002:** (1)(c)(V) added, p. 200, § 2, effective August 7. **L. 2015:** IP(1)(c)(I) and (1)(c)(I)(D) amended, (SB 15-261), ch. 291, p. 1188, § 1, effective August 5. **L. 2019:** IP(1)(c)(I), (1)(c)(I)(C), and (1)(c)(I)(D) amended and (1)(c)(I)(E), (1)(c)(VI), and (1)(c)(VII) added, (SB 19-236), ch. 359, p. 3304, § 10, effective May 30.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1)(c)(V), see section 1 of chapter 74, Session Laws of Colorado 2002.

40-3-104.3. Manner of regulation - competitive responses - definitions - repeal. (1) (a) Upon application by any public utility providing electric, natural gas, or steam service, the commission shall authorize such public utility to provide utility services to a specific customer or potential customer by contract without reference to its tariffs on file with the commission if the commission finds that:

(I) For contracts with a specific customer or potential customer involving electric and steam service:

(A) The price of any such service is not below that service's variable cost;

(B) The customer, or potential customer, has expressed its intention to decline or discontinue, or partially discontinue, service, to provide its own service, or to pursue the purchase of alternate services from another provider;

(C) The approval of the application will not adversely affect the remaining customers of the public utility; and

(D) The approval of the application is in the public interest;

(II) For contracts with existing customers involving natural gas service:

(A) The customer has the ability to provide its own service or has competitive alternatives available from other providers of the same or substitutable service, except from another public utility providing or proposing to provide the same type of service;

(B) The customer will discontinue using the services of the public utility if the authorization is not granted;

(C) Approval of the application will not as adversely affect the remaining customers of the public utility as would the alternative;

(D) The price of any such service provided pursuant to this subparagraph (II) shall be justified and shall not be less than the marginal cost of the service to the public utility. If the price is less than marginal cost, this shall be deemed to be an illegal restraint of trade subject to the provisions of article 4 of title 6, C.R.S.; and

(E) The approval of the application is in the public interest.

(b) Following a notice period of five days after the filing of an application under this section, the commission shall approve or deny the application within thirty days. All applications filed with the commission pursuant to this section shall be placed at the head of the commission's docket and shall be disposed of promptly within the time periods set forth in this paragraph (b); except that, for good cause shown, the commission may extend the period in which it must act for an additional fifteen days, or, in extraordinary circumstances, including but not limited to the existence of numerous pending applications under this section, the commission may extend the period in which it must act for an additional thirty days beyond the fifteen days provided for in this paragraph (b). Whenever such application is continued as provided in this paragraph (b), the commission shall enter an order making such continuance and stating fully the facts necessitating the continuance. If the commission has not approved or denied any such application within the time periods set forth in this paragraph (b), the application shall be deemed approved. If the commission denies any such application for approval within the permitted period, the subject contract shall not become effective. Any contract submitted pursuant to this section shall be filed under seal and treated as confidential by the commission; except that at the time the applicant files an application or contract with the commission, the applicant shall also furnish a copy of the application to any public utility then providing electric, gas, or steam service in the state of Colorado to the customer, and also furnish a copy to the office of consumer counsel, and the office of consumer counsel shall also treat said contract as confidential.

(c) An application filed by a public utility pursuant to this section shall contain the name of the customer, a description of the services proposed to be provided under contract, evidence that the requirements of paragraph (a) of this subsection (1) have been met, and any additional information required by the commission. The commission may dismiss an application if the applicant fails to provide information necessary to enable the commission to make the findings required by paragraph (a) of this subsection (1).

(d) (Deleted by amendment, L. 92, p. 2138, § 1, effective April 23, 1992.)

(e) Within ten days after the execution of such contract, the public utility shall file with the commission under seal and as a confidential document the final contract or other description of the price and terms of service, together with any additional information required by the commission. The applicant shall also furnish a copy of such information to the office of consumer counsel, who shall treat the information as confidential. The commission shall have no authority to disapprove the contract if the contract complies with the conditions contained in paragraph (a) of this subsection (1), but the commission may consider the contract for general regulatory purposes and to ensure compliance with the requirements of this section.

(2) (a) For contracts involving electric and steam service, at the time of any proceeding in which a utility's overall rate levels are determined, the commission shall specify a fully distributed cost methodology to be used to segregate rate base, expenses, and revenues associated with utility service provided by contract pursuant to this section from other regulated utility operations. For contracts involving electric and steam service, if revenues from a service provided pursuant to this section are less than the cost of service as determined by the fully distributed cost methodology specified by the commission, the rates of other regulated utility operations may not be increased to recover such difference between costs and revenues.

(b) For contracts involving natural gas service, the commission may require a public utility to segregate investments, expenses, and revenues associated with utility service provided pursuant to subparagraph (II) of paragraph (a) of subsection (1) of this section to ensure that such services are not subsidized by revenues from other utility operations. If the commission requires such segregation of such investment and expenses, it shall specify a fully distributed cost allocation methodology.

(3) (a) This section shall neither enlarge nor diminish the rights and obligations of a public utility operating under a certificate issued by the commission to serve customers within a territory pursuant to the provisions of article 3.5, 5, or 9.5 of this title.

(b) Nothing in this section shall be construed to permit any public utility to provide electric, natural gas, or steam service to a customer of another public utility located in or for use in the service territory of such other public utility providing or proposing to provide the same type of service.

(4) (a) The commission has the right to inspect the books and records of any affiliate of a public utility to the extent that the affiliate uses any plant, or incurs any cost, or provides any service or product which is joint and common to the provision of public utility services and products subject to the jurisdiction of the commission. Upon application and for good cause shown, the commission may enter an appropriate protective order which directs the manner in which proprietary information shall be treated.

(b) For purposes of this subsection (4), unless the context otherwise requires, "affiliate of a public utility" means a subsidiary of a public utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual public utility's involvement with the joint venture, or a subsidiary of a parent corporation of a public utility.

(5) Nothing in this section limits or restricts the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination except as specifically provided in this section.

(6) (a) Notwithstanding any other provision of this section, an investor-owned electric utility subject to rate regulation by the commission may offer economic development rates to a qualifying commercial or industrial customer.

(b) (I) An economic development rate approved pursuant to this section must be lower than the rate or rates that the qualifying commercial or industrial customer would be or currently is subject to under the utility's tariffs in effect at the time the qualifying commercial or industrial customer seeks to qualify for the economic development rate; except that an economic development rate must not be lower than the utility's marginal cost of providing service to the qualifying commercial or industrial customer.

(II) (A) The commission may approve investor-owned utility tariffs that provide for implementation of an economic development rate and set a minimum and maximum amount for the rate consistent with subsection (6)(b)(I) of this section.

(B) Notwithstanding subsection (6)(b)(II)(A) of this section, the utility may negotiate and enter into agreements related to economic development rates with individual qualifying commercial or industrial customers without commission approval so long as the agreed-upon economic development rate complies with the commission-approved tariff and the addition or expansion of existing load at a single location is less than or equal to twenty megawatts. Any addition or expansion of existing load at a single location that is greater than twenty megawatts requires separate commission approval based upon a finding that the addition or expansion is consistent with this section.

(III) An investor-owned utility may offer an economic development rate to a qualifying commercial or industrial customer for up to ten years.

(c) (I) An authorization granted by the commission pursuant to this section must include such terms and conditions as the commission determines are necessary to ensure that the economic development rates or charges assessed to other customers do not subsidize the cost of providing service to qualifying commercial and industrial customers consistent with subsection (6)(b)(I) of this section, and that there is no other subsidization of such service. In developing the terms and conditions, the commission shall consider, among other things, the rates and charges assessed to the utility's wholesale customers and the effects on other transmission system owners and users resulting from new transmission facilities constructed in connection with the utility's expansion of an existing voluntary renewable energy program or service offering.

(II) In a commission proceeding related to economic development rates authorized pursuant to subsection (6)(b) of this section, the utility bears the burden of proof to establish that:

(A) The rates or charges assessed to other customers do not subsidize the cost of providing economic development rates to qualifying commercial or industrial customers;

(B) The rates of other regulated utility operations do not increase; and

(C) Other customers on the utility's system do not experience a rate increase due to a rate or rates offered to a qualifying commercial or industrial customer pursuant to this section.

(III) The commission shall not impute to the utility revenues that would have been received from the qualifying commercial or industrial customer if the customer were being provided service under the corresponding rate for which it would have otherwise qualified under the utility's tariffs.

(d) (I) An investor-owned utility may seek commission approval to expand any voluntary renewable energy program or service offering, except those covered by valid agreements to the contrary executed and approved by the commission as of January 1, 2019,

through the acquisition of additional renewable generation capacity and energy to meet the current and projected demand of:

(A) Any commercial or industrial customer making a capital investment of two hundred fifty million dollars or more;

(B) Any commercial or industrial customer that requires such expansion to remain as a customer of that utility; or

(C) Any qualifying commercial or industrial customer entering the service territory of the utility.

(II) The commission may approve, within one hundred twenty days, an expansion of an existing voluntary renewable energy program or service offering upon a showing by the utility that:

(A) There is not sufficient capacity and energy in the existing voluntary renewable energy program or service offering to satisfy the needs of the customer and the customer meets the requirements of subsection (6)(d)(I) of this section; and

(B) The availability of the program or service, either on its own or in combination with other incentives, is a substantial factor in the customer's decision to locate new or expand or retain existing business operations in Colorado.

(7) As used in subsection (6) of this section and this subsection (7):

(a) "Qualifying commercial or industrial customer":

(I) Means a utility customer that:

(A) Agrees to: Locate commercial or industrial operations in Colorado and add at least three megawatts of new load at a single location; or expand existing commercial or industrial operations in Colorado and add at least three megawatts of new load at a single location; and

(B) Demonstrates, to the satisfaction of the investor-owned utility, subject to review by the commission, that: The cost of electricity is a critical consideration in deciding where to locate new or expand existing operations; and the availability of economic development rates, either on their own or in combination with other economic development incentives, is a substantial factor in the customer's decision to locate new or expand existing business operations in Colorado;

(II) Does not include a customer that agrees to relocate or otherwise transfer its existing load of at least three megawatts from the service territory of another public utility, as defined in section 40-1-103, into the service territory of the utility offering economic development rates.

(b) "Voluntary renewable energy program or service offering" means a program or other service offering approved by the commission that allows a commercial or industrial customer access to eligible energy resources, as that term is defined in section 40-2-124 (1)(a), on a voluntary basis, on terms and conditions deemed necessary by the commission. For a voluntary renewable energy program or service offering to be expanded, it must have been approved by the commission prior to the expansion request of a commercial or industrial customer pursuant to subsection (6)(d)(I) of this section.

(8) This subsection (8) and subsections (6) and (7) of this section are repealed, effective January 1, 2028.

Source: L. 89: Entire section added, p. 1535, § 1, effective July 1. **L. 92:** Entire section amended, p. 2138, § 1, effective April 23. **L. 2018:** (5) amended and (6) to (8) added, (HB 18-1271), ch. 362, p. 2159, § 2, effective January 1, 2019.

Cross references: For the legislative declaration in HB 18-1271, see section 1 of chapter 362, Session Laws of Colorado 2018.

40-3-104.4. Simplified regulatory treatment for small or nonprofit water companies. (1) The commission, with due consideration to public interest, quality of service, financial condition, and just and reasonable rates, shall grant regulatory treatment that is less comprehensive than otherwise provided for under this article 3 to small, privately owned water companies that serve fewer than one thousand five hundred customers. The commission, when considering policy statements and rules, shall balance reasonable regulatory oversight with the cost of regulation in relation to the benefit derived from the regulation.

(2) (a) Except as otherwise provided in subsection (2)(b) of this section, a water company registered as a nonprofit organization under section 501 (c) of the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. sec. 501 (c), is exempt from regulation under the "Public Utilities Law", articles 1 to 7 of this title 40.

(b) Notwithstanding subsection (2)(a) of this section, all rates, charges, and terms and conditions of service between a water company described in subsection (2)(a) of this section and its customers must be just and reasonable. The commission shall resolve any complaint alleging a violation of this subsection (2)(b) in accordance with articles 6 and 7 of this title 40 if the complaint is signed by:

(I) The mayor, the president of the board of trustees, or a majority of the council, commission, or other governing body of an affected city, county, city and county, or town;

(II) The chief executive officer of an affected public utility; or

(III) The lesser of:

(A) At least twenty-five customers or prospective customers of the water company complained of; or

(B) At least twenty-five percent of the current customers of the water company complained of.

Source: L. 2001: Entire section added, p. 1469, § 1, effective August 8. **L. 2018:** Entire section amended, (SB 18-134), ch. 91, p. 729, § 1, effective August 8.

40-3-104.5. Special provisions for rail carrier rate increases. Notwithstanding section 40-3-105 and any other provision of this title to the contrary, the commission shall not exercise any jurisdiction over rates with respect to intrastate rail carriers.

Source: L. 84: Entire section added, p. 1037, § 3, effective July 1. **L. 2000:** Entire section amended, p. 215, § 2, effective March 29.

40-3-105. Free and reduced service or transportation prohibited - exceptions. (1) No public utility shall, directly or indirectly, issue, give, or tender any free service, ticket, frank, free pass, or other gratuity of services or any free or reduced rate transportation for passengers or property between points within this state unless a tariff so providing is first filed with and approved by the commission.

(2) Except as otherwise provided in this section, no public utility shall charge, demand, collect, or receive a greater or lesser or different compensation for any product or commodity

furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or rule or regulation or any facility or privilege except those which are regularly and uniformly extended to all corporations and persons; but the commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.

(3) (a) Nothing in this article shall prohibit or restrict any public utility from furnishing its service, product, or commodity to, or the receiving of its service, product, or commodity by, its employees, pensioners, officers, directors, or board members at no charge or at charges less than those prescribed in the utility's published schedules or tariffs.

(b) No revenue shall accrue or be credited in the accounts of such utility with respect to such service, product, or commodity furnished at no charge nor with respect to any amounts by which charges for such service, product, or commodity are less than those prescribed in the utility's published schedules or tariffs.

Source: L. 13: p. 470, § 17. **C.L.** § 2928. **L. 27:** p. 249, § 1. **CSA:** C. 137, § 18. **L. 41:** p. 599, § 1. **CRS 53:** § 115-3-5. **C.R.S. 1963:** § 115-3-5. **L. 69:** p. 931, § 14. **L. 73:** p. 1143, § 1. **L. 84:** (2) amended, p. 1039, § 4, effective July 1. **L. 2002:** (2) amended, p. 1033, § 69, effective June 1.

Cross references: For penalties for violations, see article 7 of this title.

40-3-106. Advantages prohibited - graduated schedules - consideration of household income and other factors - definitions. (1) (a) Except when operating under paragraph (c) or (d) of this subsection (1), a public utility, as to rates, charges, service, or facilities, or in any other respect, shall not make or grant any preference or advantage to a corporation or person or subject a corporation or person to any prejudice or disadvantage. A public utility shall not establish or maintain any unreasonable difference as to rates, charges, service, facilities, or between localities or class of service. The commission may determine any question of fact arising under this section.

(b) Repealed.

(c) A local exchange provider, as defined in section 40-15-102 (18), may enter into a contract, when necessary, specifying non-cost-based rates and conditions particular to that contract with one or more purchasers of services for applications of interactive video technology for purposes of distance learning, video arraignment of defendants in criminal cases, or examination, diagnosis, or treatment of patients in the course of medical practice. When an application is subject to a bidding process by the end user of the service, the local exchange providers offering component elements of interactive video technology pursuant to this paragraph (c) shall offer the component elements relating to a specific application to a specific end user to all bidders, including themselves, if bidding, at the same rates, terms, and conditions. This exception shall not apply to any other regulated service. A provider other than a local exchange provider may offer such interactive video services if such services are provided under

the same terms and conditions as specified in this paragraph (c). Each contract entered into under this paragraph (c) shall be filed with the commission for information only.

(d) (I) Notwithstanding any provision of articles 1 to 7 of this title to the contrary, the commission may approve any rate, charge, service, classification, or facility of a gas or electric utility that makes or grants a reasonable preference or advantage to low-income customers, and the implementation of such commission-approved rate, charge, service, classification, or facility by a public utility shall not be deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination.

(II) As used in this paragraph (d), a "low-income utility customer" means a utility customer who:

(A) Has a household income at or below one hundred eighty-five percent of the current federal poverty line; and

(B) Otherwise meets the eligibility criteria set forth in rules of the department of human services adopted pursuant to section 40-8.5-105.

(III) When considering whether to approve a rate that makes or grants a reasonable preference or advantage to low-income utility customers, the commission shall take into account the potential impact on, and cost-shifting to, utility customers other than low-income utility customers.

(2) Nothing in articles 1 to 7 of this title 40 prohibits a public utility engaged in the production, generation, transmission, or furnishing of heat, light, gas, water, power, or telephone service from establishing a graduated scale of charges subject to this title 40; except that, for rates resulting from a rate design change approved by the commission on or after September 1, 2020, the commission shall require utility revenue or billing adjustment mechanisms to ensure that a utility's change in rate design results in a revenue-neutral outcome. In adopting new rate designs for residential customers, the commission shall evaluate the potential for higher bills due to changes in rate design. Rate designs that disproportionately negatively impact low-income residential customers compared to other residential customers of the utility are presumed to be contrary to the public interest.

(3) Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service as authorized by articles 1 to 7 of this title.

(4) The commission shall order a fixed public utility, except a municipally owned utility, to increase its rates only to its customers in a municipality by adding a surcharge to recover the amount such fixed public utility pays to that municipality as a cost of doing business within that municipality under a franchise or pursuant to a license or occupation tax levied by the municipality, so long as the increase in rates by such fixed public utility is pursuant to a method of surcharge approved by the commission. Occupation tax as used in this subsection (4) does not include the employer and employee tax imposed by a municipality for the privilege of employment within that municipality.

(5) Repealed.

Source: L. 13: p. 473, § 18. **C.L.** § 2929. **CSA:** C. 137, § 19. **CRS 53:** § 115-3-6. **C.R.S. 1963:** § 115-3-6. **L. 69:** p. 932, § 15. **L. 81:** (4) and (5) added, p. 1912, § 1, effective July 1. **L. 83:** (5) repealed, p. 1555, § 3, effective June 17. **L. 84:** (1) amended, p. 1039, § 5, effective July 1. **L. 86:** (1)(a) amended, p. 1155, § 2, effective September 1. **L. 89:** (2) amended, p. 1526, § 8,

effective April 12. **L. 90:** (1)(a) amended, p. 1849, § 51, effective May 31. **L. 91:** (1)(a) amended, p. 1925, § 57, effective June 1. **L. 95:** (1)(a) amended and (1)(c) added, p. 245, § 1, effective April 17. **L. 2000:** (1)(b) repealed, p. 217, § 3, effective March 29. **L. 2002:** (1)(a) amended, p. 1033, § 70, effective June 1. **L. 2007:** (1)(a) amended and (1)(d) added, p. 319, § 1, effective April 2. **L. 2008:** (2) amended, p. 1792, § 6, effective July 1. **L. 2010:** (1)(d)(II)(A) amended, (HB 10-1422), ch. 419, p. 2124, § 181, effective August 11. **L. 2013:** (1)(a) amended, (SB 13-194), ch. 89, p. 289, § 2, effective April 1. **L. 2020:** (2) amended, (SB 20-030), ch. 148, p. 639, § 3, effective June 29.

40-3-107. Transmission of business of other companies. Every telephone public utility operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other telephone public utility with whose line a physical connection may have been made.

Source: L. 13: p. 473, § 19. **C.L.** § 2930. **CSA:** C. 137, § 20. **CRS 53:** § 115-3-7. **C.R.S. 1963:** § 115-3-7. **L. 69:** p. 932, § 16. **L. 2008:** Entire section amended, p. 1792, § 7, effective July 1.

Cross references: For fixing of joint rates, see § 40-4-104.

40-3-107.5. Interconnection with renewable energy cooperatives. Electric utilities shall interconnect with renewable energy cooperatives organized pursuant to section 7-56-210, C.R.S. Every renewable energy cooperative that desires to interconnect its system with any facilities owned or operated by a public utility shall comply with applicable interconnection rules and with reasonable standards and policies related to the reliability of the public utility system. All such standards and policies, as well as all costs for the interconnection, shall be fair, reasonable, and nondiscriminatory to each renewable energy cooperative.

Source: L. 2004: Entire section added, p. 1123, § 4, effective May 27.

40-3-108. Rates for long and short distances. No telephone public utility subject to articles 1 to 7 of this title shall charge or receive any greater compensation in the aggregate for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to articles 1 to 7 of this title. Upon application to the commission, a telephone public utility may be authorized by the commission to charge less for a longer than a shorter distance service for the transmission of messages or conversations in special cases, after investigation; and the commission may from time to time prescribe the extent to which such telephone public utility may be relieved from the operation and requirements of this section.

Source: L. 13: p. 473, § 20. **C.L.** § 2931. **CSA:** C. 137, § 21. **CRS 53:** § 115-3-8. **C.R.S. 1963:** § 115-3-8. **L. 69:** p. 932, § 17. **L. 2008:** Entire section amended, p. 1793, § 8, effective July 1.

40-3-109. Street transportation public utility - transfers. Every street transportation public utility shall, upon such terms as the commission finds to be just and reasonable, furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, city, or town not reached by the originating vehicle.

Source: L. 13: p. 474, § 21. **C.L.** § 2932. **CSA:** C. 137, § 22. **CRS 53:** § 115-3-9. **C.R.S. 1963:** § 115-3-9. **L. 69:** p. 933, § 18.

40-3-110. Information furnished commission - reports. (1) Every public utility shall furnish to the commission, at such time and in such form as the commission may require, one or more reports in which the utility shall specifically answer all questions propounded by the commission upon or concerning which the commission may desire information. All reports must be made under oath or affirmation.

(2) The commission may require a public utility to file monthly reports of earnings and expenses and to file periodic or special reports, or both periodic and special reports, concerning any matter about which the commission is authorized by articles 1 to 7 of this title 40 or in any other law to inquire or to keep itself informed or which it is required to enforce.

(3) The commission shall require every public utility that reports information on disconnections and delinquencies pursuant to section 40-3-103.6 (1)(i) to also file an annual narrative containing the utility's analysis of any trends or inconsistencies revealed by the data.

Source: L. 13: p. 474, § 22. **C.L.** § 2933. **CSA:** C. 137, § 23. **CRS 53:** § 115-3-10. **C.R.S. 1963:** § 115-3-10. **L. 2020:** Entire section amended, (SB 20-030), ch. 148, p. 639, § 4, effective June 29.

Cross references: For duty of common carriers to report accidents, see § 40-9-108.

40-3-111. Rates determined after hearing. (1) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that the rates, tolls, fares, rentals, charges, or classifications demanded, observed, charged, or collected by any public utility for any service, product, or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts affecting such rates, fares, tolls, rentals, charges, or classifications are unjust, unreasonable, discriminatory, or preferential, or in any way violate any provision of law, or that such rates, fares, tolls, rentals, charges, or classifications are insufficient, the commission shall determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges, rules, regulations, practices, or contracts to be thereafter observed and in force and shall fix the same by order. In making such determination, the commission may consider current, future, or past test periods or any reasonable combination thereof and any other factors which may affect the sufficiency or insufficiency of such rates, fares, tolls, rentals, charges, or classifications during the period the same may be in effect, and may consider any factors which influence an adequate supply of energy, encourage energy conservation, or encourage renewable energy development.

(1.5) (a) If the commission considers environmental effects when comparing the costs and benefits of potential utility resources, it shall also make findings and give due consideration

to the effect that acquiring such resources will have on the state's economy and employment, including, but not limited to, the effect on the mining, electric, natural gas, energy efficiency, and renewable resource industries.

(b) If the commission considers factors which encourage renewable energy development, it shall also make findings and give due consideration to the effect of such factors on the utility's ability to recover its capital and operating costs.

(2) (a) The commission has the power, after a hearing upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, contract, or practice, or the entire schedule of rates, fares, tolls, rentals, charges, classifications, rules, contracts, and practices of any public utility; and to establish new rates, fares, tolls, rentals, charges, classifications, rules, contracts, practices, or schedules, in lieu thereof.

(b) As part of any inquiry or investigation into rate structures of regulated electric utilities undertaken on or before July 1, 2009, the commission shall consider whether to adopt retail rate structures that enable the use of solar or other renewable energy resources in agricultural applications, including, but not limited to, irrigation pumping.

Source: L. 13: p. 475, § 23. **C.L.** § 2934. **CSA:** C. 137, § 24. **CRS 53:** § 115-3-11. **C.R.S. 1963:** § 115-3-11. **L. 81:** (1) amended, p. 1914, § 1, effective July 1. **L. 93:** (1.5) added, p. 202, § 1, effective March 31. **L. 94:** (1) and (1.5) amended, p. 611, § 3, effective April 8. **L. 2008:** (2) amended, p. 1793, § 9, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (1.5), see section 1 of chapter 102, Session Laws of Colorado 1994.

40-3-112. Commission to provide local government with avoided cost information. (1) The general assembly hereby finds that it is in the interest of the people of this state to promote the production of energy and the disposal of solid waste in a manner designed to protect the environment; therefore, the general assembly hereby declares that it is the policy of this state to promote the development of systems which generate energy through the burning of solid waste in a manner designed to insure the maintenance of clean air standards.

(2) Prior to the construction of a solid waste-to-energy incineration facility, any unit of local government contemplating construction of such a facility may, by written request, require the commission to calculate the avoided cost to a specified electric utility for the purchase of energy and capacity by said utility from said contemplated facility. Pursuant to such request the utility shall provide the commission with all data necessary to calculate said cost.

(3) As used in this section, "solid waste-to-energy incineration facility" means a facility where flammable waste material is used as a primary fuel for the production of electrical power the total output of which exceeds one hundred kilowatts.

Source: L. 83: Entire section added, p. 1556, § 1, effective June 1.

Cross references: For the authority of counties and municipalities relating to solid waste-to-energy incineration systems, see part 9 of article 20 of title 30 and part 10 of article 15 of title 31.

40-3-113. Rail rates for transportation of recyclable or recycled materials. (Repealed)

Source: L. 84: Entire section added, p. 1040, § 6, effective July 1. **L. 2000:** Entire section repealed, p. 217, § 4, effective March 29.

40-3-114. Cost allocation - effect on competitive markets. The commission shall ensure that regulated electric and gas utilities do not use ratepayer funds to subsidize nonregulated activities.

Source: L. 93: Entire section added, p. 2062, § 13, effective July 1.

40-3-115. Recovery of utility relocation costs. (1) As used in this section, unless the context otherwise requires:

(a) "Political subdivision" means a county, city and county, city, town, home rule city, home rule town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public organization organized pursuant to law.

(b) "State" means the state government, any state agency, state department, state institution, or state-level authority.

(2) (a) Notwithstanding the provisions of section 40-15-502 (3)(b)(I) to (3)(b)(V), local exchange providers of basic local exchange service subject to regulation pursuant to part 2, part 3, or part 5 of article 15 of this title may request authorization from the commission to recover the actual costs incurred for the relocation of infrastructure or facilities requested by the state or a political subdivision. Actual costs are the nonfacility costs incurred in the relocation plus the undepreciated amount of the facilities being replaced. Recovery of actual costs incurred for relocation is intended for those state and political subdivision requests that are determined by the commission to be beyond the normal course of business.

(b) The commission shall verify the actual costs that may be recovered, determine the allocation of costs to various customers and services, and prescribe the method of such recovery. In no event shall the period of recovery of the relocation costs exceed three years.

(c) In determining the allocation of the costs to be recovered, the commission shall consider the jurisdiction requiring the relocation and the geographic area that most directly benefits from the required relocation to determine the customers or services that will bear the costs.

Source: L. 2003: Entire section added, p. 2640, § 1, effective August 6.

40-3-116. Electric vehicle programs - rates. (1) The rates and charges schedule for services provided by a program created under section 40-5-107 may allow:

(a) A return on any investment made under section 40-5-107 by an electric public utility at the electric public utility's weighted average cost of capital, including the most recent rate of return on equity, approved by the commission, including by allowing a utility to earn a rate of return on rebates provided to customers through a transportation electrification program;

(b) Rate recovery mechanisms that allow earlier, as determined by the commission, recovery of costs, including the use of rate adjustment clauses; and

(c) Performance-based incentive returns or similar investment incentives.

(2) By May 15, 2020, an electric public utility shall submit to the commission a proposal for a specific rate or rates for electricity supplied to commercial and industrial facilities used to charge electric vehicles that encourage vehicle charging and that support the operation of the electric grid.

Source: L. 2019: Entire section added, (SB 19-077), ch. 383, p. 3434, § 3, effective May 31.

Cross references: For the legislative declaration in SB 19-077, see section 1 of chapter 383, Session Laws of Colorado 2019.

40-3-117. Performance-based rate-making - investigation - report - repeal. (1) The commission shall conduct an investigation of financial performance-based incentives and performance-based metric tracking to identify mechanisms that may serve to align regulated utility operations, expenditures, and investments with public benefit goals including safety, reliability, cost efficiency, emissions reductions, and expansion of distributed energy resources. The investigation, which shall be conducted in an investigatory proceeding, must consist of a review of existing and potential metrics, including future test years, and consideration of new performance-based incentives.

(2) (a) Within eighteen months after May 30, 2019, the commission shall report its findings to the senate transportation and energy committee and the house of representatives energy and environment committee, or their successor committees. The report must include the following:

(I) A general determination as to whether a transition to performance-based metrics regulation of a regulated utility would be net beneficial to the state, in terms of meeting stated objectives of the commission and other related statutory requirements;

(II) Actions that the commission may pursue to guide the change to a performance-based metrics regulation;

(III) Directives to be given to utilities;

(IV) A list of types of future litigated proceedings within which the report could be implemented; and

(V) A proposed timeline for transition to performance-based metrics regulation.

(b) The report may include any recommendations of legislation needed to fully realize the benefits of performance-based metrics regulation, including identifying any existing statute that would serve as an impediment to realizing the full benefits of a transition to performance-based metrics regulation and suggested recommended changes to the existing statute.

(3) This section is repealed, effective September 1, 2021.

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3306, § 11, effective May 30.

40-3-118. Electric utility retail rates survey - nonadjudicatory proceeding - definition - report - repeal. (1) (a) The commission shall open a nonadjudicatory proceeding to conduct a survey of electric public utility retail rates and specifically consider recommendations that would result in rate relief in certificated electric utility territories with retail rates materially greater than the state average. The commission shall determine the minimum percentage by which a retail rate that exceeds the state average rate qualifies as a materially greater rate.

(b) As used in this section, "public utility" does not include a cooperative electric association, as defined in section 40-9.5-102.

(2) On or before February 1, 2021, the commission shall file a report with the house energy and environment committee and the senate transportation and energy committee, or their successor committees, describing the scope of analysis conducted, potential solutions considered, and any recommendations that could provide rate relief to ratepayers.

(3) This section is repealed, effective September 1, 2021.

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3306, § 11, effective May 30.

ARTICLE 3.2

Air Quality Improvement Costs

PART 1

GENERAL PROVISIONS

40-3.2-101. Legislative declaration. The general assembly hereby finds, determines, and declares that cost-effective natural gas and electricity demand-side management programs will save money for consumers and utilities and protect Colorado's environment. The general assembly further finds, determines, and declares that providing funding mechanisms to encourage Colorado's public utilities to reduce emissions or air pollutants and to increase energy efficiency are matters of statewide concern and that the public interest is served by providing such funding mechanisms. Such efforts will result in an improvement in the quality of life and health of Colorado citizens and an increase in the attractiveness of Colorado as a place to live and conduct business.

Source: L. 98: Entire article added, p. 1050, § 3, effective July 1. **L. 2007:** Entire section amended, p. 984, § 2, effective May 22.

40-3.2-102. Recovery of air quality improvement costs. (1) A public utility shall be entitled to fully recover from its retail customers the air quality improvement costs that it prudently incurs as a result of a voluntary agreement entered into pursuant to part 12 of article 7 of title 25, C.R.S., after July 1, 1998, except as provided in subsection (7) of this section.

(2) For the purposes of this article, "air quality improvement costs" means the incremental life-cycle costs including capital, operating, maintenance, fuel, and financing costs incurred or to be incurred by a public utility at electric generating facilities located in Colorado.

To account for the timing differences between various costs and revenue recovery, life-cycle costs shall be calculated using net present value analysis.

(3) Upon application by a public utility for cost recovery, the commission shall determine an appropriate method of cost recovery that assures full cost recovery for the public utility. The air quality improvement costs recovered by the public utility shall not cause an average rate impact greater than the equivalent of one and one-half mills per kilowatt hour in any period, nor shall such costs exceed a total of two hundred eleven million dollars calculated using 1998 net present value dollars. The air quality improvement costs for a generating facility shall be recovered over a period of fifteen years or less.

(4) Any revenues a public utility receives from transferring, selling, banking, or otherwise using allowances established under Title IV of the federal "Clean Air Act" or under any other trading program of regional or national applicability shall be credited to the public utility's customers to offset air quality improvement costs if such revenues are a result of a voluntary agreement entered into under part 12 of article 7 of title 25, C.R.S.

(5) To the extent that a voluntary agreement entered into under part 12 of article 7 of title 25, C.R.S., does not increase the public utility's electric generating capacity, the voluntary agreement shall not be subject to any restrictions that arise from the commission's integrated resources planning rules.

(6) The commission shall assure that any future industry restructuring does not adversely affect the ability of the public utility to recover its air quality improvement costs. Nothing in this section shall prevent the commission from considering the appropriate value, including market value, of a public utility's generation assets in any future industry restructuring proceeding.

(7) (a) If a public utility's wholesale sales are subject to regulation by the federal energy regulatory commission and the public utility sells power on the wholesale market from generating facilities that are subject to a voluntary agreement under part 12 of article 7 of title 25, C.R.S., the public utilities commission shall determine whether to assign a portion of the air quality improvement costs to be recovered from the public utility's wholesale customers. The public utilities commission may assign a portion of the air quality improvement costs to the public utility's wholesale customers to the extent that such portion of such cost recovery does not conflict with the public utility's wholesale contracts entered into prior to April 1, 1998.

(b) If the public utilities commission assigns a portion of the public utility's air quality improvement costs to be recovered from the public utility's wholesale customers, the public utility may apply to the federal energy regulatory commission for recovery, effective on the date of filing, of the portion of costs assigned to the public utility's wholesale customers. The public utilities commission shall permit the public utility to recover the portion of costs assigned to the public utility's wholesale customers from its retail customers pending the federal energy regulatory commission's approval of recovery from the public utility's wholesale customers.

(c) Notwithstanding paragraph (b) of this subsection (7), if the public utility fails to apply to the federal energy regulatory commission within six months after the public utilities commission's final order assigning a portion of the air quality improvement costs to the public utility's wholesale customers or 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 said portion of the costs from its retail customers.

(d) All revenues that a public utility receives from its wholesale customers for air quality improvement costs shall be credited as an offset to the air quality improvement costs charged to the public utility's retail customers.

Source: L. 98: Entire article added, p. 1050, § 3, effective July 1.

40-3.2-103. Gas distribution utility demand-side management programs - rules - recovery of costs. (1) On or before September 30, 2007, the commission shall commence a rule-making proceeding, as described in subsection (2) of this section, to develop expenditure and natural gas savings targets, funding and cost-recovery mechanisms, and a financial bonus structure for demand-side management programs implemented by an investor-owned gas distribution utility, also referred to in this section as a "gas utility".

(2) As part of the rule-making proceeding required by subsection (1) of this section, the commission shall:

(a) Adopt DSM program expenditure targets equal to at least one-half of one percent of a natural gas utility's revenues from its full service customers in the year prior to setting such targets;

(b) Establish DSM program savings targets that are commensurate with program expenditures and expressed in terms of an amount of gas saved per unit of program expenditures;

(c) (I) Adopt procedures for allowing gas utilities to recover their prudently incurred costs of DSM programs without having to file a rate case. Such costs shall include, but are not limited to, facility investments; rebates; interest rate buy-downs; incremental labor costs, employee benefits, carrying costs, and employee-related administrative costs; and other administrative costs. All such costs shall be recovered through a cost adjustment mechanism that is set on an annual basis, or more frequently if deemed appropriate.

(II) Cost adjustment procedures shall give gas utilities the option of obtaining cost recovery either through expensing DSM program expenditures or adding them to base rates, with an amortization period to be determined by the commission. In addition, such procedures shall provide that cost recovery for programs directed at residential customers are to be collected from residential customers only and that cost recovery for programs directed at nonresidential customers are to be collected from nonresidential customers only.

(d) Adopt a bonus structure to reward gas utilities for investments in cost-effective DSM programs. For each year of operation, the bonus shall be capped at twenty-five percent of the expenditures or twenty percent of the net economic benefits of the DSM programs, whichever amount is lower. The amount of the bonus awarded each year shall be determined based on the extent to which the gas utility has achieved the targets established by the commission in accordance with paragraphs (a) and (b) of this subsection (2). The bonus shall not count against a gas utility's authorized rate of return or be considered in rate proceedings.

(e) Consider the fact that implementing the new DSM programs may require a phase-in period before a gas utility is able to achieve the funding level determined by the commission pursuant to paragraph (a) of this subsection (2). A gas utility that implements a new DSM program in phases shall be eligible to receive a bonus under the bonus structure adopted pursuant to paragraph (d) of this subsection (2) during its phase-in period.

(f) Not adopt any measure authorizing a financial penalty against a gas utility that fails to meet the targets in any particular year.

(3) Within twelve months after the completion of the rule-making required by subsection (1) of this section, each gas utility shall:

(a) Develop and begin implementing a set of cost-effective DSM programs for its full service customers. Such programs shall be of the gas utility's choosing, taking into account the characteristics of the gas utility and its customers. One or more programs may be targeted to low-income customers and, if so, may be provided directly by the gas utility or indirectly through financial support of conservation programs for low-income households administered by the state.

(b) In implementing DSM programs, use reasonable efforts to maximize energy savings consistent with the annual energy efficiency budget.

(4) In implementing DSM programs, gas utilities may spend a disproportionate share of total expenditures on one or more classes of customers.

(5) The commission shall authorize each gas utility to recover moneys spent for education programs, impact and process evaluations, and program planning related to natural gas DSM programs offered by the gas utility without having to show that such expenditures, on an independent basis, are cost-effective. The commission may limit the amount spent for these activities.

(6) (a) Gas utilities shall submit annual reports to the commission, as determined by the commission by rule. The annual report shall describe the gas utility's DSM programs and shall document program expenditures, energy savings impacts and the techniques used to estimate these impacts, the estimated cost-effectiveness of program expenditures, and any other information the commission may require.

(b) The commission shall review each report submitted pursuant to paragraph (a) of this subsection (6) and shall determine the level of bonus, if any, that the gas utility is eligible to collect on the basis of the information included in the report. The commission's determination shall be made within three months after receiving the report. Any such bonus shall be authorized as a supplement to the cost adjustment mechanism or alternative mechanism approved by the commission and shall be applied over a twelve-month period after approval of the bonus.

(7) Gas utilities may continue DSM programs that were in existence on or before May 22, 2007, and shall not be required to obtain approval from the commission for such programs.

(8) This section shall not be construed to extend the commission's authority to any nonregulated utility businesses or affiliates of a gas utility.

Source: L. 2007: Entire section added, p. 984, § 3, effective May 22.

Cross references: For the definition of DSM programs, see § 40-1-102.

40-3.2-104. Electricity utility demand-side management programs - rules - annual report - definition. (1) It is the policy of the state of Colorado that a primary goal of electric utility least-cost resource planning is to minimize the net present value of revenue requirements. The commission may adopt rules as necessary to implement this policy.

(2) (a) The commission shall establish energy savings and peak demand reduction goals to be achieved by an investor-owned electric utility, taking into account the utility's cost-effective demand-side management potential, the need for electricity resources, the benefits of demand-side management investments, and other factors as determined by the commission.

(b) The energy savings and peak demand reduction goals must be at least five percent of the utility's retail system peak demand, measured in megawatts, in the base year and at least five percent of the utility's retail energy sales, measured in megawatt-hours, in the base year. The base year is 2006. The goals shall be met in 2018, counting savings in 2018 from demand-side management measures installed starting in 2006. The commission may establish interim goals and may revise the goals as it deems appropriate.

(c) Commencing January 1, 2019, the energy savings and peak demand reduction goals must be at least five percent of the utility's retail system peak demand, measured in megawatts, in the base year and at least five percent of the utility's retail energy sales, measured in megawatt-hours, in the base year. The base year is 2018. The goals shall be met in 2028, counting savings in 2028 from demand-side management measures installed starting in 2019. The commission may establish interim goals and may revise the goals as it deems appropriate.

(3) The commission shall permit electric utilities to implement cost-effective electricity DSM programs to reduce the need for additional resources that would otherwise be met through a competitive acquisition process.

(4) The commission shall ensure that utilities develop and implement DSM programs that give all classes of customers an opportunity to participate and shall give due consideration to the impact of DSM programs on nonparticipants and on low-income customers.

(5) The commission shall allow an opportunity for a utility's investments in cost-effective DSM programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives. In complying with this subsection (5), the commission shall consider, without limitation, the following incentive mechanisms, which shall take into consideration the performance of the DSM program:

(a) An incentive to allow a rate of return on demand-side management investments that is higher than the utility's rate of return on other investments;

(b) An incentive to allow the utility to accelerate the depreciation or amortization period for demand-side management investments;

(c) An incentive to allow the utility to retain a portion of the net economic benefits associated with a DSM program for its shareholders;

(d) An incentive to allow the utility to collect the costs of DSM programs through a cost adjustment clause;

(e) Other incentive mechanisms that the commission deems appropriate.

(6) Each investor-owned electric utility shall submit an annual report to the commission describing the DSM programs implemented by the electric utility in the previous year. The report shall document the following:

(a) Program expenditures, including incentive payments;

(b) Peak demand and energy savings impacts and the techniques used to estimate those impacts;

(c) Avoided costs and the techniques used to estimate those costs;

(d) The estimated cost-effectiveness of the DSM programs;

(e) The net economic benefits of the DSM programs; and

(f) Any other information required by the commission.

(7) For purposes of this section, "electric utility" or "utility" means "investor-owned utility".

Source: L. 2007: Entire section added, p. 984, § 3, effective May 22; (7) added, p. 1172, § 3, effective May 23. **L. 2017:** (2) amended, (HB 17-1227), ch. 209, p. 813, § 1, effective August 9. **L. 2020:** (5)(a) and (5)(b) amended, (HB 20-1402), ch. 216, p. 1059, § 72, effective June 30.

Cross references: For the definition of DSM programs, see § 40-1-102.

40-3.2-105. Reporting requirement. (Repealed)

Source: L. 2007: Entire section added, p. 984, § 3, effective May 22. **L. 2017:** Entire section repealed, (SB 17-044), ch. 4, p. 8, § 6, effective August 9.

40-3.2-106. Costs of pollution in utility planning - definitions - rules. (1) The commission shall require an electric public utility subject to commission jurisdiction to consider the cost of carbon dioxide emissions, as set forth pursuant to subsection (4) of this section, when determining the cost, benefit, or net present value of any plan or proposal submitted in one of the following proceedings:

(a) Electric resource plans or any utility plan or application that considers or proposes the acquisition of new electric generating resources or the retirement of existing utility generation;

(b) Applications related to section 40-2-124;

(c) Applications related to section 40-3.2-104; or

(d) A plan or application for transportation electrification or other forms of beneficial electrification.

(2) In a proceeding listed in subsection (1)(a) of this section, a utility shall:

(a) At a minimum, model an optimization of a base case portfolio of resources using the cost of carbon dioxide emissions, as set forth pursuant to subsection (4) of this section. The cost of carbon dioxide emissions must apply to the evaluation of all existing electric generation resources and to any new resources evaluated or proposed as part of the resource modeling. The commission may require a utility to file or propose additional base cases. The utility may propose, and the commission shall consider, alternative optimized portfolios of resources in addition to the base case, utilizing different levels of costs for carbon dioxide.

(b) (I) Present a calculation of the net present value of revenue requirement for the resources in each optimized portfolio. To show the net present value of revenue requirement that would be incurred by the utility for implementing the portfolio, in addition to presenting the full net present value of revenue requirement through a calculation using the cost of carbon dioxide emissions set forth pursuant to subsection (4) of this section, the utility shall also present the full net present value of revenue requirement through a calculation without using the cost of carbon dioxide emissions set forth pursuant to subsection (4) of this section.

(II) In addition to the net present value of revenue requirement calculations required in subsection (2)(b)(I) of this section, for each optimized model run, the utility must provide a present value calculation showing the net present value of the total cost of carbon dioxide emissions of each portfolio, calculated by multiplying the total emissions of that portfolio by the cost of carbon dioxide set forth pursuant to subsection (4) of this section.

(3) In approving a resource plan, the commission shall consider:

(a) The net present value of the cost of carbon dioxide emissions;

(b) The net present value of revenue requirements that would be incurred by the utility for implementing the portfolio; and

(c) Other relevant factors, as determined by the commission.

(4) The commission shall base the cost of carbon dioxide emissions on the most recent assessment of the social cost of carbon dioxide developed by the federal government. Starting in 2020, the commission shall use a social cost of carbon dioxide of not less than forty-six dollars per short ton. The commission shall modify the cost of carbon dioxide emissions based on escalation rates of the 2020 base cost by an amount that is equal to or greater than the central value escalation rates established in the technical support document. When calculating the cost of carbon dioxide emissions for any proceeding listed in subsection (1) of this section, the commission shall use the same discount rate as that used to develop the federal social cost of carbon dioxide, as set forth in the technical support document. Notwithstanding the discount rate used to develop the social cost of carbon dioxide value over the planning period, the commission shall continue to discount any net present value analysis of any optimized resource portfolio in the electric resource planning process using discount rates that the commission deems appropriate.

(5) The commission shall apply a cost of carbon dioxide emissions to the nonenergy benefits for programs that are defined to be beneficial electrification.

(6) As used in this section:

(a) "Beneficial electrification" means a utility's change in the energy source powering an end use from a nonelectric source to an electric source, including transportation, water heating, space heating, or industrial processes, if the change:

(I) Reduces system costs for the utility's customers;

(II) Reduces net carbon dioxide emissions; or

(III) Provides for a more efficient utilization of grid resources.

(b) "Technical support document" means the 2016 technical support document of the federal interagency working group on social cost of greenhouse gases, entitled "Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866".

Source: L. 2019: Entire section added, (SB 19-236), ch. 359, p. 3309, § 13, effective May 30.

PART 2

COORDINATED UTILITY PLAN TO REDUCE AIR EMISSIONS

40-3.2-201. Short title. This part 2 shall be known and may be cited as the "Clean Air - Clean Jobs Act".

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 466, § 1, effective April 19.

40-3.2-202. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., will likely require reductions in emissions from coal-fired power plants operated by rate-regulated utilities in Colorado. A coordinated plan of emission reductions from these coal-fired power plants will enable Colorado rate-regulated utilities to meet the requirements of the federal act and protect public health and the environment at a lower cost than a piecemeal approach. A coordinated plan of reduction of emissions for Colorado's rate-regulated utilities will also result in reductions in many air pollutants and promote the use of natural gas and other low-emitting resources to meet Colorado's electricity needs, which will in turn promote development of Colorado's economy and industry.

(2) The general assembly further finds that the use of natural gas to reduce coal-fired emissions may require rate-regulated utilities to enter into long-term contracts for natural gas in a manner that protects electricity consumers. Even though such long-term contracts might be beneficial to consumers, financial rating agencies could find that such long-term contracts increase the financial risk to rate-regulated utilities, which in turn could increase the cost of capital to these utilities. The general assembly finds that it is important to give financial markets confidence that utilities will be able to recover the costs of long-term gas contracts without the risk of future regulators disallowing contracts.

(3) The general assembly further finds and declares that Colorado rate-regulated utilities require timely and forward-looking reviews of their costs of providing utility service in order to undertake the comprehensive and extensive planning and changes to their business operations contemplated by this part 2. In order to allow these utilities to continue to provide reliable electric service, alter their operations in the manner described by this part 2, and meet other state public policy goals, it is imperative that Colorado rate-regulated utilities continue in sound financial condition and remain attractive investments so that sufficient capital is provided to achieve the state's goals. To that end, the general assembly finds that the commission should have additional tools and more flexibility in its regulatory authority to ensure the continued financial health of these utilities. The general assembly also finds and declares that the actions provided for in this part 2 be implemented in a manner to address the sound economic, health, and environmental conditions of energy producing communities.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 466, § 1, effective April 19.

40-3.2-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Air quality control commission" means the commission created in section 25-7-104, C.R.S.

(2) "Department" means the department of public health and environment.

(3) "Federal act" means the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., as amended.

(4) "State act" means the "Colorado Air Pollution Prevention and Control Act", article 7 of title 25, C.R.S.

(5) "State implementation plan" means the plan required by and described in section 110 (a) and other provisions of the federal act.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 467, § 1, effective April 19.

40-3.2-204. Emission control plans - role of the department of public health and environment - timing of emission reductions - approval. (1) On or before August 15, 2010, and in coordination with current or expected requirements of the federal act and the state act, all rate-regulated utilities that own or operate coal-fired electric generating units located in Colorado shall submit to the commission an emission reduction plan for emissions from those units.

(2) (a) The plan filed under this section shall cover a minimum of nine hundred megawatts or fifty percent of the utility's coal-fired electric generating units in Colorado, whichever is smaller. Except as set forth in section 40-3.2-206, the coal-fired capacity covered under the plan filed under this section shall not include any coal-fired capacity that the utility has already announced that it plans to retire prior to January 1, 2015. At the utility's discretion, the plan may include some or all of the following elements:

(I) New emission control equipment for oxides of nitrogen and other pollutants;

(II) Retirement of coal-fired units, if the retired coal-fired units are replaced by natural gas-fired electric generation or other low-emitting resources as defined in section 40-3.2-206, including energy efficiency;

(III) Conversion of coal-fired generation to run on natural gas;

(IV) Long-term fuel supply agreements;

(V) New natural gas pipelines and other supporting gas infrastructure;

(VI) Increased utilization of existing gas-fired generating capacity;

(VII) New transmission lines and other supporting transmission infrastructure;

(VIII) Emission control equipment that is required to be installed at affected units prior to or in conjunction with any retirement, conversion, or emission control equipment retrofit set forth under the plan in order to limit any pollutant other than oxides of nitrogen; and

(IX) Any other capital, fuel, and operations and maintenance expenditures appropriate to support the implementation of the plan.

(b) (I) Prior to filing the plan, the utility shall consult with the department and shall work with the department in good faith to design a plan to meet the current and reasonably foreseeable requirements of the federal act and state law in a cost-effective and flexible manner.

(II) The commission shall provide the department an opportunity to:

(A) Comment on the air quality, all other air pollutants, and other emission reductions of the plan; and

(B) Evaluate and determine whether the plan is consistent with the current and reasonably foreseeable requirements of the federal act.

(III) In commenting upon the utility's plan, the department shall determine whether any new or repowered electric generating unit proposed under the plan, other than a peaking facility utilized less than twenty percent on an annual basis or a facility that captures and sequesters more than seventy percent of emissions not subject to a national ambient air quality standard or a hazardous air pollutant standard, will achieve emission rates equivalent to or less than a combined-cycle natural gas generating unit.

(IV) The commission shall not approve a plan except after an evidentiary hearing and unless the department has determined that the plan is consistent with the current and reasonably foreseeable requirements of the federal act.

(c) The plan shall include a schedule that would result in full implementation of the plan on or before December 31, 2017. The schedule may include interim milestones. The utility shall design the schedule to protect system reliability, control overall cost, and assure consistency with the requirements of the federal act.

(d) The plan shall set forth the costs associated with activities identified in the plan, including the planning, development, construction, and operation of elements identified pursuant to subparagraphs (I) to (IX) of paragraph (a) of this subsection (2), as well as the costs of any shutdown, decommissioning, or repowering of existing coal-fired electric generating units that are set forth in the plan.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 468, § 1, effective April 19.

40-3.2-205. Review - approval. (1) In evaluating the plan, the commission shall consider the following factors:

(a) Whether the department reports that the plan is likely to achieve at least a seventy to eighty percent reduction, or greater, in annual emissions of oxides of nitrogen as necessary to comply with current and reasonably foreseeable requirements of the federal act and the state act. The reduction in emissions under this paragraph (a) shall be measured from 2008 levels at coal-fired power plants identified in the plan. In determining the reduction in emissions under this paragraph (a), the department shall include:

(I) Emissions from coal-fired power plants identified in the plan and continuing to operate after retrofit with emission control equipment; and

(II) Emissions from any facilities constructed to replace any retired coal-fired power plants identified in the plan.

(b) Whether the department has made the determination under section 40-3.2-204 (2)(b)(III);

(c) The degree to which the plan will result in reductions in other air pollutant emissions;

(d) The degree to which the plan will increase utilization of existing natural gas-fired generating capacity;

(e) The degree to which the plan enhances the ability of the utility to meet state or federal clean energy requirements, relies on energy efficiency, or relies on other low-emitting resources;

(f) Whether the plan promotes Colorado economic development;

(g) Whether the plan preserves reliable electric service for Colorado consumers;

(h) Whether the plan is likely to help protect Colorado customers from future cost increases, including costs associated with reasonably foreseeable emission reduction requirements; and

(i) Whether the cost of the plan results in reasonable rate impacts. In evaluating the rate impacts of the plan, the commission shall examine the impact of the rates on low-income customers.

(2) The commission shall review the plan and enter an order approving, denying, or modifying the plan by December 15, 2010. Any modifications required by the commission shall result in a plan that the department determines is likely to meet current and reasonably foreseeable federal and state act requirements.

(3) All actions taken by the utility in furtherance of, and in compliance with, an approved plan are presumed to be prudent actions, the costs of which are recoverable in rates as provided in section 40-3.2-207.

(4) If the utility disagrees with the commission's modifications to its proposed plan with respect to resource selection, the utility may withdraw its application.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 469, § 1, effective April 19.

40-3.2-206. Coal plant retirements - replacement resources. (1) (a) The general assembly finds that, in designing a coordinated emission reduction plan as described in section 40-3.2-204 and to expeditiously accelerate coal plant retirements, it is in the public interest for utilities to give primary consideration to replacing or repowering their coal generation with natural gas generation and that utilities shall also consider other low-emitting resources, including energy efficiency, if this replacement or repowering can be accomplished prudently and for reasonable rate impacts compared with placing additional emission controls on coal-fired generating units, and if electric system reliability can be preserved. To that end, in the plan required under section 40-3.2-204, each utility shall include an evaluation of the following proposals:

(I) The cost and system reliability impacts of retiring a minimum of nine hundred megawatts of coal-fired electric generating capacity, or fifty percent of the utility's coal-fired generating units in Colorado, whichever is less, by January 1, 2015, and repowering the affected coal-fired facilities with natural gas or replacing them with natural gas-fired generation or other low-emitting resources, including energy efficiency. The coal-fired capacity evaluated under this subparagraph (I) shall not include any coal-fired capacity that the utility has already announced that it plans to retire prior to January 1, 2015. The utility may also prepare evaluations of additional scenarios, including scenarios that result in the retirement of less than nine hundred megawatts of coal-fired electric generating capacity or the retirement of some portion of the nine hundred megawatts of capacity after January 1, 2015, but before January 1, 2018.

(II) Retirements of a portion of its coal-fired generating capacity in the period after April 19, 2010, but prior to January 1, 2015. At a minimum, the utility shall evaluate whether to retire a portion of its coal-fired capacity on or before January 1, 2013, or whether the retirements of coal-fired generating facilities that have already been announced could be advanced to an earlier retirement date.

(b) (I) For all evaluations required by this subsection (1), the utility shall report:

(A) The estimated overall impacts on the utility's emissions of oxides of nitrogen and other pollutants;

(B) The feasibility of the retirement, repowering, or replacement on the schedule proposed in the evaluation;

(C) The costs and impact on electric rates from these proposals; and

(D) The impact of the retirements on the reliability of the utility's electric service.

(II) All evaluations required by this subsection (1) shall contrast the costs of replacing coal generation with natural gas generation and other low-emitting resources, including energy efficiency, with the costs of installing additional emission controls on the coal plants.

(2) The utility shall set forth in its plan the utility's proposal for the best way of timely meeting the emission reduction requirements required by federal and state law, given the need to preserve electric system reliability, to avoid unreasonable rate increases, and the economic and environmental benefits of coordinated emission reductions.

(3) In reviewing the reasonableness of the utility's proposed plan, the commission shall:

(a) Compare the relative costs of repowering or replacing coal facilities with natural gas generation or other low-emitting resources, including energy efficiency, to an alternative that incorporates emission controls on the existing coal-fired units;

(b) Use reasonable projections of future coal and natural gas costs;

(c) Incorporate a reasonable estimate for the cost of reasonably foreseeable emission regulation consistent with the commission's existing practice;

(d) Consider the degree to which the plan will increase utilization of existing natural gas-fired generating resources available to the utility, together with increased utilization of other low-emitting resources including energy efficiency; and

(e) Consider the economic and environmental benefits of a coordinated emissions reduction strategy.

(4) The utility may enter into long-term gas supply agreements to implement the requirements of this part 2. A long-term gas supply agreement is an agreement with a term of not less than three years or more than twenty years. All long-term gas supply agreements may be filed with the commission for review and approval. The commission shall determine whether the utility acted prudently by entering into the specific agreement, whether the proposed agreement appears to be beneficial to consumers, and whether the agreement is in the public interest. If an agreement is approved, the utility is entitled to recover through rates the costs it incurs under the approved agreement, and any approved amendments to the agreement, notwithstanding any change in the market price of natural gas during the term of the agreement. The commission shall not reverse its approval of the long-term gas agreement even if the agreement price is higher than a future market price of natural gas.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 470, § 1, effective April 19.

40-3.2-207. Cost recovery - legislative declaration. (1) (a) A utility is entitled to fully recover the costs that it prudently incurs in executing an approved emission reduction plan, including the costs of planning, developing, constructing, operating, and maintaining any emission control or replacement capacity constructed pursuant to the plan, as well as any interim air quality emission control costs the utility incurs while the plan is being implemented.

(b) The general assembly finds that the emissions reductions under this part 2 are being made to assist the state of Colorado to comply with current and reasonably foreseeable emission restrictions under federal law. To provide this assistance, the utility is being asked to make substantial capital investments and to enter into substantial contractual commitments in an expedited time period outside of the normal resource planning process.

(2) (a) 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 a project developed pursuant to the plan, the commission shall determine whether to assign a portion of the plan cost 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 19, 2010.

(b) Except as specified in paragraph (c) of this subsection (2), if the commission makes an assignment of costs pursuant to paragraph (a) of this subsection (2) and if the utility applies to the federal energy regulatory commission for recovery and pursues that application in good faith, then:

(I) To the extent that the federal energy regulatory commission does not permit recovery of the allocated wholesale portion of plan-related investment, the commission shall approve retail rates sufficient to recover such disallowed wholesale portion of the investment through the recovery mechanism detailed in this section; and

(II) The public utility may not recover any revenue shortfall caused by a delay in making any filing with the federal energy regulatory commission or due to any rate suspension period employed by the federal energy regulatory commission or because the public utility failed to pursue recovery of the amounts at the federal energy regulatory commission in good faith.

(c) 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 plan's costs to the public utility's wholesale customers, the public utility is not entitled to recover the assigned portion of the costs from its retail customers.

(3) Current recovery shall be allowed on construction work in progress at the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, for expenditures on projects associated with the plan during the construction, startup, and preservice implementation phases of the projects.

(4) To the extent that an approved plan includes the early conversion or closure of coal-based generation capacity by January 1, 2015, and to the extent that the utility demonstrates that a lag in the recovery of the costs of the plan related to the investment required by such plan contributes to a utility earning less than its authorized return on equity, the commission shall employ rate-making mechanisms, in addition to allowing a current return on construction work in progress, that permit rate adjustments, no less frequently than once per year, without requiring the utility to file a general rate case to allow recovery of the approved plan's costs. Such rate-making mechanisms may include a separate rate adjustment clause, regular make-whole rate increases, or other appropriate mechanisms as determined by the commission.

(5) During the time any special regulatory practice is in effect, the utility shall file a new rate case at least every two years or file a base rate recovery plan that spans more than one year.

(6) The commission shall allow, but not require, the utility to develop and own as utility rate-based property any new electric generating plant constructed primarily to replace any coal-fired electric generating unit retired pursuant to the plan filed under this part 2.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 472, § 1, effective April 19.

40-3.2-208. Air quality planning. (1) The air quality provisions of the emission reduction plan filed under this part 2 are intended to fulfill the requirements of the state and federal acts and shall be proposed by the department to the air quality control commission after the utility files the plan with the commission to be considered for incorporation into the regional haze element of the state implementation plan.

(2) (a) Upon the utility's filing of the utility plan with the commission pursuant to section 40-3.2-204, the air quality control commission, in response to the proposal by the department, shall initiate a proceeding to incorporate the air quality provisions of the utility plan into the regional haze element of the state implementation plan. Except as set forth in this subsection (2), the air quality control commission shall not act on the utility plan or the provisions of the regional haze element of the state implementation plan that would establish controls for those units covered by the utility plan until after the commission's approval of the utility plan.

(b) The air quality control commission shall vacate the entire proceeding related to the utility plan and shall initiate a new proceeding for the consideration of alternative proposals for the appropriate controls for those units covered by the utility plan for inclusion in the regional haze element of the state implementation plan if:

(I) The commission does not approve the utility plan by December 15, 2010;

(II) The utility withdraws its application pursuant to section 40-3.2-205 (4); or

(III) The air quality control commission rejects any portion of the utility plan as approved by the commission.

(c) The air quality control commission shall conduct the proceedings specified in this subsection (2) after public notice and an opportunity for the public to participate in accordance with the air quality control commission's procedures.

(3) If the final approved provisions of the state implementation plan are not consistent with the air quality provisions of the utility plan, the utility may file a revised utility plan with the commission that modifies the original plan to be consistent with the final approved state implementation plan. The revised utility plan is subject to all of the review and cost recovery provisions contained in this part 2. Notwithstanding any revision required to the utility plan, the utility is entitled to fully recover any costs it prudently incurred or contracted to incur under the originally approved plan prior to the plan's revision and any costs incurred as a result of any enforceable state implementation plan or other air quality requirements.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 474, § 1, effective April 19.

40-3.2-209. Early reductions. Reductions in emissions achieved pursuant to this part 2 through a compliance strategy before such reductions are mandated under federal law are voluntary for purposes of determining early reduction credits under federal law.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 475, § 1, effective April 19.

40-3.2-210. Exemption from limits on voluntary emission reductions. The limits on utility expenditures on voluntary emission reductions in section 40-3.2-102 do not apply to utility expenditures under a plan approved by the commission under this part 2.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 475, § 1, effective April 19.

ARTICLE 3.4

Emergency Telephone Access

40-3.4-101 to 40-3.4-111. (Repealed)

Source: L. 2013: Entire article repealed, (SB 13-194), ch. 89, p. 289, § 1, effective April 1.

Editor's note: This article was added in 1986. For amendments to this article prior to its repeal in 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For the wind up of the low-income telephone assistance fund and the satisfying of obligations, see section 5 of chapter 89, Session Laws of Colorado 2013.

ARTICLE 3.5

Regulation of Rates and Charges
by Municipal Utilities

40-3.5-101. Application - reasonable charges - adequate service. (1) This article shall be applicable within the authorized electric and natural gas service areas of each municipal utility that lie outside the jurisdictional limits of such municipality. Insofar as municipal utilities establish rates, charges, and tariffs and any regulations pertaining thereto in accordance with the provisions of this article, the provisions of section 40-1-104 and articles 4, 6, and 7 of this title shall not apply; except that section 40-4-105 shall apply with respect to the crossing of railroad rights-of-way. Nothing in this article shall be construed as limiting the applicability of article 5 of this title.

(2) All charges made, demanded, or received by any municipal utility for any rate, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just, reasonable, and sufficient.

(3) Every municipal utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, its employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.

(4) For the purposes of this article, "municipal utility" means a municipal natural gas or electric utility.

Source: L. 83: Entire article added, p. 1553, § 2, effective June 17. **L. 2002:** (1) amended, p. 1947, § 3, effective June 8.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 350, Session Laws of Colorado 2002.

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, 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, tariff, or voluntary plan established within the authorized service area which lies outside the jurisdictional limits of the municipality varies from the rate, charge, 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, 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.

Source: L. 83: Entire article added, p. 1553, § 2, effective June 17. **L. 99:** Entire section amended, p. 964, § 2, effective August 4.

40-3.5-103. Rate schedules. Municipal utilities shall print and keep open for public inspection schedules showing all rates and charges collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges, and facilities which in any manner affect or relate to rates and service within the authorized electric and natural gas service areas of the municipal utility which lie outside the jurisdictional limits of the municipality.

Source: L. 83: Entire article added, p. 1553, § 2, effective June 17.

40-3.5-104. Changes in rates - notice and public hearing. (1) (a) No change shall be made by any municipal utility in any rate or charge or in any rule, regulation, or contract relating to or affecting any base rate, charge, or service, or in any privilege or facility, except after thirty days' notice to the public. Such notice shall be given by keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect. In addition, such notice shall be given by publishing the proposed new schedule, or if that is impractical due to the size or bulk of the proposed new schedule, by publishing a notice of the availability of the proposed new schedule for public inspection, at least once in at least one newspaper of general circulation in the authorized service area at least thirty days and no more than sixty days prior to the date set for public hearing on and adoption of the new schedule.

(b) In addition to the notice provided for in paragraph (a) of this subsection (1), if a municipal utility serves customers who live outside the municipal corporate boundaries, notice of any change in any rate or charge or in any rule, regulation, or contract relating to or affecting any base rate, charge, or service or any change in any privilege or facility shall be given by mailing to such customer notification of any such change.

(2) The notice required by subsection (1) of this section shall also specify the date, time, and place at which the public hearing shall be held by the governing body of the municipal utility to consider the proposed new schedule. The notice shall specify that each municipal utility customer shall have the right to appear, personally or through counsel, at such hearing for the purpose of providing testimony regarding the proposed new schedule. Said public hearing shall be held on the date and time and at the place set forth in the notice; except that the governing body of the municipal utility may adjourn and reconvene said hearing as it deems necessary.

(3) The governing body of the municipal utility, for good cause shown, may allow changes without requiring the thirty days' notice and public hearing by an order specifying the changes to be made, the circumstances necessitating the change without requiring the thirty days' notice and public hearing, the time when the changes shall take effect, and the manner in which the changes shall be published.

(4) Insofar as municipal utilities establish rates, charges, and tariffs and any regulations pertaining thereto in accordance with the provisions of this article, any conflict shall be resolved by the commission in accordance with the procedures contained in article 6 of this title upon the filing of a complaint by no less than five percent of the affected electric or natural gas customers outside the corporate limits of the municipality or by five such customers, whichever number is greater. Any such complaint shall be filed with the commission within thirty days after the final decision by the governing body of the municipality to change a rate, charge, or tariff or any regulation pertaining thereto. If such complaint is heard by the commission and is deemed not frivolous, all reasonable costs as determined by the commission, including reasonable attorney fees, shall be paid by the utility. In any hearing conducted pursuant to the provisions of this section, the burden of proof shall be sustained by the municipal utility.

Source: L. 83: Entire article added, p. 1554, § 2, effective June 17.

40-3.5-105. Free and reduced service prohibited - exceptions. Except as otherwise provided in this section, no municipal utility shall charge, demand, collect, or receive a greater or lesser or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates and charges applicable to such product, commodity, or service as specified in its schedules on file and in effect at the time, nor shall any such municipal utility refund or remit, directly or indirectly or in any manner or by any device, any portion of the rates and charges so specified nor extend to any corporation or person any form of contract or agreement or rule or regulation or any facility or privilege except one which is regularly and uniformly extended to all corporations and persons. The governing body of the municipal utility may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable.

Source: L. 83: Entire article added, p. 1555, § 2, effective June 17.

40-3.5-106. Advantages prohibited - graduated schedules. (1) No municipal utility, as to rates, charges, service, facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No municipal utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either between localities or between any class of service. The governing body of each municipal utility shall determine the reasonableness of any such difference.

(2) Nothing in this article shall prohibit a municipal utility engaged in the production, generation, transmission, distribution, or furnishing of heat, light, gas, or power from establishing a graduated scale of charges subject to the provisions of this article.

(3) Nothing contained in this article shall exempt from the public utilities commission of the state of Colorado the power and authority to regulate the rates, charges, tariffs and any regulations pertaining thereto of the sale of natural gas by a municipal utility to another public utility.

Source: L. 83: Entire article added, p. 1555, § 2, effective June 17.

40-3.5-107. Fees. Municipal utilities authorized to serve areas which lie outside their municipal corporate limits shall be subject to providing annual reports of gross operating revenues, computation of fees, and payment of such fees relating to those areas.

Source: L. 83: Entire article added, p. 1555, § 2, effective June 17.

ARTICLE 4

Service and Equipment

40-4-101. Regulations, service, and facilities prescribed. (1) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that the rules, regulations, practices, equipment, facilities, or service of any public utility or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed and shall fix the same by its order, rule, or regulation.

(2) The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and upon proper tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

(3) The commission shall prescribe rules and regulations for the termination of gas and electric service to residential customers. Said rules and regulations shall require that the customer be given reasonable notice and an opportunity to be heard by the terminating utility company before termination of gas or electric service and that such service may not be terminated during certain periods if the customer establishes that termination of the service would be especially dangerous to the health or safety of the customer and that he is unable to pay

for the service as regularly billed by the utility, or that he is able to pay but only in reasonable installments.

Source: L. 13: p. 475, § 24. **C.L.** § 2935. **CSA:** C. 137, § 25. **CRS 53:** § 115-4-1. **C.R.S. 1963:** § 115-4-1. **L. 69:** p. 933, § 19. **L. 80:** Entire section amended, p. 748, § 1, effective April 13.

40-4-102. Extensions and improvements prescribed - when. (1) Whenever the commission, after a hearing upon its own motion, upon appeal by a public utility or power authority from a local government action pursuant to section 29-20-108 (5), C.R.S., or upon complaint, finds that the additions, extensions, repairs, or improvements to or change in the existing plant, equipment, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, that a new structure should be erected to promote the security or convenience of its employees or the public or in any other way to secure adequate service or facilities, or that the conditions imposed by a local government action unreasonably impair the ability of a public utility or power authority to provide safe, reliable, and economical service, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure be erected in the manner and within the time specified in such order. If the commission orders the erection of a new structure, the selection of the site for such structure shall be subject to the approval of the commission. If a public utility or power authority appeals an order from a local government action under section 29-20-108, C.R.S., the commission may require that the public utility or power authority reimburse the commission for the reasonable expenses, attorney fees, and expert witness fees the commission incurs in reviewing the appeal. Any fee collected pursuant to this section shall be remitted to the state treasurer, who shall credit such fee to the public utilities commission fixed utility fund created pursuant to section 40-2-114.

(2) If any additions, extensions, repairs, improvements, or changes or any new structures which the commission has ordered to be erected require joint action of two or more public utilities, the commission shall notify the public utilities that such additions, repairs, improvements, or changes or new structures have been ordered and that the same shall be made at their joint cost, whereupon the public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, repairs, extensions, improvements, or changes or new structures which each shall bear. If, at the expiration of such time, such public utilities fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements, or changes or new structures, the commission has the authority, after further hearing, to make an order fixing the proportion of such expense to be borne by each public utility and the manner in which the same shall be paid or secured.

Source: L. 13: p. 476, § 25. **C.L.** § 2936. **CSA:** C. 137, § 26. **CRS 53:** § 115-4-2. **C.R.S. 1963:** § 115-4-2. **L. 69:** p. 933, § 20. **L. 2001:** (1) amended, p. 597, § 4, effective May 30.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (1), see section 1 of chapter 183, Session Laws of Colorado 2001.

40-4-103. Increased transportation facilities prescribed. Whenever the commission, after a hearing upon its own motion or upon complaint, finds that any common carrier does not run a sufficient number of trains or vehicles or does not possess or operate sufficient motive power to reasonably accommodate the traffic, whether passenger or freight, or both, transported by or offered to it for transportation, or does not run its trains or vehicles with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places or does not run any train or vehicle upon a reasonable time schedule for the run, the commission has the power to make an order directing any such common carrier to increase the number of its trains or of its vehicles or its motive power or to change the time of starting its train or vehicle or to change the time schedule for the run of any train or vehicle, or to change the stopping places thereof, or to make any other change the commission may determine to be reasonably necessary to accommodate and transport the traffic, whether passenger or freight, or both, transported or offered to it for transportation.

Source: L. 13: p. 477, § 26. **C.L.** § 2937. **CSA:** C. 137, § 27. **CRS 53:** § 115-4-3. **C.R.S. 1963:** § 115-4-3. **L. 69:** p. 933, § 21.

40-4-104. Connection of noncompetitive lines - costs and rates apportioned. Whenever the commission, after a hearing upon its own motion or upon complaint, finds that a physical connection can reasonably be made between the lines of two or more noncompetitive telephone public utilities whose lines can be made to form a continuous line of communication by the construction and maintenance of suitable connections for the transmission of messages or conversations and that the public convenience and necessity will be served or finds that two or more telephone public utilities have failed to establish joint rates, tolls, or charges for service by or over said lines and that joint rates, tolls, or charges ought to be established, the commission may by its order require that such connections be made and that conversations be transmitted and messages transferred over such connection under such rules as the commission may establish and prescribe through lines and joint rates, tolls, and charges to be made and used, observed, and in force in the future. If such telephone public utilities do not agree upon the division between them of the joint cost of the physical connection or connections or the division of the joint rates, tolls, or charges established by the commission over such through lines, the commission has authority, after further hearing, to establish the division by supplemental order.

Source: L. 13: p. 477, § 27. **C.L.** § 2938. **CSA:** C. 137, § 28. **CRS 53:** § 115-4-4. **C.R.S. 1963:** § 115-4-4. **L. 69:** p. 934, § 22. **L. 2008:** Entire section amended, p. 1794, § 11, effective July 1.

Cross references: For duty of telephone company to transmit messages of another company, see § 40-3-107.

40-4-105. Joint use of equipment and facilities. (1) Whenever the commission, after a hearing upon its own motion or upon complaint of a public utility affected, finds that the public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof on, over, or under any street or highway that belongs to another public utility, or the crossing of a railroad right-of-way by a

public utility for installation of its own facilities in a manner and in a location that is compatible with the use for railroad purposes, and that such use will not result in irreparable injury to the owners or other users of such conduits, subways, wires, tracks, poles, pipes, or other equipment or to the railroad's use of the right-of-way, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission by order may direct that such use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, other equipment, or railroad right-of-way, for such damage as may result therefrom to the property of such owners or other users thereof.

(2) In proceedings arising out of a complaint requesting the commission to authorize and determine appropriate compensation to be paid by a public utility to install its own facilities across a railroad right-of-way in a manner and location compatible with railroad use of the right-of-way, the commission may require the parties involved in the proceeding to reimburse the commission for the reasonable expenses, attorney fees, and expert witness fees the commission incurs in making its determination. Any fee collected pursuant to this section shall be remitted to the state treasurer, who shall credit such fee to the public utilities commission fixed utility fund created pursuant to section 40-2-114.

(3) Nothing in this section shall be construed to limit the right of a public utility to exercise the power of eminent domain to acquire property pursuant to applicable law.

(4) For purposes of this section, with respect to crossing of railroad rights-of-way by a public utility, the term "public utility" shall include power authorities organized under section 29-1-204, C.R.S. The term "public utility" shall also include municipal utilities and cooperative electric associations otherwise exempt from this article.

Source: L. 13: p. 478, § 28. **C.L.** § 2939. **CSA:** C. 137, § 29. **CRS 53:** § 115-4-5. **C.R.S. 1963:** § 115-4-5. **L. 69:** p. 934, § 23. **L. 2002:** Entire section amended, p. 1946, § 2, effective June 8.

Cross references: (1) For compensation ascertained by jury in eminent domain proceedings when demanded by owner, see § 15 of article II of the Colorado Constitution.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 350, Session Laws of Colorado 2002.

40-4-106. Rules for public safety - crossings - civil fines - allocation of expenses. (1) (a) The commission may, after a hearing on its own motion or upon complaint, make general or special orders, promulgate rules, or act by other means to require each public utility to maintain and operate its lines, plant, system, equipment, electrical wires, apparatus, tracks, and premises in such a manner as to promote and safeguard the health and safety of its employees, passengers, customers, subscribers, and the public and to require the performance of any other act that the health or safety of its employees, passengers, customers, subscribers, or the public may demand.

(b) If, pursuant to this subsection (1), the commission issues an order or promulgates a rule requiring a railroad company to comply with railroad crossing safety regulations, the commission may impose a civil penalty pursuant to article 7 of this title 40, in an amount not to

exceed the maximum amount set forth in section 40-7-105 (1), against a railroad company that fails to comply with the order or rule.

(2) (a) The commission has the power to determine, order, and prescribe, in accordance with the plans and specifications to be approved by it, the just and reasonable manner including the particular point of crossing at which the tracks or other facilities of any public utility may be constructed across the facilities of any other public utility at grade, or above or below grade, or at the same or different levels, or at which the tracks or other facilities of any railroad corporation may be constructed across any public highway at grade, or above or below grade, or at which any public highway may be constructed across the tracks or other facilities of any railroad corporation at grade, or above or below grade and to determine, order, and prescribe the terms and conditions of installation and operation, maintenance, and warning at all such crossings that may be constructed, including the posting of personnel or the installation and regulation of lights, block, interlocking, or other system of signaling, safety appliance devices, or such other means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted.

(b) Whenever the commission orders in any proceeding before it, regardless of by whom or how such proceeding was commenced, that automatic or other safety appliance signals or devices be installed, reconstructed, or improved and operated at any crossing at grade of any public highway or road over the tracks of any railroad corporation, the commission shall also determine and order, after notice and hearing, how the cost of installing, reconstructing, or improving such signals or devices shall be divided between and paid by the interested railroad corporation whose tracks are located at the crossing on the one hand and the chief engineer and the interested city, city and county, town, county, or other political subdivision of the state on the other hand. In determining how much of the cost shall be paid by the railroad corporation, consideration shall be given to the benefit, if any, that will accrue from the signals or devices to the railroad corporation, but in every case the part to be paid by the railroad corporation shall be not less than twenty percent of the total cost of the signals or devices at any crossing, and the orders shall provide that every signal or device installed will be maintained by the railroad corporation for the life of the crossing to be so signalized. In order to compensate for the use of the crossings by the public generally, the commission shall also order that such part of the cost of installing, reconstructing, or improving the signals or devices as will not be paid by the railroad corporation be divided between the highway-rail crossing signalization fund and the city, town, city and county, county, or other political subdivision in which the crossing is located, and the commission shall fix in each case the amount to be paid from the highway-rail crossing signalization fund and the amount to be paid by the city, town, city and county, county, or other political subdivision. Any order of the commission under this section for the payment of any part of any such costs from the highway-rail crossing signalization fund is authority for the state treasurer to pay out of said fund to the person, firm, or corporation entitled thereto under the commission's order the amount so determined to be paid from said fund. The requirement of notice and hearing in this section is deemed to have been complied with by the commission's giving notice of and holding a hearing upon the question of whether any such signals or devices are required at any crossing; but in such cases the notice shall state that the question of how the costs will be borne and paid will be considered at and determined as a result of the hearing for which the notice is given. This paragraph (b) shall not apply to any grade crossing when all or

any part of the cost of the installation, reconstruction, or improvement of the signals or devices at the crossing will be paid from funds available under any federal or federal-aid highway act.

(3) (a) (I) The commission also has power upon its own motion or upon complaint and after hearing, of which all the parties in interest including the owners of adjacent property shall have due notice, to order any crossing constructed at grade or at the same or different levels to be relocated, altered, or abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission, and to prescribe the terms upon which the separation should be made and the proportion in which the expense of the alteration or abolition of the crossing or the separation of the grade should be divided between the railroad corporations affected or between the corporation and the state, county, municipality, or public authority in interest.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), the affected railroad corporation, the commission, the department of transportation, or the local government responsible for supervising and maintaining the intersecting public highway or road may abolish any crossing at grade of any public highway or road over the tracks of a corporation if:

(A) The crossing is without gates, signals, alarm bells, or warning personnel and is located within one-quarter mile of a crossing with gates, signals, alarm bells, or warning personnel or a separated grade crossing;

(B) The crossing is not the only crossing that provides access to property;

(C) No less than sixty days prior to the proposed abolition date, the railroad corporation, commission, department of transportation, or local government posts conspicuous notice of the proposed abolition at the crossing and gives written notice of the proposed abolition to all other entities authorized to initiate abolition of the crossing pursuant to this subparagraph (II); and

(D) Neither any entity given notice nor any other interested party files an objection to the abolition pursuant to subparagraph (III) of this paragraph (a).

(III) A crossing shall not be abolished pursuant to subparagraph (II) of this paragraph (a) if an entity given notice pursuant to sub-subparagraph (C) of subparagraph (II) of this paragraph (a) or any other interested party, within sixty days of receiving such notice, files with the commission and provides to the entity that gave notice of the proposed abolition a written objection to the abolition. The written objection shall include a statement by a professional engineer licensed to practice in Colorado that indicates that the engineer is familiar with the requirements of subparagraph (II) of this paragraph (a) and all relevant aspects of the crossing and has examined the crossing and believes that it is safe as designed. However, nothing in this subparagraph (III) shall preclude the abolition of the crossing pursuant to subparagraph (I) of this paragraph (a).

(b) (I) (A) The commission is authorized to approve individual projects wherein the allocation of the total expenses of the separation of grades to be paid by the railroad corporation or railroad corporations may exceed two million five hundred thousand dollars. The commission may approve more than one project, the sum totals of which may exceed the two-million-five-hundred-thousand-dollar cap set forth in this subparagraph (I), but in no event shall an individual class I railroad corporation pay more than two million five hundred thousand dollars of the cost of a single project or the cost of more than one project in any calendar year. Nothing in this subparagraph (I) shall preclude any railroad corporation from voluntarily contributing more than its allotted share for grade separation construction in one year, and, in such event, all amounts

contributed by such railroad exceeding its allotted share in any one year shall be credited to and shall serve to reduce any payment for grade separation construction expenses by that railroad in subsequent years.

(B) Repealed.

(II) If the cost of a project is such that it calls for payment by a railroad corporation in more than one calendar year or if the amount due from the railroad corporation exceeds two million five hundred thousand dollars and thus must be made in consecutive calendar years, nothing in this section shall be construed to require that the approved project must be subjected to reapplication or rereview by the commission.

(III) In determining how much of the total expense of the separation of grades shall be paid by the railroad corporation or railroad corporations and by the state, county, municipality, or public authority in interest, consideration shall be given to the benefits, if any, which accrue from the grade separation project and the responsibility for need, if any, for such project. The railroad corporation or railroad corporations and the state, county, municipality, or public authority in interest shall share the costs for that portion of the project which separates the grades and constructs the approaches thereto. The commission shall consider the costs of obtaining rights-of-way, the costs of construction, and the costs of engineering. To the extent that the requirements of the railroad corporation or railroad corporations and the state, county, municipality, or public authority in interest generate additional costs beyond that necessary to provide the grade separation, such costs shall be borne by the responsible entity.

(IV) This paragraph (b) shall not apply to any project for the elimination of hazards at any railway-highway crossing when all or any part of the cost of such project will be paid from moneys made available for expenditure under title 23, U.S.C.; except that any amount paid by a railroad corporation for such an exempt project shall be credited against the two-million-five-hundred-thousand-dollar cap set forth in subparagraph (I) of this paragraph (b).

(c) (I) The state, county, municipality, or public authority, at its discretion, may withdraw its request for allocation determination at any time prior to the issue of the final order of the commission.

(II) The state, county, municipality, or public authority, at its discretion, after the hearing and prior to final order of the commission, may make a motion for a declaratory ruling on the cost allocation. In response to such a request, the commission shall make a declaratory ruling and shall provide the movant reasonable time to withdraw the request for allocation determination.

(III) After the final order is issued, the project shall proceed, unless the commission revises the order after consideration of a request for change by the state, county, municipality, or public authority in interest.

(d) The commission shall not order the abolition of any crossing for which a grade separation is determined to be necessary until this separation is constructed.

(e) and (f) Repealed.

(4) Repealed.

Source: L. 13: p. 478, § 29. **L. 17:** p. 415, § 1. **C.L.** § 2940. **CSA:** C. 137, § 30. **L. 41:** p. 602, § 1. **L. 43:** p. 476, § 1. **CRS 53:** § 115-4-6. **L. 55:** p. 698, § 1. **L. 63:** p. 758, § 1. **C.R.S. 1963:** § 115-4-6. **L. 65:** p. 926, § 1. **L. 69:** pp. 935, 964, §§ 24, 75. **L. 72:** p. 615, § 144. **L. 80:** (4) added, p. 750, § 1, effective April 16. **L. 81:** (1) amended, p. 1918, § 1, effective June 19. **L.**

83: (3) amended, p. 1558, § 1, effective July 1. **L. 86:** (3)(b) and (3)(c) R&RE and (3)(e) and (3)(f) repealed, pp. 1157, 1158, §§ 1, 2, effective July 1. **L. 91:** (2)(b) amended, p. 1075, § 62, effective July 1. **L. 93:** (3)(b)(I)(B) repealed, p. 2063, § 15, effective July 1. **L. 99:** (3)(b)(I), (3)(b)(II), and (3)(b)(IV) amended, p. 140, § 1, effective August 4. **L. 2003:** (2)(b) amended, p. 1702, § 11, effective May 14. **L. 2007:** (3)(a) amended, p. 313, § 1, effective August 3. **L. 2008:** (2) amended, p. 1794, § 12, effective July 1. **L. 2015:** (2)(b) amended, (HB 15-1209), ch. 64, p. 173, § 2, effective March 30. **L. 2019:** (1) amended, (SB 19-236), ch. 359, p. 3311, § 14, effective May 30.

Editor's note: Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 1982. (See L. 80, p. 750.)

Cross references: For liability under provisions of subsection (2) of this section, see § 43-4-216; for rule-making procedures, see article 4 of title 24.

40-4-107. Time limit regulations. (Repealed)

Source: L. 13: p. 479, § 30. **C.L.** § 2941. **CSA:** C. 137, § 31. **CRS 53:** § 115-4-7. **C.R.S. 1963:** § 115-4-7. **L. 69:** p. 936, § 25. **L. 2008:** Entire section repealed, p. 1796, § 13, effective July 1.

40-4-108. Standards for electricity, gas, and water. The commission has power, after hearing upon its own motion or upon complaint, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed by all electric, gas, and water public utilities; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such product, commodity, or service and for the measurement thereof; to establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and equipment for measurement and weighing; and to provide for the examination and testing of any and all equipment used for the measurement or weighing of any product, commodity, or service of any such public utility.

Source: L. 13: p. 479, § 31. **C.L.** § 2942. **CSA:** C. 137, § 32. **CRS 53:** § 115-4-8. **C.R.S. 1963:** § 115-4-8. **L. 69:** p. 936, § 26.

40-4-109. Entry to premises - testing meters. (1) The commissioners and their officers and employees have power to enter upon any premises occupied by any public utility for the purpose of making the examination and tests and exercising any of the other powers provided for in articles 1 to 7 of this title and to set up and use on such premises any equipment necessary therefor. The agents and employees of such public utility have the right to be present at the making of such examinations and tests.

(2) Any consumer or user of any product, commodity, or service of a public utility may have any equipment used in the measurement thereof tested upon paying the fees fixed by the

commission. The commission shall establish and fix reasonable fees to be paid for testing such equipment on the request of the consumer or user, the fee to be paid by the consumer or user at the time of his request but to be paid by the public utility and repaid to the consumer or user if the equipment is found defective or incorrect to the disadvantage of the consumer or user under such rules and regulations as may be prescribed by the commission.

Source: L. 13: p. 479, § 31. **C.L.** § 2942. **CSA:** C. 137, § 32. **CRS 53:** § 115-4-9. **C.R.S. 1963:** § 115-4-9. **L. 69:** p. 937, § 27.

Cross references: For standards for and the testing of weights and measures generally, see article 14 of title 35.

40-4-110. Valuations of property. The commission has power to ascertain the value of the property of every public utility in this state and the facts which in its judgment have or may have any bearing on such value. The commission has power to make revaluations from time to time and to ascertain all new construction, extensions, and additions to the property of every public utility.

Source: L. 13: p. 480, § 32. **C.L.** § 2943. **CSA:** C. 137, § 33. **CRS 53:** § 115-4-10. **C.R.S. 1963:** § 115-4-10.

Cross references: For hearings in valuation matters, see § 40-6-118.

40-4-111. Uniform system of accounts prescribed. The commission has power to establish a system of accounts to be kept by all public utilities, or to classify said public utilities and to establish a system of accounts for each class, and to prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records, and memoranda to be kept by such public utilities, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys and any other forms, records, and memoranda that in the judgment of the commission may be necessary to carry out the provisions of articles 1 to 7 of this title. The system of accounts established by the commission and the forms of accounts, records, and memoranda prescribed by it shall not be inconsistent in the case of corporations subject to the provisions of the federal "Interstate Commerce Act", Part I, 49 U.S.C., sec. 1 et seq., with the systems and forms from time to time established for such corporations by the surface transportation board; but nothing contained in this section shall affect the power of the commission to prescribe forms of accounts, records, and memoranda covering information in addition to that required by the surface transportation board. The commission, after hearing upon its own motion or upon complaint, may prescribe by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. Where the commission has prescribed the forms of accounts, records, or memoranda to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records, or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records, or memoranda as are explanatory of and supplemental to the accounts, records, or memoranda prescribed by the commission.

Source: L. 13: p. 480, § 33. **C.L.** § 2944. **CSA:** C. 137, § 34. **CRS 53:** § 115-4-11. **C.R.S. 1963:** § 115-4-11. **L. 2001:** Entire section amended, p. 1281, § 60, effective June 5.

40-4-112. Depreciation account - rules. The commission has power, after hearing, to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of accounts as the commission may prescribe. The commission, from time to time, may determine and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility, and each public utility shall conform its depreciation accounts to the rates so determined.

Source: L. 13: p. 481, § 34. **C.L.** § 2945. **CSA:** C. 137, § 35. **CRS 53:** § 115-4-12. **C.R.S. 1963:** § 115-4-12. **L. 69:** p. 937, § 28.

40-4-113. Evaluation of retail electric industry structure - study - repeal. (Repealed)

Source: L. 98: Entire section added, p. 860, § 1, effective May 26. **L. 99:** (4)(d) amended, p. 657, § 1, effective May 18.

Editor's note: Subsection (6) provided for the repeal of this section, effective December 31, 2000. (See L. 98, p. 860.)

40-4-114. Funding and appropriations - retail electricity policy development fund - creation - repeal. (Repealed)

Source: L. 98: Entire section added, p. 867, § 1, effective May 26.

Editor's note: Subsection (2) provided for the repeal of this section, effective December 31, 2000. (See L. 98, p. 867.)

40-4-115. Reliable electricity infrastructure - task force - repeal. (Repealed)

Source: L. 2006: Entire section added, p. 831, § 2, effective May 4.

Editor's note: Subsection (5) provided for the repeal of this section, effective December 31, 2006. (See L. 2006, p. 831.)

40-4-116. Renewable resource generation development areas - task force - fund - definitions - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 1340, § 1, effective May 29.

Editor's note: Subsection (7) provided for the repeal of this section, effective December 31, 2007. (See L. 2007, p. 1340.)

40-4-117. Integrated transmission facility planning - review by commission - report - repeal. (Repealed)

Source: L. 2009: Entire section added, (HB 09-1345), ch. 356, p. 1858, § 2, effective June 1.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2011. (See L. 2009, p. 1858.)

40-4-118. Colorado smart grid task force - fund - definition - reports - repeal. (Repealed)

Source: L. 2010: Entire section added, (SB 10-180), ch. 428, p. 2231, § 1, effective June 11. **L. 2012:** (2)(a)(I) and (5) amended, (HB 12-1315), ch. 224, p. 980, § 49, effective July 1.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 2015. (See L. 2010, p. 2231.)

40-4-119. Siting of electric transmission facilities - task force - repeal. (Repealed)

Source: L. 2011: Entire section added, (SB 11-045), ch. 288, p. 1338, § 1, effective June 3.

Editor's note: Subsection (6) provided for the repeal of this section, effective December 31, 2011. (See L. 2011, p. 1338.)

ARTICLE 5

New Construction - Extension

40-5-101. New construction - extension - compliance with local zoning rules. (1) (a) A public utility shall not begin the construction of a new facility, plant, or system or the extension of its facility, plant, or system without first obtaining from the commission a certificate that the present or future public convenience and necessity require, or will require, the construction or extension. For purposes of this subsection (1), the present or future public convenience and necessity does not include the consideration of land use rights or siting issues related to the location or alignment of the proposed electric transmission lines or associated facilities, which issues are under the jurisdiction of a local government's land use regulation. Sections 40-5-101 to 40-5-104 do not require a corporation to secure a certificate for the following:

(I) An extension within any city and county, city, or town within which it has already lawfully commenced operations;

(II) An extension into territory, either within or outside of a city and county, city, or town, contiguous to its facility, line, plant, or system and not already served by a public utility providing the same commodity or service; or

(III) An extension within or to territory already served by the corporation, as is necessary in the ordinary course of its business.

(b) If a public utility, in constructing or extending its line, plant, or system, interferes, or is about to interfere, with the operation of the line, plant, or system of any other public utility already constructed, the commission, upon complaint of the public utility claiming to be injuriously affected, after hearing, may prohibit the construction or extension or prescribe just and reasonable terms and conditions for the location of the lines, plants, or systems affected.

(2) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that there is or will be a duplication of service by public utilities in any area, the commission may issue a certificate of public convenience and necessity assigning specific territories to one or to each of said utilities or, by certificate of public convenience and necessity, otherwise define the conditions of rendering service and constructing extensions within those territories and may order the elimination of the duplication upon such terms as are just and reasonable, having due regard to due process of law and to all the rights of the respective parties and to public convenience and necessity.

(3) Except as otherwise provided in section 29-20-108, C.R.S., a public utility shall not construct or install a new facility, plant, or system within the territorial boundaries of a local government unless the construction or installation complies with the local government's zoning rules, resolutions, or ordinances. Nothing in this subsection (3) prohibits a local government from granting a variance from its zoning rules, resolutions, or ordinances for such uses of the property. Nothing in this subsection (3) grants the commission any additional authority to restrict a siting application. For purposes of this section, "local government" means a county, home rule or statutory city, town, territorial charter city, or city and county. Nothing in this subsection (3) restricts the right of a public utility or power authority to appeal to the public utilities commission a local government action under section 29-20-108, C.R.S.

(4) (a) A public utility is entitled to recover, through a separate rate adjustment clause, the costs that it prudently incurs in planning, developing, and completing the construction or expansion of transmission facilities for which the utility has been granted a certificate of public convenience and necessity, or for which the commission has determined that no certificate of public convenience and necessity is required. The transmission rate adjustment clause is subject to annual changes, which are effective on January 1 of each year.

(b) To provide additional encouragement to utilities to pursue the construction and expansion of transmission facilities, the commission shall approve current recovery by the utility through the annual rate adjustment clause of the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, on the total balance of construction work in progress related to such transmission facilities as of the end of the immediately preceding year. The rate adjustment clause shall be reduced to the extent that the prudently incurred costs being recovered through the adjustment clause have been included in the public utility's base rates as a result of the commission's final order in a rate case.

Source: L. 13: p. 481, § 35. **L. 17:** p. 418, § 1. **C.L.** § 2946. **CSA:** C. 137, § 36. **CRS 53:** § 115-5-1. **L. 61:** p. 628, § 2. **C.R.S. 1963:** § 115-5-1. **L. 2005:** (3) added, p. 1355, § 1, effective August 8. **L. 2007:** (4) added, p. 267, § 3, effective March 27. **L. 2012:** Entire section amended, (HB 12-1312), ch. 101, p. 339, § 2, effective April 12.

Cross references: (1) For the acquisition of public utilities by cities and towns, see § 40-5-104.

(2) For the legislative declaration contained in the 2007 act enacting subsection (4), see section 1 of chapter 61, Session Laws of Colorado 2007. For the legislative declaration in the 2012 act amending this section, see section 1 of chapter 101, Session Laws of Colorado 2012.

40-5-101.5. Investor-owned utilities' service extension policies - commission review - rules. (1) Within one hundred eighty days after August 9, 2017, the commission shall open a nonadjudicatory proceeding to evaluate investor-owned utilities' current service extension policies for serving new load applications; except that gas-only, investor-owned utilities are not subject to the commission's nonadjudicatory proceeding. Based on the commission's evaluation, the commission shall issue a decision containing recommendations to investor-owned utilities for potential implementation.

(2) In the commission's nonadjudicatory proceeding, the commission shall consider, without limitation, the following information from investor-owned utilities:

(a) The utilities' general load extension procedures used by the utility and requesting customers, including:

(I) The use of construction agreements, revenue assurance agreements, assignment of estimated costs, predevelopment system investment protocols, and options for cost and schedule transparency; and

(II) Potential system automation benefits to enhance clarity of the requirements and process;

(b) Equitable allocation of costs associated with an extension of facilities and any other factors affecting the cost of an extension of facilities; and

(c) Variables that affect time lines for construction and implementation of an extension of facilities.

(3) Within ninety days after the conclusion of the nonadjudicatory proceeding, the commission may promulgate rules consistent with the findings of the nonadjudicatory proceeding.

Source: L. 2017: Entire section added, (SB 17-271), ch. 310, p. 1673, § 1, effective August 9.

40-5-102. Certificate of public convenience and necessity. No public utility shall exercise any right or privilege under any franchise, permit, ordinance, vote, or other authority granted after April 12, 1913, or under any franchise, permit, ordinance, vote, or other authority granted before April 12, 1913, but not actually exercised before said date or the exercise of which has been suspended for more than one year without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege. When the commission finds, after hearing, that a public utility has, before April 12, 1913, begun actual construction work and is prosecuting such work, in good faith, uninterruptedly, and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise, permit, ordinance, vote, or other authority granted before April 12, 1913, but not actually exercised before said date, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work and after such

completion, may exercise such right or privilege. Sections 40-5-101 to 40-5-104 shall not be construed to validate any right or privilege invalid on April 12, 1913, or becoming invalid after said date under any law of this state.

Source: L. 13: p. 481, § 35. **L. 17:** p. 418, § 1. **C.L.** § 2946. **CSA:** C. 137, § 36. **CRS 53:** § 115-5-2. **C.R.S. 1963:** § 115-5-2.

40-5-103. Certificate - application for - issuance. (1) Before any certificate may issue under sections 40-5-101 to 40-5-104, a certified copy of its articles of incorporation or charter, if the applicant is a corporation, shall be filed in the office of the commission. Every applicant for a certificate to exercise franchise rights under section 40-5-102 shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise, permit, ordinance, vote, or other authority of the proper county, city and county, or municipal or other public authority. The commission has the power to issue a certificate to exercise franchise rights after hearing, to refuse to issue the same, or to issue it for the partial exercise only of said right or privilege and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. Nothing contained in this subsection (1) shall be construed to limit or restrict the power and authority of the commission: To regulate, issue, or refuse to issue certificates of public convenience and necessity for construction of a new facility, plant, or system or of any extension thereof as provided in section 40-5-101; and to attach to the exercise of the rights granted by such certificate such terms and conditions as in the commission's judgment may be required by the public convenience and necessity.

(2) If such public utility desires to exercise a right or privilege under a franchise, permit, ordinance, vote, or other authority which it contemplates securing but which has not yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe issue the desired certificate upon such terms and conditions as it may designate after such public utility has obtained the contemplated franchise, permit, ordinance, vote, or other authority. Upon the presentation to the commission of evidence satisfactory to it that such franchise, permit, ordinance, vote, or other authority has been secured by such public utility, the commission shall thereupon issue such certificate.

Source: L. 13: p. 418, § 35. **L. 17:** p. 418, § 1. **C.L.** § 2946. **CSA:** C. 137, § 36. **CRS 53:** § 115-5-3. **C.R.S. 1963:** § 115-5-3. **L. 69:** p. 937, § 29. **L. 81:** (1) amended, p. 1918, § 1, effective June 19. **L. 82:** (1) amended, p. 629, § 43, effective April 2.

40-5-104. Acquisition by municipality. (1) Any municipality which has acquired or constructed any public utility plant, property, or facility has the power to contract with a public utility for the operation of any part or the whole thereof, subject to the provisions of articles 1 to 7 of this title and to exercise, in respect to such public utility, the powers of regulation and supervision conferred upon it by the commission.

(2) Sections 40-5-101 to 40-5-104 shall not apply to railroads.

Source: L. 17: p. 417, § 1. **C.L.** § 2946. **CSA:** C. 137, § 36. **CRS 53:** § 115-5-4. **C.R.S. 1963:** § 115-5-4. **L. 69:** p. 938, § 30.

40-5-105. Certificate or assets may be sold, assigned, or leased. (1) The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe; except that this section does not apply to assets that are sold, assigned, or leased:

(a) In the normal course of business; or

(b) That are owned by a telecommunications service provider and:

(I) Are not used in the provision of regulated telecommunications services; or

(II) (A) Are land and support assets and are not directly used in the provision of regulated telecommunications services.

(B) A telecommunications service provider shall provide notice to the commission of transactions subject to this subparagraph (II), along with the associated accounting entries on the provider's books and records, to permit the commission to determine, if necessary, the disposition of any gain or loss from the transaction.

Source: L. 45: p. 526, § 2. **CSA:** C. 137, § 36. **CRS 53:** § 115-5-5. **C.R.S. 1963:** § 115-5-5. **L. 69:** p. 938, § 31. **L. 71:** p. 1100, § 1. **L. 2004:** Entire section amended, p. 164, § 1, effective March 17.

40-5-106. Designation for service of process. (1) It is the duty of every public utility operating in, through, or into the state of Colorado to file with the commission a designation in writing, under oath, of the name and post office address of a person upon whom service of notices or orders in proceedings pending before the commission may be made. Such designation may from time to time be changed by like writing similarly filed. In default of such designation, service of any notice or order may be made by posting such order or notice in the office of the director of the commission and by mailing a copy of such notice or order to such public utility by certified mail, return receipt requested, at its last-known address.

(2) Every public utility operating in, through, or into the state of Colorado shall also file with the director of the commission a designation in writing, under oath, of the name and post office address of a person in the state of Colorado upon whom process issued by or under the authority of any court or board having jurisdiction of the subject matter may be served in any judicial or other proceeding brought against such public utility in this state. Such designation may from time to time be changed by like writing similarly filed. In default of such designation, service may be made upon any agent, representative, or employee of such public utility found within the state. Nothing in this article shall apply to railroad corporations.

Source: L. 45: p. 526, § 3. **CSA:** C. 137, § 36. **CRS 53:** § 115-5-6. **C.R.S. 1963:** § 115-5-6. **L. 69:** p. 938, § 32. **L. 2003:** Entire section amended, p. 1704, § 17, effective May 14.

40-5-107. Electric vehicle programs - definitions - repeal. (1) (a) No later than May 15, 2020, and on or before May 15 every three years thereafter, an electric public utility shall file

with the commission an application for a program for regulated activities to support widespread transportation electrification within the area covered by the utility's certificate of public convenience and necessity.

(b) To comply with this subsection (1), an application must seek to minimize overall costs and maximize overall benefits and may include:

(I) Investments or incentives to facilitate the deployment of customer-owned or utility-owned charging infrastructure, including charging facilities, make-ready infrastructure, and associated electrical equipment that support transportation electrification;

(II) Investments or incentives to facilitate the electrification of public transit and other vehicle fleets;

(III) Rate designs, or programs that encourage vehicle charging that supports the operation of the electric grid; and

(IV) Customer education, outreach, and incentive programs that increase awareness of the programs and of the benefits of transportation electrification and encourage greater adoption of electric vehicles.

(2) When considering transportation electrification programs and determining cost recovery for investments and other expenditures related to programs proposed by an electric public utility under subsection (1) of this section, the commission shall consider whether the investments and other expenditures are:

(a) Reasonably expected to improve the use of the electric grid, including improved integration of renewable energy;

(b) Reasonably expected to increase access to the use of electricity as a transportation fuel;

(c) Designed to ensure system safety and reliability;

(d) (I) Reasonably expected to contribute to meeting air quality standards, improving air quality in communities most affected by emissions from the transportation sector, and reducing statewide emissions of greenhouse gases by forty percent below 2005 levels by 2030 and eighty percent below 2005 levels by 2050.

(II) This subsection (2)(d) is repealed, effective July 1, 2031.

(e) Reasonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging and related infrastructure and services; attract private capital investments; and utilize high-quality jobs and skilled worker training programs;

(f) Transparent, incorporating public reporting requirements to inform design and commission policy; and

(g) Reasonably expected to provide access for low-income customers, in the totality of the utility's transportation electrification programs, which may include community-based and multi-family charging infrastructure, car share programs, and electrification of public transit, while giving due consideration to the affect on low-income customers.

(3) (a) Electric vehicle infrastructure electrical work on the customer side of the utility meter, including the installation of the charging station apparatus and related hardware, must:

(I) Be performed by a licensed master electrician, licensed journeyman electrician, licensed residential wireman, or properly supervised electrical apprentice as each term is defined in section 12-115-103; and

(II) Comply with article 115 of title 12, including sections 12-115-109 and 12-115-115, and all applicable rules of the state electrical board.

(b) For all electric vehicle infrastructure or charging stations owned by the utility, the utility shall use utility employees or qualified contractors if the contractors' employees have access to an apprenticeship program as defined in section 8-83-308 (3)(a). This apprenticeship requirement does not apply to:

(I) The design, planning, or engineering of the infrastructure;

(II) Management functions to operate the infrastructure; or

(III) Any work included in a warranty.

(4) As used in this section, unless the context otherwise requires:

(a) "Industry" means either one or more individual employers or an industry association.

(b) (I) "Skilled worker training program" means an accredited educational, occupational education, as defined in section 23-60-103 (2), apprenticeship, or similar training program that:

(A) Trains or retrains individuals to perform a skill that is needed in the workforce; and

(B) Awards an industry- or state-recognized certificate, credential, associate degree, professional license, or similar evidence of achievement upon completion of the program.

(II) "Skilled worker training program" does not include an educational program that awards a bachelor's or higher degree upon completion of the program.

Source: L. 2019: Entire section added, (SB 19-077), ch. 383, p. 3435, § 4, effective May 31. **L. 2020:** (2)(e) and IP(3)(b) amended and (4) added, (HB 20-1395), ch. 137, p. 594, § 7, effective June 26.

Cross references: For the legislative declaration in SB 19-077, see section 1 of chapter 383, Session Laws of Colorado 2019.

ARTICLE 6

Hearings and Investigations

40-6-101. Proceedings - delegation of duties - rules. (1) The commission shall conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice. All of the provisions of article 4 of title 24, C.R.S., shall apply to the work, business, proceedings, and functions of the commission, or any individual commissioner or administrative law judge; but where there is a specific statutory provision in this title applying to the commission, such specific statutory provision shall control as to the commission. For this purpose, any administrative law judge, as provided in this title, shall be deemed to be a hearing commissioner as that term is used in said article 4 of title 24, C.R.S. The commission may from time to time make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any individual commissioner or administrative law judge, including forms of notices and the service thereof. Any party to the proceeding may appear before the commission or any individual commissioner or administrative law judge and be heard. Every vote and official act of the commission, any individual commissioner, or an administrative law judge shall be entered of record and such record shall be made public upon the request of any party interested. All hearings before the commission, any individual commissioner, or an administrative law judge shall be public.

(2) (a) The commission may by order direct that any of its work, business, or functions under any provision of law, except functions vested solely in the commission under this title 40, be assigned or referred to an individual commissioner or to an administrative law judge to be designated by order for action. The commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference. When an individual commissioner or an administrative law judge is unable to act upon any matter assigned or referred because of absence or other cause, the chair of the commission may designate another commissioner or administrative law judge, as the case may be, to serve temporarily until the commission otherwise orders.

(b) Every case submitted to the commission for adjudication must be heard in the first instance by the commission unless, by rule, minute order, or written decision, the commission assigns the case to an administrative law judge or to an individual commissioner for hearing.

(3) An individual commissioner or an administrative law judge has authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred to such officer under the provisions of this title and, with respect thereto, has all the jurisdiction and powers conferred by law upon the commission and is subject to the same duties and obligations. The seal of the commission shall be the seal of an individual commissioner or administrative law judge. Except as otherwise provided in this title, any order, decision, or requirement of an individual commissioner or an administrative law judge with respect to any matter assigned or referred to such officer under subsection (2) of this section has the same force and effect and may be made and evidenced in the same manner as if made or taken by the commission.

(4) All hearings and investigations before the commission, any individual commissioner, or any administrative law judge shall be governed by this title and by rules of practice and procedure adopted by the commission; and, in the conduct thereof, neither the commission, nor any individual commissioner, nor any administrative law judge shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony before the commission, any commissioner, or any administrative law judge shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission.

(5) Notwithstanding subsections (2) to (4) of this section, the commission may promulgate rules to authorize the delegation of its routine administrative transportation matters to commission staff. If the commission promulgates rules pursuant to this subsection (5), the commission shall define in rule the meaning of the term "routine administrative transportation matter".

Source: L. 13: p. 489, § 38. **C.L.** § 2947. **CSA:** C. 137, § 38. **L. 45:** p. 527, § 4. **CRS 53:** § 115-6-1. **C.R.S. 1963:** § 115-6-1. **L. 69:** p. 939, § 33. **L. 89:** Entire section amended, p. 1526, § 9, effective April 12. **L. 93:** (2) amended, p. 2063, § 16, effective July 1. **L. 2003:** (3) amended, p. 1705, § 18, effective May 14. **L. 2019:** (2) amended and (5) added, (SB 19-236), ch. 359, p. 3311, § 15, effective May 30.

Cross references: For conduct that may constitute the practice of law, see article 93 of title 13.

40-6-102. Service - fees - depositions - examination of witnesses. (1) The commission, each commissioner, an administrative law judge with respect to matters referred to such judge, and the director of the commission have power to issue notices, orders to satisfy or answer, summonses, subpoenas, and commissions to take the deposition of any witness whose testimony is required in any proceeding pending before the commission in like manner and to the same extent as courts of record. The process issued by the commission, any commissioner, an administrative law judge, or the director of the commission shall extend to all parts of the state and beyond the boundaries thereof as may be provided by law or the Colorado rules of civil procedure and may be served by any person authorized to serve process of courts of record, by any person designated for that purpose by the commission or a commissioner, or by first-class mail, postage prepaid, as provided in section 40-6-108. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided for payment of the fees of witnesses.

(2) In any investigation, inquiry, hearing, or other proceeding pending before the commission, any commissioner, or any administrative law judge of the commission, the depositions of witnesses may be taken, both within and without the state of Colorado, under the same circumstances and in the same manner as provided by the Colorado rules of civil procedure for the taking of depositions in courts of record.

(3) A party to the record of any investigation, inquiry, hearing, or other proceeding pending before the commission, any commissioner, any administrative law judge of the commission, or a person for whose immediate benefit such investigation, hearing, or other proceeding is prosecuted or defended, or the directors, officers, superintendent, or managing agent of any corporation which is a party to the record in such investigation, hearing, or other proceeding may be examined upon the hearing thereof, or upon deposition, or both, as if under cross-examination at the instance of the commission or any adverse party, and for that purpose may be compelled, in the same manner and subject to the same rules for examination as any other witness, to testify; but the party calling for such examination shall not be concluded thereby but may rebut it by counter testimony.

Source: L. 13: p. 489, § 39. **C.L.** § 2948. **CSA:** C. 137, § 39. **L. 45:** p. 527, § 5. **CRS 53:** § 115-6-2. **C.R.S. 1963:** § 115-6-2. **L. 69:** p. 940, § 34. **L. 89:** Entire section amended, p. 1527, § 10, effective April 12. **L. 2003:** (1) amended, p. 1705, § 19, effective May 14.

Cross references: For depositions and discovery, see Rules 26 to 37, Colorado rules of civil procedures; for service of process, see Rule 4(d), Colorado rules of civil procedure; for fees of sheriff for service of process, see § 30-1-104; for payment of fees of witnesses, see § 40-6-103.

40-6-103. Administration of oaths - compulsion of testimony - fees. (1) The commission, each commissioner, the director, and any administrative law judge as to matters referred to such judge have power to administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of records, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state. No subpoena shall be issued except upon good cause shown. Good cause shown shall consist of an

affidavit stating with specificity the testimony, records, or documents sought and the relevance of such testimony, records, or documents to the proceedings of the commission. Each witness who appears by order of the commission, a commissioner, the director, or any administrative law judge shall receive for the witness' attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party is subpoenaed, the witness' fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, at the time of service, may demand the fees to which the witness is entitled for travel to and from the place at which the witness is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, the witness shall not be required to attend, as directed in the subpoena. All fees and mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. No witness furnished with free transportation shall receive mileage for the distance the witness may have traveled on such free transportation.

(2) The district court in and for the county or city and county in which any inquiry, investigation, hearing, or proceeding may be held by the commission, or any individual commissioner or administrative law judge, has the power to compel the attendance of witnesses, the giving of testimony, and the production of records or documents as required by any subpoenas issued by the commission, or any individual commissioner, the director, or any administrative law judge. The commission, individual commissioner, or an administrative law judge before whom the testimony is to be given or produced, in case of the failure or refusal of any witness to attend or testify or produce any records or documents required by such subpoena, may report to the district court in and for the county or city and county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness or the production of said records or documents, that the witness has been subpoenaed in the manner prescribed in this title, and that the witness has failed or refused to attend or produce the records or documents required by the subpoena or has failed or refused to answer questions propounded to the witness in the course of such proceeding; and the commission, individual commissioner, or an administrative law judge may ask for an order of the court compelling the witness to attend and testify or produce or cause to be produced documentary evidence. No person so testifying shall be exempt from prosecution or punishment for any perjury in the first degree committed by such person in this testimony. Nothing in this section shall be construed as in any manner giving to any public utility immunity of any kind.

Source: L. 13: p. 489, § 40. **C.L.** § 2949. **CSA:** C. 137, § 40. **CRS 53:** § 115-6-3. **C.R.S. 1963:** § 115-6-3. **L. 69:** p. 940, § 35. **L. 72:** p. 566, § 40. **L. 83:** (1) amended, p. 1561, § 1, effective June 1. **L. 89:** Entire section amended, p. 1528, § 11, effective April 12. **L. 2003:** Entire section amended, p. 1706, § 20, effective May 14.

Cross references: For perjury, see part 5 of article 8 of title 18; for fees of witnesses, see §§ 13-33-102 and 13-33-103.

40-6-104. Certified copies - evidence - orders. (1) Copies of all official documents, commission decisions, and orders on file with the commission, or documents filed or deposited according to law in the office of the commission, certified by a commissioner or by the director under the official seal of the commission to be true copies of the originals, shall be evidence in like manner as the originals and shall be treated and recognized as such by all courts of the state of Colorado.

(2) Any order, decision, authorization, certificate, or entry, or a copy thereof, certified by a commissioner or by the director under the official seal of the commission to be a true copy of the original order, decision, authorization, certificate, or entry, may be filed for record in the office of the county clerk and recorder of any county or city and county in which is located the principal place of business of any public utility affected thereby or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, decision, authorization, or certificate has not been modified, stayed, suspended, or revoked may also be recorded in the same offices in the same manner and with like effect.

Source: L. 13: p. 491, § 41. **C.L.** § 2950. **CSA:** C. 137, § 41. **CRS 53:** § 115-6-4. **C.R.S. 1963:** § 115-6-4. **L. 69:** p. 941, § 36. **L. 2003:** Entire section amended, p. 1707, § 21, effective May 14.

40-6-105. Fees - copies of records - disposition. (1) The commission shall charge the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the commission, twenty cents for each page; for certified copies of official documents and orders filed in its office, twenty cents for each page; and one dollar for every certificate under seal affixed thereto.

(2) No fees shall be charged for copies of papers, records, or official documents furnished to public officers for use in their official capacity, but the commission may fix reasonable charges for publications issued under its authority. All fees charged under this section shall be collected by the commission, paid to the department of revenue, deposited in the office of the state treasurer, and credited to the public utilities commission fixed utility fund or the public utilities commission motor carrier fund, as the case may be.

Source: L. 13: p. 491, § 42. **C.L.** § 2951. **CSA:** C. 137, § 42. **CRS 53:** § 115-6-5. **C.R.S. 1963:** § 115-6-5. **L. 69:** p. 942, § 37.

40-6-106. Power to inspect books and accounts. The commission, each commissioner, and any person employed by the commission shall have the right to inspect the records and documents of any public utility; and the commission, each commissioner, or any employee authorized to administer oaths has the power to examine under oath any officer, agent, or employee of such public utility in relation to the business and affairs of said public utility. Any person other than a commissioner demanding such inspection shall produce under the hand and seal of the commission his authority to make such inspection; and a written record of the testimony or statement so given under oath shall be made and filed with the commission.

Source: L. 13: p. 492, § 43. **C.L.** § 2952. **CSA:** C. 137, § 43. **CRS 53:** § 115-6-6. **C.R.S. 1963:** § 115-6-6. **L. 69:** p. 942, § 38.

40-6-107. Production of documents - transparency in planning for future acquisitions - rules. (1) The commission may require, by order served on any public utility in the manner provided in section 40-6-102 for the service of orders, the production within this state at such time and place as it may designate of any records and documents kept by the public utility in any office or place outside of this state, or, at its option, verified copies in lieu thereof, so that an examination of the records or documents may be made by the commission or under its direction.

(2) (a) To ensure transparency in the acquisition of power generation resources for the benefit of Colorado ratepayers and to promote fairness in electric utility competitive bidding processes, the commission shall, within ninety days after March 29, 2011, commence a rule-making proceeding to adopt rules, applicable after March 29, 2011, to require an investor-owned electric utility that is evaluating or has evaluated an existing or proposed electric generating facility as a potential resource, whether in connection with a commission proceeding or otherwise, to provide the owner or developer of the generating facility, upon request, with reasonable and timely access to the modeling inputs and assumptions that were used by the investor-owned public utility to evaluate the facility and that reasonably relate to that facility or to the transmission of electricity from that facility to the investor-owned public utility. Bidders in a competitive electric resource bidding process shall be permitted access to those modeling inputs and assumptions, as the modeling inputs and assumptions apply to the bidders' particular facility, in time to ensure that errors or omissions may be corrected before the competitive bidding process is completed. If it is determined that an error or omission, as defined by commission rule-making, exists in the investor-owned public utility's modeling, the commission shall require the investor-owned public utility to perform additional modeling to confirm that electric generating facilities are fairly and accurately represented in the results of any computer modeling performed by the investor-owned public utility.

(b) In any commission proceeding regarding electric resource planning or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities, the commission shall establish procedures regarding the designation and approval of information as highly confidential that protect the public interest and assure that ratepayers receive the benefits of competition and transparency while protecting the trade secrets of computer modeling software producers, independent bidders, and the investor-owned public utility.

Source: L. 13: p. 493, § 44. **C.L.** § 2953. **CSA:** C. 137, § 44. **CRS 53:** § 115-6-7. **C.R.S. 1963:** § 115-6-7. **L. 69:** p. 943, § 39. **L. 2011:** Entire section amended, (HB 11-1262), ch. 75, p. 206, § 1, effective March 29.

Cross references: For service of orders, see Rule 4(d), Colorado rules of civil procedure.

40-6-108. Complaints - service - notice of hearing. (1) (a) Complaint may be made by the commission on its own motion or by any corporation, person, chamber of commerce, or board of trade, or by any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or by any body politic or municipal corporation by petition or

complaint in writing, setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

(b) No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electric, water, or telephone public utility, unless the same is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the county, city and county, city, or town, if any, within which the alleged violation occurred, or not less than twenty-five customers or prospective customers of such public utility.

(c) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission, the same rule shall apply with regard to the joinder of causes and parties.

(d) The commission is not required to dismiss any complaint because of the absence of direct damage to the complainant.

(e) Upon the filing of any complaint, the commission shall cause a copy thereof to be served upon the person complained of, together with an order requiring such defendant to satisfy or answer said complaint within a time to be fixed by the commission.

(2) (a) Notice of all applications, petitions, and orders instituting investigations or inquiries shall be given to all persons, firms, or corporations who, in the opinion of the commission, are interested in, or who would be affected by, the granting or denial of any such application, petition, or other proceeding. Except for good cause shown, any person desiring to file an objection or intervene in or participate as a party in any such proceeding shall file his or her objection or petition for leave to intervene or, under such rules as the commission may prescribe, file other appropriate pleadings to become a party, within thirty days after the date of the notice, or such lesser time as the commission may prescribe. No final action shall be taken by the commission in any proceeding during the time any such filing is permitted.

(b) Any public utility giving notice of a proposed gas or electric tariff shall serve such notice upon the Colorado energy office or its successor agency. The office shall be granted leave to intervene as a matter of right, upon a timely filing of a petition or other pleading in accordance with this section, in adjudicatory matters affecting gas or electric utilities; except that the office shall not be a party to any individual complaint between a utility and an individual.

(3) Service in all applications, petitions, complaints, hearings, investigations, and other proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Colorado rules of civil procedure, or may be made personally or by first-class mail. In all cases wherein service is obtained by mail by the commission, the certificate of the director of the commission of such mailing shall be prima facie evidence that service has been obtained, and the time fixed in any order or notice shall commence to run from the date of mailing as shown in such certificate. The mailing of any notice or other paper by any other party to a proceeding shall be evidenced by the certificate of the person mailing such notice or other paper, and the time fixed in any such notice or other paper shall commence to run from the date of mailing as shown in such certificate.

(4) The commission shall fix the time when and place where any hearing required by this title or by article 4 of title 24, C.R.S., will be had upon any application, complaint, petition, investigation, or other proceeding, and shall serve notice thereof to the parties not less than ten days before the time set for such hearing, unless the commission finds that public interest or necessity requires that any such hearing be held at an earlier date. The commission shall hold a hearing and issue a final order in complaint cases within two hundred ten days after the filing of testimony and exhibits by the complainant. In extraordinary circumstances, the commission may extend the time an additional ninety days following a hearing in which such extraordinary circumstances are established. The complainant may waive the time limits established in this section, in which case the time limits are not binding on the commission.

Source: L. 13: p. 493, § 45. **C.L.** § 2954. **CSA:** C. 137, § 45. **L. 45:** p. 528, § 6. **CRS 53:** § 115-6-8. **C.R.S. 1963:** § 115-6-8. **L. 69:** p. 943, § 40. **L. 89:** (2) and (4) amended, p. 1529, § 12, effective April 12. **L. 93:** (4) amended, p. 2064, § 17, effective July 1. **L. 2003:** (3) amended, p. 1707, § 22, effective May 14. **L. 2008:** (2) amended, p. 1796, § 14, effective July 1. **L. 2012:** (2)(b) amended, (HB 12-1315), ch. 224, p. 981, § 50, effective July 1.

Cross references: For service of summons, see Rule 4(e), Colorado rules of civil procedure.

40-6-109. Hearings - orders - record - review - representation of entities in nonadjudicatory proceedings. (1) At the time fixed for any hearing before the commission, any commissioner, or an administrative law judge, or, at the time to which the same may have been continued, the applicant, petitioner, complainant, the person, firm, or corporation complained of, and such persons, firms, or corporations as the commission may allow to intervene and such persons, firms, or corporations as will be interested in or affected by any order that may be made by the commission in such proceeding and who shall have become parties to the proceeding shall be entitled to be heard, examine and cross-examine witnesses, and introduce evidence. A full and complete record of all proceedings had before the commission, any commissioner, or an administrative law judge in any formal hearing and all testimony shall be taken down by any reporter appointed by the commission or, as deemed appropriate by the commission, a commissioner, or an administrative law judge, as applicable, recorded electronically. All parties in interest shall be entitled to be heard in person or by attorney.

(2) Whenever any hearing, investigation, or other proceeding is assigned to an administrative law judge or individual commissioner for hearing, the administrative law judge or individual commissioner, after the conclusion of said hearing, shall promptly transmit to the commission the record and exhibits of said proceeding together with a written recommended decision which shall contain his findings of fact and conclusions thereon, together with the recommended order or requirement. Copies thereof shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty days after service upon the parties, or within such extended period of time as the commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such decision is stayed within such time by the commission upon its own motion, such recommended decision shall become the decision of the commission and subject to the provisions of section 40-6-115. The commission upon its own motion may and where exceptions are filed shall reconsider the matter,

either upon the same record or after further hearing, and such recommended decision shall thereupon be stayed or postponed pending final determination thereof by the commission. The commission may adopt, reject, or modify the findings of fact and conclusions of such individual commissioner or administrative law judge or, after examination of the record of any such proceeding, enter its decision and order therein without regard to the findings of fact and conclusions of any individual commissioner or administrative law judge. Any commissioner to whom a proceeding may be so assigned shall not be disabled thereby from participating with the commission in the final decision.

(3) After the conclusion of any hearing, investigation, or proceeding before the commission, the commission shall make and file its decision. The decision shall be a report in writing in which the commission shall state its findings of fact and conclusions thereon together with its order or requirement. The decision, under the seal of the commission, shall be served upon all parties and made available to all participants in the proceeding.

(4) Unless otherwise provided in this title, all decisions of the commission shall become effective upon a day to be fixed by the commission in any such decision and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission. Decisions containing negative orders shall be effective on the date of entry thereof, unless otherwise provided in any such decision. If an order or requirement cannot, in the judgment of the commission, be complied with within the time prescribed therein, the commission, on application made within such time and for good cause shown, may extend the time for compliance fixed in its decision.

(5) The commission may by general rule or regulation provide for the taking of evidence in uncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing. Such shortened or informal proceedings shall otherwise be subject to all of the provisions of this title. Upon its own motion the commission may and upon request of a party timely made the commission shall assign any such uncontested or unopposed proceeding for hearing.

(6) The commission may make the initial decision in cases where it has not presided at the taking of evidence, and the recommended decision of the individual commissioner or administrative law judge may be omitted in any case in which the commission finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(7) The commission may by general rule or regulation provide for appearances pro se by, or for representation by authorized officers or regular employees of, the commission's staff, corporations, partnerships, limited liability companies, sole proprietorships, and other legal entities in certain nonadjudicatory matters before the commission.

Source: L. 13: p. 494, § 46. **C.L.** § 2955. **CSA:** C. 137, § 46. **L. 45:** p. 529, § 7. **CRS 53:** § 115-6-9. **C.R.S. 1963:** § 115-6-9. **L. 69:** p. 944, § 41. **L. 89:** (1), (2), and (4) to (6) amended, p. 1530, § 13, effective April 12. **L. 93:** (7) added, p. 2064, § 18, effective July 1. **L. 2008:** (3) amended, p. 1796, § 15, effective July 1. **L. 2009:** (1) amended, (HB 09-1118), ch. 130, p. 563, § 12, effective August 5.

40-6-109.5. Hearings on applications - time limits for decisions. (1) Whenever an application of any kind is filed with the commission and is accompanied by the applicant's supporting testimony or a detailed summary of the supporting testimony, together with exhibits,

if any, the commission shall issue its decision on the application no later than one hundred twenty days after the application is deemed complete as prescribed by rules promulgated by the commission. If the commission finds that additional time is required, it may, by separate order, extend the time for decision by an additional period not to exceed one hundred thirty days.

(2) In the case of any application not accompanied by prefiled testimony and exhibits, the commission shall issue its decision no later than two hundred ten days after the application is deemed complete as prescribed by the commission's rules.

(3) The time limits specified in subsections (1) and (2) of this section may be waived by the applicant and, if so waived, shall not be binding on the commission.

(4) The commission, in particular cases, under extraordinary conditions and after notice and a hearing at which the existence of extraordinary conditions is established, may extend the time limits specified in subsections (1) and (2) of this section for a period not to exceed an additional one hundred thirty days.

Source: L. 93: Entire section added, p. 2064, § 19, effective July 1. **L. 2019:** (1) and (4) amended, (SB 19-236), ch. 359, p. 3312, § 16, effective May 30.

40-6-110. Complaint by utility. Any public utility has a right to complain on any grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases.

Source: L. 13: p. 495, § 47. **C.L.** § 2956. **CSA:** C. 137, § 47. **CRS 53:** § 115-6-10. **C.R.S. 1963:** § 115-6-10. **L. 69:** p. 946, § 42.

40-6-111. Hearing on schedules - suspension - new rates - rejection of tariffs. (1) (a) Whenever there is filed with the commission any tariff or schedule stating any new or changed individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation, the commission has power, either upon complaint or upon its own initiative and without complaint, at once, and, if it so orders, without answer or other formal pleadings by the interested public utilities, but upon reasonable notice, to have a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation if it believes that such a hearing is required and that such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation may be improper.

(b) Pending the hearing and decision on the hearing, in the case of a public utility other than a rail carrier, the rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation must not go into effect; but the period of suspension of the rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation must not extend beyond one hundred twenty days beyond the time when the rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation would otherwise go into effect unless the commission, in its discretion, and by separate order, extends the period of suspension for a further period not exceeding one hundred thirty days.

(c) Repealed.

(d) Notwithstanding any order of suspension of a proposed increase in electric, gas, or steam rates under this subsection (1), after January 1, 2012, the commission may order, without hearing, interim rates, at any level up to the proposed new rates, to take effect not later than sixty

days after the filing for the proposed rate increase. In making a determination as to whether to allow interim rates, the commission shall consider the amount of the revenue deficiency presented by the utility and the extent to which this deficiency would adversely affect the utility during the time period required to hold hearings on the suspended rates.

(2) (a) (I) If a hearing is held thereon, whether completed before or after the expiration of the period of suspension, the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, that it finds just and reasonable. In making such finding in the case of a public utility other than a rail carrier, the commission may consider current, future, or past test periods or any reasonable combination thereof and any other factors that may affect the sufficiency or insufficiency of such rates, fares, tolls, rentals, charges, or classifications during the period the same may be in effect and may consider any factors that influence an adequate supply of energy, encourage energy conservation, or encourage renewable energy development. The commission shall consider the reasonableness of the test period revenue requirements presented by the utility.

(II) If the rates established by the commission after hearing are lower than any interim rates established under paragraph (d) of subsection (1) of this section, then the commission shall order the utility to return to customers on their utility bills through a negative rate rider the difference between the total amount that would have been collected under the final approved rates and the amount collected under the interim rates for the period that the interim rates were in effect, with interest at a rate established by the commission.

(III) All such rates, fares, tolls, rentals, charges, classifications, contracts, practices, or rules not so suspended, on the effective date thereof, which, in the case of a public utility other than a rail carrier, shall not be less than thirty days after the time of filing the same with the commission, or of such lesser time as the commission may grant, shall go into effect and be the established and effective rates, fares, tolls, rentals, charges, classifications, contracts, practices, and rules subject to the power of the commission, after a hearing on its own motion or upon complaint, as provided in this article, to alter or modify the same.

(b) Repealed.

(c) If the commission considers factors which encourage renewable energy development, it shall also make findings and give due consideration to the effect of such factors on the utility's ability to recover its capital and operating costs.

(3) The tariffs and schedules required by this title shall contain such information, and shall be published, filed, and posted in such form and manner, as the commission by regulation shall prescribe; and the commission is authorized to reject any tariff or schedule filed with it which is not in the form required by this section and by such regulations. Any tariff or schedule so rejected by the commission shall be void and its use shall be unlawful.

(4) (a) The provisions of this section relating to suspension of rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules, or regulations pending the hearing and decision thereon shall not apply to cooperative electric associations, but this subsection (4) shall not be construed to exempt such associations from any other provision of this section. Notwithstanding any other provision of law, no cooperative electric association shall establish, charge, or collect a discriminatory or preferential rate, charge, rule, or regulation which would be violative of section 40-3-106 (1) or section 40-3-111. Upon complaint filed by any member or customer of a cooperative electric association or by any affected public utility, the commission

shall determine whether the rate, charge, rule, or regulation in question is contrary to this section, section 40-3-106 (1), or section 40-3-111.

(b) (I) Paragraph (a) of this subsection (4) shall not be applicable to a cooperative electric association which has voted to exempt itself from regulation pursuant to the provisions of section 40-9.5-103. Regulation of such cooperative electric associations shall be in the manner provided in article 9.5 of this title.

(II) Repealed.

(c) and (c.1) Repealed.

Source: L. 13: p. 495, § 48. **C.L.** § 2957. **CSA:** C. 137, § 48. **CRS 53:** § 115-6-11. **L. 63:** p. 760, § 1. **C.R.S. 1963:** § 115-6-11. **L. 69:** p. 946, § 43. **L. 81:** (1) and (2) amended and (4) added, pp. 1914, 1920, 1922, §§ 2, 1, 2, effective July 1. **L. 82:** (4) amended, p. 587, § 1, effective February 19. **L. 83:** (4) amended, p. 1572, § 3, effective July 1. **L. 84:** (1) and (2) amended, p. 1041, § 7, effective July 1. **L. 85:** (4)(b)(I) amended and (4)(b)(II) repealed, pp. 1301, 1303, §§ 2, 6, effective April 5. **L. 89:** (3) amended, p. 1531, § 14, effective April 12; (4)(c) and (4)(c.1) added, pp. 1538, 1539, §§ 1, 1, effective April 28. **L. 94:** (2)(a) amended and (2)(c) added, p. 612, § 4, effective April 8. **L. 2000:** (1)(c) and (2)(b) repealed, p. 217, § 5, effective March 29. **L. 2010:** (1)(d) added and (2)(a) amended, (HB 10-1365), ch. 140, p. 475, §§ 2, 3, effective April 19. **L. 2019:** (1)(b) amended, (SB 19-236), ch. 359, p. 3312, § 17, effective May 30.

Editor's note: (1) Amendments to subsection (2) by House Bill 81-1036 and House Bill 81-1038 were harmonized.

(2) Subsection (4)(c.1) provided for the repeal of subsections (4)(c) and (4)(c.1), effective July 1, 1992. (See L. 89, p. 1539.)

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2)(a) and enacting subsection (2)(c), see section 1 of chapter 102, Session Laws of Colorado 1994.

40-6-112. Alteration or amendment of decision - decisions final in collateral actions. (1) The commission, at any time upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any decision rescinding, altering, or amending a prior decision, when served upon the public utility affected, shall have the same effect as original decisions.

(2) In all collateral actions or proceedings, the decisions of the commission which have become final shall be conclusive.

Source: L. 13: p. 496, § 49. **C.L.** § 2958. **CSA:** C. 137, § 49. **CRS 53:** § 115-6-12. **C.R.S. 1963:** § 115-6-12. **L. 69:** p. 947, § 44.

40-6-113. Transcripts - record on review. (1) In any proceeding the commission, any single commissioner, or any administrative law judge may order a transcript of all or any part of such proceeding. The cost of preparing the transcript shall be paid by the commission. If any party to any proceeding seeks to reverse, modify, or annul a recommended decision of a single

commissioner or administrative law judge, or a decision of the commission, in the manner as provided in this section, then such party, and not the commission, shall pay the cost of the transcript of such proceeding or the applicable portion thereof in accordance with the provisions of this section.

(2) Any party who seeks to reverse, modify, or annul the recommended decision of a single commissioner or administrative law judge or the decision of the commission shall promptly notify the official reporter of the parts of the transcript of the proceedings which shall be prepared and certified by the official reporter. A copy of this notification shall be served upon the commission and all parties. Within ten days thereafter any other party or the commission may serve and file a designation of additional parts of the transcript of proceedings which is to be included. The transcript or the parts thereof which may be designated by the parties or the commission shall be prepared by the official reporter and certified by such reporter, and when completed shall be filed with the commission. The transcript, as so prepared, shall be filed with the commission on or before the time the first pleading is required to be filed with the commission by the party, whether such pleading is exceptions or a petition for rehearing, reconsideration, or reargument. The commission, upon request timely made, may extend the time within which to file the transcript, and if the transcript cannot reasonably be prepared within the time prescribed, the commission shall extend the time for filing both the transcript and the first pleading of the party.

(3) The cost of preparing the transcript shall be advanced by the party seeking to reverse, annul, or modify the recommended decision of a commissioner or administrative law judge, or the decision of the commission; except that the commission may upon objections by such party order any other party to advance payment forthwith for the cost of preparing such parts of the transcripts designated by them, as the commission shall determine.

(4) It is not necessary for a party to cause a transcript to be filed as provided in this section in any case where the party does not seek to amend, modify, annul, or reverse basic findings of fact which shall be set forth in the recommended decision of a commissioner or administrative law judge or in the decision of the commission. If such transcript is not filed pursuant to the provisions of this section for consideration with the party's first pleading, it shall be conclusively presumed that the basic findings of fact, as distinguished from the conclusions and reasons therefor and the order or requirements thereon, are complete and accurate.

(5) Instead of designating portions of the transcript as provided in subsection (2) of this section, the parties, by written stipulation filed with the commission and acceptable to the commission, may designate the portions of the transcript to be filed with the commission. The transcript, as agreed upon and subject to the approval of the commission, shall be filed with the commission.

(6) In case of an action to review an order or decision of the commission, a transcript of such testimony or the affidavits or other evidence under the shortened or informal procedure, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision, and the pleadings, record, and proceedings in the case, shall constitute the record of the commission. On review of an order or decision of the commission, the party seeking such review and the commission may stipulate that a certain question alone or a particular portion only of the evidence shall be certified to the district court for its judgment, whereupon such stipulation and the question and the evidence specified shall constitute the record on review.

Source: L. 13: p. 496, § 50. **C.L.** § 2959. **CSA:** C. 137, § 50. **CRS 53:** § 115-6-13. **C.R.S. 1963:** § 115-6-13. **L. 69:** p. 947, § 45. **L. 89:** (1) to (4) amended, p. 1531, § 15, effective April 12.

40-6-114. Reconsideration, reargument, or rehearing - application - basis of review - order - exception. (1) After a decision has been made by the commission or after a decision recommended by an individual commissioner or administrative law judge has become the decision of the commission, as provided in this article, any party thereto may within twenty days thereafter, or within such additional time as the commission may authorize upon request made within such period, make application for rehearing, reargument, or reconsideration of the same or of any matter determined therein. Such application shall be governed by such general rules as the commission may establish and shall specify with particularity the grounds upon which the applicant considers the decision unlawful. Any such application shall, within thirty days after the filing thereof, be considered and acted upon by the commission. Failure to act upon the application within such period shall constitute a denial thereof. Rehearing, reargument, or reconsideration may be granted if sufficient reason therefor is shown.

(2) An application for rehearing, reargument, or reconsideration of a decision of the commission made in accordance with the provisions of this section and the rules and regulations of the commission shall not stay or postpone such decision unless the commission, upon motion by the party seeking such stay or postponement or the commission upon its own motion, so orders; except that orders of the commission issued for the installation of automatic or other safety appliance signals or devices at railroad crossings shall be processed and handled to completion when such application deals solely with the matter of allocation of the costs thereof among the railroad company and the state and the political subdivisions pursuant to section 40-4-106.

(3) If after rehearing, reargument, or reconsideration of a decision of the commission it appears that the original decision is in any respect unjust or unwarranted, the commission may reverse, change, or modify the same accordingly. Any decision made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original decision may be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original decision or any such decision may be subject to judicial review as provided in section 40-6-115, at the option of the party seeking review. If the commission denies said application, the original order shall become effective according to its terms, unless the commission otherwise orders, except as provided in section 40-6-116.

(4) If no application for rehearing, reargument, or reconsideration has been made or, if made, is withdrawn, a suit to enforce, enjoin, suspend, modify, or set aside any final decision of the commission, in whole or in part, may be brought in a district court of the state of Colorado as set forth in this article; except that, if any party to a proceeding applies for reconsideration, reargument, or rehearing, no other party may appeal until the commission has ruled on the application. For purposes of judicial review, a decision on an application for rehearing, reargument, or reconsideration shall be deemed final on the date said decision is served on the parties to the proceeding.

(5) Any court may stay or suspend, in whole or in part, the operation of any commission decision under section 40-6-116, even though the commission had not been previously requested to suspend or stay such decision.

(6) (Deleted by amendment, L. 93, p. 2065, § 20, effective July 1, 1993.)

Source: L. 13: p. 496, § 51. **C.L.** § 2960. **CSA:** C. 137, § 51. **L. 53:** p. 470, § 1. **CRS 53:** § 115-6-14. **L. 61:** p. 630, § 1. **C.R.S. 1963:** § 115-6-14. **L. 69:** p. 949, § 46. **L. 77:** (2) amended, p. 1859, § 1, effective May 20. **L. 81:** (2) amended, p. 1924, § 1, effective March 27. **L. 89:** (1) amended, p. 1532, § 16, effective April 12. **L. 92:** (3), (4), and (5) amended and (6) added, p. 2130, § 2, effective July 1. **L. 93:** (4) and (6) amended, p. 2065, § 20, effective July 1.

40-6-115. Review by district court - mandamus. (1) Within thirty days after a final decision by the commission in any proceeding, any party to the proceeding before the commission may apply to the district court for a writ of certiorari or review for the purpose of having the lawfulness of the final decision inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of issuance and shall direct the commission to certify its record in the proceeding to said court. On the return day, the cause shall be heard by the district court unless, for a good reason shown, the same be continued. No new or additional evidence may be introduced in the district court, but the cause shall be heard on the record of the commission as certified by it. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceedings.

(2) The findings and conclusions of the commission on disputed questions of fact shall be final and shall not be subject to review, except that, in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of a petitioner under the constitution of the United States or the constitution of the state of Colorado, the district court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the said constitutional question shall not be final.

(3) Upon review, the district court shall enter judgment either affirming, setting aside, or modifying the decision of the commission. So far as necessary to the decision and where presented, the district court shall decide all relevant questions of law and interpret all relevant constitutional and statutory provisions. The review shall not extend further than to determine whether the commission has regularly pursued its authority, including a determination of whether the decision under review violates any right of the petitioner under the constitution of the United States or of the state of Colorado, and whether the decision of the commission is just and reasonable and whether its conclusions are in accordance with the evidence.

(4) The provisions of the Colorado rules of civil procedure relating to writs of certiorari or review, so far as applicable and not in conflict with the provisions of this title, shall apply to proceedings had in the district court under the provisions of this section. No court of this state, except the district court to the extent specified, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties; but an action in the nature of mandamus shall lie from the district court to the commission in all proper cases.

(5) All actions for review shall be commenced and tried in the district court in and for the county in which the petitioner resides, or if a corporation or partnership in the county in which it maintains its principal office or place of business, or in the district court of the city and county of Denver, at the option of the petitioner. Appellate review may be obtained in the

supreme court concerning any final judgment of the district court on review, affirming, setting aside, or modifying any decision of the commission, in the same manner and with the same effect as appellate review of judgments of the district court in other civil actions.

Source: L. 13: p. 497, § 52. **C.L.** § 2961. **CSA:** C. 137, § 52. **L. 45:** p. 531, § 8. **CRS 53:** § 115-6-15. **C.R.S. 1963:** § 115-6-15. **L. 69:** p. 949, § 47. **L. 75:** (1) and (4) amended, p. 227, § 90, effective July 16. **L. 89:** (4) amended, p. 1532, § 17, effective April 12. **L. 92:** (1) amended, p. 2131, § 3, effective July 1. **L. 93:** (1) amended, p. 2065, § 21, effective July 1.

40-6-116. Suspension of decision - notice - bond - accounting pending review. (1) The pendency of a writ of certiorari or review shall not of itself stay or suspend the operation of the decision of the commission; but, during the pendency of such writ, the district court, in its discretion, may stay or suspend, in whole or in part, the operation of the commission's decision.

(2) No order so staying or suspending any decision of the commission shall be made other than upon three days' notice and after hearing; and if the decision of the commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

(3) In case the decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond has been filed with and approved by the district court, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the decision of the commission, and of all moneys which any person may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the decision of the commission in case said decision is sustained. The district court, in case it stays or suspends the decision of the commission in any matter affecting rates, fares, tolls, rentals, charges, or classifications, by order, shall direct the public utility affected to pay into court from time to time, there to be impounded until the final decision of the case, or into some bank or trust company under such conditions as the court may prescribe all sums of money which it may collect from any person in excess of the sum such person would have been compelled to pay if the decision of the commission had not been stayed or suspended.

(4) In case the district court stays or suspends any decision lowering any rate, fare, toll, rental, charge, or classification, the commission, upon the filing and approval of said suspending bond, shall forthwith require the public utility affected, under penalty of the immediate enforcement of the decision of the commission, pending review and notwithstanding the suspending order, to keep such accounts, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by such public utility, pending review, in excess of the charges allowed by the decision of the commission, together with the names and addresses of the persons to whom overcharges will be refundable in case the charges made by the public utility, pending review, are not sustained by the district court. The court, from time to time, may require the party petitioning for a review to give additional security on, or to increase, the suspending bond, whenever in the opinion of the court the same may be necessary to insure the prompt payment of said damages and said overcharges.

(5) Upon the final decision by the district court, all moneys which the public utility may have collected, pending the appeal, in excess of those authorized by such final decision, together

with interest, in case the court ordered the deposits of such moneys in a bank or trust company, shall be promptly paid to the persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the commission. If any moneys are not claimed by the persons entitled thereto within one year from the final decision of the district court, the commission shall cause notice to such persons to be given by publication once a week for two successive weeks in a newspaper of general circulation printed and published in the city and county of Denver and in such other newspapers as may be designated by the commission, said notice to state the names of persons entitled to such moneys and the amounts due each person. All moneys not claimed within ninety days after publication of such notice shall be paid by the public utility, under the direction of the commission, into the state treasury and credited to the general fund.

Source: L. 13: p. 498, § 53. **C.L.** § 2962. **CSA:** C. 137, § 53. **L. 45:** p. 532, § 9. **CRS 53:** § 115-6-16. **C.R.S. 1963:** § 115-6-16. **L. 69:** p. 951, § 48. **L. 75:** (1) amended, p. 227, § 91, effective July 16.

40-6-117. Priority on court calendar. All actions and proceedings under this title, and all actions or proceedings to which the commission or the people of the state of Colorado may be parties, and in which any question arises under this title or under or concerning any decision of the commission, shall be preferred over all other civil causes except election causes and shall be heard and determined in preference to all other civil business except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney general in any action or proceeding in which he may be allowed to intervene.

Source: L. 13: p. 500, § 54. **C.L.** § 2963. **CSA:** C. 137, § 54. **CRS 53:** § 115-6-17. **C.R.S. 1963:** § 115-6-17. **L. 69:** p. 952, § 49. **L. 89:** Entire section amended, p. 1533, § 18, effective April 12.

40-6-118. Valuations - hearings - findings - review. (1) For the purpose of ascertaining the matters and things specified in section 40-4-110, concerning the value of the property of public utilities, the commission may cause a hearing to be held at such time and place as the commission may designate. Before any hearing is had, the commission shall give the public utility affected thereby at least thirty days' written notice, specifying the time and place of such hearing, and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section and pursuant to section 40-6-111, but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to or from inquiring into such matters in any other investigation or hearing. All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its findings of fact in writing upon all matters concerning which evidence has been introduced before it which in its judgment have bearing on the value of the property of the public utility affected. Such findings shall be subject to review by the district court in the same manner and within the same time as other orders and decisions of the commission.

(2) The findings of the commission so made and filed, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding, or hearing before the commission or any court, in which the commission, the state, or any officer, department, or institution thereof, or any county, city and county, municipality, or other body politic and the public utility affected may be interested, whether arising under the provisions of this title, or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. The commission, from time to time, may cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions, or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify, or affect any finding of fact previously made, and at such time may make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and be conducted in the same manner, and the findings so made shall have the same force and effect as is provided for such original notice, hearing, and findings. Such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except insofar as such supplemental findings shall change or modify the findings made at the original hearing or investigation.

Source: L. 13: p. 501, § 55. **C.L.** § 2964. **CSA:** C. 137, § 55. **CRS 53:** § 115-6-18. **C.R.S. 1963:** § 115-6-18. **L. 69:** p. 952, § 50. **L. 89:** (2) amended, p. 1533, § 19, effective April 12.

40-6-119. Excess charges - reparation - actions - limitation. (1) When complaint has been made to the commission concerning any rate, fare, toll, rental, or charge for any product or commodity furnished or service performed by any public utility and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, provided no discrimination will result from such reparation.

(2) If the public utility does not comply with the order for the payment of reparation within the specified time in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy provided in this section shall be cumulative and in addition to any other remedy in articles 1 to 7 of this title provided in case of failure of a public utility to obey the order or decision of the commission.

Source: L. 13: p. 502, § 56. **C.L.** § 2965. **CSA:** C. 137, § 56. **CRS 53:** § 115-6-19. **C.R.S. 1963:** § 115-6-19.

40-6-120. Temporary authority. (Repealed)

Source: L. 69: p. 953, § 51. **C.R.S. 1963:** § 115-6-20. **L. 79:** (1) amended, p. 1516, § 1, effective June 19. **L. 83:** (1) amended, p. 1563, § 1, effective March 16. **L. 87:** (2) amended, p. 1475, § 1, effective February 26. **L. 89:** (3) amended, p. 1533, § 20, effective April 12. **L. 93:** (4) amended, p. 2066, § 22, effective July 1. **L. 2011:** Entire section repealed, (HB 11-1198), ch. 127, p. 416, § 3, effective August 10.

40-6-121. Computation of time. When the day for the performance of any act under this title, the effective date of any commission decision or order, the effective date of any administrative law judge's or commissioner's recommended decision, or the day upon which any document is required to be filed with the commission falls on any Saturday or Sunday, or on any day when the commission office is lawfully closed, the same shall be continued until 5 p.m. on the first full business day following such Saturday, Sunday, or day of lawful closing.

Source: L. 69: p. 954, § 51. **C.R.S. 1963:** § 115-6-21. **L. 88:** Entire section amended, p. 896, § 4, effective May 19. **L. 89:** Entire section amended, p. 1534, § 21, effective April 12. **L. 95:** Entire section amended, p. 199, § 14, effective April 13.

40-6-122. Ex parte communications - disclosure. (1) Commissioners and administrative law judges shall file memoranda, in accordance with this section, of all private communications to or from interested persons concerning matters under the commissioners' or judges' jurisdiction.

(2) For purposes of this section, "interested person" means any person or entity, or any agent or representative of a person or entity:

(a) Whose operations are within the jurisdiction of the commission; or

(b) Who has participated in a proceeding before the commission within one year prior to the communication; or

(c) Who anticipates participating in a proceeding before the commission within one year after the communication.

(3) Each memorandum filed pursuant to subsection (1) of this section shall set forth the time and place at which the communication was made, the persons who were present at that time and place, a statement of the subject matter of the communication, other than proprietary information, and a statement that the subject matter of the communication did not relate to any pending adjudicatory proceeding before the commission. It shall not be necessary for the memorandum to be prepared by the commissioner or judge, but it shall be signed or otherwise authenticated by the commissioner or judge, whose signature or authentication shall constitute a certificate by such commissioner or judge that the memorandum is complete and accurate. All such memoranda shall be filed with the director of the commission, who shall keep them on file and available for public inspection for a minimum of three years after their submission.

(4) Any public utility may request that the commission conduct a public meeting at which communications otherwise subject to this section may be made without the necessity of filing memoranda. The commission shall adopt reasonable rules and regulations to govern such requests. In addition, the commission may adopt such other rules as are necessary and proper to govern ex parte communications generally.

(5) As used in this section, an "adjudicatory proceeding" does not include a rule-making proceeding or discussions on pending legislative proposals.

Source: L. 93: Entire section added, p. 2066, § 23, effective July 1. **L. 2008:** (3) amended and (5) added, p. 1797, § 16, effective July 1.

40-6-123. Standards of conduct. (1) Members and staff of the commission shall conduct themselves in such a manner as to ensure fairness in the discharge of the duties of the commission, to provide equitable treatment of the public, utilities, and other parties, to maintain public confidence in the integrity of the commission's actions, and to prevent the appearance of impropriety or of conflict of interest. The standards set forth in this section apply at all times to the commissioners, to their staff, including administrative law judges, and to parties under contract with the commission for state business.

(2) The commissioners, staff who act in an advisory capacity to the commissioners, and administrative law judges shall refrain from financial, business, and social dealings that adversely affect their impartiality or interfere with the proper performance of their official duties.

(3) Neither commissioners, staff members, parties under contract for state work, or members of the immediate families of such persons shall request or accept any gift, bequest, or loan from persons who appear before the commission; except that commissioners and staff members may participate in meetings, conferences, or educational programs which are open to other persons.

(4) Commissioners shall not lend the prestige of their office to advance the private interests of others, nor shall they convey the impression that special influence can be brought to bear upon them.

(5) Commissioners and presiding administrative law judges shall not own any stock, securities, or other financial interest in any company regulated by the commission.

(6) Violation of this section by a commissioner shall be grounds for the immediate removal of such commissioner by the governor.

Source: L. 93: Entire section added, p. 2066, § 23, effective July 1.

40-6-124. Disqualification. (1) Commissioners and presiding administrative law judges shall disqualify themselves in any proceeding in which their impartiality may reasonably be questioned, including, but not limited to, instances in which they:

(a) Have a personal bias or prejudice concerning a party;

(b) Have served as an attorney or other representative of any party concerning the matter at issue, or were previously associated with an attorney who served, during such association, as an attorney or other representative of any party concerning the matter at issue;

(c) Know that they or any member of their family, individually or as a fiduciary, has a financial interest in the subject matter at issue, is a party to the proceeding, or otherwise has any interest that could be substantially affected by the outcome of the proceeding; or

(d) Have engaged in conduct which conflicts with their duty to avoid the appearance of impropriety or of conflict of interest.

Source: L. 93: Entire section added, p. 2066, § 23, effective July 1.

ARTICLE 6.5

40-6.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agricultural consumer" means a public utility customer whose utility service is classified as an agricultural user or an irrigation user pursuant to a utility tariff established by the commission or a public utility customer who is seeking such tariff status.

(2) "Commission" means the public utilities commission created in article 2 of this title.

(3) "Public utility" means an electric utility or gas utility.

(4) "Residential consumer" means a public utility customer whose utility service is limited to his residence.

(5) "Small business consumer" means a public utility customer whose utility service is classified as a small business user or a small commercial user pursuant to a utility tariff established by the commission or a public utility customer who is seeking such tariff status.

Source: L. 84: Entire article added, p. 1044, § 1, effective July 1. **L. 2015:** (3) amended, (SB 15-271), ch. 297, p. 1223, § 2, effective June 5.

40-6.5-102. Office of consumer counsel - creation - appointment - attorney general to represent. (1) There is hereby created, as a division within the department of regulatory agencies, the office of consumer counsel, the head of which shall be the consumer counsel, who shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution.

(2) (a) The office of consumer counsel shall exercise its powers and perform its duties and functions specified in this article under the department of regulatory agencies as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) Repealed.

(3) (a) The utility consumers' board, which is hereby created, shall guide the policy of the office of consumer counsel. The board shall exercise its powers and perform its duties and functions specified in this article under the department of regulatory agencies and the executive director of the department of regulatory agencies as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) The board consists of eleven members, seven of whom the governor shall appoint. The governor shall appoint at least one member who is actively engaged in agriculture as a business and at least two members who are owners of small businesses with one hundred or fewer employees. In making appointments to the board, the governor shall ensure that the membership of the board represents each of the seven congressional districts of the state and that no more than four of the governor's appointments are affiliated with the same political party. The president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives shall each appoint one member of the board. Members of the board shall be appointed for terms of four years. If a person has any conflict of interest with the duties required of a member of the board, the person shall not be appointed as a member of the board. The official who appointed a board member may remove

that board member for misconduct, incompetence, or neglect of duty. Board members serve without compensation, but members who reside outside the counties of Denver, Jefferson, Adams, Arapahoe, Boulder, Broomfield, and Douglas are entitled to reimbursement for reasonable actual expenses to attend board meetings in Denver. The board shall meet at least six times per year.

(c) It is the duty of the board to represent the public interest of Colorado utility users and, specifically, the interests of residential, agricultural, and small business users, by providing general policy guidance and oversight for the office of consumer counsel and the consumer counsel in the performance of their statutory duties and responsibilities as specified in this article. The powers and duties of the board shall include, but not be limited to, the following:

(I) Providing general policy guidance to the office of consumer counsel regarding rule-making matters, legislative projects, general activities, and priorities of the office;

(II) Gathering data and information and formulating policy positions to advise the office of consumer counsel in preparing analysis and testimony in legislative hearings on proposed legislation affecting the interests of residential, small business, and agricultural utility users;

(III) Reviewing the performance of the office of consumer counsel annually;

(IV) Conferring with the executive director of the department of regulatory agencies on the hiring of the consumer counsel and consulting with such executive director on the annual performance evaluation of the office of consumer counsel and the consumer counsel.

(4) It is the duty of the attorney general to advise the office of consumer counsel and the board in all legal matters and to provide representation in proceedings in which the office of consumer counsel participates.

Source: L. 84: Entire article added, p. 1045, § 1, effective July 1. **L. 93:** Entire section amended, p. 975, § 4, effective July 1. **L. 96:** (3)(c)(III) amended, p. 1225, § 33, effective August 7. **L. 2015:** (2)(b) repealed and (3)(a) and (3)(b) amended, (SB 15-271), ch. 297, p. 1224, § 3, effective June 5.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (3)(c)(III), see section 1 of chapter 237, Session Laws of Colorado 1996.

40-6.5-103. Qualifications - conflict of interest. The consumer counsel shall have at least five years of experience in consumer related utility issues or in the operation, management, or regulation of utilities as either an attorney, an engineer, an economist, an accountant, a financial analyst, or an administrator or any combination thereof. No person owning stocks or bonds in a corporation subject in whole or in part to regulation by the commission or who has any pecuniary interest in such corporation shall be appointed as consumer counsel.

Source: L. 84: Entire article added, p. 1045, § 1, effective July 1.

40-6.5-104. Representation by consumer counsel. (1) The consumer counsel shall represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the commission and appeals therefrom in matters which involve proposed changes in a public utility's rates and charges, in matters involving rule-making which have an

impact on the charges, the provision of services, or the rates to consumers, and in matters which involve certificates of public convenience and necessity for facilities employed in the provision of utility service, the construction of which would have a material effect on the utility's rates and charges.

(2) In exercising his discretion whether or not to appear in a proceeding, the consumer counsel shall consider the importance and the extent of the public interest involved. In evaluating the public interest, the consumer counsel shall give due consideration to the short- and long-term impact of the proceedings upon various classes of consumers, so as not to jeopardize the interest of one class in an action by another. If the consumer counsel determines that there may be inconsistent interests among the various classes of the consumers he represents in a particular matter, he may choose to represent one of the interests or to represent no interest. Nothing in this section shall be construed to limit the right of any person, firm, or corporation to petition or make complaint to the commission or otherwise intervene in proceedings or other matters before the commission.

(3) The consumer counsel shall be served with notices of all proposed gas and electric tariffs, and he or she shall be served with copies of all orders of the commission affecting the charges of agricultural consumers, residential consumers, and small business consumers.

Source: L. 84: Entire article added, p. 1045, § 1, effective July 1. **L. 2015:** (3) amended, (SB 15-271), ch. 297, p. 1225, § 4, effective June 5.

40-6.5-105. Intervenors other than the office of consumer counsel. (1) If the office of consumer counsel intervenes and there are other intervenors in proceedings before the commission, the determination of said commission with regard to the payment of expenses of intervenors, other than the office of consumer counsel, and the amounts thereof shall be based on the following considerations:

(a) Any reimbursements may be awarded only for expenses related to issues not substantially addressed by the office of consumer counsel;

(b) The testimony and participation of other intervenors must have addressed issues of concern to the general body of users or consumers concerning, directly or indirectly, rates or charges;

(c) The testimony and participation of other intervenors must have materially assisted the commission in rendering its decision;

(d) The expenses of other intervenors must be reasonable in amount;

(e) The testimony and participation of other intervenors must be of significant quality;

(f) The participation of other intervenors must be active during the proceeding and not merely an appearance for purposes of establishing legal standing; and

(g) The payment of expenses of other intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.

(2) The commission shall promptly report the award of any intervenors' expenses to the executive director of the department of regulatory agencies.

Source: L. 84: Entire article added, p. 1045, § 1, effective July 1. **L. 96:** (2) amended, p. 1228, § 43, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

40-6.5-106. Powers of consumer counsel. (1) The consumer counsel:

(a) May employ such attorneys, engineers, economists, accountants, or other employees as may be necessary to carry out his duties and shall employ a maximum of sixteen full-time employees or the equivalent thereof;

(b) Shall be granted, by the commission, leave to intervene in all cases where such request is made in conformance with rules of the commission;

(c) May contract for the services of technically qualified persons to perform research and to appear as expert witnesses before the commission, such persons to be paid from funds appropriated for the use of the consumer counsel;

(d) May have access to the files of the commission when conducting research.

(2) The consumer counsel may petition for, request, initiate, and appear and intervene as a party in any proceeding before the commission concerning rate changes, rule-making, charges, tariffs, modifications of service, and matters involving certificates of public convenience and necessity. Notwithstanding any provision of this article to the contrary, the consumer counsel shall not be a party to any individual complaint between a utility and an individual.

(2.5) The consumer counsel may petition for, request, initiate, or seek to intervene in any proceeding before a federal agency which regulates utility rates or service, or federal court when the matter before such agency or court will affect a rate, charge, tariff, or term of service for a utility product or service for a residential, small business, or agricultural utility consumer in the state of Colorado. The phrase "federal agency which regulates utility rates or service" does not include any federal lending agency.

(3) (a) The consumer counsel and any member of his or her staff directly involved in a specific adjudicatory proceeding before the commission shall refrain from ex parte communications with members of the commission. The counsel or his or her staff shall have all rights and be governed by the same ex parte rules as all other intervenors.

(b) As used in this subsection (3), an "adjudicatory proceeding" does not include a rule-making proceeding or discussions on pending legislative proposals.

Source: L. 84: Entire article added, p. 1046, § 1, effective July 1. **L. 92:** (2.5) added, p. 2128, § 1, effective April 10. **L. 2008:** (3) amended, p. 1797, § 17, effective July 1.

40-6.5-107. Financing of office. At each regular session, the general assembly shall determine the amounts to be expended by the office of consumer counsel for the direct and indirect costs of administration in performing its duties and responsibilities required by this article and shall appropriate to the office of consumer counsel from the public utilities commission fixed utility fund created in section 40-2-114 the full amount so determined. No general fund moneys shall be appropriated to the office of consumer counsel for the performance of its duties and responsibilities under this article.

Source: L. 84: Entire article added, p. 1047, § 1, effective July 1.

40-6.5-108. Office of consumer counsel subject to termination. (1) Unless continued by the general assembly:

(a) (Deleted by revision.)

(b) and (b.5) Repealed.

(c) The office of consumer counsel shall terminate on September 1, 2021.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the office of consumer counsel.

Source: L. 84: Entire article added, p. 1047, § 1, effective July 1. **L. 88:** Entire section amended, p. 1353, § 1, effective April 14. **L. 93:** Entire section amended, p. 977, § 5, effective July 1. **L. 98:** (1) amended, p. 74, § 1, effective July 1; (1) amended, p. 78, § 1, effective July 1. **L. 2004:** (1)(b) amended, p. 350, § 21, effective July 1. **L. 2006:** (1)(b) repealed and (1)(b.5) added, p. 128, §§ 2, 3, effective July 1; (1)(b) repealed and (1)(c) added, p. 24, §§ 2, 3, effective July 1. **L. 2015:** (1)(b.5) repealed and (1)(c) amended, (SB 15-271), ch. 297, p. 1225, § 5, effective June 5. **L. 2016:** (2) amended, (SB 16-189), ch. 210, p. 797, § 117, effective June 6.

Editor's note: Amendments to subsection (1) by House Bill 98-1078 were harmonized with House Bill 98-1074 resulting in the deletion of subsection (1)(a).

40-6.5-109. Consumer counsel report. (Repealed)

Source: L. 84: Entire article added, p. 1048, § 6, effective July 1. **L. 93:** Entire section repealed, p. 1793, § 90, effective June 6; entire section repealed, pp. 977, 2068, §§ 6, 24, effective July 1.

ARTICLE 7

Enforcement - Penalties

40-7-101. Enforcement of laws. It is the duty of the commission to see that the constitution and statutes of this state affecting public utilities, and persons subject to article 10.1 or 10.5 of this title, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state are recovered and collected, and to this end it may sue in the name of the people of the state of Colorado. Upon the request of the commission, the attorney general or the district attorney acting for the proper county or city and county shall aid in any investigation, hearing, or trial had under articles 1 to 7 of this title and institute and prosecute actions or proceedings for the enforcement of the constitution and statutes of this state affecting public utilities and persons subject to article 10.1 or 10.5 of this title and for the punishment of all violations thereof.

Source: L. 13: p. 503, § 57. **C.L.** § 2966. **CSA:** C. 137, § 57. **CRS 53:** § 115-7-1. **C.R.S. 1963:** § 115-7-1. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 420, § 16, effective August 10.

40-7-102. Liability for violations - punitive damages. (1) In case any public utility does, causes to be done, or permits to be done any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or omits to do any act, matter, or thing required to be done, either by the state constitution, any law of this state, or any order or decision of the commission, such public utility shall be liable to the persons or corporations affected thereby for all loss, damage, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, the court, in addition to the actual damages, may award exemplary damages. An action to recover such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

(2) No recovery as provided in this section shall in any manner affect the recovery by the state of the penalties provided in articles 1 to 7 of this title.

Source: L. 13: p. 503, § 58. **C.L.** § 2967. **CSA:** C. 137, § 58. **CRS 53:** § 115-7-2. **C.R.S. 1963:** § 115-7-2.

40-7-103. Not to affect other rights - penalties cumulative. (1) The provisions of articles 1 to 7 of this title shall not have the effect of releasing or waiving any right of action by the state, the commission, or any person or corporation for any right, penalty, or forfeiture which may have arisen or accrued under any law of this state.

(2) All penalties accruing under articles 1 to 7 of this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to nor affect the recovery of any other penalty or forfeiture nor be a bar to any criminal prosecution against any public utility, or any officer, director, agent, or employee thereof, or any other corporation or person.

Source: L. 13: p. 503, § 59. **C.L.** § 2968. **CSA:** C. 137, § 59. **CRS 53:** § 115-7-3. **C.R.S. 1963:** § 115-7-3.

40-7-104. Actions to restrain violations. (1) Whenever the commission is of the opinion that any public utility is failing or omitting to do anything required of it by law or by any order, decision, rule, direction, or requirement of the commission or is doing anything or about to do anything or permitting anything or about to permit anything to be done contrary to or in violation of law or of any order, decision, rule, direction, or requirement of the commission, it shall direct the attorney general to commence an action or proceeding in the district court in and for the county or city and county in which the cause or some part thereof arose, or in which the corporation or person complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides, in the name of the people of the state of Colorado, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction.

(2) The attorney general shall begin such action or proceeding by petition to such district court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It is the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances of the case.

(3) Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment or order effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that an order in the nature of mandamus or injunction issue or be made permanent as prayed for in the petition or in such modified or other form as will afford appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect, subject to the provisions of articles 1 to 7 of this title as appeals are taken from judgments of the district court in other actions for mandamus or injunction.

Source: L. 13: p. 504, § 60. **C.L.** § 2969. **CSA:** C. 137, § 60. **CRS 53:** § 115-7-4. **C.R.S. 1963:** § 115-7-4.

40-7-105. Violations - penalty - separate offenses. (1) Any public utility which violates or fails to comply with any provision of the state constitution or of articles 1 to 7 of this title or which fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such public utility, is subject to a penalty of not more than two thousand dollars for each offense.

(2) Every violation of the provisions of articles 1 to 7 of this title or of any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or portion thereof, except an order for the payment of money, by any corporation or person is a separate and distinct offense, and, in case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct offense.

(3) In construing and enforcing the provisions of articles 1 to 7 of this title relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, in every case shall be deemed the act, omission, or failure of such public utility.

Source: L. 13: p. 505, § 61. **C.L.** § 2970. **CSA:** C. 137, § 61. **CRS 53:** § 115-7-5. **C.R.S. 1963:** § 115-7-5.

40-7-106. Violations by agents - penalty. Every officer, agent, or employee of any public utility who violates or fails to comply with or who procures, aids, or abets any violation by any public utility of any provision of the constitution of this state or of articles 1 to 7 of this title, or who fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, or who procures, aids, or abets any public utility in its failure to obey, observe, and comply with any such order, decision, rule, direction, demand, or requirement or any part or provision thereof in a case in which a penalty has not been provided for such officer, agent, or employee commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 13: p. 505, § 62. **C.L.** § 2971. **CSA:** C. 137, § 62. **CRS 53:** § 115-7-6. **C.R.S. 1963:** § 115-7-6. **L. 93:** Entire section amended, p. 2068, § 25, effective July 1. **L. 2002:** Entire section amended, p. 1558, § 355, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

40-7-107. Violations by corporations not public utilities - penalty. Every corporation other than a public utility which violates any provision of articles 1 to 7 of this title or which fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such corporation is subject to a penalty of not more than two thousand dollars for each offense.

Source: L. 13: p. 506, § 63. **C.L.** § 2972. **CSA:** C. 137, § 63. **CRS 53:** § 115-7-7. **C.R.S. 1963:** § 115-7-7.

40-7-108. Violations by individuals - penalty. Every person who, either individually or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of articles 1 to 7 of this title or who fails to observe, obey, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or portion thereof, or who procures, aids, or abets any such public utility in its violation of articles 1 to 7 of this title or in its failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or requirement or any part or portion thereof in a case in which a penalty has not been provided for such person commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 13: p. 506, § 64. **C.L.** § 2973. **CSA:** C. 137, § 64. **CRS 53:** § 115-7-8. **C.R.S. 1963:** § 115-7-8. **L. 93:** Entire section amended, p. 2068, § 26, effective July 1. **L. 2002:** Entire section amended, p. 1558, § 356, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

40-7-109. Action to recover penalties - fines paid to general fund. Actions to recover penalties under this title may be brought in the name of the people of the state of Colorado in the district court in and for the county or city and county in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of resides. Such action shall be commenced and prosecuted to final judgment by the attorney general as directed by the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise provided in this article. All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the state treasury. Any such action

may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

Source: L. 13: p. 506, § 65. **C.L.** § 2974. **CSA:** C. 137, § 65. **CRS 53:** § 115-7-9. **C.R.S. 1963:** § 115-7-9. **L. 2008:** Entire section amended, p. 1797, § 18, effective July 1.

40-7-110. Commission to represent people - when.

(1) Repealed.

(2) The commission has the power to appear and represent the interests and welfare of the people of the state of Colorado in all matters and proceedings involving any public utility or carrier pending before any officer, department, board, commission, or court of the United States, of any other state, or of this state and to intervene in, protest, resist, or advocate the granting or denial of any petition, application, complaint, or other proceeding, to examine witnesses and offer evidence in any proceeding affecting the people of this state or some portion thereof, as the public interest, convenience, or necessity may appear, and to initiate or participate in judicial proceedings involving the order or decision of any such officer, department, board, or commission.

Source: L. 13: p. 507, § 66. **C.L.** § 2975. **CSA:** C. 137, § 66. **L. 45:** p. 534, § 10. **CRS 53:** § 115-7-10. **C.R.S. 1963:** § 115-7-10. **L. 2008:** (1) repealed, p. 1798, § 19, effective July 1.

40-7-111. Not to affect interstate or foreign commerce. None of the provisions of articles 1 to 7 of this title, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states, except insofar as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Source: L. 13: p. 508, § 68. **C.L.** § 2976. **CSA:** C. 137, § 67. **CRS 53:** § 115-7-11. **C.R.S. 1963:** § 115-7-11.

40-7-112. Applicability of civil penalties. (1) (a) A person who operates or offers to operate as a motor carrier as defined in section 40-10.1-101; a motor carrier, motor private carrier, broker, freight forwarder, leasing company, or other person required to register under section 40-10.5-102; or a transportation network company required to obtain a permit under section 40-10.1-606 is subject to civil penalties as provided in this section and sections 40-7-113 to 40-7-116, in addition to any other sanctions that may be imposed pursuant to law.

(b) The commission shall transmit all penalties it collects to the state treasurer, who shall credit them to the legal services offset fund created in section 40-7-118; except that the state treasurer shall credit one-half of any civil penalty imposed upon a motor carrier of household goods to the moving outreach fund created in section 40-10.1-509.

(2) Subsections (3) to (5) of this section and the civil penalties provided in section 40-7-113 do not apply to persons transporting nuclear materials who commit violations of section 42-20-406 (3), 42-20-407, or 42-20-505, C.R.S., or to persons transporting hazardous materials who commit violations of section 42-20-204, C.R.S.

(3) An owner or other person allowing a driver to operate a motor vehicle upon a highway in violation of a statute or rule for which a civil penalty may be imposed under section 40-7-113 (1) is subject to the civil penalties provided in section 40-7-113 if he or she knows or has reason to know that the driver is engaged in a violation.

(4) An owner or other person who directs a driver to operate a motor vehicle upon a highway in violation of a statute or rule for which a civil penalty may be imposed under section 40-7-113 (1) is subject to the civil penalties provided in section 40-7-113.

(5) Any civil penalty assessed against an owner or other person pursuant to subsection (3) or (4) of this section is in addition to, and not in lieu of, any civil penalty against the actual driver of the vehicle, and any such penalty may be assessed upon the initial violation by the person.

Source: L. 89: Entire section added, p. 1540, § 1, effective April 12. **L. 93:** (2) amended, p. 1623, § 3, effective June 6. **L. 94:** (2) amended, p. 2570, § 94, effective January 1, 1995. **L. 95:** (1) amended, p. 1209, § 23, effective May 31. **L. 98:** (1) amended, p. 1058, § 5, effective July 1. **L. 2003:** (1) amended, p. 2380, § 3, effective August 6. **L. 2005:** (1) amended, p. 782, § 74, effective June 1. **L. 2006:** (1) amended, p. 1095, § 7, effective August 7. **L. 2009:** (1) amended, (SB 09-292), ch. 369, p. 1982, § 120, effective August 5. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 420, § 17, effective August 10. **L. 2013:** (1) amended, (SB 13-189), ch. 365, p. 2126, § 1, effective June 5. **L. 2014:** (1)(a) amended, (SB 14-125), ch. 323, p. 1408, § 2, effective June 5. **L. 2017:** (1)(b) amended, (SB 17-180), ch. 281, p. 1531, § 1, effective August 9.

40-7-113. Civil penalties - fines. (1) In addition to any other penalty otherwise authorized by law and except as otherwise provided in subsections (3) and (4) of this section, any person who violates article 10.1 or 10.5 of this title 40 or any rule promulgated by the commission pursuant to article 10.1 or 10.5, which article or rule is applicable to the person, may be subject to fines as specified in the following paragraphs:

(a) Any person who fails to carry the insurance required by law may be assessed a civil penalty of not more than eleven thousand dollars.

(b) Any person who violates section 40-10.1-201 (1), 40-10.1-202 (1)(a), 40-10.1-302 (1)(a), 40-10.1-401 (1)(a), 40-10.1-502 (1)(a), or 40-10.1-702 (1)(a) may be assessed a civil penalty of not more than one thousand one hundred dollars.

(c) and (d) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10, 2011.)

(e) A person subject to section 40-10.1-111 who operates a motor vehicle without having paid the annual identification fee for any motor vehicle operated as required by section 40-10.1-111 may be assessed a civil penalty of not more than four hundred dollars.

(f) and (f.5) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10, 2011.)

(g) A person who violates any provision of article 10.1 or 10.5 of this title 40 not enumerated in subsection (1)(a), (1)(b), or (1)(e) of this section, any rule promulgated by the commission pursuant to this title 40, or any safety rule adopted by the department of public safety relating to motor carriers as defined in section 40-10.1-101 may be assessed a civil penalty of not more than one thousand one hundred dollars; except that any person who violates

a safety rule promulgated by the commission is subject to the civil penalties authorized pursuant to 49 CFR 386, subpart G, and associated appendices to part 386, as the subpart existed on January 1, 2017.

(h) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10, 2011.)

(2) The commission shall set the amount of the civil penalties to be assessed pursuant to subsection (1) of this section in rules.

(3) If a person is assessed a civil penalty for a violation referenced in subsection (1) of this section occurring on a date within twenty-four months after a previous violation, the civil penalty assessed for the second violation may be up to two times the amount specified by rule for the violation.

(4) If a person violates subsection (1) of this section three times within twenty-four months, the person may be assessed a civil penalty up to three times the amount specified by rule for the third violation and for each subsequent violation.

(5) (a) A person who fails to pay in full all civil penalties assessed by commission order under this section, subject to article 4 of title 24, C.R.S., within thirty days after the due date established by the order may have his or her vehicle registration cancelled by the department of revenue as specified in section 42-3-120 (4), C.R.S. Registration of a vehicle owned by the person for which the penalty was assessed may be denied until all penalties are paid or collected. Upon written notice from the commission, the department of revenue shall cancel the registration as specified in section 42-3-120 (4), C.R.S.

(b) This subsection (5) applies to all vehicles, regardless of when purchased, on or after August 10, 2011.

Source: L. 89: Entire section added, p. 1540, § 1, effective April 12. **L. 93:** (1) amended, p. 2069, § 27, effective July 1. **L. 95:** IP(1) and (1)(f) amended, p. 1209, § 24, effective May 31. **L. 96:** (1)(g) amended, p. 1549, § 8, effective July 1. **L. 98:** (1)(f) amended, p. 1058, § 6, effective July 1. **L. 2001:** (1)(g) amended, p. 1281, § 61, effective June 5. **L. 2003:** IP(1), (1)(a), (1)(b), (1)(c), (1)(d), (1)(f), and (1)(g) amended, p. 1703, § 15, effective May 14; (1)(f.5) added and (1)(g) amended, p. 2380, § 4, effective August 6. **L. 2004:** IP(1) amended, p. 1211, § 98, effective August 4. **L. 2006:** IP(1), (1)(e), and (1)(g) amended and (1)(h) added, p. 1096, § 8, effective August 7. **L. 2009:** (5) added, (HB 09-1230), ch. 232, p. 1067, § 4, effective August 5. **L. 2010:** (1)(f) amended, (HB 10-1167), ch. 125, p. 415, § 2, effective April 15. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10. **L. 2013:** (5)(a) amended, (SB 13-189), ch. 365, p. 2126, § 2, effective June 5. **L. 2017:** IP(1), (1)(g), (3), and (4) amended, (SB 17-180), ch. 281, p. 1531, § 2, effective August 9. **L. 2018:** (1)(b) amended, (HB 18-1320), ch. 363, p. 2164, § 3, effective August 8.

Editor's note: Amendments to subsection (1)(g) by Senate Bill 03-225 and House Bill 03-1289 were harmonized.

40-7-113.5. Civil penalties applicable to public utilities - exclusion from rate base. (1) (a) In addition to any other penalty otherwise authorized by law and except as otherwise provided in subsections (3), (4), and (5) of this section, a public utility furnishing electric, gas, water, water and sewer, or telecommunications service that intentionally violates any provision

of articles 1 to 7 or 15 of this title or of any rule or order of the commission pursuant to such articles, which provision is applicable to such utility, may be assessed a civil penalty of not more than two thousand dollars; except that nothing in this subsection (1) shall be construed to authorize the imposition of civil penalties upon:

(I) A cooperative electric association that has voted to exempt itself from regulation pursuant to section 40-9.5-103;

(II) A cooperative telephone association;

(III) A municipally owned utility; or

(IV) A nonprofit generation and transmission electric corporation or association.

(b) Civil penalties assessed pursuant to this section shall be paid and credited to the general fund, in addition to any other sanctions that may be imposed pursuant to law. The amount of any such penalties paid shall not be an allowable expense for rate-making purposes.

(2) (a) The commission shall adopt rules specifying the particular violations, and the amount of the civil penalties to be assessed for each violation, pursuant to subsection (1) of this section.

(b) No public utility shall be assessed a civil penalty if the utility is already subject to an existing reparation due to a commission order, commission rule, or statutory provision for the same violation.

(3) If any public utility receives a second civil penalty assessment for a violation of the same statute, rule, or order within one year after the first violation, the civil penalty assessed for the second violation shall be no greater than twice the amount specified by rule for such violation.

(4) If any public utility receives more than two civil penalty assessments for violation of the same statute, rule, or order within one year, the civil penalty assessed for each such subsequent violation shall be no greater than three times the amount specified by rule for such violation.

(5) Notwithstanding any provision of this section to the contrary, the total amount of civil penalties assessed against one public utility under this section shall not exceed the lesser of the following:

(a) One hundred fifty thousand dollars in any six-month period; or

(b) In any twelve-month period, one percent of the utility's gross annual revenues from services regulated by the commission, based on the most recent fiscal year for which final revenue figures are available.

Source: L. 2008: Entire section added, p. 1798, § 20, effective July 1.

40-7-114. Applicability of civil penalties to owners, employers, or other persons. (Repealed)

Source: L. 89: Entire section added, p. 1541, § 1, effective April 12. **L. 93:** (3) amended, p. 2070, § 28, effective July 1. **L. 2011:** Entire section repealed, (HB 11-1198), ch. 127, p. 416, § 3, effective August 10.

40-7-115. Each day a separate offense. Each day in which a person violates any statute, rule, or order of the commission for which a civil penalty may be imposed under section 40-7-113 or 40-7-113.5 may constitute a separate offense.

Source: L. 89: Entire section added, p. 1542, § 1, effective April 12. **L. 2008:** Entire section amended, p. 1799, § 21, effective July 1. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 423, § 19, effective August 10.

40-7-116. Enforcement of civil penalties against carriers. (1) (a) Investigative personnel of the commission, Colorado state patrol officers, and port of entry officers as defined in section 42-8-102 (3), C.R.S., have the authority to issue civil penalty assessments for the violations enumerated in sections 40-7-112 and 40-7-113. When a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.

(b) The notice shall be tendered by the enforcement official, either in person or by certified mail, or by personal service by a person authorized to serve process under rule 4(d) of the Colorado rules of civil procedure, and shall contain:

(I) The name and address of the person cited for the violation;

(II) A citation to the specific statute or rule alleged to have been violated;

(III) A brief description of the alleged violation, the date and approximate location of the alleged violation, and the maximum penalty amounts prescribed for the violation;

(IV) The date of the notice;

(V) A place for the person to execute a signed acknowledgment of receipt of the civil penalty assessment notice;

(VI) A place for the person to execute a signed acknowledgment of liability for the violation; and

(VII) Such other information as may be required by law to constitute notice of a complaint to appear for hearing if the prescribed penalty is not paid within ten days.

(c) A cited person shall execute the signed acknowledgment of receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the person cited pays the prescribed penalty. The person cited shall pay the civil penalty specified for the violation involved at the office of the commission, either in person or by depositing the payment postpaid in the United States mail within ten days after the issuance of the citation.

(d) (I) If the person cited does not pay the prescribed penalty within ten days after the issuance of the notice, the civil penalty assessment notice constitutes a complaint to appear before the commission. The person cited shall contact the commission on or before the time and date specified in the notice to set the complaint for a hearing on the merits in accordance with section 40-6-109. If the person cited fails to contact the commission on or before the time and date specified, the commission shall set the complaint for hearing.

(II) At the hearing, the commission has the burden of demonstrating a violation by a preponderance of the evidence.

(2) A civil penalty assessment notice shall not be considered defective so as to provide cause for dismissal solely because of a defect in the content of such civil penalty assessment notice. Any defect in the content of a civil penalty assessment notice issued as described in subsection (1) of this section may be cured by a motion to amend the same filed with the

commission prior to hearing on the merits. No such amendment shall be permitted if substantial rights of the person cited are prejudiced.

Source: L. 89: Entire section added, p. 1542, § 1, effective April 12. **L. 93:** Entire section amended, p. 2070, § 29, effective July 1. **L. 95:** Entire section amended, p. 1210, § 25, effective May 31. **L. 2006:** Entire section amended, p. 1099, § 15, effective August 7. **L. 2011:** (1) amended, (HB 11-1198), ch. 127, p. 423, § 20, effective August 10. **L. 2012:** (1)(a) amended, (HB 12-1019), ch. 135, p. 465, § 6, effective July 1.

40-7-116.5. Enforcement of civil penalties against public utilities. (1) (a) The director of the commission or his or her designee shall have the authority to issue civil penalty assessments for the violations enumerated in section 40-7-113.5, subject to hearing before the commission as set forth in this section. When a public utility is cited for a violation, the public utility shall be given notice of the violation in the form of a civil penalty assessment notice.

(b) The notice shall be tendered by the director or his or her designee, either in person or by certified mail, or by personal service by any person authorized to serve process under rule 4 (d) of the Colorado rules of civil procedure, and shall contain:

(I) The name and address of the person cited for the violation;

(II) A citation to the specific statute or rule alleged to have been violated;

(III) A brief description of the alleged violation;

(IV) The date and approximate location of the alleged violation;

(V) The maximum penalty amounts prescribed for the violation;

(VI) The date of the notice;

(VII) A place for the public utility to execute a signed acknowledgment of receipt of the civil penalty assessment notice;

(VIII) A place for the public utility to execute a signed acknowledgment of liability for the violation; and

(IX) Any other information as may be required by law to constitute notice of a complaint to appear for hearing if the prescribed penalty is not paid within ten days.

(c) Every cited public utility shall execute the signed acknowledgment of receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the public utility cited pays the prescribed penalty. The public utility cited shall pay the civil penalty specified for the violation involved at the office of the commission, either in person or by depositing the payment postpaid in the United States mail within ten days after the issuance of the citation.

(d) If the public utility cited does not pay the prescribed penalty within ten days after the issuance of the notice, the civil penalty assessment notice shall constitute a complaint to appear before the commission. The public utility cited shall contact the commission on or before the time and date specified in the notice to set the complaint for a hearing on the merits in accordance with section 40-6-109. If the public utility cited fails to contact the commission on or before the time and date specified, the commission shall set the complaint for hearing. At the hearing, the commission shall have the burden of demonstrating a violation by a preponderance of the evidence.

(2) A civil penalty assessment notice shall not be considered defective so as to provide cause for dismissal solely because of a defect in the content of the civil penalty assessment

notice. Any defect in the content of a civil penalty assessment notice issued as described in subsection (1) of this section may be cured by a motion to amend the same filed with the commission prior to hearing on the merits; except that no such amendment shall be permitted if substantial rights of the public utility cited are prejudiced.

(3) In the case of an alleged continuing violation for which daily penalties would accrue under section 40-7-115, the issuance of a civil penalty assessment notice shall toll the accrual of daily penalties until the later to occur of the expiration of the ten-day period provided for payment pursuant to subsection (1) of this section or, if the matter is set for hearing, upon the conclusion of the proceedings through issuance of an order, dismissal of the complaint, or other final agency action, including judicial review and appeal, if any.

(4) Nothing in this section shall be construed to authorize the assessment of a civil penalty against an individual employee of a public utility.

Source: L. 2008: Entire section added, p.1799, § 22, effective July 1.

40-7-117. Gas pipeline safety rules - civil penalty for violations - compromise - other remedies. (1) Any person violating any rule adopted or order issued by the commission pursuant to the authority granted in section 40-2-115 (1.5) shall be subject to a civil penalty not to exceed one hundred thousand dollars per violation; except that, in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed one million dollars. Each day of a continuing violation shall constitute a separate violation.

(2) Any civil penalty authorized by this section may be compromised by the commission. In determining the amount of the penalty or of the amount to be agreed upon in compromise, the commission shall consider the gravity of the violation, the size of the business of the violator, and the amount of effort expended by the violator in any attempts made in good faith to remedy the violation or prevent future similar violations. The penalty or any lesser amount agreed upon in compromise may be recovered by the commission in a civil action in any court of competent jurisdiction.

(3) The remedy provided in this section is in addition to any other remedies available to the commission under the constitution or laws of this state or of the United States.

Source: L. 93: Entire section added, p. 2071, § 30, effective July 1. **L. 2003:** (1) amended, p. 1700, § 6, effective May 14.

40-7-118. Legal services offset fund - creation - exemption from maximum reserve. (1) (a) The legal services offset fund is hereby created in the state treasury. The fund consists of the civil penalties that are collected and credited to the fund pursuant to section 40-7-112 (1)(b) for violations of article 10.1 of this title 40 or commission rules promulgated pursuant to article 10.1 of this title 40. The money in the fund is continuously appropriated to the department of regulatory agencies for use to offset the costs of legal representation of the staff of the commission in proceedings before the commission concerning the enforcement of article 10.1 of this title 40. The department of regulatory agencies shall use the money in the legal services offset fund to support appropriations made to the department that are used for legal representation of the staff of the commission in proceedings concerning the enforcement of article 10.1 of this title 40.

(b) The money in the fund and any interest earned on money in the fund at the end of any fiscal year remains in the fund and shall not be transferred to the general fund or any other fund; except that, if the balance in the fund exceeds two hundred fifty thousand dollars, the state treasurer shall transfer the money in excess of two hundred fifty thousand dollars to the general fund.

(2) In accordance with section 24-75-402 (2)(a) and for each fiscal year, the alternative maximum reserve for the legal services offset fund is two hundred fifty thousand dollars.

Source: L. 2017: Entire section added, (SB 17-180), ch. 281, p. 1532, § 3, effective August 9. **L. 2019:** (1)(a) amended, (SB 19-236), ch. 359, p. 3312, § 18, effective May 30.

ARTICLE 7.5

Civil Remedies Available to Utilities

40-7.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bypassing" means the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor, pipe, or other instrument, device, or contrivance to the utility supply system or any part thereof in such a manner as to transmit, supply, or use any utility service without passing through an authorized meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed.

(2) "Customer" means the person responsible for payment for utility services for the premises, and such term includes employees and agents of the customer.

(3) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or other legal entity.

(4) "Tampering" means the act of damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed.

(5) "Unauthorized metering" means the act of removing, moving, installing, connecting, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized contractor, employee, or agent of such utility.

(6) "Utility" means any pipeline corporation, gas corporation, electrical corporation, water corporation, irrigation system, cooperative association, nonprofit corporation, nonprofit association, municipality, or person operating in whole or in part for the purpose of supplying electricity, gas, steam, or water, or any combination thereof, to the public or to any person.

(7) "Utility service" means the provision of electricity, gas, steam, water, or any other service or commodity furnished by the utility for compensation.

(8) "Utility supply system" includes all wires, conduits, pipes, cords, sockets, motors, meters, instruments, and other devices whatsoever used by the utility for the purpose of providing utility services.

Source: L. 83: Entire article added, p. 1564, § 1, effective July 1.

40-7.5-102. Civil action allowed. (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts resulting in damages to the utility: Bypassing, tampering, or unauthorized metering. In addition, a utility may bring a civil action for damages pursuant to this section against any person who knowingly receives utility service through means of bypassing, tampering, or unauthorized metering. An action brought pursuant to this section shall be commenced within three years after the cause of action accrues.

(2) In any civil action brought pursuant to this section, the utility shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover as damages three times the amount of the actual damages, if any, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering, including, but not limited to, costs and expenses for investigation, disconnection, reconnection, service calls, employees and equipment, and expert witnesses; costs of the suit; and reasonable attorney fees.

Source: L. 83: Entire article added, p. 1565, § 1, effective July 1.

40-7.5-103. Presumptions. (1) There is a rebuttable presumption that a tenant or occupant of any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the tenant or occupant had controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist and if said tenant or occupant was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services provided for the premises.

(2) There is a rebuttable presumption that a utility customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the customer had controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist.

(3) The presumptions provided in this section shall only shift the burden of going forward with evidence and shall in no event shift the burden of proof to the defendant in any action brought pursuant to this article.

Source: L. 83: Entire article added, p. 1565, § 1, effective July 1.

40-7.5-104. Remedies cumulative. It is the purpose of this article to provide additional remedies to avoid the wrongful use of the facilities of utilities, and nothing in this article shall abridge or alter rights of action or remedies existing prior to July 1, 1983, or created on or after said date.

Source: L. 83: Entire article added, p. 1566, § 1, effective July 1.

ARTICLE 8

Unclaimed Funds for Overcharges

40-8-101. Undistributed overcharges turned over to municipality. (1) Except as provided in subsection (2) of this section, in all cases where there has been an overcharge by a public utility for any commodity or service on account of which rights to refunds have accrued to any municipality or the inhabitants thereof by reason of services or commodities received through the use of the streets of such municipality, with or without a franchise, and a refund of the amount overcharged has been directed by any court or other authorized governmental tribunal, and a part of such refund has not been made because of inability to find the persons entitled thereto within the time limit fixed by such court or tribunal, the court or tribunal shall direct that any such undistributed balance shall be turned over to the municipality.

(2) For gas, electric, and steam utilities, the public utilities commission may order that all or part of the undistributed balance of a refund be paid by the utility in an equitable manner to the general body of utility customers and the public utilities commission may order a gas or electric utility to pay up to ninety percent of the undistributed balance of a refund into the fund established by the Colorado commission on low income energy assistance pursuant to section 40-8.5-104.

Source: L. 47: p. 704, § 1. **CSA:** C. 137, § 69. **CRS 53:** § 115-8-1. **C.R.S. 1963:** § 115-8-1. **L. 69:** p. 954, § 52. **L. 90:** Entire section amended, p. 1760, § 2, effective May 31. **L. 92:** (2) amended, p. 2137, § 1, effective May 27.

40-8-102. Undistributed balance to county commissioners - when. Subject to the provisions of section 40-8-101, in all cases where rights to refunds from a similar overcharge have accrued to the inhabitants of any county, outside of a municipality therein, the undistributed balance shall be turned over to the county commissioners of such county.

Source: L. 47: p. 704, § 2. **CSA:** C. 137, § 70. **CRS 53:** § 115-8-2. **C.R.S. 1963:** § 115-8-2. **L. 90:** Entire section amended, p. 1761, § 3, effective May 31.

40-8-103. Due and payable by escheat. The payment to such municipality or county, as set forth in sections 40-8-101 and 40-8-102, shall become due and payable by escheat, where not otherwise due and payable by operation of law.

Source: L. 47: p. 704, § 3. **CSA:** C. 137, § 71. **CRS 53:** § 115-8-3. **C.R.S. 1963:** § 115-8-3.

40-8-104. Municipality or county liable for three years. The municipality or county receiving such moneys shall be liable therefor for three years from the date when received and shall pay them out to any person entitled thereto proving his claim through court action or in any other method satisfactory to the municipality or county. At the end of such period, the fund shall become the property of the municipality or county.

Source: L. 47: p. 704, § 4. **CSA:** C. 137, § 72. **CRS 53:** § 115-8-4. **C.R.S. 1963:** § 115-8-4.

40-8-105. Authority of commission unaffected. Except as provided in section 40-8-101 (2), nothing in this article shall affect the authority of the public utilities commission, as otherwise provided by law, to determine the manner in which overcharges by a public utility shall be returned to the customers of that utility.

Source: L. 90: Entire section added, p. 1761, § 4, effective May 31.

ARTICLE 8.5

Unclaimed Utility Deposits

40-8.5-101. Legislative declaration. In enacting this article, the general assembly finds and declares that there is a need to make distributions of moneys to provide aid and assistance to the indigent, the elderly, and persons with disabilities, who do not otherwise have the financial resources to meet their heating and other energy needs. The general assembly further finds and declares that the low-income energy assistance program of the department of human services is the most appropriate entity to determine those most in need of such aid and assistance. Therefore, this article shall authorize the commission on low-income energy assistance to establish a fund from which to collect and distribute moneys to accomplish the goals set forth in this section. The moneys for such fund shall be based in part on unclaimed utility deposits.

Source: L. 90: Entire article added, p. 1758, § 1, effective May 31. **L. 93:** Entire section amended, p. 1671, § 90, effective July 1. **L. 94:** Entire section amended, p. 2719, § 304, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-8.5-102. Applicability. This article shall apply to any electric or gas utility, as defined by section 40-8.5-103; except that this article shall apply only to those cooperative electric associations, as defined by section 40-9.5-102, which notify the commission that they elect to come under this article.

Source: L. 90: Entire article added, p. 1758, § 1, effective May 31.

40-8.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the legislative commission on low income energy assistance, established in section 40-8.5-103.5.

(2) "Deposit" means moneys deposited by a subscriber with a utility to secure payment for services or any other amount which is paid in advance for electric or gas utility services to be furnished.

(3) "Electric utility" means every electrical corporation operating for the purpose of supplying electricity to the public for domestic, mechanical, or public uses and includes every public utility supplying electricity; except that this definition includes only those cooperative electric associations which notify the commission that they elect to come under this article.

(4) "Gas utility" means every gas corporation operating for the purpose of supplying gas to the public for domestic, mechanical, or public uses and includes every public utility supplying gas.

(5) (a) "Unclaimed moneys" means:

(I) Deposits, including any interest thereon, less any lawful deductions or amounts owed to a utility, that the utility has been directed to return to the subscriber by an administrative or judicial order or that is due the subscriber through the utility's security or construction deposit policy and that remains unclaimed by the subscriber for more than two years;

(II) Moneys which shall be deemed unclaimed and presumed abandoned when left with the utility for more than two years after termination of the services for which the deposit or advance was made or for more than two years after the deposit becomes payable and the utility has made reasonable efforts to locate the owner of the unclaimed moneys or distribution is attempted pursuant to a final order of an administrative agency or judicial body having jurisdiction to establish the terms and conditions of such deposit or advance.

(b) This term shall not include credits to existing subscribers through cost-adjustment mechanisms, and this term shall not include unclaimed patronage capital held by cooperative electric associations.

Source: L. 90: Entire article added, p. 1758, § 1, effective May 31.

40-8.5-103.5. Commission created - duties. (1) There is created the legislative commission on low-income energy assistance. The commission is composed of eleven members appointed by the governor, each to serve a term of two years; except that the governor shall select seven of the initially appointed members to serve for one-year terms. Of the eleven members, five members must be from private sector energy-related enterprises, one member must be the director of the low-income energy assistance program in the state department of human services, one member must be from the Colorado energy office, two members must be consumers who are low-income energy assistance recipients, and two members must be from the general public. Any interim appointment necessary to fill a vacancy that has occurred by any reason other than expiration of term is for the remainder of the term of the individual member whose office has become vacant.

(2) The governor may remove any commission member for cause, which shall include but need not be limited to misconduct, incompetence, or neglect of duty.

(3) Any commission member shall be immune from liability in any civil action brought against such member for acts occurring while acting in the capacity of a commission member if such member was acting in good faith, made reasonable efforts to obtain the facts of the matter as to which action was taken, and acted in the reasonable belief that the action taken was warranted by the facts.

(4) (a) No later than December 15, 2008, the commission shall make recommendations to the governor, the speaker of the house of representatives, and the president of the senate regarding any necessary legislative changes to improve the effectiveness and efficiency of the state's low-income energy assistance services provided pursuant to article 8.7 of this title and section 26-1-109, C.R.S. With assistance and consultation from representatives from two counties chosen by the executive director, or his or her designee, of Colorado counties, incorporated, or its successor organization, the commission shall assess the strengths and

weaknesses of the current service delivery systems within the state and shall review effective service delivery systems and models of other states that may be appropriate for utilization in this state. The commission's recommendations shall build upon the positive aspects of the current service delivery system, including, but not limited to, the effective and efficient management of current funding to maximize assistance to the state's low-income population, infrastructure that is already in place to efficiently distribute benefits to eligible clients in a timely manner, and coordination already established between energy conservation measures and direct assistance. The commission's recommendations shall include, but shall not be limited to:

(I) How best to target the state's low-income energy assistance resources toward the identified needs;

(II) How best to coordinate public and private energy assistance activities with the objective of minimizing the financial burden of energy costs for the state's most needy;

(III) How best to streamline administrative processes; and

(IV) Suggested changes to state statutes, rules, or policies related to low-income energy consumers in the state.

(b) The commission may seek and receive public and private funding to assist in the conduct of the assessment and review required by paragraph (a) of this subsection (4), including but not limited to assistance from the existing resources of the department of human services created in section 24-1-120, C.R.S., the Colorado energy office created in section 24-38.5-101, C.R.S., and energy outreach Colorado, a Colorado nonprofit corporation, as described in section 40-8.7-103 (4).

Source: L. 90: Entire article added, p. 1759, § 1, effective May 31. **L. 93:** (1) amended, p. 2071, § 31, effective July 1. **L. 94:** (1) amended, p. 2719, § 305, effective July 1. **L. 2008:** (4) added, p. 1333, § 5, effective May 27. **L. 2012:** (4)(b) amended, (HB 12-1315), ch. 224, p. 981, § 51, effective July 1. **L. 2020:** (1) amended, (SB 20-136), ch. 70, p. 298, § 52, effective September 14.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 20-136, see section 1 of chapter 70, Session Laws of Colorado 2020.

40-8.5-104. Commencement of program - establishment of system for distribution of moneys to eligible recipients. The commission shall establish a fund through a nonprofit corporation established for the purpose of collecting and distributing moneys to eligible recipients, who shall be designated by the administrator of the low-income energy assistance program in the department of human services, for use in the payment of electric and gas utility bills for services received.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. **L. 93:** Entire section amended, p. 2071, § 32, effective July 1. **L. 94:** Entire section amended, p. 2720, § 306, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-8.5-105. Eligibility. The department of human services shall promulgate rules and regulations establishing the criteria for eligibility for recipients of assistance pursuant to this article, which criteria shall be based in part on household size and income and the energy costs of the household residence for the preceding year.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. **L. 94:** Entire section amended, p. 2720, § 307, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-8.5-106. Unclaimed deposits. Unclaimed deposits shall be paid by the electric and gas utilities into the fund designated by the commission pursuant to section 40-8.5-104.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. **L. 93:** Entire section amended, p. 2072, § 33, effective July 1.

40-8.5-107. Disbursement of moneys. The nonprofit corporation designated by the commission pursuant to section 40-8.5-104 shall disburse moneys to the state department of human services to make energy assistance payments on behalf of or to persons determined by the department to be eligible for such assistance in accordance with section 40-8.5-105.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. **L. 91:** Entire section amended, p. 1901, § 2, effective July 1. **L. 94:** Entire section amended, p. 2720, § 308, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ARTICLE 8.7

Low-income Energy Assistance

40-8.7-101. Short title. This article shall be known and may be cited as the "Low-income Energy Assistance Act".

Source: L. 2005: Entire article added, p. 478, § 1, effective May 5.

40-8.7-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that, in order to serve the best interests of the citizens of Colorado and, in particular, to aid low-income citizens of Colorado, there is a need for an energy assistance program to collect an optional low-income energy assistance contribution from utility customers in Colorado.

(2) The general assembly further finds that the most efficient way to support such a program is for gas and electric utilities to provide the opportunity for each utility customer to

contribute an optional amount on the customer's billing statement for low-income energy assistance that will be displayed monthly on the utility bill until the customer indicates otherwise and that the moneys collected shall be most economically and equitably disbursed through a system in which the contributions collected by electric utilities and gas utilities are transmitted to energy outreach Colorado.

Source: L. 2005: Entire article added, p. 478, § 1, effective May 5.

40-8.7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative energy assistance program" means a program operated by a municipally owned electric and gas utility or cooperative electric association that is not part of the energy assistance program established pursuant to this article.

(2) "Customer" means the named holder of an individually metered account upon which charges for electricity or gas are paid to a utility. "Customer" shall not include a customer that receives electricity or gas for the sole purpose of reselling the electricity or gas to others.

(3) "Energy assistance program" or "program" means the low-income energy assistance program created by section 40-8.7-104 and designed to provide financial assistance, residential energy efficiency, and energy conservation assistance.

(4) "Organization" means energy outreach Colorado, a Colorado nonprofit corporation, formerly known as the Colorado energy assistance foundation.

(5) "Remittance device" means the section of a customer's utility billing statement that is returned to the utility company for payment.

(6) "Utility" means a corporation, association, partnership, cooperative electric association, or municipally owned entity that provides retail electric service or retail gas service to customers in Colorado. "Utility" does not mean a propane company.

Source: L. 2005: Entire article added, p. 479, § 1, effective May 5. **L. 2006:** (1) amended, p. 1509, § 61, effective June 1.

40-8.7-104. Energy assistance program - creation - energy assistance charge. (1) There is hereby created the low-income energy assistance program to collect and disburse an optional energy assistance contribution in Colorado in accordance with this article.

(2) Except as otherwise provided in this article, every utility doing business in Colorado shall participate in the energy assistance program and shall provide the opportunity for utility customers to make an optional energy assistance contribution on the monthly remittance device on their utility billing statement beginning September 1, 2006. Each utility shall provide the opportunity for customers to donate the optional energy assistance contribution as provided in section 40-8.7-105 (2).

(3) Any reasonable costs that a utility incurs in connection with the program, including the initial costs of setting up the collection mechanism and reformatting its billing systems to solicit the optional contribution, shall be reimbursed from the moneys collected by the program, and this amount shall be approved for each utility by the public utilities commission. The reimbursed amounts shall be transmitted to the utilities before the remaining moneys are distributed to the organization.

Source: L. 2005: Entire article added, p. 479, § 1, effective May 5.

40-8.7-105. Customer opt-in provision. (1) The public utilities commission shall determine the mechanism for an opt-in provision whereby the energy assistance contributions described in section 40-8.7-104 will be collected from those customers who give notice of their intent to participate in the energy assistance program.

(2) Each utility shall solicit voluntary donations through a check-off mechanism displayed on the monthly remittance device. Recommended check-off categories of five dollars, ten dollars, twenty dollars, and "other amount" shall be displayed.

(3) Once a customer voluntarily opts into the program, the appropriate contribution shall be assessed on a monthly basis until the customer notifies the utility of his or her desire to remove the contribution. Each utility shall establish procedures to notify customers about their ability to cancel any voluntary contribution.

(4) Once the utility customer opts into the program, the energy assistance contribution shall appear as a separate line item and shall be identified in the billing statement as a contribution. The line item shall identify the optional low-income contribution, state the amount of the optional contribution, and be included in the total amount due.

(5) In accordance with article 4 of title 24 C.R.S., on or before November 1, 2005, the public utilities commission shall initiate at least one rule-making proceeding to accomplish the following:

(a) Establish a program whereby customers will be solicited to contribute a flat amount on the monthly remittance device on the utility billing statement;

(b) Encourage each utility to provide notification, where feasible, to customers participating in the program about the customer's ability to continue to contribute when the customer changes his or her address within the service territory;

(c) Require the utility to make additional efforts to inform utility customers about the program to ensure that adequate notice of the opt-in provision is given to all customers;

(d) In addition to notification on the monthly remittance device on the billing statement, require each utility to notify its customers about the opt-in provision prior to September 1, 2006, and require each utility to provide clear, periodic notice of the opt-in provision at least twice per year through bill inserts, in a statement on the bill or envelope, or in other utility communication pieces or through an alternative method approved by the commission. The costs of the insert and any other notification efforts will be considered in the utility's cost of service.

(e) Require each utility to consider the most cost-effective method possible when implementing the program; and

(f) Ensure that there is a mechanism for customers who make electronic payments to the utility to remove the optional charge from their monthly payments.

Source: L. 2005: Entire article added, p. 480, § 1, effective May 5.

40-8.7-106. Municipally owned gas, electric, and gas and electric utilities and cooperative electric associations. (1) If a municipally owned gas, electric, or gas and electric utility or a cooperative electric association operates an alternative energy assistance program to support its low-income customers with their home energy needs, then the governing body of the municipally owned gas, electric, or gas and electric utility or cooperative electric association

may self-certify its alternative energy assistance program and, upon self-certification, shall have no obligations under this article. The municipally owned utility or cooperative electric association shall submit a statement to the organization that such utility or cooperative electric association has an alternative energy assistance program. In order for such utility or cooperative electric association to self-certify, such alternative energy assistance program shall meet the following criteria:

(a) The amount and method for funding of the program shall be determined by the governing body.

(b) Program moneys shall be collected and distributed in a manner and under eligibility criteria determined by the governing body for the purpose of residential energy assistance to customers who are challenged with paying energy bills for financial reasons, including to seniors on fixed incomes, individuals with disabilities, and low-income individuals.

(2) If the governing body of a municipally owned gas, electric, or gas and electric utility or a cooperative electric association determines that the service area of such utility or cooperative has a limited number of people who qualify for energy assistance, such utility or cooperative electric association may be exempt from the obligations of this article.

(3) If a municipally owned gas, electric, or gas and electric utility or cooperative electric association has not self-certified an alternative energy assistance program pursuant to subsection (1) of this section or has not exempted itself pursuant to subsection (2) of this section, such utility or cooperative electric association shall collect an optional energy assistance charge from its customers as provided in section 40-8.7-104 (1) and (2) or pursuant to a procedure approved by the governing municipal utility or cooperative, which procedure shall be designed to notify all customers at least twice each year of the option to contribute by means of a monthly energy assistance charge and shall provide a convenient means for customers to exercise that option. In such circumstances, the governing body of such utility or cooperative shall determine the disposition and delivery of the optional energy assistance charge that it collects on the following basis:

(a) The governing body may elect to deliver the optional charge that it collects to the organization for distribution in accordance with this article.

(b) If the governing body does not make such election pursuant to paragraph (a) of this subsection (3), the energy assistance moneys collected shall be distributed under eligibility criteria determined by the governing body for the purpose set forth in paragraph (b) of subsection (1) of this section.

(4) A municipally owned gas, electric, or gas and electric utility or cooperative electric association may provide funding for energy assistance to the organization by using a source of funding other than the optional customer contribution on each bill. If the amount of such assistance approximates the amount reasonably expected to be collected from an optional charge on customer bills, a municipal utility or cooperative need not certify its own program pursuant to subsection (1) of this section and need not collect an optional energy assistance charge but shall be entitled to participate in the organization's program.

(5) Any reasonable costs that a municipally owned gas, electric, or gas and electric utility or cooperative electric association incurs in connection with the program, including the initial costs of setting up the collection mechanism, may be reimbursed at the discretion of the governing body from the energy assistance moneys collected.

Source: L. 2005: Entire article added, p. 481, § 1, effective May 5.

40-8.7-107. Disposition of moneys. (1) Each gas and electric utility shall transfer the moneys from the energy assistance contributions collected under this article to the organization on the following schedule:

(a) For the moneys collected during the period of January 1 to March 31 of each year, the utility shall transfer the collected moneys to the organization before May 1 of such year;

(b) For the moneys collected during the period of April 1 to June 30 of each year, the utility shall transfer the collected moneys to the organization before August 1 of such year;

(c) For moneys collected during the period of July 1 to September 30 of each year, the utility shall transfer the collected moneys to the organization before November 1 of such year; and

(d) For moneys collected during the period of October 1 to December 31 of each year, the utility shall transfer the collected moneys to the organization before February 1 of the next year.

(2) Each utility shall provide the organization with a summary of how the moneys collected were generated, including the number of customers participating in the program.

(3) The organization shall pay the public utilities commission from the moneys transferred to the organization pursuant to subsection (1) of this section for any administrative costs incurred pursuant to this article.

Source: L. 2005: Entire article added, p. 482, § 1, effective May 5.

40-8.7-108. Energy outreach Colorado - administration of the energy assistance charge. (1) The organization shall hold and administer all moneys collected pursuant to this article delivered to it by the utilities pursuant to section 40-8.7-107 in a separately identifiable account, which shall be restricted to the purposes set forth in this article. The organization shall maintain its books and records pertaining to the energy assistance contributions in accordance with generally accepted accounting principles and, in addition, shall maintain records adequate to identify the moneys collected by each utility. If the organization commingles the moneys collected and delivered with other assets of the organization for investment purposes, the organization shall maintain accurate accounts of the investment moneys and shall credit or charge a pro rata portion of all investment earnings, gains, or losses to the account that holds the energy assistance charges.

(2) The organization shall use the energy assistance contribution to provide low-income energy assistance and to improve energy efficiency. The financial assistance moneys shall be paid to each utility as vendor payments. The moneys shall not be used for propane, gas, or electric assistance for customers whose propane, gas, electric, or gas and electric companies or cooperative electric associations do not participate in the program. The organization may use up to five percent of the moneys collected for administration of the energy assistance program in accordance with generally accepted accounting principles.

(3) The organization shall, on an annual basis, develop a budget for the energy assistance program to determine the allocation of the energy assistance contributions collected under this article.

Source: L. 2005: Entire article added, p. 483, § 1, effective May 5.

40-8.7-109. Low-income energy assistance program - eligibility. (1) The organization shall provide energy assistance to individuals and organizations in Colorado. Individuals eligible for low-income energy assistance shall be current or prospective utility customers who:

(a) Are certified by the department of human services as qualified to receive financial assistance payments;

(b) Are citizens or legal residents of the United States and residents of Colorado; and

(c) Have a monthly household gross income at or below one hundred eighty-five percent of the federal poverty line.

(2) The department of human services shall periodically recertify an individual's eligibility to receive low-income energy assistance.

(3) In providing low-income energy assistance, the organization shall give priority to households where one or more persons are recipients of:

(a) An old age pension as set forth in section 26-2-111 (2), C.R.S.;

(b) Aid to the needy disabled as set forth in section 26-2-111 (4), C.R.S.;

(c) Aid to the blind as set forth in section 26-2-111 (5), C.R.S.;

(d) Supplemental social security disability benefits under 42 U.S.C. sec. 1396 et seq.; or

(e) Colorado works program assistance as set forth in section 26-2-706.6, C.R.S.

Source: L. 2005: Entire article added, p. 483, § 1, effective May 5. **L. 2008:** Entire section amended, p. 1801, § 23, effective July 1; (3)(e) amended, p. 1978, § 27, effective January 1, 2009. **L. 2010:** (1)(c) amended, (HB 10-1422), ch. 419, p. 2124, § 183, effective August 11.

Editor's note: Subsection (1)(e), amended by Senate Bill 08-177, was renumbered as subsection (3)(e) and harmonized with House Bill 08-1227, effective January 1, 2009.

40-8.7-110. Reports - repeal. (1) The organization shall submit a written report to the general assembly, the legislative audit committee, and the office of the state auditor on or before March 31 of each year, beginning in 2007, that covers the immediately preceding calendar year. The report shall include:

(a) An itemized account of moneys received by the organization from each utility;

(b) The amount of moneys distributed, the type of assistance provided, the geographic area of the state served, and an itemization of the programs through which the moneys are expended;

(c) The number of low-income households served, by utility and by type of assistance provided;

(d) An audited financial statement from the organization; and

(e) A summary of how the moneys collected were generated, including the number of customers participating in the program.

(1.5) To the extent applicable, the organization shall include in the report the information required by paragraphs (b) and (c) of subsection (1) of this section for moneys received from the Colorado energy office pursuant to section 40-8.7-112 (2)(a).

(2) The report shall be made available to the public for review.

(3) (a) The organization shall include in the report prepared pursuant to this section information related to money received from the Colorado energy office pursuant to section 40-8.7-112 (2)(f), which information must specify how the direct utility bill payments made pursuant to section 40-8.7-112 (2)(f) were made in accordance with section 801 (d) of the "Coronavirus Aid, Relief, and Economic Security Act", Pub.L. 116-136, also referred to as the "CARES Act".

(b) This subsection (3) is repealed, effective January 1, 2022.

Source: L. 2005: Entire article added, p. 484, § 1, effective May 5. **L. 2006:** (1.5) added, p. 6, § 2, effective February 3. **L. 2008:** (1.5) amended, p. 1874, § 15, effective June 2. **L. 2012:** (1.5) amended, (HB 12-1315), ch. 224, p. 981, § 52, effective July 1. **L. 2020:** (3) added, (HB 20-1412), ch. 113, p. 472, § 2, effective June 22.

Cross references: For the legislative declaration in HB 20-1412, see section 1 of chapter 113, Session Laws of Colorado 2020.

40-8.7-111. Jurisdiction of the public utilities commission. Nothing in this article shall be construed to expand or alter the jurisdiction of the public utilities commission.

Source: L. 2005: Entire article added, p. 484, § 1, effective May 5.

40-8.7-112. Department of human services low-income energy assistance fund - creation - energy outreach Colorado low-income energy assistance fund - creation - Colorado energy office low-income energy assistance fund - creation - definitions - repeal. (1) There is hereby created in the state treasury the department of human services low-income energy assistance fund, which shall be administered by the department of human services and shall consist of all moneys transferred by the treasurer as specified in section 39-29-109.3 (2)(f), C.R.S. All moneys in the fund are continuously appropriated to the department of human services for the purpose of increasing available funds under the low-income energy assistance program specified in section 26-1-109, C.R.S. All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(2) (a) There is hereby created in the state treasury the energy outreach Colorado low-income energy assistance fund, administered by the Colorado energy office. The fund consists of all money transferred by the state treasurer as specified in section 39-29-109.3 (2)(f) and any other money that the general assembly appropriates or transfers to the fund for the purposes set forth in this subsection (2). All money in the fund is continuously appropriated to the Colorado energy office for distribution to the organization to be used for the purposes set forth in this subsection (2). All money in the fund at the end of each fiscal year remains in the fund and does not revert to the general fund or any other fund.

(I) There is hereby created in the state treasury the energy outreach Colorado low-income energy assistance fund, administered by the Colorado energy office. The fund consists of all money transferred by the state treasurer as specified in section 39-29-109.3 (2)(f) and any other money that the general assembly appropriates or transfers to the fund for the purposes set forth in this subsection (2). All money in the fund is continuously appropriated to the Colorado energy office for distribution to the organization to be used for the purposes set forth in this

subsection (2). Except as provided in subsection (2)(a)(II) of this section, all money in the fund at the end of each fiscal year remains in the fund and does not revert to the general fund or any other fund.

(II) (A) On December 7, 2020, the state treasurer shall transfer five million dollars from the general fund to the energy outreach Colorado low-income energy assistance fund. The Colorado energy office shall distribute the money transferred pursuant to this subsection (2)(a)(II)(A) to the organization within three business days after the transfer. The organization shall disburse the money before June 30, 2021. Any money that the organization receives pursuant to this subsection (2)(a)(II)(A) that has not been disbursed by June 30, 2021, must be returned to the state on June 30, 2021,under terms dictated by the state controller for the purpose of transmitting the unused money to the general fund.

(B) On or before July 15, 2021, the organization shall submit a report to the Colorado energy office that includes, with regard to the money the organization received pursuant to subsection (2)(a)(II)(A) of this section, information on the amount of money that the organization disbursed and on the amount of money that the organization returned to the state. The Colorado energy office may conduct an audit or review of the organization's financial transactions and accounts regarding the money that the organization received pursuant to subsection (2)(a)(II)(A) of this section, to the extent that individual benefitting recipient data must be aggregated to retain privacy.

(C) The organization shall not use any money it receives pursuant to this subsection (2)(a)(II) for administrative purposes or to cover any expenses related to an application that was filed to request direct utility bill payment assistance pursuant to subsection (2)(f) of this section.

(D) This subsection (2)(a)(II) is repealed, effective September 1, 2021.

(b) The organization shall use moneys it receives from the Colorado energy office pursuant to paragraph (a) of this subsection (2) to provide direct bill payment assistance to low-income households when the department of human services is not accepting client applications for the program specified in section 26-1-109, C.R.S. Bill payments shall be paid to each utility as vendor payments. The organization may use up to five percent of the moneys for administration of the direct bill payment assistance in accordance with generally accepted accounting principles.

(c) The organization shall hold and administer all moneys it receives from the Colorado energy office pursuant to paragraph (a) of this subsection (2) in a separately identifiable account, the use of which shall be restricted to the purposes set forth in paragraph (b) of this subsection (2). The organization shall maintain its books and records pertaining to any moneys received from the Colorado energy office in accordance with generally accepted accounting principles. If the organization commingles the moneys with other assets of the organization for investment purposes, the organization shall maintain accurate accounts of the investment moneys and shall credit or charge a pro rata portion of all investment earnings, gains, or losses to the account that holds the moneys received from the Colorado energy office pursuant to paragraph (a) of this subsection (2).

(d) The organization shall develop an annual budget for the direct bill payment assistance program to determine the allocation of the moneys received from the Colorado energy office pursuant to paragraph (a) of this subsection (2).

(e) The organization shall include information related to any moneys received from the Colorado energy office pursuant to paragraph (a) of this subsection (2) in the report it prepares pursuant to section 40-8.7-110.

(I) The state treasurer shall transfer four million eight hundred thousand dollars from the care subfund in the general fund to the coronavirus relief account in the energy outreach Colorado low-income energy assistance fund, which account is hereby created. The money transferred to the coronavirus relief account pursuant to this subsection (2)(f) is continuously appropriated to the Colorado energy office for distribution to the organization to be used for the purpose set forth in this subsection (2)(f).

(II) The organization shall use money it receives from the Colorado energy office pursuant to this subsection (2)(f) to provide direct utility bill payment assistance to low-income households facing economic hardship caused by the COVID-19 pandemic, as permitted under the "Coronavirus Aid, Relief, and Economic Security Act", Pub.L. 116-136, also referred to as the "CARES Act". To receive direct bill payment assistance pursuant to this subsection (2)(f), a low-income household must certify pursuant to subsection (2)(f)(IV) of this section that its need for direct utility bill payment assistance results from the public health emergency caused by the COVID-19 pandemic.

(III) The organization shall make a direct utility bill payment authorized pursuant to this subsection (2)(f) as a vendor payment to a utility, including a municipally owned gas, electric, or gas and electric utility or a cooperative electric association that operates an alternative energy assistance program pursuant to section 40-8.7-106. The organization shall not use any portion of the money it receives from the Colorado energy office pursuant to this subsection (2)(f) for administrative purposes.

(IV) As part of an application filed to request direct utility bill payment assistance pursuant to this subsection (2)(f), the organization shall require the applicant to certify in good faith substantially the following:

This household needs direct utility bill payment assistance for its ongoing energy needs. The need for direct utility bill payment assistance is due to economic hardship incurred due to the public health emergency resulting from the COVID-19 pandemic.

(V) The organization shall hold and administer all money it receives from the Colorado energy office pursuant to this subsection (2)(f) in a separately identifiable account, the use of which is restricted to the purpose set forth in this subsection (2)(f). The organization shall maintain its books and records pertaining to any money received from the Colorado energy office pursuant to this subsection (2)(f) in accordance with generally accepted accounting principles. The organization shall not commingle the money received pursuant to this subsection (2)(f) with any other assets of the organization.

(VI) The organization must spend all of the money it receives from the Colorado energy office pursuant to this subsection (2)(f) before December 11, 2020. The organization shall return to the state any unexpended money received pursuant to this subsection (2)(f) under terms dictated by the state controller for the purpose of transmitting the unexpended money to the unemployment compensation fund, created in section 8-77-101 (1)(a), on or before December 30, 2020.

(VII) This subsection (2)(f) is repealed, effective September 1, 2021.

(3) (a) There is hereby created in the state treasury the Colorado energy office low-income energy assistance fund, which shall be administered by the Colorado energy office and shall consist of all moneys transferred by the treasurer as specified in section 39-29-109.3 (2)(f), C.R.S., all moneys transferred to the fund, all moneys received as a result of contracts entered into by the Colorado energy office for the office's program to improve the home energy efficiency of low-income households, and all moneys received by the Colorado energy office from gifts, grants, and donations for the office's program to improve the home energy efficiency of low-income households. All moneys in the fund are continuously appropriated to the Colorado energy office to be used for the purposes set forth in this subsection (3). All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(b) The Colorado energy office shall use moneys it receives pursuant to paragraph (a) of this subsection (3) for a program to provide home energy efficiency improvements for low-income households, which shall include any of the following services:

(I) Providing low-cost and cost-effective energy efficiency measures and energy education to low-income households in general;

(II) Retrofitting households with low-cost and cost-effective energy efficiency measures through the state weatherization assistance program;

(III) Providing heating system and other appliance replacement;

(IV) Providing cost-effective renewable energy measures;

(V) Supplementing the funding for any energy efficiency measures or services offered to low-income households through electric or gas utility energy efficiency or renewable energy programs; or

(VI) Paying a portion of the cost for energy efficiency upgrades to new housing built for low-income families.

(c) Households eligible for the home energy efficiency program described in paragraph (b) of this subsection (3) shall be at or below one hundred percent of the area median income guidelines adjusted for family size based on the most recently published area median income limits established by the United States department of housing and urban development.

(d) In carrying out the program to improve the home energy efficiency of low-income households, the Colorado energy office shall:

(I) Serve as many low-income households throughout the state as possible;

(II) Achieve the maximum lifetime energy savings per dollar expended;

(III) Use competitive bidding procedures to hire contractors; and

(IV) Whenever feasible, contract with Colorado accredited youth corps to provide labor.

(e) The Colorado energy office may use up to five percent of the moneys transferred pursuant to paragraph (a) of this subsection (3) for planning, overseeing, and evaluating the program to improve the home energy efficiency of low-income households. The Colorado energy office shall not hire additional state employees using moneys transferred pursuant to paragraph (a) of this subsection (3) to implement the program but may contract with nonprofit organizations, for-profit organizations, and governmental entities as is necessary to carry out the program.

(f) For any fiscal year in which moneys are expended as part of the program to improve the home energy efficiency of low-income households, the Colorado energy office shall prepare and submit to the general assembly an annual report that specifies:

(I) How the moneys were expended;

(II) The number of households served;

(III) The expected energy savings and other nonenergy benefits; and

(IV) Recommendations for any future programs of this nature.

(g) If the governor's energy office, as it existed prior to July 1, 2012, cannot use all of the moneys it receives for the state fiscal year commencing July 1, 2008, pursuant to paragraph (a) of this subsection (3) for the program described in paragraph (b) of this subsection (3), at the end of the fiscal year the state treasurer shall transfer the moneys that the governor's energy office cannot use to the clean energy fund created in section 24-75-1201 (1), C.R.S., as said fund existed prior to July 1, 2012.

(4) As used in this section, unless the context otherwise requires:

(a) "Colorado accredited youth corps" means a youth corps organization that is accredited by the Colorado youth corps association or the national association of service and conservation corps, or any successor organization.

(a.5) "Colorado energy office" means the Colorado energy office created in section 24-38.5-101, C.R.S.

(b) "Cost-effective" means energy efficiency measures whose monetary benefits exceed costs over the lifetime of the measures.

(b.3) "COVID-19" means the coronavirus disease 2019 caused by the severe acute respiratory syndrome coronavirus 2, also known as SARS-CoV-2.

(c) "Energy efficiency measures" means measures that reduce consumption of fossil fuels or electricity.

(d) Repealed.

Source: L. 2008: Entire section added, p. 1868, § 4, effective June 2; (3)(c) amended, p. 1337, § 12, effective May 27. **L. 2009:** (1) amended, (SB 09-279), ch. 367, p. 1932, § 24, effective June 1. **L. 2010:** (1)(c) added, (HB 10-1319), ch. 28, p. 104, § 2, effective March 18. **L. 2011:** (1)(d) and (1)(e) added, (SB 11-226), ch. 190, p. 735, § 9, effective May 19. **L. 2012:** (2), (3)(a), IP(3)(b), IP(3)(d), (3)(e), IP(3)(f), and (3)(g) amended, (4)(a.5) added, and (4)(d) repealed, (HB 12-1315), ch. 224, p. 981, § 53, effective July 1. **L. 2015:** (1) amended, (SB 15-264), ch. 259, p. 968, § 92, effective August 5. **L. 2020:** (2)(a) and IP(4) amended and (2)(f) and (4)(b.3) added, (HB 20-1412), ch. 113, p. 472, § 3, effective June 22. **L. 2020, 1st Ex. Sess.:** (2)(a), (2)(f)(VI), and (2)(f)(VII) amended, (SB 20B-003), ch. 7, p. 38, § 1, effective December 7.

Editor's note: The references to § 26-1-109 in this section apply to the state department of human services accepting funds on behalf of the state for any state plan not specifically identified, such as low-income energy assistance, relating to public assistance and welfare activities.

Cross references: For the legislative declaration in HB 20-1412, see section 1 of chapter 113, Session Laws of Colorado 2020.

ARTICLE 9

40-9-101. Application of sections. Sections 40-9-101 to 40-9-110 apply to any common carrier engaged in the transportation of passengers or property by railroad from one point within the state to any other point within the state. These sections do not apply to the ownership or operation of street transportation public utilities conducted solely as common carriers in the transportation of passengers.

Source: L. 07: p. 531, § 1. **R.S. 08:** § 5445. **L. 10:** p. 45, § 1. **C.L.** § 2978. **CSA:** C. 29, § 1. **CRS 53:** § 115-12-1. **C.R.S. 1963:** § 115-12-1. **L. 69:** p. 963, § 73. **L. 2019:** Entire section amended, (HB 19-1034), ch. 45, p. 152, § 1, effective July 1.

Cross references: For lien of common carrier on goods and baggage, see § 38-20-105; for motor vehicle carriers, see article 10 of title 40; for railroads, see article 20 of title 40.

40-9-102. Definitions. As used in sections 40-9-101 to 40-9-105, unless the context otherwise requires:

(1) "Common carriers" also includes express companies, private freight car lines, and pipe lines.

(2) "Railroad" includes all bridges used or operated in connection with any railroad; all the roads in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; all switches, spurs, tracks, and terminal facilities of every kind used or necessary in transportation of persons or property; all freight depots, yards, and grounds used or necessary in the transportation of persons or property; and all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any of said property.

(3) "Transportation" includes all cars, and all other vehicles and instrumentalities and facilities of a shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all service in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, demurrage, storing, or handling of property transported. It is the duty of every common carrier, subject to the provisions of sections 40-9-101 to 40-9-105, to provide such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto, and to provide a sufficient number of cars and a reasonable time schedule for trains.

Source: L. 07: p. 532, § 2. **R.S. 08:** § 5446. **L. 10:** p. 46, § 2. **C.L.** § 2979. **CSA:** C. 29, § 2. **CRS 53:** § 115-12-2. **C.R.S. 1963:** § 115-12-2.

40-9-103. Liability for damages. (1) In case any common carrier subject to the provisions of sections 40-9-101 to 40-9-105 does, causes, or permits any act, matter, or thing prohibited or declared to be unlawful in said sections or omits any act, matter, or thing required to be done in said sections such common carrier shall be liable to the person injured thereby for the full amount of damages sustained in consequence of any violation of the provisions of sections 40-9-101 to 40-9-105.

(2) Every common carrier receiving property for transportation between points within this state shall issue a receipt or a bill of lading therefor and shall be liable to the lawful holder

thereof for all loss, damage, or injury to such property caused by it or by any common carrier to which such property may be delivered or over whose lines such property may pass. No contract, receipt, rule, or regulation shall exempt such common carrier from any liability imposed in this section, but the carrier shall not be responsible for any greater sum than the value as fixed in the contract, receipt, or bill of lading where such valuation is stated. Nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law. The common carrier issuing such receipt or bill of lading shall be entitled to recover from the common carrier on whose lines the loss, damage, or injury has been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

(3) Notwithstanding subsection (2) of this section, a rail carrier may establish rates for the transportation of property under which the liability of the carrier for such property is limited to a value established by a written declaration of the shipper or by a written agreement between the shipper and the rail carrier, and such carrier may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the rail carrier for loss or damage to the property or for delay in the transportation of such property.

Source: L. 07: p. 534, § 8. **R.S. 08:** § 5452. **L. 10:** p. 49, § 8. **C.L.** § 2985. **CSA:** C. 29, § 8. **CRS 53:** § 115-12-3. **C.R.S. 1963:** § 115-12-3. **L. 84:** (3) added, p. 1043, § 8, effective July 1.

40-9-104. Violation - penalty. Any common carrier subject to the provisions of sections 40-9-101 to 40-9-105, or, whenever such common carrier is a corporation, any director or officer thereof or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, or any shipper, consignee, or applicant for cars who alone or with any other corporation, company, person, or party willfully does or causes to be done or willfully suffers or permits to be done any act, matter, or thing prohibited by sections 40-9-101 to 40-9-105 or declared to be unlawful or who aids or abets therein, or willfully omits or fails to do any act, matter, or thing required to be done in said sections, or aids or abets any such omission or failure, or is guilty of any infraction of said sections, or aids or abets therein, or fails or refuses or neglects to obey any order of the commission made under the provisions of said sections is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each offense.

Source: L. 07: p. 535, § 9. **R.S. 08:** § 5453. **L. 10:** p. 50, § 9. **C.L.** § 2986. **CSA:** C. 29, § 9. **CRS 53:** § 115-12-4. **C.R.S. 1963:** § 115-12-4.

40-9-105. Diligence in transporting - penalty for failure. (1) It is the duty of every common carrier to transport all shipments between points in this state with the utmost diligence and to move perishable products toward their destination continuously without unnecessary delays or longer stops than regular stops at stations or stops for icing or watering and at a minimum speed of not less than ten miles per hour; but excessive storms, unavoidable accidents, or damage to roadbeds which delay such shipments beyond the power of the common carrier to immediately overcome shall exempt such common carrier from compliance with the minimum speed limit, until such storms subside or such damage can be expeditiously repaired.

(2) For failure of any common carrier to receive and transport such shipments with the utmost diligence, such common carrier issuing the receipt or bill of lading therefor shall pay to the owner, consignee, or other interested party whose interests may appear, such actual damages as the owner, consignee, or other interested party may sustain, and the same may be sued for and be recovered in any court of competent jurisdiction in the district in which the plaintiff resides.

Source: L. 07: p. 544, § 26. **R.S. 08:** § 5470. **L. 10:** p. 62, § 25. **C.L.** § 2996. **CSA:** C. 29, § 19. **CRS 53:** § 115-12-5. **C.R.S. 1963:** § 115-12-5.

40-9-106. Transportation of livestock - not less than ten miles per hour. Every common carrier in this state must transport livestock from the initial point of shipment in this state to the point of destination in this state at an average rate of speed of not less than ten miles an hour and within such time, from the hour of loading at the initial point to the hour of arrival at the destination, that the point of destination shall be reached in not more than one-tenth as many hours as there were miles required to be traveled in the transportation of such shipment; except only that necessary stops of reasonable duration for feeding purposes, when required by the length of the journey, or necessary and imperative delays caused only by an act of God or inevitable accident shall not be computed in determining such minimum requirements as to speed.

Source: L. 21: p. 163, § 1. **C.L.** § 2997. **CSA:** C. 29, § 20. **CRS 53:** § 115-12-6. **C.R.S. 1963:** § 115-12-6.

40-9-107. Damages for failure to comply. For failure of any common carrier to transport any such shipment within the time required by section 40-9-106, the common carrier issuing the receipt or bill of lading shall pay to the owner, consignee, or other interested party whose interest may appear such actual damages as the owner, consignee, or other interested party may sustain, together with exemplary damages in a sum of not less than one hundred dollars nor more than one thousand dollars, to be fixed by the jury or by the court if the cause is tried without a jury, and such actual and exemplary damages may be sued for and recovered in any court of competent jurisdiction in the district in which the plaintiff resides.

Source: L. 21: p. 163, § 2. **C.L.** § 2998. **CSA:** C. 29, § 21. **CRS 53:** § 115-12-7. **C.R.S. 1963:** § 115-12-7.

40-9-108. Accidents - notice - investigation. (1) Every railroad, whenever an accident attended by bodily injury or loss of human life occurs in this state on its line of road or on its ground or in its yards, shall give immediate written notice thereof to the public utilities commission. In the event of any such accident, the commission, if it deems the public interest to require it, shall cause a suitable investigation to be made forthwith and shall give written notice thereof to the person and railroad primarily interested.

(2) The expense of such investigation shall be certified by a majority of the commission and shall be audited and paid by the state in the same manner as other expenses are audited and paid. The commission is empowered to make and enforce such rules as, in its judgment, will tend to prevent accidents in the operation of the railroads of this state.

Source: L. 07: p. 544, § 27. **R.S. 08:** § 5471. **L. 10:** p. 63, § 26. **C.L.** § 2999. **CSA:** C. 29, § 22. **CRS 53:** § 115-12-8. **C.R.S. 1963:** § 115-12-8. **L. 69:** p. 963, § 74.

Cross references: For employer's duty to keep a record of injuries received by employees as well as the duty to report those injuries to the division of labor, see § 8-43-101.

40-9-109. Transportation of service animals accompanying individuals with disabilities. When an individual with a disability is accompanied by a service animal or an animal that is being trained as a service animal, as defined in section 24-34-301, C.R.S., for such individual with a disability, neither the individual with a disability nor the service animal shall be denied the facilities of any common carrier, nor shall the individual with a disability be denied the immediate custody of the service animal while riding upon a common carrier. The provisions of this section also apply to a trainer of a service animal, as defined in section 24-34-301, C.R.S., for use by a qualified individual with a disability, unless the service animal presents an imminent danger to the public health or safety. The individual with a disability or the trainer of the service animal shall be liable for any damage done to the premises or facilities of the common carrier by the service animal. An animal being individually trained for the purpose of aiding an individual with a disability shall be visibly and prominently identified as a service animal in training.

Source: L. 41: p. 343, § 1. **CSA:** C. 29, § 21(1). **CRS 53:** § 115-12-9. **C.R.S. 1963:** § 115-12-9. **L. 86:** Entire section amended, p. 935, § 2, effective March 20. **L. 89:** Entire section amended, p. 1045, § 2, effective April 19. **L. 2001:** Entire section amended, p. 1282, § 62, effective June 5. **L. 2014:** Entire section amended, (SB 14-118), ch. 250, p. 987, § 25, effective August 6.

40-9-110. Railroad freight transport - number of crew members required - penalty - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that it is in the public interest to require that a common carrier engaged in the transportation of freight by railroad have multiple crew members aboard a railroad train or light engine in order to help ensure the public safety of citizens of this state and the safety of the state's waterways and natural environment.

(2) A railroad train or light engine operated in connection with carrying freight must have at least two crew members aboard while the railroad train or light engine is moving.

(3) Subsection (2) of this section does not apply to:

(a) Helper service;

(b) Trains that are used primarily for the purpose of transporting people from one location to another or are used for tourism purposes such as scenic, historic, or excursion rides;

(c) A locomotive or group of locomotives that are traveling no more than thirty miles per hour outside of a rail yard and are attached only to a caboose;

(d) Hostler service; and

(e) The movement of a train for the purpose of loading or unloading freight so long as the train is moving no more than ten miles per hour.

(4) A person who willfully violates subsection (2) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of:

(a) Not less than two hundred fifty dollars nor more than one thousand dollars for a first offense;

(b) Not less than one thousand dollars nor more than five thousand dollars for a second offense committed within three years; or

(c) Not less than five thousand dollars nor more than ten thousand dollars for a third or subsequent offense committed within three years.

(5) As used in this section:

(a) (I) "Crew member" means an employee of the common carrier involved in the operation of a railroad train or light engine.

(II) "Crew member" does not include a hostler service or utility employee or contractor of the carrier.

(b) (I) "Helper service" means the use of a locomotive or a group of locomotives to assist another train that is experiencing mechanical failure or lacks the power to traverse difficult terrain.

(II) "Helper service" includes the travel to or from a location where the assistance is provided.

(c) "Hostler service" means the movement of locomotives that are not attached to rail cars within a rail yard.

Source: L. 2019: Entire section added, (HB 19-1034), ch. 45, p. 152, § 2, effective July 1.

ARTICLE 9.5

Cooperative Electric Associations

PART 1

GENERALLY

40-9.5-101. Legislative declaration. The general assembly hereby finds and declares that cooperative electric associations which are owned by the member-consumers they serve are regulated by the member-consumers themselves acting through an elected governing body. It is further declared that the regulation by the public utilities commission under the "Public Utilities Law", articles 1 to 7 of this title, may be duplicative of the self-regulation by the association and may be neither necessary nor cost-effective. It is therefore the purpose of this part 1 to determine the necessity of regulation by the public utilities commission by allowing cooperative electric associations to exempt themselves from regulation by the public utilities commission.

Source: L. 83: Entire article added, p. 1567, § 1, effective July 1. **L. 86:** Entire section amended, p. 1162, § 3, effective May 27.

40-9.5-102. Definitions. For the purposes of this part 1, "cooperative electric association" includes a nonprofit electric corporation or association but does not include nonprofit generation and transmission electric corporations or associations.

Source: L. 83: Entire article added, p. 1567, § 1, effective July 1. **L. 86:** Entire section amended, p. 1162, § 4, effective May 27.

40-9.5-103. Exemption from "Public Utilities Law". Except as otherwise provided in this part 1, the provisions of the "Public Utilities Law", articles 1 to 7 of this title, shall not apply to cooperative electric associations which have, by an affirmative vote of the members and consumers pursuant to section 40-9.5-104, voted to exempt themselves from such provisions and to be subject to the provisions of this part 1. The period of exemption shall begin on the date the election results are filed with the public utilities commission.

Source: L. 83: Entire article added, p. 1567, § 1, effective July 1. **L. 86:** Entire section amended, p. 1162, § 5, effective May 27.

40-9.5-104. Procedure for exemption - election. (1) (a) The board of directors of each cooperative electric association may, at its option, submit the question of its exemption from the "Public Utilities Law", articles 1 to 7 of this title, to its members and its consumers. Approval by a majority of those voting in the election shall be required for such exemption.

(b) The board of directors of the cooperative electric association shall be responsible for mailing the ballots to all members and consumers of the association, for counting the returned ballots, and for determining the result of the election and shall also be responsible for insuring that the election is not held in a dishonest, corrupt, or fraudulent manner. The ballot shall contain the following language:

"Shall ..... (name of the cooperative electric association) be exempt from regulation by the public utilities commission of the state of Colorado?

( ) Yes ( ) No"

(c) The ballot must be postmarked or returned in an envelope accompanying the ballot with return postage paid within thirty days after it was mailed to the member or consumer.

(d) The results of the election held pursuant to this subsection (1) shall be certified by the secretary of the board of directors of the cooperative electric association no later than sixty days after the ballots are mailed to the members and consumers, and said secretary shall file the results with the director of the public utilities commission.

(2) Upon an affirmative vote of the members and consumers of the cooperative electric association on the question of exempting said association, the association shall be exempt from the "Public Utilities Law", articles 1 to 7 of this title, beginning on the date the election results are filed with the public utilities commission.

Source: L. 83: Entire article added, p. 1568, § 1, effective July 1. **L. 85:** (1)(a) amended, p. 1299, § 1, effective May 31. **L. 2003:** (1)(d) amended, p. 1707, § 23, effective May 14.

40-9.5-105. Certificate of public convenience and necessity. (1) A certificate of public convenience and necessity issued by the public utilities commission prior to July 1, 1983, assigning specific service territories to a cooperative electric association shall remain in full force and effect and shall be subject to such rights and limitations as other certificates of public

convenience and necessity held by other electric public utilities subject to regulation of the public utilities commission.

(2) After giving simultaneous notice by certified mail to other electric public utilities serving areas adjacent to an unserved, uncertificated territory and to the public utilities commission of its intent to extend service, a cooperative electric association shall have the right to extend service into such unserved, uncertificated territory unless the public utilities commission receives a complaint concerning such extension. Such complaint must be received by the commission no later than thirty days following the commission's receipt of the notice of extension. Upon the filing of a complaint, the commission shall determine whether to issue a certificate of public convenience and necessity authorizing such extension.

(3) Whenever the public utilities commission, after a hearing upon complaint, finds that an electric public utility, including a cooperative electric association, is unwilling or unable to serve an existing or newly developing load within its certificated territory and that the public convenience and necessity requires a change, said commission may, in its discretion, delete from the certificate of said public utility or association that portion of said territory which the public utility or association is unwilling or unable to serve and incorporate said territory into the certificated territory of another electric public utility, including another cooperative electric association, upon such terms as are just and reasonable, having due regard to due process of law and to all the rights of the respective parties and to public convenience and necessity.

(4) Upon complaint filed by an electric public utility, including a cooperative electric association, the public utilities commission shall determine whether any construction or extension made or proposed to be made by another such public utility or association will interfere with or duplicate the line, plant, system, or service of the complainant, in which event the public utilities commission may make such order prohibiting such construction or extension or prescribing the terms and conditions thereof as to it may seem just and reasonable.

(5) The provisions of articles 6 and 7 of this title shall apply to any proceeding of the public utilities commission required by this section.

(6) Except as otherwise provided in this part 1, the enactment of this part 1 shall neither enlarge nor diminish the rights and obligations of electric public utilities, including cooperative electric associations, under certificates of public convenience and necessity issued by the public utilities commission. Nothing in this part 1 shall enlarge or diminish the respective rights and obligations of electric public utilities, including cooperative electric associations, or municipalities under franchise or other contractual agreements.

Source: L. 83: Entire article added, p. 1568, § 1, effective July 1. **L. 85:** (2) amended, p. 1301, § 3, effective April 5. **L. 86:** (6) amended, p. 1162, § 6, effective May 27.

40-9.5-106. Prohibited acts. (1) No cooperative electric association shall make a change in any rate charged for electric service or in any rule or regulation in connection therewith unless such association shall provide public notice of such proposed change at least thirty days prior to the day the proposed change is to take effect.

(2) No cooperative electric association, as to rates, charges, service, or facilities or as to any other matter, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No cooperative electric association shall establish or maintain any unreasonable difference as to rates, charges, service,

or facilities or as to any other matter, either between localities or between any class of service. Notwithstanding section 40-6-108 (1)(b), any complaint arising out of this subsection (2) signed by one or more customers of such association shall be resolved by the public utilities commission in accordance with the hearing and enforcement procedures established in articles 6 and 7 of this title. A cooperative electric association may approve any reasonable rate, charge, service, classification, or facility that establishes a graduated rate for increased energy consumption, for energy conservation and energy efficiency purposes, by residential customers that is revenue-neutral for the class, where revenue includes margins, expenses, riders, or charges as approved by the cooperative electric association. The implementation of such rate, charge, service, classification, or facility by a cooperative electric association shall not be deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination. In adopting such rate, a cooperative electric association shall give due consideration to the impact of such rates on low-income customers. A cooperative electric association may utilize a community energy fund as contemplated by section 40-2-127 for energy efficiency, energy conservation, weatherization, and renewable energy purposes. A cooperative electric association shall not apply such rate to consumers that have single meters that record energy consumption for combined residential and agricultural uses.

(3) No rates, charges, rules, or regulations of a cooperative electric association shall be unjust or unreasonable. Any complaint under this subsection (3) shall be resolved by the public utilities commission in accordance with the hearing and enforcement procedures established in articles 6 and 7 of this title if the complaint alleging a violation is signed by the mayor, the president or chairman of the board of trustees, or a majority of the council, commission, or other legislative body of an affected county, city and county, city, or town, an affected public utility, or any one or more affected entities constituting a separate rate class of the association or is signed by not less than twenty-five customers or prospective customers of such association.

Source: L. 83: Entire article added, p. 1569, § 1, effective July 1. **L. 2009:** (2) amended, (SB 09-039), ch. 175, p. 777, § 2, effective August 5.

40-9.5-107. Duties of cooperative electric associations. (1) Cooperative electric associations shall provide reasonably continuous and adequate electric utility service to all members and consumers within their certificated service areas.

(2) Cooperative electric associations shall provide and maintain reasonably adequate facilities for the provision of electric utility service within their certificated service areas.

(3) All cooperative electric associations shall cooperate with each other and with other electric utilities in avoiding unnecessary construction of facilities and cooperate in the joint use of facilities for generation, transmission, and distribution of electric energy.

(4) Cooperative electric associations shall construct and maintain their facilities in a careful and safe fashion so as to minimize hazards to either persons or property.

(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.

(6) If a cooperative electric association has an immediate shutoff policy, such association shall have provisions for an immediate appeal of such policy to the board of directors.

(7) The board of directors of a cooperative electric association shall adopt all necessary rules and regulations to comply with the provisions of this part 1.

(8) Any conflict arising out of this section shall be resolved by the public utilities commission in accordance with the hearing procedures established in article 6 of this title.

Source: L. 83: Entire article added, p. 1570, § 1, effective July 1. **L. 86:** (7) amended, p. 1162, § 7, effective May 27; (5) amended, p. 1223, § 38, effective May 30. **L. 2005:** (5) amended, p. 239, § 3, effective August 8.

40-9.5-108. Public meetings. (1) All meetings of a cooperative electric association are declared to be open meetings and open to the members, consumers, and news media at all times; but such association, by a two-thirds affirmative vote of the board members present, may go into executive session for consideration of documents or testimony given in confidence, but such association shall not make final policy decisions or adopt or approve any resolution, rule, regulation, or formal action, any contract, or any action calling for the payment of money at any session which is closed to the members, consumers, and news media.

(2) (a) Before the board of directors convenes in executive session, the board shall announce the general topic of the executive session.

(b) At every regular meeting of the board of directors, members of the association shall be given an opportunity to address the board on any matter concerning the policies and business of the association. The board may place reasonable, viewpoint-neutral restrictions on the amount and duration of public comment.

(c) Written minutes shall be made of all meetings of the board of directors. The minutes shall be posted on the website of the association as soon as they have been approved and shall remain posted until at least six months after the date of the meeting. Upon request by a member of the board, that member's own vote on any issue shall be noted in the minutes.

(3) Any action taken contrary to the provisions of this section shall be null and void and without force or effect.

Source: L. 83: Entire article added, p. 1570, § 1, effective July 1. **L. 2010:** (2) amended, (HB 10-1098), ch. 424, p. 2194, § 1, effective August 11.

40-9.5-109. Regulations governing consumer complaints. The board of directors of each cooperative electric association shall adopt regulations which specify a procedure for members and consumers to register complaints about and be given an opportunity to be heard by the board on the rates charged by such association, the manner in which the electric service is provided, and proposed changes in the rates or regulations. Such regulations may be amended whenever deemed appropriate by the board.

Source: L. 83: Entire article added, p. 1570, § 1, effective July 1. **L. 85:** Entire section amended, p. 1299, § 3, effective May 31. **L. 93:** Entire section amended, p. 2072, § 34, effective July 1.

40-9.5-109.5. Election policy - adoption - publication - contents. (1) The board of directors of each cooperative electric association shall adopt a written policy governing the election of directors. The election policy shall be posted on the association's website. The election policy shall contain true and complete information on the following subjects:

(a) The procedure and timing for a member to become a candidate for the board of directors and the process by which elections for the board of directors are held;

(b) The qualifications for candidates and requirements for appearing on the ballot;

(c) The date of the election, which shall be fixed, posted on the association's website, and otherwise publicized no less than six months before the election.

(2) In addition to the posting required in subsection (1) of this section, information on how to become a candidate and the schedule for elections shall be communicated to each member in a mailing and on the association's website no less than two months before petitions to become a candidate are due.

(3) The ballot mailing deadline shall be posted on the website at least three months before the deadline and shall remain so posted until after the election.

Source: L. 2010: Entire section added, (HB 10-1098), ch. 424, p. 2194, § 2, effective August 11.

40-9.5-110. Board of directors of cooperative electric associations - nomination - elections. (1) (a) A nomination for director on the board of directors of a cooperative electric association may be made by written petition signed by at least fifteen members of such association, and filed with the board of directors of such association no later than forty-five days prior to the date of the election. Any petition so filed shall designate the name of the nominee and the term for which nominated. The name of a nominee shall appear on the ballot if the nominating petition is in apparent conformity with this section as determined by the secretary of the board. Nomination and election of directors by districts, if provided for in the bylaws of the association, shall be permitted.

(b) Candidates for positions on the board of directors shall be entitled to receive membership lists, in a usable format, on the same basis and at the same time as such lists are made available to incumbent directors running for reelection. Candidates shall use such lists only for purposes of the election and shall return or destroy them immediately after the election.

(c) All board members shall make available to association members some means for direct contact, whether by telephone, electronic mail, or regular mail. Information on how to contact each board member by one or more of these methods shall be available on the association website.

(2) (a) (I) Each member of the association is entitled to vote in the election of directors on the board of directors either at a meeting held for such purpose or by mail, but not both. A member who has voted by mail is not entitled to vote at the meeting.

(II) Mail voting must be in writing on ballots provided by the association. The mail ballot shall be voted by the member, placed in a special secrecy sleeve or inner envelope provided for the purpose so as to conceal the marking on the ballot, deposited in a return envelope, which must be signed by the voting member, and mailed back to the association or to an independent third party with whom the association has contracted for the storage and counting of ballots in accordance with paragraph (c) of this subsection (2).

(III) A mail ballot received in a signed return envelope but without a secrecy sleeve or inner envelope is nonetheless valid and shall be counted.

(b) The order of names on the ballot shall be determined randomly in a manner that does not automatically assign the top line to the incumbent.

(c) The board of directors shall, when practicable, arrange for an independent third party to oversee the storage and counting of ballots. If this is not practicable, then ballots shall be collected and stored in a manner that protects the privacy of their content. All candidates for the board of directors shall be given the opportunity to be present to observe the counting of the ballots; except that, if the association has contracted with an independent third party to collect and count ballots, the ballots must be delivered to the association under seal promptly after the count and, upon the request of any candidate, made available to the candidate for inspection.

(3) Voting for directors on the board of directors by proxy or cumulative voting is prohibited.

(4) Neither the association nor the board of directors shall endorse or oppose the candidacy of an incumbent board member or other candidate for a position on the board. During the two months immediately preceding the election, board members shall not send individual newsletters using the association's resources.

Source: L. 83: Entire article added, p. 1571, § 1, effective July 1. **L. 85:** (2) amended, p. 1302, § 4, effective April 5. **L. 2010:** Entire section amended, (HB 10-1098), ch. 424, p. 2195, § 3, effective August 11. **L. 2016:** (2)(a) and (2)(c) amended, (SB 16-055), ch. 46, p. 109, § 1, effective August 10.

40-9.5-111. Notice of meeting - agenda. (1) Notice of the time and place of a meeting of the board of directors and a copy of the agenda for such meeting shall be posted in every service office maintained by the association at least ten days before the meeting. The agenda shall specifically designate the issues or questions to be discussed, or the actions to be taken, at the meeting. Copies of the agenda shall be available at each service office for members and consumers.

(2) The date, time, location, and agenda of every meeting of the board of directors shall be posted on the association's website no less than ten days before the meeting in the case of regular meetings and as soon as the meeting is scheduled in the case of special meetings. If a meeting is postponed or cancelled, notice of the postponement or cancellation shall immediately be posted on the website.

Source: L. 83: Entire article added, p. 1571, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1098), ch. 424, p. 2196, § 4, effective August 11.

40-9.5-112. Provisions applicable to cooperative electric associations. Except as otherwise provided in this part 1, the provisions of article 55 of title 7, C.R.S., shall apply to cooperative electric associations. In the case of any irreconcilable conflict between said article and this part 1, this part 1 shall control. Section 40-4-105 shall apply to cooperative electric associations with respect to crossing of railroad rights-of-way.

Source: L. 83: Entire article added, p. 1571, § 1, effective July 1. **L. 86:** Entire section amended, p. 1163, § 8, effective May 27. **L. 2002:** Entire section amended, p. 1948, § 4, effective June 8. **L. 2010:** Entire section amended, (HB 10-1098), ch. 424, p. 2197, § 5, effective August 11.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 350, Session Laws of Colorado 2002.

40-9.5-113. Method of reimposing public utilities commission regulation. Any cooperative electric association may vote no more than once a year to place said association under the regulation of the public utilities commission, as provided in the "Public Utilities Law", articles 1 to 7 of this title. Said question shall only be submitted to the member-consumers of the association if at least five percent of the member-consumers of the association sign a petition requesting such an election and if such signatures are gathered within a six-month period immediately preceding the submission of the petition to the association's board of directors. No petition circulated pursuant to this section shall be valid unless the petition sponsor notifies the board in writing prior to circulation for signatures. Such petition shall be submitted to, and signatures certified by, the board at a regular scheduled meeting. Such certification shall include a determination as to whether the signatures on the petition were gathered within a six-month period immediately preceding the submission of the petition to the board. After the petition has been certified by the board, the commission shall conduct an election within forty-five days on the question. If a majority of the persons voting at the election vote in favor of placing their association under commission regulation, the commission shall reassert its regulation upon determination of the election results.

Source: L. 83: Entire article added, p. 1571, § 1, effective July 1. **L. 85:** Entire section amended, p. 1302, § 5, effective April 5. **L. 2005:** Entire section amended, p. 330, § 1, effective April 20.

40-9.5-114. Public utilities commission - fees. No cooperative electric association which has voted to exempt itself from the "Public Utilities Law", articles 1 to 7 of this title, and to be subject to the provisions of this part 1 shall be required to pay to the public utilities commission the fees imposed by the provisions of article 2 of this title; except that, for any year in which the commission is required, pursuant to section 40-9.5-105 or 40-9.5-113, to act with respect to an exempt cooperative electric association, such exempt association shall pay to the commission actual and necessary costs not to exceed twenty-five percent of the fees that it would have been liable for under the provisions of article 2 of this title if regulated by the commission.

Source: L. 83: Entire article added, p. 1572, § 1, effective July 1. **L. 85:** Entire section amended, p. 1304, § 1, effective April 30. **L. 86:** Entire section amended, p. 1163, § 9, effective May 27.

40-9.5-114.5. Applicability of sections 40-9.5-108 to 40-9.5-112. The provisions of sections 40-9.5-108 to 40-9.5-112 shall be applicable to all cooperative electric associations with

membership of more than twenty-five thousand members whether regulated under this part 1 or the "Public Utilities Law", articles 1 to 7 of this title.

Source: L. 85: Entire section added, p. 1299, § 2, effective May 31. **L. 86:** Entire section amended, p. 1163, § 10, effective May 27. **L. 93:** Entire section amended, p. 2072, § 35, effective July 1.

40-9.5-115. Repeal of article. (Repealed)

Source: L. 83: Entire article added, p. 1572, § 1, effective July 1. **L. 85:** Entire section repealed, p. 1303, § 6, effective April 5.

40-9.5-116. Investment in public-private transportation facilities. (1) Notwithstanding any provision of law to the contrary, the board of directors of a cooperative electric association may consider investing in one or more of the following:

(a) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;

(b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.;

(c) Repealed.

(d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

(2) The board of directors of a cooperative electric association may give preference to the investments described in subsection (1) of this section if such investments are in the interest of the cooperative electric association's members and are consistent with sound investment policy.

Source: L. 98: Entire section added, p. 446, § 8, effective August 5. **L. 2005:** (1)(c) repealed, p. 289, § 41, effective August 8.

Cross references: For the legislative declaration contained in the 1998 act enacting this section, see section 1 of chapter 154, Session Laws of Colorado 1998.

40-9.5-117. Surcharge for underground conversion of facilities. The board of directors of a cooperative electric association may adopt a resolution to impose a surcharge on those consumers within the service area of the cooperative electric association who derive a direct benefit from the conversion of overhead electric and communication facilities to underground locations. Such surcharge shall be limited to costs related to the conversion of overhead electric and communication facilities to underground locations.

Source: L. 99: Entire section added, p. 373, § 3, effective April 22.

40-9.5-118. Net metering - rules. (1) **Definitions.** For purposes of this section, unless the context otherwise requires:

(a) "Customer-generator" means an end-use electricity customer that generates electricity on the customer's side of the meter using eligible energy resources.

(b) "Eligible energy resources" has the meaning established in section 40-2-124.

(2) Each cooperative electric association shall allow a customer-generator's retail electricity consumption to be offset by the electricity generated from eligible energy resources on the customer-generator's side of the meter that are interconnected with the facilities of the cooperative electric association, subject to the following:

(a) **Monthly excess generation.** If a customer-generator generates electricity in excess of the customer-generator's monthly consumption, all such excess energy, expressed in kilowatt-hours, shall be carried forward from month to month and credited at a ratio of one to one against the customer-generator's energy consumption, expressed in kilowatt-hours, in subsequent months.

(b) **Annual excess generation.** Within sixty days after the end of each annual period, or within sixty days after the customer-generator terminates its retail service, the cooperative electric association shall account for any excess energy generation, expressed in kilowatt-hours, accrued by the customer-generator and shall credit such excess generation to the customer-generator in a manner deemed appropriate by the cooperative electric association.

(c) **Nondiscriminatory rates.** A cooperative electric association shall provide net metering service at nondiscriminatory rates.

(d) **Interconnection standards.** A cooperative electric association and a customer-generator shall comply with the interconnection standards and insurance requirements established in the rules promulgated by the public utilities commission pursuant to section 40-2-124; except that the cooperative electric association may reduce or waive any of the insurance requirements, and except that the public utilities commission shall initiate a rule-making proceeding no later than October 1, 2008, for the purpose of addressing cooperative electric association system issues in its small generator interconnection procedures. A cooperative electric association shall not prevent or unreasonably burden the installation of a net metering system if such system includes protective equipment that prevents any export of customer-generated electricity from the customer's side of the meter.

(e) (I) **Size specifications.** Each cooperative electric association shall allow:

(A) Residential customer-generators to generate electricity subject to net metering up to ten kilowatts; and

(B) Commercial or industrial customer-generators to generate electricity subject to net metering up to twenty-five kilowatts.

(II) Each cooperative electric association may allow customer-generators to generate electricity subject to net metering in amounts in excess of the minimum amounts specified in subparagraph (I) of this paragraph (e). If the cooperative electric association denies interconnection to a customer-generator that has requested interconnection of a system with a capacity of twenty-five kilowatts or larger, the association shall provide a written technical or economic explanation of such denial to the customer.

(3) The cooperative electric association and the customer-generator shall indemnify, defend, and save the other party harmless from any and all damages, losses, or claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other party's action or failure to act in relation to any obligations under this section, except in cases of gross negligence or intentional wrongdoing by the indemnified party.

Source: L. 2008: Entire section added, p. 188, § 2, effective August 5.

PART 2

SERVICE TERRITORIES WITHIN MUNICIPALITIES
OWNING AND OPERATING ELECTRIC UTILITIES

40-9.5-201. Legislative declaration. The general assembly hereby finds and declares that the provisions of article XXV of the Colorado constitution allow the public utilities commission to establish exclusive service territories for utilities as provided in article 5 of this title and that it has been the policy of the state of Colorado to establish exclusive service territories for cooperative electric associations. The general assembly further finds and declares that, if a cooperative electric association has been granted an exclusive service territory that is within a municipality that operates an electric utility or within an area annexed by a municipality that operates an electric utility, the municipality has taken private property and shall pay just compensation for the electric distribution facilities and certificate of public convenience and necessity of the association located within the municipality. Therefore, it is declared to be a matter of statewide concern and to be the purpose of this part 2 to establish a procedure to be followed when the certificated service territory of a cooperative electric association is included within a municipality that operates an electric utility or within an area annexed by a municipality that operates an electric utility.

Source: L. 86: Entire part added, p. 1159, § 1, effective May 27.

40-9.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Cooperative electric association" shall have the same meaning as in section 40-9.5-102.

(2) "Electric distribution facilities" means all or any portion of the electric lines and facilities of a cooperative electric association used or capable of being used in serving ultimate consumers, but the term does not include transmission lines, feeder lines, and substation facilities, or portions thereof, which are necessary for the integration and operation of portions of the association's electric system which are located outside a municipality or the area annexed by a municipality, nor does the term include transformers, meters, and associated metering equipment.

(3) "Municipality" means a statutory or home rule town, city, or city and county.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

40-9.5-203. Service rights and facilities of cooperative electric associations within municipalities or within areas to be annexed by municipalities which own and operate electric utilities. (1) Notwithstanding any provision to the contrary, if a cooperative electric association has certificated service territory within a municipality which after May 27, 1986, commences operation of its own electric utility or has certificated service territory within an area annexed after May 27, 1986, by a municipality which owns and operates an electric utility, the municipality shall pay just compensation for the electric distribution facilities of the cooperative

electric association located within the territory, together with the association's certificate of public convenience and necessity constituting its rights to serve such territory.

(2) No later than thirty days prior to final action on each annexation ordinance, the municipality shall notify the affected cooperative electric association in writing of the boundaries of the municipality or the annexed area within which certificated service territory of the association is included and shall indicate such boundaries or area on appropriate maps.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

40-9.5-204. Just compensation for service rights and facilities by municipality. (1) The just compensation for electric distribution facilities and service rights shall be:

(a) The present-day reproduction cost, new, of the electric distribution facilities being acquired, less depreciation computed on a straight-line basis over thirty-five years with such depreciation being limited to one-half of such cost; and

(b) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the cooperative electric association located outside the municipality or the area annexed by the municipality after detaching the electric distribution facilities to be sold; and

(c) An annual amount, payable each year for a period of ten years following the date of purchase, equal to twenty-five percent of the revenues received by the municipality from the sale of electric power to the services within such municipality which were previously served by the cooperative electric association; and

(d) An annual amount equal to five percent of the revenues received by the municipality from the sale of electric power to the additional services that come into existence in the affected area, for each year for a period of ten years following the date of acquisition.

(2) If the cooperative electric association and the municipality cannot agree on the amount to be paid pursuant to subsection (1) of this section, either party may bring an action for condemnation or inverse condemnation in the district court for the county in which the property is located to determine the amount to be paid pursuant to the factors stated in subsection (1) of this section. During the pendency of any such action, the municipality shall deposit with the court the amount the municipality has offered to be paid the cooperative electric association, and, upon said payment, the municipality shall have the right to serve all electric customers within the annexed area.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

40-9.5-205. Purchase by cooperative electric association of electric distribution facilities and service rights of municipality. If any municipality changes its boundaries so as to exclude from its corporate limits any territory previously served by a cooperative electric association, such municipality shall give, within thirty days, written notice to the association of such exclusion of territory, and the cooperative electric association, within one hundred twenty days after receipt of such notice, shall purchase the municipality's electric distribution facilities and service rights within the excluded area. Section 40-9.5-204 shall apply to acquisitions by a cooperative electric association pursuant to this section.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

40-9.5-206. Provisions on purchase nonexclusive - no effect on existing contracts. (1) Nothing contained in this part 2 shall prohibit a municipality and a cooperative electric association from buying, selling, or exchanging electric distribution facilities, service rights, and other rights, property, and assets by mutual agreement.

(2) Nothing in this part 2 shall impair the obligations of existing contracts.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

40-9.5-207. Applicability. (1) This part 2 shall apply to all cooperative electric associations which have electric distribution facilities, franchises, certificates of public convenience and necessity, rights-of-way, or appurtenances to facilities which are included in the boundaries of a municipality which after May 27, 1986, commences operation of its own electric utility or are included in an area annexed by a municipality which owns and operates an electric utility.

(2) Notwithstanding any statutory provision to the contrary, the procedures in this part 2 relating to the allocation and conveyance of property and property rights of any cooperative electric association to any municipality or of any municipality to any cooperative electric association shall be exclusively available to such municipality and to such cooperative electric association.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

PART 3

NET METERING FOR CUSTOMER-GENERATORS
OF COOPERATIVE ELECTRIC ASSOCIATIONS

40-9.5-301 to 40-9.5-306. (Repealed)

Source: L. 2008: Entire part repealed, p. 188, § 1, effective August 5.

Editor's note: This part 3 was added in 2002. For amendments to this part 3 prior to its repeal in 2008, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 9.7

Colorado Clean Energy
Development Authority

40-9.7-101 to 40-9.7-123. (Repealed)

Source: L. 2012: Entire article repealed, (HB 12-1315), ch. 224, p. 984, § 55, effective July 1.

Editor's note: This article was added in 2007. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Motor Carriers and Intrastate Telecommunications Services

ARTICLE 10

Motor Vehicle Carriers

40-10-101 to 40-10-120. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was numbered as article 9 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning common carriers, see article 10.1 of this title.

ARTICLE 10.1

Motor Carriers

Editor's note: This article is similar to former articles 10, 11, 13, 14, and 16 of this title as they existed prior to 2011. For a detailed comparison, see the comparative tables located in the back of the index.

PART 1

GENERAL PROVISIONS

40-10.1-101. Definitions. As used in this article 10.1, unless the context otherwise requires:

(1) "Advertise" means to advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign, including signage on a vehicle, flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property.

(2) "Certificate" means the certificate of public convenience and necessity issued to a common carrier under part 2 of this article.

(3) "Commission" means the public utilities commission of the state of Colorado.

(4) "Common carrier" means a common carrier as defined in section 40-1-102; except that the term does not include:

(a) A contract carrier as defined in this section;

(b) A motor carrier of passengers under part 3 of this article 10.1; or

(c) A motor carrier of passengers providing large-market taxicab service under part 7 of this article 10.1.

(5) "Compensation" means any money, property, service, or thing of value charged or received or to be charged or received, whether directly or indirectly.

(6) "Contract carrier" means every person, other than a common carrier or a motor carrier of passengers under part 3 of this article, who, by special contract, directly or indirectly affords a means of passenger transportation over any public highway of this state; except that the term does not include a transportation network company, as defined in section 40-10.1-602 (3), or a transportation network company driver, as defined in section 40-10.1-602 (4).

(7) "Fixed points" and "established route" mean points or a route between or over which any common carrier usually or ordinarily operates or holds out to operate any motor vehicle, even though there may be departures from such points or route, whether such departures are periodic or irregular.

(8) "Household goods" means the personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects and property is:

(a) Arranged and paid for by the householder; except that "household goods" does not include property moving from a factory or store, other than property that the householder has purchased with intent to use in his or her dwelling and that is transported at the request of, and the transportation charges are paid to the mover by, the householder; or

(b) Arranged and paid for by another party.

(9) "Intrastate commerce" means transportation for compensation by motor vehicles over the public highways between points in this state.

(9.5) "Large-market taxicab service" means indiscriminate passenger transportation for compensation in a taxicab on a call-and-demand basis, within and between points in the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld, and between those points and all points within the state of Colorado, with the first passenger in the taxicab having exclusive use of the taxicab unless the passenger agrees to multiple loadings.

(10) "Motor carrier" means any person owning, controlling, operating, or managing a motor vehicle that provides transportation in intrastate commerce pursuant to this article; except that the term does not include a transportation network company, as defined in section 40-10.1-602 (3), or a transportation network company driver, as defined in section 40-10.1-602 (4).

(11) "Motor vehicle" means any automobile, truck, tractor, motor bus, or other self-propelled vehicle or any trailer drawn thereby.

(12) "Mover" means a motor carrier that provides the transportation or shipment of household goods.

(13) "Nonconsensual towing" or "nonconsensual tow" means the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

(14) "Permit" means the permit issued to a contract carrier under part 2 of this article 10.1 or to a motor carrier under part 3, 4, 5, or 7 of this article 10.1.

(15) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or other legal entity and any person acting as or in the capacity of lessee, trustee, or receiver thereof, whether appointed by a court or otherwise.

(16) "Public highway" means every street, road, or highway in this state over which the public generally has a right to travel.

(17) "Shipper" means a person who uses the services of a mover to transport or ship household goods.

(18) "Taxicab" means a motor vehicle with a seating capacity of eight or less, including the driver, operated in taxicab service.

(19) "Taxicab service" means passenger transportation in a taxicab on a call-and-demand basis, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loadings.

(20) "Towing carrier" means a motor carrier that:

(a) Provides, as one of its primary functions, the towing of motor vehicles by use of a tow truck; and

(b) May also provide storage of towed vehicles.

(21) "Tow truck" means a motor vehicle specially designed or equipped for transporting another motor vehicle by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting such other motor vehicle from one place to another.

(22) "Vehicle booting company" means a private corporation, partnership, or sole proprietor in the business of immobilizing a motor vehicle through use of a boot.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 395, § 1, effective August 10. **L. 2014:** (6) and (10) amended, (SB 14-125), ch. 323, p. 1409, § 3, effective June 5. **L. 2018:** IP, (4), and (14) amended and (9.5) added, (HB 18-1320), ch. 363, p. 2165, § 4, effective August 8. **L. 2019:** (22) added, (SB 19-236), ch. 359, p. 3312, § 19, effective May 30.

40-10.1-102. Powers of commission. (1) The commission has the power to and shall administer and enforce this article, including the right to inspect the motor vehicles, facilities, and records and documents, regardless of the format, of the motor carriers and persons involved.

(2) The Colorado state patrol has the power to monitor and enforce compliance with the certificate and permit requirements of this article and article 10.5 of this title.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 397, § 1, effective August 10. **L. 2012:** (2) amended, (HB 12-1019), ch. 135, p. 465, § 7, effective July 1.

40-10.1-103. Subject to control by commission. (1) All common carriers and contract carriers are declared to be public utilities within the meaning of articles 1 to 7 of this title and are declared to be affected with a public interest and subject to this article and articles 1 to 7 of this title, including the regulation of all rates and charges pertaining to public utilities, so far as applicable, and other laws of this state not in conflict therewith.

(2) Except as provided in subsection (1) of this section, motor carriers are not public utilities under this title, but are declared to be affected with a public interest and are subject to

regulation to the extent provided in this article, in section 40-2-110.5, in article 6 of this title, and in article 7 of this title except sections 40-7-113.5, 40-7-116.5, and 40-7-117. The term "public utility", when used in articles 6 and 7 of this title, includes all motor carriers.

(3) Transportation network companies, as defined in section 40-10.1-602 (3), are not common carriers, contract carriers, or motor carriers under this title, but are declared to be affected with a public interest and are subject to regulation to the extent provided in part 6 of this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 397, § 1, effective August 10. **L. 2014:** (3) added, (SB 14-125), ch. 323, p. 1409, § 4, effective June 5.

40-10.1-104. Compliance. A person shall not operate or offer to operate as a motor carrier in this state except in accordance with this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 398, § 1, effective August 10.

40-10.1-105. Transportation not subject to regulation. (1) The following types of transportation are not subject to regulation under this article:

(a) A ridesharing arrangement, as defined in section 39-22-509 (1)(a)(II), C.R.S.;

(b) The transportation of children to and from school, school-related activities, and school-sanctioned activities to the extent that such transportation is provided by a school or school district or the school or school district's transportation contractors;

(c) A private individual who transports a neighbor or friend on a trip;

(d) Transportation by hearses, ambulances, or other emergency vehicles;

(e) Transportation by motor vehicles designed and used for the nonemergency transportation of individuals with disabilities as defined in section 42-7-510 (2)(b), C.R.S.;

(f) An amusement ride consisting of a towed vehicle that is incapable of operating under its own power, the principal purpose of which is to carry individuals over short distances for their enjoyment and by which the provision of a transportation service is only incidental;

(g) People service transportation and volunteer transportation pursuant to article 1.1 of this title;

(h) Transportation by vehicles operated upon fixed rails;

(i) Transportation of property, except transportation provided by a towing carrier or a mover;

(j) Transportation performed by the federal government, a state, or any agency or political subdivision of either, whether through an intergovernmental agreement, contractual arrangement, or otherwise; and

(k) Transportation of repossessed property by a secured creditor or assignee, or by a repossessor on behalf of a secured creditor or assignee, when repossessing pursuant to section 4-9-629, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 398, § 1, effective August 10.

40-10.1-106. Commission to make rules and prescribe rates. (1) The commission has the authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of this article, including rules on the following subjects:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public;

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle. In setting the rates and charges pursuant to this section, the commission may require towing carriers performing nonconsensual tows to submit financial statements or other financial information to determine the costs associated with the performance of nonconsensual towing and any motor vehicle storage incident thereto.

(c) The administration of the fingerprint-based criminal history record checks required by section 40-10.1-110.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 399, § 1, effective August 10.

40-10.1-107. Financial responsibility - filing. (1) Each motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest.

(2) The financial responsibility required by subsection (1) of this section must be in the form of a liability insurance policy issued by an insurance carrier or insurer authorized to do business in this state, or a surety bond issued by a company authorized to do business in this state, or proof of self-insurance.

(3) An insurance policy, surety bond, or self-insurance pursuant to subsection (2) of this section shall be kept continuously effective during the life of a certificate or permit and the commission shall require such evidence of continued validity as the commission deems necessary.

(4) No termination of an insurance policy or surety bond is valid unless the insurer or surety has notified both the holder of the policy or bond and the commission at least thirty days before the effective date of the termination.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 399, § 1, effective August 10.

40-10.1-108. Commission to make safety rules. (1) The commission has the authority and duty to establish, for motor carriers subject to parts 2, 3, and 7 of this article 10.1, reasonable rules to promote safety of operation.

(2) For the purpose of carrying out this section pertaining to safety, the commission may obtain the assistance of any agency of the United States or of this state having special knowledge of any matter necessary to promote the safety of operation and equipment of motor vehicles. In

adopting such rules, the commission shall use as general guidelines the standards contained in the current rules and regulations of the United States department of transportation relating to safety regulations, qualifications of drivers, driving of motor vehicles, parts and accessories, recording and reporting of accidents, hours of service of drivers, and inspection and maintenance of motor vehicles.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 400, § 1, effective August 10. **L. 2018:** (1) amended, (HB 18-1320), ch. 363, p. 2165, § 5, effective August 8.

40-10.1-109. Motor carrier compliance with safety rules. (1) A motor carrier subject to part 2, 3, or 7 of this article 10.1 shall comply with the safety rules adopted by the commission pursuant to section 40-10.1-108.

(2) A motor carrier operating a motor vehicle that is defined as a commercial vehicle in section 42-4-235 (1)(a), C.R.S., shall comply with the safety rules adopted by the department of public safety pursuant to section 24-33.5-203 (1)(b), C.R.S., in addition to the rules adopted by the commission under subsection (1) of this section.

(3) Nothing in subsection (1) or (2) of this section diminishes the authority of the commission, the department of public safety, a peace officer, or any other agent of government to enforce the laws of this state.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 400, § 1, effective August 10. **L. 2018:** (1) amended, (HB 18-1320), ch. 363, p. 2165, § 6, effective August 8.

40-10.1-110. Criminal history record check - rules. (1) (a) An individual who wishes to drive: A taxicab for a motor carrier that is the holder of a certificate to provide taxicab service issued under part 2 of this article 10.1; a motor vehicle for a motor carrier that is the holder of a permit to operate as a charter bus, children's activity bus, luxury limousine, medicaid client transport, or off-road scenic charter under part 3 of this article 10.1; or a motor vehicle for a motor carrier that is the holder of a permit to operate as a large-market taxicab service under part 7 of this article 10.1 must have the individual's fingerprints taken by a local law enforcement agency or any third party approved by the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check.

(b) If an approved third party takes the individual's fingerprints, the fingerprints may be electronically captured using Colorado bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the individual's information for more than thirty days unless requested to do so by the individual. The individual shall submit payment for the fingerprints and for actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation.

(c) Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the commission.

(1.5) When the results of a fingerprint-based criminal history record check of an individual performed pursuant to this section reveal a record of arrest without a disposition, the commission shall require the individual to submit to a name-based criminal history record check,

as defined in section 22-2-119.3 (6)(d). The individual shall pay the costs associated with a name-based criminal history record check.

(2) An individual whose fingerprints are checked in accordance with subsection (1) of this section may, pending the results of the criminal history record check, drive the motor vehicles for the motor carrier described in subsection (1) of this section for up to ninety days after the fingerprints are forwarded to the Colorado bureau of investigation or until the commission receives the results of the check, whichever occurs first. The commission may temporarily extend the ninety-day period, in accordance with section 24-33.5-412 (7), based on a delay in processing criminal history record checks by the Colorado bureau of investigation or on other exigent circumstances beyond the commission's control. Upon the commission's receipt of the results, the individual may resume driving motor vehicles for the motor carrier described in subsection (1) of this section, so long as the driving does not violate applicable law and does not occur while the individual has a criminal conviction that disqualifies the individual from driving a motor vehicle in accordance with subsection (3) of this section.

(3) An individual whose criminal history record is checked pursuant to this section is disqualified and prohibited from driving motor vehicles for the motor carrier described in subsection (1) of this section if the criminal history record check reflects that:

(a) The individual is not of good moral character, as determined by the commission based on the results of the check;

(b) (I) The individual has been convicted of a felony or misdemeanor involving moral turpitude.

(II) As used in this paragraph (b), "moral turpitude" includes any unlawful sexual offense against a child, as defined in section 18-3-411, C.R.S., or a comparable offense in any other state or in the United States.

(c) Within the two years immediately preceding the date the criminal history record check is completed, the individual was:

(I) Convicted in this state of driving under the influence, as defined in section 42-4-1301 (1)(f), C.R.S.; driving with excessive alcoholic content, as described in section 42-4-1301 (2)(a), C.R.S.; or driving while ability impaired, as defined in section 42-4-1301 (1)(g), C.R.S.; or

(II) Convicted of a comparable offense in any other state or in the United States.

(4) The commission shall consider the information resulting from the criminal history record check in its determination as to whether the individual has met the standards set forth in section 24-5-101 (2), C.R.S.

(5) An individual whose fingerprints were checked pursuant to subsection (1) of this section shall, as a condition of continued qualification to drive a motor vehicle for a motor carrier, resubmit a set of his or her fingerprints to the commission in accordance with the commission's rules.

(6) Each motor carrier described in subsection (1) of this section shall ensure driver compliance with this section and with commission rules promulgated pursuant to this section. Nothing in this subsection (6) makes a driver an employee of the motor carrier.

(7) The commission shall, consistent with the requirements of this section, promulgate rules concerning the employment of, contracting with, and retention of an individual whose criminal history record is checked pursuant to this section, and the frequency and circumstances requiring resubmission of fingerprints.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 400, § 1, effective August 10. **L. 2013:** (2) amended, (SB 13-192), ch. 129, p. 431, § 1, effective April 19; (3)(c)(I) amended, (HB 13-1325), ch. 331, p. 1887, § 20, effective May 28. **L. 2016:** (1) amended, (HB 16-1097), ch. 186, p. 655, § 1, effective May 20. **L. 2018:** (1) amended, (HB 18-1320), ch. 363, p. 2165, § 7, effective August 8. **L. 2019:** (1.5) added, (HB 19-1166), ch. 125, p. 558, § 50, effective April 18; (1) and (2) amended, (SB 19-236), ch. 359, p. 3313, § 20, effective May 30.

40-10.1-111. Filing, issuance, and annual fees. (1) A motor carrier shall pay the commission the following fees in amounts prescribed in this section or, if not prescribed in this section, as set administratively by the commission with approval of the executive director of the department of regulatory agencies:

(a) Except as otherwise provided in paragraph (b) of this subsection (1), the filing fee for an application for a temporary authority, certificate, or permit under part 2 of this article or for an extension, amendment, transfer, or lease of a temporary authority, certificate, or permit is thirty-five dollars, and the fee for issuance of a temporary authority, certificate, or permit under part 2 of this article is five dollars.

(b) The commission shall administratively set the annual filing fee for a permit to operate under part 7 of this article 10.1 to provide large-market taxicab service.

(c) (I) The filing fee for a permit to operate under part 4 or part 8 of this article 10.1 is one hundred fifty dollars.

(II) Repealed.

(d) The commission shall administratively set the annual filing fee for a permit to operate under part 5 of this article; except that the fee may not exceed three hundred twenty-five dollars.

(e) The filing fee for a temporary permit to operate as a mover pursuant to section 40-10.1-502 (5)(a) is one hundred fifty dollars.

(f) The commission shall administratively set the annual fee for each motor vehicle a motor carrier owns, controls, operates, or manages.

(2) Except for a mover holding a permit issued under part 5 of this article and a motor carrier that has paid a fee pursuant to article 10.5 of this title, a motor carrier shall not operate any motor vehicle in intrastate commerce unless the annual fees required by paragraph (f) of subsection (1) of this section have been paid. Such fees apply on a calendar year basis and are creditable only to the specific vehicles for which the fees have been paid.

(3) Administratively set fees must be based on the appropriation made for the purposes specified in section 40-2-110 (2)(a)(I), subject to the approval of the executive director of the department of regulatory agencies, such that the revenue generated from all motor carrier fees approximates the direct and indirect costs of the commission in the supervision and regulation of motor carriers.

(4) The commission shall transmit all fees collected under this section to the state treasurer, who shall credit them to the public utilities commission motor carrier fund created in section 40-2-110.5.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 402, § 1, effective August 10. **L. 2012:** (1)(c) amended, (HB 12-1327), ch. 217, p. 931, § 1, effective May 24. **L.**

2018: IP(1) and (1)(b) amended, (HB 18-1320), ch. 363, p. 2166, § 8, effective August 8. **L. 2019:** (1)(c)(I) amended, (SB 19-236), ch. 359, p. 3333, § 28, effective May 30.

Editor's note: (1) Section 6 of chapter 217, Session Laws of Colorado 2012, provides that the act amending subsection (1)(c) applies to towing carriers that applied for permits on, before, or after May 24, 2012.

(2) Subsection (1)(c)(II)(B) provided for the repeal of subsection (1)(c)(II), effective July 1, 2014. (See L. 2012, p. 931.)

40-10.1-112. Commission may take action against certificate or permit. (1) Except as specified in subsection (3) of this section, the commission, at any time, by order duly entered, after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist or may suspend, revoke, alter, or amend any certificate or permit issued to the motor carrier under this article for the following reasons:

(a) A violation of this article or of any term or condition of the motor carrier's certificate or permit;

(b) Exceeding the authority granted by a certificate or permit;

(c) A violation or refusal to observe any of the proper orders or rules of the commission;

(d) For a towing carrier, a violation of any of the provisions set forth in part 18 or 21 of article 4 of title 42, C.R.S., or a conviction, guilty plea, or plea of nolo contendere to a felony;

(e) For a mover, failure or refusal to abide by the terms of an arbitrator's award under section 40-10.1-507, or failure to satisfy the requirements for a new or renewed permit under section 40-10.1-502.

(2) Any person may file a complaint against a motor carrier for a violation of this article or a rule adopted under this article. The complainant may request any relief that the commission, in its authority, may grant, including an order to cease and desist, suspension or revocation of the motor carrier's certificate or permit, or assessment of civil penalties. Upon proof of violation, the commission may issue an order to cease and desist, suspend or revoke the motor carrier's certificate or permit, assess civil penalties as provided in article 7 of this title, or take any other action within the commission's authority. In assessing civil penalties under this subsection (2), the commission is not constrained by the procedural requirements of section 40-7-116.

(3) Notwithstanding the notice and hearing provisions of subsection (1) of this section, the commission shall summarily suspend the certificate or permit of any motor carrier for failure to maintain effective insurance or surety bond coverage and file evidence of the same in accordance with section 40-10.1-107 and rules adopted pursuant thereto. The commission shall reinstate such summarily suspended certificate or permit within a time period specified in, and in accordance with, the rules of the commission.

(4) A motor carrier whose certificate or permit has been revoked for cause more than twice is not eligible for another such certificate or permit for at least two years after the date of the third such revocation. In the case of an entity, the two-year period of ineligibility also applies to all principals, officers, and directors of the entity, whether or not any such principal, officer, or director applies individually or as a principal, officer, or director of the same or a different entity. As used in this subsection (4), "revoked for cause" does not include a revocation for failure to carry the required insurance unless it is shown that the person knowingly operated without insurance.

(5) Any commission action under subsection (1) or (2) of this section must conform to the provisions and procedures specified in article 6 of this title. The motor carrier has all the rights to the opportunity for a hearing, review, and appeal as to such order or ruling of the commission as are now provided by articles 1 to 7 of this title. No appeal from or review of any order or ruling of the commission supersedes or suspends such order or rulings unless specifically ordered by the proper court.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 403, § 1, effective August 10.

40-10.1-113. Penalty for violations. Any person who provides transportation in intrastate commerce without first obtaining a certificate or permit, violates any of the terms thereof, fails or refuses to make any return or report required by the commission, denies to the commission access to the books and records of such person, or makes any false return or report commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 40-10.1-114.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 404, § 1, effective August 10.

40-10.1-114. Penalty for violation of article. (1) Every motor carrier and every officer, agent, or employee of a motor carrier and every other person who violates or fails to comply with or who procures, aids, or abets in the violation of this article, who fails to obey, observe, or comply with any order, decision, or rule of the commission adopted under this article, or who procures, aids, or abets any person in such failure to obey or observe such order, decision, or rule commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) An individual who is employed by or who contracts with a motor carrier and who operates a motor vehicle for the motor carrier's business in violation of section 40-10.1-110 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Each day of a continuing violation of this article constitutes a separate offense.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 404, § 1, effective August 10.

40-10.1-115. Jurisdiction of courts. The district court or, within its jurisdiction, the county court of any county in or through which a motor carrier operates has jurisdiction in all matters arising under this article on account of the operations of such motor carrier except as otherwise provided in this article and excepting those matters expressly delegated to the commission; and it is the duty of the district attorney for the county having jurisdiction to prosecute all violations of this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 404, § 1, effective August 10.

40-10.1-116. Commission to notify local authorities - procedure. (1) Whenever the commission is of the opinion that a motor carrier is failing or omitting to do anything required of it by law or by any order, decision, rule, direction, or requirement of the commission or is acting or is about to act or permitting an act or about to permit an act in violation of the law or of any order, decision, rule, direction, or requirement of the commission, the commission shall request the attorney general of the state or the district attorney of any district to commence an action or proceeding in the district court in and for the county or city and county in which the cause or some part thereof arose or in which the motor carrier complained of maintains a principal place of business or resides. Such action or proceeding must be conducted in accordance with section 40-7-104; except that references in section 40-7-104 to the attorney general include any district attorney bringing the action or proceeding.

(2) Appellate review may be obtained in the supreme court concerning a final judgment in an action or proceeding under this section in the same manner and with the same effect, subject to this article, as appellate review of judgments of the district court in other actions for mandamus or injunction.

(3) A person injured by the noncompliance of a motor carrier with this article or any other provision of law or an order, decision, rule, direction, or requirement of the commission may apply to a court of competent jurisdiction for the enforcement thereof, and the court has jurisdiction to enforce obedience thereto by injunction or other proper process, mandatory or otherwise, and to restrain the motor carrier and its officers, agents, employees, or representatives from further disobedience thereof, or to enjoin upon them obedience to the same, and any person so injured has cause of action in damages and is privileged to pursue the usual and proper remedies as in any other case.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 405, § 1, effective August 10.

40-10.1-117. Limited regulation of transportation network companies. Notwithstanding any other provision of law, transportation network companies, as defined in section 40-10.1-602 (3), are governed exclusively under part 6 of this article.

Source: L. 2014: Entire section added, (SB 14-125), ch. 323, p. 1409, § 5, effective June 5.

PART 2

MOTOR CARRIERS OF PASSENGERS -
COMMON CARRIERS AND CONTRACT CARRIERS

40-10.1-201. Certificate required. (1) A person shall not operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation.

(2) The fact that a person carries on operations, in whole or in part, between substantially fixed points or over established routes, or under contracts with more than one

person, or by making repeated or periodic trips is prima facie evidence that the person is a common carrier and subject to this part 2 and part 1 of this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 405, § 1, effective August 10.

40-10.1-202. Permit required - legislative declaration. (1) (a) A person shall not operate or offer to operate as a contract carrier in intrastate commerce without first obtaining a permit for such operation from the commission. As used in this part 2, "permit" does not include a permit under part 3, 4, or 5 of this article.

(b) The general assembly hereby declares that the business of contract carriers is affected with a public interest and that the safety and welfare of the public traveling upon the highways, the preservation and maintenance of the highways, and the proper regulation of common carriers using the highways require the regulation of contract carriers to the extent provided in this article, for which purposes the commission is vested with the authority to issue a permit to a contract carrier and may attach to such permit and to the exercise of the rights and privileges granted by the permit such terms and conditions as are reasonable.

(2) No permit, nor any extension or enlargement of an existing permit, shall be granted by the commission if, in the commission's judgment, the proposed operation of any such contract carrier will impair the efficient public service of any authorized common carrier then adequately serving the same territory over the same general highway route. The commission shall give written notice of any application for a permit to all persons interested in or affected by the issuance of the permit or any extension or enlargement thereof, pursuant to section 40-6-108 (2).

(3) Nothing contained in this article compels a contract carrier to be or become a common carrier or subjects a contract carrier to the laws or liability applicable to a common carrier.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 406, § 1, effective August 10.

40-10.1-203. Rules for issuance of certificate - standing to protest - judicial review - legislative declaration. (1) The commission has the power to issue a certificate to a common carrier or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in the commission's judgment, the public convenience and necessity may require.

(2) (a) The granting of a certificate to operate a taxicab service within and between counties with a population of less than seventy thousand, based on the most recent available federal census figures, is governed by the doctrine of regulated monopoly.

(b) (I) The granting of a certificate to operate a taxicab service within and between those counties with a population of seventy thousand or greater that are not served by a large-market taxicab service pursuant to part 7 of this article 10.1, based on the most recent available federal census figures, is not an exclusive grant or monopoly, and the doctrine of regulated competition applies.

(II) The general assembly finds, determines, and declares that nothing in this subsection (2) requires or prohibits a taxicab company applying for a certificate to form a labor union nor requires any taxicab driver to join a labor union.

(c) (I) (A) Repealed.

(B) Notwithstanding any provision of this section to the contrary, the holder of a certificate of public convenience and necessity that contains authority to operate as a taxicab between points within the state of Colorado shall also be deemed to hold taxicab authority to pick up passengers from any point in the state of Colorado and transport the passengers back to the certificate holder's authorized area when the certificate holder has dropped off passengers in close proximity to that point. The provisions of this sub-subparagraph (B) do not apply when a taxicab drops off a passenger at any airport in this state.

(II) The holder of a certificate that contains authority to operate a taxicab service to points in the city and county of Denver also holds taxicab service authority from points in the city and county of Denver to all points within the common carrier's base area, defined as that geographic area in which such common carrier may provide point-to-point taxicab service.

(III) The commission shall amend, by order and without notice or hearing, any existing taxicab service certificate by removing all language authorizing large-market taxicab service offered in accordance with part 7 of this article 10.1.

(3) When a request for reconsideration of a written recommended decision under this section has been made by filing exceptions pursuant to section 40-6-109 and the commission has rendered a final decision on the exceptions as provided in article 6 of this title 40, any party to the proceeding may, within thirty days after the final decision, apply directly to a district court in this state for judicial review pursuant to section 40-6-115. For purposes of judicial review, a decision of the commission on exceptions is final on the date the decision is served on the parties to the proceeding.

Source: L. 2011: (2)(c)(I) amended, (SB 11-180), ch. 249, p. 1085, § 1, effective June 2; entire article added, (HB 11-1198), ch. 127, p. 406, § 1, effective August 10. **L. 2015:** (2)(b)(II) amended, (HB 15-1316), ch. 339, p. 1376, § 1, effective August 5. **L. 2018:** (2)(b), (2)(c)(III), and (3) amended and (2)(c)(I)(A) repealed, (HB 18-1320), ch. 363, p. 2166, § 9, effective August 8.

Editor's note: Subsection (2)(c)(I) was numbered as § 40-10-105 (2)(d)(I) in Senate Bill 11-180 (see L. 2011, p. 1085). That provision was harmonized with subsection (2)(c)(I) as it appears in House Bill 11-1198.

40-10.1-204. Temporary authority. (1) To enable the provision of common carrier or contract carrier service for which there appears to be an immediate and urgent need to any point or within a territory having no such service capable of meeting the need, the commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier, as the case may be. Such temporary authority, unless suspended or revoked for good cause, is valid for such time as the commission specifies, but for not more than an aggregate of one hundred eighty days, unless for good cause shown the commission extends the temporary authority for a period which may extend until a final

administrative decision is rendered. A grant of temporary authority or an extension thereof creates no presumption that corresponding permanent authority will be granted thereafter.

(2) Pending the determination of an application filed with the commission for approval of an acquisition of stock of a common carrier or contract carrier, a consolidation or merger of two or more such carriers, or a purchase, lease, or contract to operate the properties of one or more such carriers, the commission may, in its discretion and without hearings or other proceedings, grant temporary approval for a period not exceeding one hundred eighty days for the operation of the carrier or its properties sought to be acquired by the person proposing in such pending application to acquire the properties or stock, if it appears that failure to grant such temporary approval may result in destruction of or injury to the carrier or its properties sought to be acquired, or may interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. For good cause shown, the commission may extend such temporary approval for a period which may extend until a final administrative decision is rendered. Temporary approval or an extension thereof does not create a presumption that the application will be granted.

(3) Common carrier or contract carrier service rendered under temporary authority or approval is subject to all applicable provisions of this title and to the rules and requirements of the commission. The maximum time period of any temporary authority or approval is not subject to extension or renewal.

(4) The commission shall not issue a temporary authority or approval unless, under such general rules as the commission may prescribe governing the application and notice thereof to interested or affected common carriers, all interested or affected carriers have been given at least five days' notice of the filing of the application and an opportunity to protest the granting thereof. If the commission determines that an emergency exists, it may issue temporary authority or approval at once by making specific reference in its order to the circumstances constituting the emergency, in which case no notice need be given, but any such emergency authority or approval expires no later than thirty days after it was issued.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 407, § 1, effective August 10.

40-10.1-205. Transfer of certificate or permit. (1) A certificate or permit, or rights obtained under a certificate or permit, that are held, owned, or obtained by any common carrier or contract carrier may be sold, assigned, leased, encumbered, or transferred as other property, subject to prior authorization by the commission.

(2) Absent other facts, the fact that a common carrier or contract carrier conducts operations with independent contractors does not in and of itself constitute a lease or transfer of the certificate.

(3) An existing certificate or permit shall not be transferred unless the fitness of the transferee is established to the satisfaction of the commission.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 408, § 1, effective August 10.

40-10.1-206. Rates - limitations. (1) It is unlawful for any common carrier to carry or advertise that it will carry any individuals at rates different from those it has on file with the commission for such carriage.

(2) A contract carrier shall not destroy or impair, through discrimination or unfair competition, the service or business of any common carrier or the integrity of the state's regulation of any such service or business; and to that end, the commission is authorized and directed to prescribe minimum rates, fares, and charges to be collected by contract carriers when competing with duly authorized common carriers, which rates, fares, and charges must not be less than the rates prescribed for common carriers for substantially the same or similar service.

(3) In accordance with this article and such rules as the commission may prescribe, every contract carrier subject to this article shall file with the commission, within such time and in such form as the commission may designate, and shall keep on file with the commission, at all times, schedules showing rates, charges, and collections, collected or enforced or to be collected or enforced, that in any manner affect or relate to the operations of any such contract carrier; and the commission has full power to change, amend, or alter any such tariff or, after hearing, fix the rates of any contract carrier subject to this article that competes with a common carrier.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 409, § 1, effective August 10.

40-10.1-207. Taxicab license plates - rules. (1) (a) The commission shall either:

(I) Create a document that a person authorized to provide taxicab services under this article may use to verify to the department of revenue or the department's authorized agent that the person is so authorized; or

(II) Create a system to electronically verify to the department of revenue or the department's authorized agent that the person is authorized to provide taxicab services under this part 2.

(b) Upon request, the commission shall provide the document to the person with such authority or the electronic verification to the department of revenue or the department's authorized agent.

(2) The commission may promulgate rules to implement this section and to enforce section 42-3-236, C.R.S.

(3) Repealed.

Source: L. 2011: Entire section added, (HB 11-1234), ch. 142, p. 496, § 4, effective July 1.

Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2012. (See L. 2011, p. 496.)

PART 3

MOTOR CARRIERS OF PASSENGERS - LIMITED REGULATION

40-10.1-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Charter basis" means on the basis of a contract for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party has the exclusive right to direct the operation of the vehicle, including selection of the origin, destination, route, and intermediate stops.

(2) "Charter bus" means a motor vehicle with a minimum seating capacity of thirty-three, including the driver, that is hired to transport a person or group of persons traveling from one location to another for a common purpose. A charter bus does not provide regular route service from one location to another.

(3) "Chartering party" means a person or group of persons who share a personal or professional relationship whereby all such persons are members of the same affiliated group, including a family, business, religious group, social organization, or professional organization. "Chartering party" does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.

(4) "Children's activity bus" means a motor vehicle that transports groups of eight or more children, eighteen years of age or younger, and any adults over eighteen years of age accompanying or participating with the group, to or from activities that are sponsored by nonprofit organizations entitled to a tax exemption under the federal "Internal Revenue Code of 1986", as amended, or the transportation of children to and from school, school-related activities, or school-sanctioned activities to the extent that such transportation is not provided by the school or school district or the school or school district's transportation contractors.

(5) "Commercial location" means a place where goods or services are bought, sold, or exchanged.

(6) "Fire crew transport" means a motor vehicle that transports people engaged in fighting wildfires.

(7) "Luxury limousine" means a chauffeur-driven, luxury motor vehicle as defined by the commission by rule.

(8) "Luxury limousine service" means a specialized, luxurious transportation service provided on a prearranged, charter basis. "Luxury limousine service" does not include taxicab service or any service provided between fixed points over regular routes at regular intervals.

(9) "Medicaid client transport" means a motor vehicle that transports passengers who are recipients of medicaid pursuant to articles 4 to 6 of title 25.5, C.R.S., and are being transported under a medicaid nonemergent medical transportation contract or a medicaid nonmedical transportation contract.

(10) "Medicaid nonemergent medical transportation contract" means a contract or provider agreement with the department of health care policy and financing or its approved agent for the purpose of providing nonemergent medical transportation to approved recipients of medicaid.

(11) "Medicaid nonmedical transportation contract" means a contract or provider agreement with the department of health care policy and financing or its approved agent for the purpose of providing nonmedical transportation to approved recipients of medicaid.

(12) "Off-road scenic charter" means a motor vehicle that transports passengers, on a charter basis, to scenic points within Colorado, originating and terminating at the same location and using a route that is wholly or partly off of paved roads. "Off-road scenic charter" does not include the transport of passengers to commercial locations.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 409, § 1, effective August 10. **L. 2016:** (9) amended and (10), (11), and (12) added, (HB 16-1097), ch. 186, p. 655, § 2, effective May 20.

Cross references: For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

40-10.1-302. Permit requirements. (1) (a) A person shall not operate or offer to operate a charter bus, children's activity bus, fire crew transport, luxury limousine, medicaid client transport, or off-road scenic charter in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this part 3.

(b) A person may apply for a permit under this part 3 to the commission in such form and with such information as the commission may require. A permit is valid for one year after the date of issuance.

(2) (a) Except as otherwise provided in subsection (3) of this section, the commission shall issue a permit to a motor carrier of passengers under this part 3 upon completion of the application and compliance with the financial responsibility requirements of this article.

(b) (I) In addition to the requirements of paragraph (a) of this subsection (2), a person applying for a medicaid client transport permit shall provide the commission proof of a medicaid client transport agreement with the department of health care policy and financing or its approved agent in such form and with such information as the commission may require.

(II) The department of health care policy and financing may transfer medicaid money to the commission to assist the commission in its regulation of medicaid transport under this article. Any money that the commission receives from the department of health care policy and financing is continuously appropriated to the commission.

(3) A person whose permit has been revoked for cause is not eligible for another permit for two years after the date of revocation. If an entity's permit has been revoked, the two-year ineligibility also applies to the entity's principals, officers, directors, and members of the entity, except for a revocation for failure to carry insurance unless the person knowingly operated a motor carrier without insurance.

(4) In order to obtain a permit under this section, an applicant must have each vehicle operated under the permit inspected within the immediately preceding twenty days by a qualified mechanic in accordance with rules promulgated by the commission. The applicant must also attach a report showing each vehicle passed inspection.

(5) Effective July 1, 2016, any existing permit issued pursuant to this part 3 expires on the anniversary of its issuance.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 410, § 1, effective August 10. **L. 2013:** (2) amended and (3) and (4) added, (SB 13-189), ch. 365, p. 2127, § 3, effective June 5. **L. 2016:** (1) and (2) amended and (5) added, (HB 16-1097), ch. 186, p. 656, § 3, effective May 20.

40-10.1-303. Livery license plates - rules. (1) The commission shall either:

(a) Create a document that a person authorized to provide luxury limousine service under this article may use to verify to the department of revenue or its authorized agent that the person provides such service; or

(b) Create a system to electronically verify to the department of revenue or its authorized agent that the person is authorized to provide luxury limousine service under this article.

(2) Upon request, the commission shall provide the document to the person with such authority or the electronic verification to the department of revenue or its authorized agent.

(3) The commission may promulgate rules to implement this section and to enforce section 42-3-235, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 411, § 1, effective August 10.

40-10.1-304. Revocation of permit for failure to pay fine. (1) If a carrier that holds a permit under this part 3 fails to pay a fine or civil penalty imposed under this article 10.1 or a rule issued under this article 10.1 within the time prescribed for payment, and not before the decision imposing the fine or civil penalty becomes a final decision by the commission, the carrier's permit is revoked immediately. Any of the following are disqualified from applying for a permit for thirty-six months after the date the fine or civil penalty is due:

(a) The carrier;

(b) Any owner, principal, officer, member, partner, or director of the carrier; and

(c) Any other entity owned or operated by that owner, principal, officer, member, partner, or director.

(2) This disqualification is in addition to and not in lieu of any other penalty or disqualification, including the period of disqualification specified in section 40-10.1-112 (4).

Source: L. 2013: Entire section added, (SB 13-189), ch. 365, p. 2127, § 4, effective June 5. **L. 2017:** IP(1) amended, (SB 17-180), ch. 281, p. 1532, § 4, effective August 9.

PART 4

MOTOR CARRIERS OF TOWED MOTOR VEHICLES

40-10.1-401. Permit requirements. (1) (a) A person shall not operate or offer to operate as a towing carrier in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this article.

(b) A person may apply for a permit under this part 4 to the commission in such form and with such information as the commission may require. Permits are valid for one year after the date of issuance.

(2) The commission may deny an application under this part 4 of a person who has, within the immediately preceding five years, been convicted of, or pled guilty or nolo contendere to, a felony. The commission may also deny an application under this part 4 or refuse to renew the permit of a towing carrier based upon a determination that the towing carrier or any of its owners, principals, officers, members, partners, or directors has not satisfied a civil penalty arising out of any administrative or enforcement action brought by the commission.

(3) (a) Except as otherwise provided in subsection (2) of this section and section 40-10.1-112 (4), the commission shall issue a permit to a towing carrier upon completion of the application and the filing of proof of workers' compensation insurance coverage in accordance with the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., and with the financial responsibility requirements of this article and may attach to the permit and to the exercise of the rights granted by the permit such restrictions, terms, and conditions, including altering the rates and charges of the applicant, as are reasonably deemed necessary for the protection of the property of the public.

(b) If a towing carrier violates this article 10.1, any other applicable provision of law, or any rule or order of the commission issued under this article 10.1 and as a result is ordered by a court or by the commission to pay a fine or civil penalty that the towing carrier subsequently fails to pay in full within the time prescribed for payment, and not before the decision imposing the fine or civil penalty becomes a final decision by the commission, then:

(I) The towing carrier's permit is revoked immediately; and

(II) The towing carrier, its owners, principals, officers, members, partners, and directors, and any other entity owned or operated by one or more of those owners, principals, officers, members, partners, or directors, may be disqualified from obtaining or renewing any operating authority under this article for a period of five years after the date on which the fine or civil penalty was due. The period of disqualification pursuant to this subparagraph (II) is in addition to, and not in lieu of, and does not affect, any other penalty or period of disqualification, including the period of disqualification specified in section 40-10.1-112 (4).

(c) A towing carrier's facilities and vehicles are subject to inspection by the commission and by authorized personnel of the Colorado state patrol, which shall promptly report to the commission concerning any violations revealed by an inspection.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 411, § 1, effective August 10. **L. 2012:** Entire section amended, (HB 12-1327), ch. 217, p. 931, § 2, effective May 24. **L. 2017:** IP(3)(b) and (3)(b)(I) amended, (SB 17-180), ch. 281, p. 1533, § 5, effective August 9.

Editor's note: Section 6 of chapter 217, Session Laws of Colorado 2012, provides that the act amending this section applies to towing carriers that applied for permits on, before, or after May 24, 2012.

40-10.1-402. Verification of authority - notice of requirement for designated license plates - rules. (1) (a) The commission shall either:

(I) Create a document that a person authorized to operate as a towing carrier under this article may use to verify to the department of revenue or the department's authorized agent that the person is so authorized; or

(II) Create a system to electronically verify to the department of revenue or the department's authorized agent that the person is authorized to provide towing services under this part 4.

(b) Upon request, the commission shall provide the document to the person with such authority or the electronic verification to the department of revenue or the department's authorized agent.

(2) The commission may promulgate rules to implement this section and to enforce section 42-3-235.5, C.R.S.

(3) Repealed.

Source: L. 2012: Entire section added, (HB 12-1327), ch. 217, p. 933, § 3, effective May 24.

Editor's note: (1) Section 6 of chapter 217, Session Laws of Colorado 2012, provides that the act adding this section applies to towing carriers that applied for permits on, before, or after May 24, 2012.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2013.

40-10.1-403. Towing task force - creation - rules - repeal. (1) The towing task force is hereby created within the department of regulatory agencies.

(2) The task force consists of nine members, appointed as follows:

(a) One member, or the member's designee, appointed by the governor to represent the commission;

(b) One member, or the member's designee, appointed by the chief of the Colorado state patrol;

(c) One member, or the member's designee, appointed by the governor to represent a towing association within the state;

(d) One member, or the member's designee, appointed by the governor to represent towing carriers within the state but who does not represent a towing association;

(e) One member, or the member's designee, appointed by the governor to represent an association of automobile owners within the state;

(f) One member who insures towing operations, or the member's designee, appointed by the governor to represent insurance companies within the state;

(g) One member, or the member's designee, appointed by the governor to represent an association of motor carriers within Colorado;

(h) One member, or the member's designee, appointed by the governor to represent local law enforcement agencies; and

(i) One member who owns private property and contracts for towing services, or the member's designee, appointed by the governor to represent consumers of towing services.

(3) (a) The members of the task force serve four-year terms; except that the members appointed under paragraphs (a) to (d) of subsection (2) of this section serve initial terms of two years.

(b) The members shall elect a chair from among their membership. The chair shall set the times and frequency of the task force's meetings.

(4) (a) When promulgating or amending rules concerning rate regulation of tow carriers, the commission shall consult with the task force.

(b) At the discretion of the commission, the staff of the commission shall consult with the task force concerning investigations of overcharges made by towing carriers in violation of this title.

(c) The commission need not accept the recommendations of the task force.

(5) The task force has the following duties and powers:

(a) To make comprehensive recommendations to the commission about the maximum rates that may be charged for the recovery, towing, and storage of a vehicle that has been towed without the owner's consent. The task force shall make its first comprehensive recommendations to the commission about the maximum rates by September 1, 2015.

(b) To advise the commission or the staff of the commission concerning investigations of overcharges made by towing carriers in violation of this title.

(6) This section is repealed, effective September 1, 2024. Prior to the repeal, the department of regulatory agencies shall review the task force in accordance with section 2-3-1203, C.R.S.

Source: L. 2014: Entire section added, (HB 14-1031) ch. 14, p. 125, § 1, effective August 6.

PART 5

MOTOR CARRIERS OF HOUSEHOLD GOODS

40-10.1-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Accessorial service" means any service performed by a mover that results in a charge to the shipper and is incidental to the transportation service, including valuation coverage; preparation of written inventory; equipment, including dollies, hand trucks, pads, blankets, and straps; storage, packing, unpacking, or crating of articles; hoisting or lowering; waiting time; long carry, which is defined as carrying articles excessive distances between the mover's vehicle and the residence; overtime loading and unloading; reweighing; disassembly or reassembly; elevator or stair carrying; boxing or servicing of appliances; and furnishing of packing or crating materials. "Accessorial service" also includes services not performed by the mover but by a third party at the request of the shipper or mover if the charges for such services are to be paid to the mover by the shipper at or prior to the time of delivery.

(2) "Contract" means a written document, approved by the shipper in writing before the performance of any service, that authorizes services from the named mover and lists the services and all costs associated with the transportation of household goods and accessorial services to be performed.

(3) "Estimate" means a written document that sets forth the total cost and the basis of such costs related to a shipper's move, including transportation or accessorial services.

(4) "Storage" means warehousing of the shipper's goods while under the care, custody, and control of the mover.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 412, § 1, effective August 10.

40-10.1-502. Permit requirements - issuance by ports of entry. (1) (a) A person shall not operate or offer to operate as a mover in intrastate commerce pursuant to this article, or advertise services as a mover, without first having obtained a permit from the commission in accordance with this part 5.

(b) A mover shall annually apply for a permit under this part 5 to the commission in such form and with such information as the commission may require.

(2) The commission may deny an application under this part 5 or refuse to renew the permit of any mover based upon a determination that the mover, or any of its directors, officers, owners, or general partners has not satisfied a civil penalty arising out of any administrative or enforcement action brought by the commission.

(3) Except as otherwise provided in subsection (2) of this section and section 40-10.1-112 (4), the commission shall issue a permit to a mover upon completion of the application and compliance with the financial responsibility requirements of this article.

(4) A permit is not valid for a mover transacting business at any location other than those designated in its application unless the mover first notifies the commission in writing of any change of location. A permit issued under this section is not assignable, and the mover is not permitted to conduct business under more than one name except as shown on its permit. A mover desiring to change its name or location at a time other than upon renewal of a permit shall notify the commission of such change.

(5) (a) The Colorado state patrol may issue, through a port of entry weigh station created pursuant to article 8 of title 42, C.R.S., a temporary household goods mover permit. The temporary permit is valid for fifteen consecutive days and is not renewable. A mover or its successor who has been issued a temporary permit is not eligible for a subsequent temporary permit.

(b) A temporary permit shall not be approved until the applicant:

(I) Provides evidence of financial responsibility as required by section 40-10.1-107;

(II) Signs a verification, under penalty of perjury as specified in section 24-4-104 (13)(a), C.R.S., that the applicant meets the financial responsibility required by section 40-10.1-107; and

(III) Pays the fees required by section 40-10.1-111 (1)(e) and (1)(f). The Colorado state patrol shall transmit the fees to the state treasurer, who shall credit them to the public utilities commission motor carrier fund pursuant to section 40-10.1-111 (4).

(c) If a mover applied for and received a temporary permit pursuant to this subsection (5), the mover is not subject, during the period covered by the temporary permit, to a penalty for failure to have a permanent permit.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 412, § 1, effective August 10. **L. 2012:** (5)(a) and (5)(b)(III) amended, (HB 12-1019), ch. 135, p. 466, § 8, effective July 1.

40-10.1-503. Enforcement of carrier's lien. A mover without a current and valid permit issued under this part 5 is not entitled to acquire or enforce a carrier's lien under section 4-7-307 or 4-7-308, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 413, § 1, effective August 10.

40-10.1-504. Advertising. (1) No mover, nor any officer, agent, employee, or representative of the mover, shall advertise a transportation service in a name other than that in which the mover's permit is held.

(2) Each advertisement of a mover shall include the phrase "CO PUC permit no. ___" and the physical address of the mover.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 413, § 1, effective August 10.

40-10.1-505. Contracts for service. (1) At or before the time of commencing work, a mover that provides any moving or accessorial services shall leave with the shipper a contract as specified by the commission containing the information listed in this subsection (1). The contract must be signed and dated by the shipper and the mover and must include:

(a) The name, telephone number, and physical address where the mover's employees are available during normal business hours;

(b) The date the document is prepared and the proposed date of the move;

(c) The name and address of the shipper, the addresses where the goods are to be picked up and delivered, and a telephone number where the shipper may be reached;

(d) The name, telephone number, and physical address of a location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper;

(e) An itemized breakdown and description of costs or rates and services for transportation and accessorial services to be provided during a move or storage of household goods;

(f) Acceptable forms of payment. A mover shall accept a minimum of two of the following four forms of payment:

(I) Cash;

(II) Cashier's check, money order, or traveler's check;

(III) A valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

(IV) A valid credit card.

(g) Any other items as designated by the rules of the commission.

(2) A mover shall clearly and conspicuously disclose to the shipper in the contract the forms of payments the mover will accept from those categories described in paragraph (f) of subsection (1) of this section.

(3) Each contract must include the phrase "(name of mover) is permitted with the public utilities commission of the state of Colorado as a mover. Permit no. ___."

(4) At or before the time of commencing work, the mover shall leave with the shipper a consumer advisement. The mover shall retain a copy of the consumer advisement, signed and dated by the shipper, for at least three years and shall make the copy available to the commission upon request. The consumer advisement shall be in substantially the following form:

Consumer Advisement

Intrastate movers in Colorado are regulated by the Colorado public utilities commission (PUC). Each mover should have a PUC permit number. You are encouraged to contact the PUC to confirm that the mover you are using is indeed permitted in Colorado.

A mover that is not permitted may ***not*** withhold any of your property to enforce payment of money due under the contract ("carrier's lien").

A mover must include its PUC permit number, true name, and physical (street) address in all advertisements.

You should be aware that the total price of any household move can change, based on a number of factors that may include at least the following:

- Additional services you request at the time of the move;
- Additional items to be moved that were not included in the mover's original estimate;
- Changes to the location or accessibility of building entrances, at either end of the move, that were not included in the mover's original estimate; and
- Changes to the previously agreed date of pickup or delivery.

You should also be aware that, in case of a dispute between you and the mover, Colorado has an arbitration process available to resolve the dispute without going to court.

If you have any questions, you are encouraged to call the PUC for guidance on your rights and obligations.

I acknowledge that I have been given a copy of this consumer advisement to keep for my records.

Signed _____ (shipper).

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 414, § 1, effective August 10.

40-10.1-506. Delivery and storage of household goods. (1) A mover shall relinquish household goods to a shipper and shall place the goods inside a shipper's dwelling unless the shipper has not tendered payment in the amount specified in a contract signed and dated by the shipper. A mover shall not refuse to relinquish prescription medicines, medical equipment, medical devices, or goods for use by children, including children's furniture, clothing, or toys, under any circumstances.

(2) A mover shall not refuse to relinquish household goods to a shipper or fail to place the goods inside a shipper's dwelling based on the mover's refusal to accept an acceptable form of payment.

(3) A mover that lawfully refuses to relinquish a shipper's household goods may place the goods in storage until payment is tendered; however, the mover shall notify the shipper of the location where the goods are stored and the amount due within five days after receipt of a written request for that information from the shipper, which request shall include the address where the shipper may receive the notice. A mover shall not require a prospective shipper to waive any rights or requirements under this section.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 416, § 1, effective August 10.

40-10.1-507. Binding arbitration. In the event of a dispute between a mover and a shipper concerning the amount charged for services or concerning lost or damaged goods, the mover shall offer the shipper the opportunity to participate in binding arbitration under the uniform rules for better business bureau binding arbitration or a substantially similar binding arbitration process promulgated by the council of better business bureaus, incorporated, or its successor organization. If the shipper accepts the offer to arbitrate, the mover shall participate in good faith in the arbitration process and shall agree to be bound by the arbitrator's award.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 416, § 1, effective August 10.

40-10.1-508. Revocation of permit for failure to pay fine. (1) If a mover that holds a permit under this section fails to pay a fine or civil penalty imposed under this part 5 or a rule issued under this article 10.1 within the time prescribed for payment, and not before the decision imposing the fine or civil penalty becomes a final decision by the commission, the permit is revoked immediately. Any of the following are disqualified from applying for a permit for thirty-six months after the date the fine or civil penalty is due:

(a) The mover;

(b) Any owner, principal, officer, member, partner, or director of the mover; and

(c) Any other entity owned or operated by that owner, principal, officer, member, partner, or director.

(2) This disqualification is in addition to and not in lieu of any other penalty or disqualification, including the period of disqualification specified in section 40-10.1-112 (4).

Source: L. 2013: Entire section added, (SB 13-189), ch. 365, p. 2127, § 5, effective June 5. **L. 2017:** IP(1) amended, (SB 17-180), ch. 281, p. 1533, § 6, effective August 9.

40-10.1-509. Outreach - fund. The moving outreach fund is hereby created in the state treasury. The fund consists of one-half the penalties collected from movers and credited to the fund under section 40-7-112. The commission shall use the fund to educate consumers about their rights and the responsibilities of movers under this part 5. This outreach includes public service announcements about the licensing of movers. The moneys in the fund and any interest earned on moneys in the fund remain in the fund and do not revert to the general fund at the end of any fiscal year.

Source: L. 2013: Entire section added, (SB 13-189), ch. 365, p. 2127, § 5, effective June 5.

PART 6

TRANSPORTATION NETWORK COMPANIES

Law reviews: For article, "Über Problems: Ride-Sharing Exclusions in Personal Automobile Insurance Policies", see 47 Colo. Law. 46 (Aug.-Sept. 2018).

40-10.1-601. Short title. This article shall be known and may be cited as the "Transportation Network Company Act".

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1409, § 6, effective June 5.

40-10.1-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Personal vehicle" means a vehicle that is used by a transportation network company driver in connection with providing services for a transportation network company that meets the vehicle criteria set forth in this part 6.

(2) "Prearranged ride" means a period of time that begins when a driver accepts a requested ride through a digital network, continues while the driver transports the rider in a personal vehicle, and ends when the rider departs from the personal vehicle.

(3) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect riders to drivers for the purpose of providing transportation. A transportation network company does not provide taxi service, transportation service arranged through a transportation broker, ridesharing arrangements, as defined in section 39-22-509 (1)(a)(II), C.R.S., or any transportation service over fixed routes at regular intervals. A transportation network company is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers. A transportation network company does not include a political subdivision or other entity exempted from federal income tax under section 115 of the federal "Internal Revenue Code of 1986", as amended.

(4) "Transportation network company driver" or "driver" means an individual who uses his or her personal vehicle to provide services for riders matched through a transportation network company's digital network. A driver need not be an employee of a transportation network company.

(5) "Transportation network company rider" or "rider" means a passenger in a personal vehicle for whom transport is provided, including:

(a) An individual who uses a transportation network company's online application or digital network to connect with a driver to obtain services in the driver's vehicle for the individual and anyone in the individual's party; or

(b) Anyone for whom another individual uses a transportation network company's online application or digital network to connect with a driver to obtain services in the driver's vehicle.

(6) "Transportation network company services" or "services" means the provision of transportation by a driver to a rider with whom the driver is matched through a transportation network company. The term does not include services provided either directly by or under contract with a political subdivision or other entity exempt from federal income tax under section 115 of the federal "Internal Revenue Code of 1986", as amended.

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1409, § 6, effective June 5.

40-10.1-603. Limited regulation. Notwithstanding any other provision of law, transportation network companies are governed exclusively by this part 6. A transportation network company is not subject to the commission's rate, entry, operational, or common carrier requirements, other than those requirements expressly set forth in this part 6.

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1411, § 6, effective June 5.

40-10.1-604. Registration - financial responsibility of transportation network companies - insurance. (1) A transportation network company shall comply with the filing requirements of part 3 and the registered agent requirement of part 7 of article 90 of title 7, C.R.S.

(2) A transportation network company shall file with the commission documentation evidencing that the transportation network company or the driver has secured primary liability insurance coverage for the driver for incidents involving the driver during a prearranged ride. Coverage for incidents involving a driver during a prearranged ride must be in the amount of at least one million dollars per occurrence. The insurance policy must provide coverage at all times the driver is engaged in a prearranged ride. This subsection (2) becomes effective ninety days after June 5, 2014.

(3) For the period of time when a driver is logged into a transportation network company's digital network but is not engaged in a prearranged ride, the following insurance requirements apply:

(a) Repealed.

(b) On or before January 15, 2015, and thereafter, a driver or a transportation network company on the driver's behalf shall maintain a primary automobile insurance policy that:

(I) Recognizes that the driver is a transportation network company driver and covers the driver's provision of transportation network company services while the driver is logged into the transportation network company's digital network;

(II) Meets at least the minimum coverage of at least fifty thousand dollars to any one person in any one accident, one hundred thousand dollars to all persons in any one accident, and for property damage arising out of the use of the motor vehicle to a limit, exclusive of interest and costs, of thirty thousand dollars in any one accident; and

(III) Is one of the following:

(A) Full-time coverage similar to the coverage required by commission rules promulgated under section 40-10.1-107 (1);

(B) An insurance rider to, or endorsement of, the driver's personal automobile insurance policy required by the "Motor Vehicle Financial Responsibility Act", article 7 of title 42, C.R.S.; or

(C) A corporate liability insurance policy purchased by the transportation network company that provides primary coverage for the period of time in which a driver is logged into the digital network.

(c) The division of insurance shall conduct a study of whether the levels of coverage provided for in this subsection (3) are appropriate for the risk involved with transportation network company services. In conducting the study, the division of insurance shall convene one or more stakeholder meetings to evaluate the choices of coverage set forth in subparagraph (III) of paragraph (b) of this subsection (3). On or before January 15, 2015, the division of insurance

shall present its findings and any recommendations to the business, labor, economic and workforce development committee in the house of representatives, the business, labor, and technology committee in the senate, the transportation and energy committee in the house of representatives, and the transportation committee in the senate.

(d) If a transportation network company purchases an insurance policy under this subsection (3), it shall provide documentation to the commission evidencing that the transportation network company has secured the policy. If the responsibility is placed on a driver to purchase insurance under this subsection (3), the transportation network company shall verify that the driver has purchased an insurance policy under this subsection (3).

(4) A driver's personal automobile insurance policy that complies with part 6 of article 4 of title 10, C.R.S., is sufficient to satisfy the compulsory insurance requirements thereof. An insurance policy required by subsection (2) or subsection (3) of this section:

(a) May be placed with an insurer licensed under title 10, C.R.S., or with a surplus lines insurer authorized under article 5 of title 10, C.R.S.; and

(b) Need not separately satisfy the requirements of part 6 of article 4 of title 10, C.R.S.

(5) Nothing in this section requires a personal automobile insurance policy to provide coverage for the period of time in which a driver is logged into a transportation network company's digital network.

(6) If more than one insurance policy provides valid and collectible coverage for a loss arising out of an occurrence involving a motor vehicle operated by a driver, the responsibility for the claim must be divided on a pro rata basis among all of the applicable policies. This equal division of responsibility may only be modified by the written agreement of all of the insurers of the applicable policies and the owners of those policies.

(7) In a claims coverage investigation, a transportation network company shall cooperate with a liability insurer that also insures the driver's transportation network company vehicle, including the provision of relevant dates and times during which an incident occurred that involved the driver while the driver was logged into a transportation network company's digital network.

(8) Nothing in this section modifies or abrogates any otherwise applicable insurance requirements set forth in title 10, C.R.S.

(9) If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the transportation network company shall cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle. The commission shall not assess any fines as a result of a violation of this subsection (9).

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1411, § 6, effective June 5.

Editor's note: Subsection (3)(a) provided for the repeal of subsection (3)(a), effective July 1, 2015. (See L. 2014, p. 1411.)

40-10.1-605. Operational requirements. (1) The following requirements apply to the provision of services:

(a) A driver shall not provide services unless a transportation network company has matched the driver to a rider through a digital network. A driver shall not solicit or accept the on-demand summoning of a ride, otherwise known as a "street hail".

(b) A transportation network company shall make available to prospective riders and drivers the method by which the transportation network company calculates fares or the applicable rates being charged and an option to receive an estimated fare.

(c) Upon completion of a prearranged ride, a transportation network company shall transmit to the rider an electronic receipt, either by electronic mail or via text message, documenting:

(I) The point of origin and destination of the prearranged ride;

(II) The total duration and distance of the prearranged ride;

(III) The total fare paid, including the base fare and any additional charges incurred for distance traveled or duration of the prearranged ride; and

(IV) The driver's first name and telephone number.

(d) Before permitting a person to act as a driver on its digital network, a transportation network company shall confirm that the person is at least twenty-one years of age and possesses:

(I) A valid driver's license;

(II) Proof of automobile insurance;

(III) Proof of a Colorado vehicle registration; and

(IV) Within ninety days of June 5, 2014, and pursuant to commission rules, proof that the person is medically fit to drive.

(e) A driver shall not offer or provide transportation network company services for more than twelve consecutive hours.

(f) A transportation network company shall implement an intoxicating substance policy for drivers that disallows any amount of intoxication of the driver while providing services. The transportation network company shall include on its website and mobile device application software a notice concerning the transportation network company's intoxicating substance policy.

(g) (I) A transportation network company shall conduct or have a certified mechanic conduct a safety inspection of a prospective driver's vehicle before it is approved for use as a personal vehicle and shall have periodic inspections of personal vehicles conducted thereafter, at intervals of at least one inspection per year. A safety inspection shall include an inspection of:

(A) Foot brakes;

(B) Emergency brakes;

(C) Steering mechanism;

(D) Windshield;

(E) Rear window and other glass;

(F) Windshield wipers;

(G) Headlights;

(H) Tail lights;

(I) Turn indicator lights;

(J) Stop lights;

(K) Front seat adjustment mechanism;

(L) The opening, closing, and locking capability of the doors;

(M) Horn;

(N) Speedometer;
(O) Bumpers;
(P) Muffler and exhaust system;
(Q) Tire conditions, including tread depth;
(R) Interior and exterior rear-view mirrors; and
(S) Safety belts.

(II) Effective ninety days after June 5, 2014, the commission may also conduct inspections of personal vehicles.

(h) A personal vehicle must:

(I) Have at least four doors; and

(II) Be designed to carry no more than eight passengers, including the driver.

(i) A transportation network company shall make the following disclosure to a prospective driver in the prospective driver's terms of service:

While operating on the transportation network company's digital network, your personal automobile insurance policy might not afford liability coverage, depending on the policy's terms.

(j) (I) A transportation network company shall make the following disclosure to a prospective driver in the prospective driver's terms of service:

If the vehicle that you plan to use to provide transportation network company services for our transportation network company has a lien against it, you must notify the lienholder that you will be using the vehicle for transportation services that may violate the terms of your contract with the lienholder.

(II) The disclosure set forth in subparagraph (I) of this paragraph (j) must be placed prominently in the prospective driver's written terms of service, and the prospective driver must acknowledge the terms of service electronically or by signature.

(k) A transportation network company shall make available to a rider a customer support telephone number on its digital network or website for rider inquiries.

(l) The disclosure requirements set forth in this subsection (1) take effect on July 1, 2014.

(m) (I) A transportation network company shall not disclose to a third party any personally identifiable information concerning a user of the transportation network company's digital network unless:

(A) The transportation network company obtains the user's consent to disclose personally identifiable information;

(B) Disclosure is necessary to comply with a legal obligation; or

(C) Disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

(II) The limitation on disclosure does not apply to the disclosure of aggregated user data and other information about the user that is not personally identifiable.

(n) Any taxicab company or shuttle company authorized by the commission under this article may convert to a transportation network company model or may set up a subsidiary or affiliate transportation network company. In converting to a transportation network company model or setting up a transportation network company subsidiary or affiliate, a taxicab company

or shuttle company authorized by the commission under this article may completely or partially suspend its certificate of public convenience and necessity issued under section 40-10.1-201. During the period of suspension of its certificate of public convenience and necessity, a taxicab company, shuttle company, or a subsidiary or affiliate of a taxicab company or shuttle company is exempt from taxi or shuttle standards under this article, the standards concerning the regulation of rates and charges under article 3 of this title, and any commission rules regarding common carriers promulgated under this article or article 3 of this title.

(o) Each transportation network company shall require that each personal vehicle providing transportation network company services display an exterior marking that identifies the personal vehicle as a vehicle for hire.

(2) A transportation network company or a third party shall retain true and accurate inspection records for at least fourteen months after an inspection was conducted for each personal vehicle used by a driver.

(3) (a) Before a person is permitted to act as a driver through use of a transportation network company's digital network, the person shall:

(I) Obtain a criminal history record check pursuant to the procedures set forth in section 40-10.1-110 as supplemented by the commission's rules promulgated under section 40-10.1-110 or through a privately administered national criminal history record check, including the national sex offender database; and

(II) If a privately administered national criminal history record check is used, provide a copy of the criminal history record check to the transportation network company.

(b) A driver shall obtain a criminal history record check in accordance with subparagraph (I) of paragraph (a) of this subsection (3) every five years while serving as a driver.

(c) (I) A person who has been convicted of or pled guilty or nolo contendere to driving under the influence of drugs or alcohol in the previous seven years before applying to become a driver shall not serve as a driver. If the criminal history record check reveals that the person has ever been convicted of or pled guilty or nolo contendere to any of the following felony offenses, the person shall not serve as a driver:

(A) An offense involving fraud, as described in article 5 of title 18, C.R.S.;

(B) An offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(C) An offense against property, as described in article 4 of title 18, C.R.S.; or

(D) A crime of violence, as described in section 18-1.3-406, C.R.S.

(II) A person who has been convicted of a comparable offense to the offenses listed in subparagraph (I) of this paragraph (c) in another state or in the United States shall not serve as a driver.

(III) A transportation network company or a third party shall retain true and accurate results of the criminal history record check for each driver that provides services for the transportation network company for at least five years after the criminal history record check was conducted.

(IV) A person who has, within the immediately preceding five years, been convicted of or pled guilty or nolo contendere to a felony shall not serve as a driver.

(4) (a) Before permitting an individual to act as a driver on its digital network, a transportation network company shall obtain and review a driving history research report for the individual.

(b) An individual with the following moving violations shall not serve as a driver:

(I) More than three moving violations in the three-year period preceding the individual's application to serve as a driver; or

(II) A major moving violation in the three-year period preceding the individual's application to serve as a driver, whether committed in this state, another state, or the United States, including vehicular eluding, as described in section 18-9-116.5, C.R.S., reckless driving, as described in section 42-4-1401, C.R.S., and driving under restraint, as described in section 42-2-138, C.R.S.

(c) A transportation network company or a third party shall retain true and accurate results of the driving history research report for each driver that provides services for the transportation network company for at least three years.

(5) If any person files a complaint with the commission against a transportation network company or driver, the commission may inspect the transportation network company's records as reasonably necessary to investigate and resolve the complaint.

(6) (a) A transportation network company shall provide services to the public in a nondiscriminatory manner, regardless of geographic location of the departure point or destination, once the driver and rider have been matched through the digital network; race; ethnicity; gender; sexual orientation, as defined in section 2-4-401 (13.5), C.R.S.; gender identity; or disability that could prevent customers from accessing transportation. A driver shall not refuse to transport a passenger unless:

(I) The passenger is acting in an unlawful, disorderly, or endangering manner;

(II) The passenger is unable to care for himself or herself and is not in the charge of a responsible companion; or

(III) The driver has already committed to providing a ride for another rider.

(b) A transportation network company shall not impose additional charges for providing services to persons with physical or mental disabilities because of those disabilities.

(c) A driver shall permit a service animal to accompany a rider on a prearranged ride.

(d) If a rider with physical or mental disabilities requires the use of the rider's mobility equipment, a driver shall store the mobility equipment in the vehicle during a prearranged ride if the vehicle is reasonably capable of storing the mobility equipment. If the driver is unable to store a rider's mobility equipment in the driver's vehicle, the driver shall refer the rider to another driver or transportation service provider with a vehicle that is equipped to accommodate the rider's mobility equipment.

(7) (a) A transportation network company is not liable for a driver's violation of subsection (6) of this section unless the driver's violation has been previously reported to the transportation network company in writing, and the transportation network company has failed to reasonably address the alleged violation. The commission shall afford a transportation network company the same due process rights afforded transportation providers in defending against civil penalties assessed by the commission.

(b) The commission may assess a civil penalty up to five hundred fifty dollars under this subsection (7).

(8) Within ten days of receiving a complaint about a driver's alleged violation of subsection (6) of this section, the commission shall report the complaint to the transportation network company for which the driver provides services.

(9) A driver shall immediately report to the transportation network company any refusal to transport a passenger pursuant to paragraph (a) of subsection (6) of this section, and the transportation network company shall annually report all such refusals to the commission in a form and manner determined by the commission.

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1413, § 6, effective June 5.

40-10.1-606. Permit required for transportation network companies - penalty for violation - rules. (1) A person shall not operate a transportation network company in Colorado without first having obtained a permit from the commission.

(2) The commission shall issue a permit to each transportation network company that meets the requirements of this part 6 and pays an annual permit fee of one hundred eleven thousand two hundred fifty dollars to the commission. The commission may adjust the annual permit fee by rule to cover the commission's direct and indirect costs associated with implementing this part 6.

(3) The commission shall determine the form and manner of application for a transportation network company permit.

(4) The commission may take action against a transportation network company as set forth in section 40-10.1-112, including issuing an order to cease and desist and suspending, revoking, altering, or amending a permit issued to the transportation network company.

(5) (a) For a violation of this part 6 or a failure to comply with a commission order, decision, or rule issued under this part 6, a transportation network company is subject to the commission's authority under sections 40-7-101, 40-7-112, 40-7-113, 40-7-115, and 40-7-116.

(b) The commission shall not assess a penalty against a driver.

(6) The commission may deny an application under this part 6 or refuse to renew the permit of a transportation network company based on a determination that the transportation network company has not satisfied a civil penalty arising out of an administrative or enforcement action brought by the commission.

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1419, § 6, effective June 5.

40-10.1-607. Fees - transportation network company fund - creation. The commission shall transmit all fees collected pursuant to this part 6 to the state treasurer, who shall credit the fees to the transportation network company fund, which is hereby created in the state treasury. The moneys in the fund are continuously appropriated to the commission for the purposes set forth in this part 6. All interest earned from the investment of moneys in the fund is credited to the fund. Any moneys not expended at the end of the fiscal year remain in the fund and do not revert to the general fund or any other fund.

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1420, § 6, effective June 5.

40-10.1-608. Rules. (1) The commission may promulgate rules consistent with this part 6, including rules concerning administration, fees, and safety requirements.

(2) The commission may promulgate rules requiring a transportation network company to maintain and file with the commission evidence of financial responsibility and proof of the continued validity of the insurance policy, surety bond, or self-insurance, but shall not require a transportation network company to file a copy of the insurance policy.

Source: L. 2014: Entire part added, (SB 14-125), ch. 323, p. 1420, § 6, effective June 5.

PART 7

LARGE-MARKET TAXICAB SERVICES

40-10.1-701. Legislative declaration. (1) The general assembly finds and declares that:

(a) Nothing in this part 7 requires or prohibits a motor carrier applying for a permit pursuant to section 40-10.1-702 (1)(a) to form a labor union nor requires any large-market taxicab service driver to join a labor union; and

(b) If a motor carrier previously obtained a certificate of public convenience and necessity to provide taxicab service pursuant to section 40-10.1-201 and the certificate remains valid at a time that the motor carrier subsequently obtains a permit to operate large-market taxicab service under this part 7, the motor carrier's certificate constitutes a devalued asset for the motor carrier.

Source: L. 2018: Entire part added, (HB 18-1320), ch. 363, p. 2167, § 10, effective August 8.

40-10.1-702. Large-market taxicab service - permit required - rules. (1) (a) On and after January 1, 2019, a person shall not operate or offer to operate large-market taxicab service in intrastate commerce without first having obtained a permit to operate large-market taxicab service from the commission in accordance with this part 7.

(b) A person may apply for a permit in a form and manner prescribed by the commission.

(c) A permit issued pursuant to this section is valid for one year after the date of issuance.

(2) Except as provided in section 40-10.1-704, the commission shall issue a permit to a motor carrier of passengers upon completion of the application filed pursuant to subsection (1) of this section, the payment of a fee determined by the commission, compliance with the financial responsibility requirements established by rule by the commission pursuant to section 40-10.1-107, and submission of current rate information pursuant to section 40-10.1-705.

(3) In order to obtain a permit under this section, an applicant must demonstrate that each vehicle operated under the permit has been inspected within the immediately preceding twelve months by a qualified mechanic in accordance with rules promulgated by the commission.

(4) (a) Except as provided in subsection (4)(b) of this section, a motor carrier providing large-market taxicab service must have at least twenty-five vehicles in its fleet at all times.

(b) In El Paso, Larimer, and Weld counties, a motor carrier providing large-market taxicab service must have at least ten vehicles in its fleet at all times.

(5) For each county served by a motor carrier providing large-market taxicab service pursuant to this part 7, the commission shall by rule determine the maximum rate that a motor carrier providing large-market taxicab service may charge its passengers.

Source: L. 2018: Entire part added, (HB 18-1320), ch. 363, p. 2168, § 10, effective August 8.

40-10.1-703. Large-market taxicab service license plates - rules. (1) The commission shall create either a document or an electronic system that a person authorized to provide large-market taxicab service under this part 7 may use to verify to the department of revenue or the department's authorized agent that the person provides large-market taxicab service.

(2) Upon request, the commission shall:

(a) If the commission creates a document pursuant to subsection (1) of this section, provide the document to the person authorized to provide large-market taxicab service; or

(b) If the commission creates an electronic system pursuant to subsection (1) of this section, provide the electronic verification to the department of revenue or its authorized agent.

(3) The commission may promulgate rules to implement this section and to enforce section 42-3-236.

Source: L. 2018: Entire part added, (HB 18-1320), ch. 363, p. 2168, § 10, effective August 8.

40-10.1-704. Permit revocation. (1) If a motor carrier that holds a permit under this part 7 fails to comply with a final commission decision that assesses a fine or civil penalty pursuant to section 40-7-113 for a violation of this article 10.1 or a rule adopted pursuant to this article 10.1, the motor carrier's permit is revoked immediately. Any of the following persons are disqualified from applying for a permit for twenty-four months after the date of the permit revocation:

(a) The motor carrier;

(b) An owner, principal, officer, member, partner, or director of the motor carrier; and

(c) Any other entity owned or operated by an owner, principal, officer, member, partner, or director of the motor carrier.

(2) The disqualification set forth in subsection (1) of this section does not apply to revocation based on a failure to carry insurance unless the person knowingly operated the motor carrier without insurance.

(3) The disqualification set forth in subsection (1) of this section is in addition to and not in lieu of any other penalty or disqualification, including the period of disqualification specified in section 40-10.1-112 (4).

Source: L. 2018: Entire part added, (HB 18-1320), ch. 363, p. 2169, § 10, effective August 8.

40-10.1-705. Rates - limitations - rules. (1) Except as provided in subsections (2) and (3) of this section, large-market taxicab services are not subject to rate limitations imposed under part 2 of this article 10.1.

(2) (a) A motor carrier operating a large-market taxicab service shall file with the commission, in the form and manner that the commission may designate, a schedule showing the rates, charges, and collections that the motor carrier collects, enforces, or intends to collect or enforce that affect or relate to the motor carrier's large-market taxicab service operations.

(b) The commission shall not limit the number or frequency of rate schedules that a motor carrier may file with the commission pursuant to subsection (2)(a) of this section.

(c) Unless a filed rate schedule exceeds the maximum rate set by the commission by rule pursuant to section 40-10.1-702 (5), the commission shall not reject a rate schedule filed with the commission unless the schedule was not filed in the form and manner designated by the commission pursuant to subsection (2)(a) of this section. The commission shall not amend any rate schedule filed with the commission pursuant to this section.

(3) It is unlawful for a motor carrier operating a large-market taxicab service to carry or advertise that it will carry individuals in a manner contrary to the filing required under subsection (2)(a) of this section.

(4) The commission may promulgate rules consistent with this section to implement the system of schedule filings required by this section.

Source: L. 2018: Entire part added, (HB 18-1320), ch. 363, p. 2169, § 10, effective August 8.

PART 8

VEHICLE BOOTING COMPANIES

40-10.1-801. Permit requirements - rules. (1) (a) Effective January 1, 2020, a person shall not operate or offer to operate as a vehicle booting company in intrastate commerce without first having obtained a permit from the commission in accordance with this article 10.1.

(b) A person may apply for a permit under this part 8 to the commission in the form and with the information as the commission requires. Permits are valid for one year after the date of issuance.

(2) The commission may deny an application under this part 8 of a person who has, within the immediately preceding five years, been convicted of, or pled guilty or nolo contendere to, a felony. The commission may also deny an application under this part 8 or refuse to renew the permit of a vehicle booting company based upon a determination that the vehicle booting company or any of its owners, principals, officers, members, partners, or directors has not satisfied a civil penalty arising out of any administrative or enforcement action brought by the commission.

(3) (a) Except as otherwise provided in subsection (2) of this section and section 40-10.1-112 (4), the commission shall issue a permit to a vehicle booting company upon completion of the application and the filing of proof of workers' compensation insurance coverage in accordance with the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, and with the financial responsibility requirements of this title 40 and may attach to the permit and to

the exercise of the rights granted by the permit any restrictions, terms, and conditions, including altering the rates and charges of the applicant, as are reasonably deemed necessary for the protection of the property of the public.

(b) If a vehicle booting company violates this article 10.1, any other applicable provision of law, or any rule or order of the commission issued under this article 10.1 and as a result is ordered by a court or by the commission to pay a fine or civil penalty that the vehicle booting company subsequently fails to pay in full within the time prescribed for payment, and not before the decision imposing the fine or civil penalty becomes a final decision by the commission, then:

(I) The vehicle booting company's permit is revoked immediately; and

(II) The vehicle booting company, its owners, principals, officers, members, partners, and directors, and any other entity owned or operated by one or more of those owners, principals, officers, members, partners, or directors, may be disqualified from obtaining or renewing any operating authority under this title 40 for a period of five years after the date on which the fine or civil penalty was due. The period of disqualification pursuant to this subsection (3)(b)(II) is in addition to, and not in lieu of, and does not affect, any other penalty or period of disqualification, including the period of disqualification specified in section 40-10.1-112 (4).

(c) A vehicle booting company's facilities and vehicles are subject to inspection by the commission and by authorized personnel of the Colorado state patrol, which agency shall promptly report to the commission concerning any violations revealed by an inspection.

(4) The commission may promulgate rules as necessary and reasonable to implement this part 8, including rules regarding signage and drop fees.

(5) There is hereby created in the state treasury the vehicle booting cash fund, referred to in this section as the "fund", consisting of any fee revenue collected by the commission pursuant to this part 8 and transmitted to the state treasurer for credit into the fund and any other money that the general assembly may appropriate or transfer to the fund. The money in the fund is continuously appropriated to the commission for its implementation of this part 8. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

Source: L. 2019: Entire part added, (SB 19-236), ch. 359, p. 3314, § 21, effective May 30.

ARTICLE 10.5

Unified Carrier Registration System

40-10.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the public utilities commission of the state of Colorado.

(2) "Unified carrier registration system" means the unified carrier registration system authorized by section 4305 of the federal "Unified Carrier Registration Act of 2005", 49 U.S.C. sec. 14504a, as amended.

Source: L. 2006: Entire article added, p. 1093, § 1, effective August 7.

40-10.5-102. Registration required - rules of commission. (1) On and after the repeal of sections 40-10-120 and 40-11-115, which occurred on September 25, 2007, a motor carrier, motor private carrier, broker, freight forwarder, leasing company, or other person required to register with the United States department of transportation under the unified carrier registration system:

(a) Shall not engage in, or contract for, any interstate transportation of persons or property on any public highway in this state without first so registering; and

(b) Shall comply with all applicable rules of the commission.

(2) For purposes of carrying out the provisions of this article and relevant federal statutes and rules, the commission:

(a) Shall participate in the uniform carrier registration system;

(b) Is vested with the legal authority to administer the unified carrier registration agreement for the state of Colorado; and

(c) Has the power to promulgate such rules as are necessary for the proper administration and enforcement of this article. Such rules may include, without limitation, rules establishing registration fees and other fees sufficient to cover the direct and indirect costs of administration and enforcement of this article. All fees collected under this article shall be transmitted to the state treasurer, who shall credit them to the public utilities commission motor carrier fund, created in section 40-2-110.5.

Source: L. 2006: Entire article added, p. 1093, § 1, effective August 7. **L. 2009:** IP(1) amended, (SB 09-292), ch. 369, p. 1983, § 123, effective August 5.

ARTICLE 11

Contract Motor Carriers

40-11-101 to 40-11-117. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was numbered as article 11 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning contract carriers, see article 10.1 of this title.

ARTICLE 11.5

Independent Contractors - Motor Carriers

40-11.5-101. Independent contractors - motor carriers. Notwithstanding article 10.1 of this title, common carriers and contract carriers may use independent contractors.

Source: L. 90: Entire article added, p. 1762, § 1, effective June 8. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 424, § 21, effective August 10.

40-11.5-102. Lease provisions - definitions - rules. (1) Leases between motor carriers or contract carriers and independent contractors may contain, but need not be limited to, the following provisions:

(a) (I) The independent contractor, working with a certificated taxi or limousine carrier, may either lease a motor vehicle owned by the certificated carrier or may own the motor vehicle and lease it to the certificated carrier, who may release the vehicle to the independent contractor.

(II) The independent contractor, working with a certificated common carrier or contract carrier, other than a certificated taxi or limousine carrier, may own the motor vehicle and lease it to the certificated carrier.

(b) The lease may require the independent contractor to be instructed in the method of the carrier's operation, and to be familiar with federal, state, and municipal statutes, ordinances, and regulations. The lease may further require the certificated carrier or contract carrier to enforce compliance with such federal, state, and municipal statutes, ordinances, and regulations by the independent contractor. Compliance with the provisions of this paragraph (b) shall not affect the status of the independent contractor as an independent contractor for purposes of this article.

(c) The lease may provide for the transportation services to be accomplished personally by the independent contractor.

(d) The lease may provide for uniformity, on the body of the motor vehicle being used, of color and any written displays.

(e) The lease may provide for periodic driver safety training.

(f) The lease may provide for some control over any assistant working with the independent contractor relating to the enforcement of, and compliance with, federal, state, and municipal statutes, ordinances, and regulations.

(g) The lease may establish a specific number of hours to complete a particular shipment of goods and may provide for the creation of shifts which are primarily created to make available transportation equipment on a basis established to meet public need and necessity, and to provide adequate service to the public at all times.

(h) The lease may provide for certain regulations in the event radio telecommunication procedures are used between the certificated carrier or contract carrier and the driver of the vehicle.

(i) The lease may provide that the independent contractor only work for the certificated carrier or contract carrier as a driver during the time the independent contractor is operating the motor vehicle pursuant to the lease.

(j) The lease may prohibit the independent contractor from individually advertising the services being offered while driving for the certificated carrier or contract carrier pursuant to the terms of the lease.

(k) The lease may provide for the carrier to pay the independent contractor's fees when the carrier accepts charge vouchers for services rendered to customers.

(2) The lease may be terminated by any party, but nothing in this section shall be construed as relieving an independent contractor from the obligation of completing an accepted trip.

(3) The lease need not be for a term certain.

(4) Leases containing provisions pursuant to paragraphs (a), (b), (e), (f), (g), (h), and (i) of subsection (1) of this section shall be presumed prima facie evidence of an independent contractor relationship between the parties to the lease. This presumption may be overcome by clear and convincing evidence of an employment relationship between the parties to the lease considering only factors not in the lease. Leases containing the other optional provisions shall not change the characterization of the relationship evidenced by the lease.

(5) (a) Any lease or contract executed pursuant to this section must provide for coverage under workers' compensation or an occupational accident insurance policy that provides similar coverage.

(a.5) If an operator of a commercial vehicle, as defined in section 42-4-235 (1)(a)(I)(B), obtains similar coverage pursuant to this subsection (5), then the operator:

(I) Is excluded from the definition of employee for purposes of section 8-40-202 (2);

(II) Shall notify the division of workers' compensation in the department of labor and employment of the election, in a manner determined by the director of the division of workers' compensation by rule; and

(III) Shall, along with the motor carrier and contract carrier, provide proof of the similar coverage upon request to interested parties, including the carrier's workers' compensation insurance provider, the division of workers' compensation, and the division of insurance.

(b) For purposes of this subsection (5), "similar coverage":

(I) Means insurance benefits designed for independent contractors and sole proprietors who reject workers' compensation coverage and elect, pursuant to this subsection (5), coverage providing medical, temporary and permanent disability, death and dismemberment, and survivor benefits that are subject to regulation by the division of insurance in the department of regulatory agencies. The specifications of the insurance, including coverages, exclusions, policy limits, and the amount, if any, of any deductibles or copayments, must be filed with the division of insurance. The specifications must meet or exceed standards set by the division of insurance and the standards must specify that the benefits offered by the insurance coverage must be at least comparable to the benefits offered under the workers' compensation system.

(II) For services performed by operators of commercial vehicles, as defined in section 42-4-235 (1)(a)(I)(B), means insurance benefits defined in subsection (5)(b)(I) of this section. The specifications of the insurance, including minimum thresholds for coverage and the amount, if any, of any deductibles or copayments, must meet or exceed the standards set, by rule, by the division of insurance in the department of regulatory agencies.

(c) The lease shall provide for the payment of such coverage by either the lessor or lessee. If the lease provides for the lessee to pay for such coverage, proof of coverage shall be maintained by the lessor for the duration of the lease and the lessor shall not have liability for failure of compliance by the lessee.

(d) Notwithstanding any other law, if an operator of a commercial vehicle, as defined in section 42-4-235 (1)(a)(I)(B), a motor carrier, or a contract carrier obtains similar coverage pursuant to this subsection (5), articles 40 to 47 of title 8 do not apply.

(e) The commissioner of insurance in the division of insurance in the department of regulatory agencies shall promulgate rules establishing the minimum coverages for benefits under an occupational accident policy under this subsection (5).

Source: L. 90: Entire article added, p. 1762, § 1, effective June 8. **L. 92:** (4) amended and (5) added, p. 1800, § 4, effective June 6. **L. 2004:** (5)(b) amended, p. 906, § 34, effective May 21. **L. 2018:** (5)(a) and (5)(b) amended and (5)(a.5), (5)(d), and (5)(e) added, (SB 18-178), ch. 203, p. 1317, § 1, effective August 8.

ARTICLE 12

Commercial Carriers - Motor Vehicles

40-12-101 to 40-12-114. (Repealed)

Source: L. 78: Entire article repealed, p. 521, § 8, effective July 1.

Editor's note: This article was numbered as article 10 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 1978, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 13

Towing Carriers - Motor Vehicles

40-13-101 to 40-13-112. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was numbered as article 14 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning towing carriers, see article 10.1 of this title.

ARTICLE 14

Carriers of Household Goods

40-14-101 to 40-14-114. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was added in 1984, repealed in 1995, and recreated and reenacted in 2003. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning carriers of household goods, see article 10.1 of this title.

ARTICLE 15

Intrastate Telecommunications Services

Editor's note: This article was added in 1984. This article was repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 1

GENERAL PROVISIONS

40-15-101. Legislative declaration. The general assembly hereby finds, determines, and declares that it is the policy of the state of Colorado to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high-quality telecommunications services. Such goals are best achieved by legislation that brings telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service while fostering free market competition within the telecommunications industry. The general assembly further finds that the technological advancements and increased customer choices for telecommunications services generated by such market competition will enhance Colorado's economic development and play a critical role in Colorado's economic future. However, the general assembly recognizes that the strength of competitive force varies widely between markets and products and services. Therefore, to foster, encourage, and accelerate the continuing emergence of a competitive telecommunications environment, the general assembly declares that flexible regulatory treatments are appropriate for different telecommunications services.

Source: L. 87: Entire article R&RE, p. 1476, § 1, effective July 2.

40-15-102. Definitions. As used in this article 15, unless the context otherwise requires:

(1) Repealed.

(2) "Advanced features" means custom calling features known as speed dialing, 3-way calling, call forwarding, and call waiting.

(3) "Basic local exchange service" or "basic service" means the telecommunications service that provides:

(a) A local dial tone;

(b) Local usage necessary to place or receive a call within an exchange area; and

(c) Access to emergency, operator, and interexchange telecommunications services.

(3.3) "Broadband" or "broadband service" means broadband internet service provided over a broadband network.

(3.5) "Broadband internet service" means a retail service that transmits and receives data from the customer's property or determined point of presence to substantially all internet endpoints. The term includes any capabilities that are incidental to and enable the operation of the broadband service.

(3.7) "Broadband network" means the plant, equipment, components, facilities, hardware, and software used to provide broadband internet service at measurable speeds of at least ten megabits per second downstream and one megabit per second upstream or at measurable speeds at least equal to the federal communications commission's definition of high-speed internet access or broadband, whichever is faster, with:

(a) Sufficiently low latency to enable the use of real-time communications, including voice-over-internet-protocol service; and

(b) Either no usage limits or usage limits that are reasonably comparable to those found in urban areas for the same technology.

(4) "Centron and centron-like services" means services which provide custom switching features which include but are not limited to distributive dial tone, select number screening, toll restriction and screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting and screening.

(4.5) "Commercial mobile radio service" or "CMRS" means cellular or wireless service, personal communications service, paging service, radio common carrier service, radio mobile service, or enhanced specialized mobile radio service.

(5) "Commission" means the public utilities commission of the state of Colorado.

(5.5) "Competitive local exchange carrier" or "CLEC" means a local exchange provider that is not the incumbent local exchange carrier in an identified exchange area.

(6) "Deregulated telecommunications services" means telecommunications services not subject to the jurisdiction of the commission pursuant to part 4 of this article.

(6.5) "Distributed equitably" means that distribution by the commission of high cost support mechanism funding to eligible providers shall be accomplished using regulatory principles that are neutral in their effect, that do not favor one class of providers over another, and that do not cause any eligible telecommunications provider to experience a reduction in its high cost support mechanism support revenue requirement based upon commission rules that are not applicable to other telecommunications providers.

(6.7) "Eligible applicant" means an applicant seeking grant funding for a proposed broadband project under section 40-15-509.5 with a sufficient business track record to indicate that the applicant's operations will be sustainable after receiving infrastructure support under section 40-15-509.5. The term is limited to for-profit entities; except that a nonprofit telephone cooperative, including its affiliates and subsidiaries, or a nonprofit rural electric association that

existed on May 10, 2014, qualifies as an "eligible applicant". The term is not limited to a current recipient of high cost support mechanism funds.

(7) "Emerging competitive telecommunications services" means telecommunications services subject to regulation by the commission pursuant to part 3 of this article.

(8) "Exchange area" means a geographic area established by the commission that is used in providing basic local exchange service.

(8.5) "FCC" means the federal communications commission.

(9) "Functionally equivalent" refers to services or products which perform the same or similar tasks or functions to obtain substantially the same result at reasonably comparable prices.

(9.3) "Incumbent local exchange carrier" or "ILEC" has the meaning set forth in 47 U.S.C. sec. 251 (h).

(9.5) "Incumbent provider" means a provider that offers broadband internet service in an unserved area, but that is not providing a broadband network in that area.

(10) "Information services" has the same meaning as set forth in 47 U.S.C. sec. 153.

(10.5) "Infrastructure" means the facilities or equipment used in the deployment of broadband service.

(11) "Interexchange provider" means a person who provides interexchange telecommunications service.

(12) "Interexchange telecommunications service" means telephone service between exchange areas that is not included in basic local exchange service.

(13) "InterLATA" means telecommunications services between LATAs.

(14) "InterLATA interexchange telecommunications service" means long-distance service between LATAs.

(14.5) "Internet-protocol-enabled service" or "IP-enabled service" means a service, functionality, or application, other than voice-over-internet protocol, that uses internet protocol or a successor protocol and enables an end user to send or receive a voice, data, or video communication in internet protocol format or a successor format, utilizing a broadband connection at the end user's location.

(15) "IntraLATA" means telecommunications service provided within one LATA.

(16) "IntraLATA interexchange telecommunications service" means long-distance service within a LATA.

(17) "LATA" means each local access and transport area which has been designated in this state by the commission. A LATA may encompass more than one contiguous local exchange area in this state which serves common social, economic, or other purposes, even where such area transcends municipal or other local governmental boundaries.

(17.5) (a) "Local entity" means elected members of a county or municipal government.

(b) For purposes of this subsection (17.5), "municipal government" means a home rule or statutory city, town, or city and county or a territorial charter city.

(18) "Local exchange provider" or "local exchange carrier" means any person authorized by the commission to provide basic local exchange service.

(19) "New products and services" means any new product or service introduced separately or in combination with other products and services after January 1, 1988, which is not functionally required to provide basic local exchange service and any new product or service which is introduced after January 1, 1988, which is not a repackaged current product or service or a direct replacement for a regulated product or service. Repackaging any product or service

deregulated under part 4 of this article with any service regulated under part 2 or 3 of this article shall not be considered a new product or service.

(19.3) Repealed.

(19.5) "Nonoptional operator services" means operator services requiring an operator for individualized call processing or specialized or alternative billing, including, without limitation, credit card calls, calls billed to a third number, collect calls, and person-to-person calls.

(20) "Operator services" means services, other than directory assistance, provided either by live operators or by the use of recordings or computer-voice interaction to enable customers to receive individualized and select telephone call processing or specialized or alternative billing functions. "Operator services" includes nonoptional operator services, optional operator services, and operator services necessary for the provision of basic local exchange service.

(20.3) "Operator services necessary for the provision of basic local exchange service" means operator services provided when operator intervention is required to complete a local call or obtain access to emergency services or to directory assistance.

(20.6) "Optional operator services" means operator services not defined in subsection (19.5) or (20.3) of this section, including, without limitation, operator services provided in connection with conference calling, foreign language translation, operator services to provide telephone service to inmates at penal institutions, and voice messaging.

(21) "Premium services" means any enhanced or improved product or service offered by a telecommunications service provider that is not functionally required for the provision of basic local exchange or interexchange service and that the customer may purchase at his or her option.

(22) "Private line service" means any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end user for the transmission of any telecommunications services.

(23) (a) "Private telecommunications network" means a system, including the construction, maintenance, or operation of such system, for the provision of telecommunications service, or any portion of such service, by a person or entity for the sole and exclusive use of such person or entity and not for resale, directly or indirectly.

(b) Repealed.

(c) Construction, maintenance, or operation of a private telecommunications network shall not constitute the provision of public utility service, and such network shall not be subject to any of the provisions of this article or of articles 1 to 7 of this title.

(24) "Regulated telecommunications services" means telecommunications services treated as public utility services subject to the jurisdiction of the commission.

(24.5) "Rural telecommunications provider" means a local exchange provider that meets one or more of the following conditions:

(a) Provides common carrier service to any local exchange carrier study area, as defined by the commission, that does not include either:

(I) Any incorporated place of ten thousand inhabitants or more, or any part thereof, based on the most recently available population statistics of the United States bureau of the census; or

(II) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) Provides telephone exchange service, including exchange access, to fewer than fifty thousand access lines;

(c) Provides telephone exchange service to any local exchange carrier study area, as defined by the commission, with fewer than one hundred thousand access lines; or

(d) Has less than fifteen percent of its access lines in communities of more than fifty thousand inhabitants.

(25) "Special access" means any point-to-point or point-to-multipoint service provided by a local exchange provider dedicated to the exclusive use of any interexchange provider for the transmission of any telecommunications services.

(26) "Special arrangements" means custom assemblies of optional manufactured products which allow users to select nonstandard interfaces and switched or dedicated facilities in combinations for select, specialized custom applications, including but not limited to combinations of microwave, coaxial or copper cable, fiber optics, multiplexing equipment, or specialized electronics. "Special arrangements" does not include access.

(27) "Special assemblies" means services provided to customers who require special or nonstandard conditioning for interoffice or intraoffice connections or image-data use interruptions for combination lines.

(28) "Switched access" means the services or facilities furnished by a telecommunications provider to interexchange providers that allow them to use the basic exchange network for origination or termination of interexchange telecommunications service.

(29) "Telecommunications service" and "telecommunications" have the same meaning as set forth in 47 U.S.C. sec. 153.

(30) Repealed.

(31) "Toll service" means a type of telecommunications service, commonly known as long-distance service, that is provided on an intrastate basis and that is:

(a) Not included as a part of basic local exchange service;

(b) Provided between local calling areas; and

(c) Billed to the customer separately from basic local exchange service.

(32) (a) "Unserved area" means an area of the state that:

(I) Lies outside of municipal boundaries or is a city with a population of fewer than seven thousand five hundred inhabitants; and

(II) Consists of households that lack access to at least one provider of a broadband network that uses satellite technology and at least one provider of a broadband network that uses nonsatellite technology.

(b) "Unserved area" also means any portion of a state or interstate highway corridor that lacks access to a provider of a broadband network.

(33) "Voice-over-internet protocol service" or "VoIP service" means a service that:

(a) Enables real-time, two-way voice communications originating from or terminating at a user's location in internet protocol or a successor protocol;

(b) Utilizes a broadband connection from the user's location; and

(c) Permits a user to generally receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Source: L. 87: Entire article R&RE, p. 1477, § 1, effective July 2. **L. 94:** (19.5), (20.3), and (20.6) added and (20) amended, p. 1063, § 1, effective May 4. **L. 95:** (3) amended, p. 756, § 3, effective May 24. **L. 97:** (23) amended, p. 59, § 1, effective March 24. **L. 98:** (30) and (31) added, p. 845, § 3, effective May 26. **L. 2000:** (24.5) added, p. 46, § 1, effective March 10; (20)

amended, p. 418, § 1, effective April 14. **L. 2003:** (19.5) and (20.6) amended, p. 2591, § 1, effective June 5. **L. 2005:** (6.5) and (19.3) added, p. 465, § 1, effective July 1. **L. 2014:** (1), (23)(b), and (30) repealed, (5.5) and (8.5) added, and (8), (11), (12), (18), (21), (28), and IP(31) amended, (HB 14-1330), ch. 151, p. 516, § 1, effective May 9; (3), (10), and (29) amended and (4.5), (14.5), and (33) added (HB 14-1329), ch. 150, p. 512, § 1, effective May 9; (3) and (29) amended and (9.3) added (HB 14-1331), ch. 152, p. 523, § 1, effective May 9; (3.3), (3.5), (3.7), (6.7), (9.5), (10.5), (17.5), and (32) added (HB 14-1328), ch. 173, p. 629, § 1, effective May 10. **L. 2018:** IP, IP(3.7), and (32)(a) amended and (19.3) repealed, (SB 18-002), ch. 89, p. 706, § 1, effective August 8. **L. 2020:** (17.5) amended, (HB 20-1137), ch. 241, p. 1162, § 1, effective September 14.

Editor's note: (1) This section is similar to former § 40-15-101 as it existed prior to 1987.

(2) Amendments to subsection (3) by HB 14-1329 and HB 14-1331 were harmonized.

(3) Section 3 of chapter 241 (HB 20-1137), Session Laws of Colorado 2020, provides that the act changing this section applies to applications submitted on or after September 14, 2020.

40-15-103. Application of part. The provisions of this part 1 shall apply throughout this article, unless specifically otherwise stated.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2.

40-15-104. Powers of local government. Nothing in this article shall be construed to supersede any existing powers of a local government.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2.

40-15-105. Nondiscriminatory access charges. (1) No local exchange provider shall, as to its pricing and provision of access, make or grant any preference or advantage to any person providing telecommunications service between exchanges nor subject any such person to, nor itself take advantage of, any prejudice or competitive disadvantage for providing access to the local exchange network. Access charges by a local exchange provider shall be cost-based, as determined by the commission, but shall not exceed its average price by rate element and by type of access in effect in the state of Colorado on July 1, 1987.

(2) At its option, any rural telecommunications provider may, in lieu of the provisions of subsection (1) of this section, remain under the jurisdiction of the commission pursuant to part 2 of this article. A rural telecommunications provider operating under this subsection (2) may at any time apply to the commission for regulatory relief under section 40-15-203 or 40-15-207. Such rural telecommunications provider, upon the granting of regulatory relief, shall provide access services under the conditions established in subsection (1) of this section; except that the commission shall set the maximum price for access services for such provider.

(3) Contracts for access pursuant to subsection (1) of this section shall be filed with the commission and open to review by other purchasers of such access to assure compliance with the provisions of this section. Prior to such review, the purchaser desiring such review shall execute

a nondisclosure agreement as determined by the commission for the protection of business and trade secrets.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2. **L. 2000:** (2) amended, p. 47, § 2, effective March 10.

40-15-106. Cross-subsidization prohibited - illegal restraint of trade. The price of telecommunications services or products which are not subject to the jurisdiction of the commission shall not be priced below cost by use of subsidization from customers of services and products subject to the jurisdiction of the commission, and any such cross-subsidization is deemed to be an illegal restraint of trade subject to the provisions of article 4 of title 6, C.R.S.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2.

40-15-107. Powers of commission - inspection of books and documents - confidentiality of information obtained through audit. (1) The commission shall administer and enforce all provisions of this article, and, in addition to any other powers under articles 1 to 7 of this title, the commission has the right to inspect the books and documents of the local exchange provider. The local exchange provider shall supply additional relevant and material information to the commission as needed. In addition, the commission has the right to inspect the books and records of any affiliate of a local exchange provider which provides telecommunications service under part 2, 3, or 4 of this article, if, in the provision of such service, the affiliate uses a plant or incurs costs that are joint and common to the provision of any basic local exchange service of the local exchange provider regulated under part 2 of this article.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), all information, documents, and copies thereof provided to the commission, a commissioner, or any person employed by the commission in connection with an audit, whether such audit is conducted pursuant to this section or pursuant to any other authority granted to the commission by law, shall be given confidential treatment and shall not be made public by the commission or any other person without either:

(I) The prior written consent of the person providing such information, documents, or copies; or

(II) A court order issued pursuant to section 24-72-204 (5), C.R.S.

(b) This subsection (2) shall not be construed to shield from disclosure information, documents, and copies thereof that are in the commission's possession through the exercise of the commission's audit authority and that are otherwise subject to disclosure under the Colorado open records law, part 2 of article 72 of title 24, C.R.S. The commission may consider whether to change the status of reports provided to it on a nonconfidential basis.

(3) The commission shall have no authority to regulate telephone or telecommunications service from inmates at penal institutions.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2. **L. 99:** Entire section amended, p. 184, § 1, effective March 31. **L. 2003:** (3) added, p. 2591, § 2, effective June 5.

Editor's note: This section is similar to former § 40-15-105 as it existed prior to 1987.

40-15-108. Cost methodologies. (1) Any local exchange provider which provides facilities or equipment for use by interstate users or providers of telecommunications services shall separate all investments and expenses associated therewith according to applicable federal separations procedures and agreements.

(2) Any provider of telecommunications service which offers both regulated and deregulated telecommunications service shall segregate its intrastate investments and expenses in accordance with allocation methodologies as prescribed by the commission to ensure that deregulated telecommunications services are not subsidized by regulated telecommunications services.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2.

40-15-109. Assurance of interconnections - averaging of rates. (1) If a local exchange provider does not have interconnection with an interexchange provider, the commission may order any provider of interexchange service in the state to interconnect with the local exchange provider. Nothing in this subsection (1) shall require a rural telecommunications provider to provide interexchange telecommunications service.

(2) All providers of interexchange voice grade telecommunications service shall average their interexchange voice grade rates on a statewide basis. Nothing in this section shall be construed to prohibit volume discounts or other discounts in promotional offerings.

(3) The commission may provide for just and equitable compensation upon application of an interexchange provider subject to subsection (1) or (2) of this section.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2. **L. 2000:** (1) amended, p. 47, § 3, effective March 10.

40-15-110. Provision of regulated and deregulated service. Nothing in this article shall be construed to preclude a single entity from offering and providing services under parts 2, 3, and 4 of this article.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2.

40-15-111. Regulation of the discontinuation or rearrangement of basic local exchange service - measured or message rate service not required. (1) Every local exchange provider shall continue to offer and provide basic local exchange service in any exchange area it serves immediately prior to July 2, 1996, unless the commission determines that an alternative provider offers or provides functionally equivalent service to the customers in such exchange area.

(2) Rearrangements of exchange areas shall require a determination by the commission that such rearrangement will promote the public interest and welfare and will not adversely impact the public switched network of the affected local exchange provider or such provider's financial integrity.

(3) Measured or message rate service for end user customers shall not be required in order for such customers to obtain basic local exchange service unless the commission so orders.

(4) A telecommunications provider shall not base its charges for basic local exchange service on the volume or amount of data or voice traffic of an individual subscriber except with the prior approval of the commission following notice and the opportunity for a hearing.

Source: L. 95: Entire section added, p. 755, § 2, effective May 24. **L. 99:** (2) amended, p. 185, § 2, effective March 31.

40-15-112. Unauthorized change of telecommunications provider. (1) No provider of telecommunications service shall request the transfer of a customer's account, wholly or in part, to another provider of the same or a similar telecommunications service unless one or more of the following conditions has been met:

(a) The provider to whom the customer's account is to be transferred has obtained from the customer a document, signed by the customer, that contains a clear, conspicuous, and unequivocal request by the customer for a change of provider; or

(b) The provider to whom the customer's account is to be transferred has obtained the customer's oral authorization for the transfer and can furnish proof of such authorization through verification by an independent third party, electronic records, or any other manner prescribed by the commission by rule.

(2) (a) If the customer is not an individual, a document, authorization, or request referenced in subsection (1) of this section shall be valid only if given by an authorized representative of the customer, who shall provide proof of such authority.

(b) A document shall not be valid under paragraph (a) of subsection (1) of this section if it is presented to the customer for signature in connection with a sweepstakes or other game of chance.

(3) A telecommunications provider who initiates an unauthorized change in a customer's telecommunications provider in violation of this section is liable:

(a) To the customer, the customer's previously selected provider, or both, as determined by the commission, for all intrastate long distance charges, interstate long distance charges, local exchange service charges, provider switching fees, the value of any premiums to which the customer would have been entitled, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) To the customer's local exchange provider for the change fees for the unauthorized change and reinstating the customer to the original provider.

Source: L. 98: Entire section added, p. 843, § 1, effective May 26.

40-15-113. Unauthorized charge for services. (1) A provider of telecommunications service shall not engage in the following activities:

(a) Charging a customer for goods or services without the customer's authorization;

(b) Adding charges for goods or services to the customer's bill without the customer's authorization; or

(c) When providing billing services for a telecommunications provider, knowingly or recklessly participating in charging or billing a customer for goods or services without the customer's authorization to add the goods or services to the customer's bill; except that, in accordance with federal law, this paragraph (c) does not apply to a provider of CMRS services.

(2) A customer is not liable for an amount charged in violation of this section.

(3) The commission shall maintain and keep available data on the incidence of complaints in violation of this section.

Source: L. 2001: Entire section added, p. 121, § 1, effective August 8. **L. 2014:** IP(1) and (1)(c) amended, (HB 14-1330), ch. 151, p. 517, § 2, effective May 9.

PART 2

REGULATED TELECOMMUNICATIONS SERVICES

40-15-201. Regulation by commission. (1) For purposes of this part 2, except as otherwise provided in this title, each provider of basic local exchange service is declared to be affected with a public interest and a public utility subject to the provisions of articles 1 to 7 of this title, so far as applicable, including the regulation of all rates and charges pertaining to local exchange companies; except that, if a provider applies for and receives commission approval of an alternative form of regulation, or if a provider is a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2)(d), the commission shall not consider the provider's overall rate of return or overall revenue requirements when determining the just and reasonable rate for a particular product or service. The commission may promulgate rules as necessary to implement this part 2.

(2) Basic emergency service is declared to be subject to regulation under this part 2 and subject to potential reclassification under section 40-15-207.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2. **L. 94:** (2)(h) added, p. 1064, § 2, effective May 4. **L. 99:** (1), (2)(c), and (2)(f) amended, p. 185, § 3, effective March 31. **L. 2000:** (1) amended, p. 47, § 4, effective March 10. **L. 2014:** Entire section amended, (HB 14-1331), ch. 152, p. 523, § 2, effective May 9.

Editor's note: This section is similar to former § 40-15-102 as it existed prior to 1987.

40-15-202. Certificate required. (1) No provider of services regulated in this part 2 shall operate in this state except in accordance with the provisions of this part 2.

(2) No provider of services regulated in this part 2 shall operate within this state without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation, unless such operation is authorized by section 40-5-102.

(3) The commission is authorized to issue a certificate of public convenience and necessity to a provider of services regulated in this part 2, and the commission may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

(4) A provider of services regulated in this part 2 holding a certificate of public convenience and necessity to offer or provide basic local exchange service or a provider of services regulated in this part 2 that had authority lawfully to offer or provide basic local exchange service immediately prior to July 2, 1987, without a certificate of public convenience

and necessity shall continue to have such authority without having to make application to the commission for additional or continued authority.

Source: L. 87: Entire article R&RE, p. 1481, § 1, effective July 2. **L. 93:** Entire section amended, p. 2080, § 50, effective July 1.

Editor's note: This section is similar to former § 40-15-103 as it existed prior to 1987.

40-15-203. Manner of regulation - refraining from regulation.

(1) to (5) Repealed.

(6) (a) Upon its own motion or application of a provider of telecommunications service regulated under this part 2, the commission may, in lieu of reclassification of a service under section 40-15-207, examine whether it should refrain from regulation and may refrain from regulation for competitive need for specific telecommunications service otherwise subject to its jurisdiction.

(b) The commission shall approve or deny any such application for refraining from regulation for competitive need within one hundred eighty days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of sixty days. If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(7) The authority granted the commission pursuant to this section is in addition to, and not a limitation upon, other powers of the commission, and such authority shall not be construed to be the sole or exclusive means by which the commission may refrain from regulation under this title.

(8) Notwithstanding the provisions of this section, no expenses incurred in the solicitation and the provision of services under this section shall be paid, directly or indirectly, by the subscribers of the applicant's regulated services.

Source: L. 87: Entire article R&RE, p. 1481, § 1, effective July 2. **L. 95:** (1) amended, p. 756, § 4, effective May 24. **L. 2014:** (2), (3), (4), and (5) repealed, (HB 14-1331), ch. 152, p. 524, § 3, effective May 9.

Editor's note: (1) This section is similar to former § 40-15-104 as it existed prior to 1987.

(2) Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 1996. (See L. 95, p. 756.)

40-15-203.5. Simplified regulatory treatment for rural telecommunications providers. The commission, with due consideration of the public interest, quality of service, financial condition, and just and reasonable rates, shall grant regulatory treatment that is less comprehensive than otherwise provided for under this article to rural telecommunications providers as defined in section 40-15-102 (24.5). The commission shall issue policy statements and rules and regulations that maintain reasonable regulatory oversight and that consider the cost of regulation in relation to the benefit derived from such regulation. These rules and regulations shall encourage the cost effective deployment and use of modern telecommunications

technology. All proposed rules applicable to rural telecommunications providers that come before the commission shall consider the economic impact on rural telecommunications providers and their subscribers. The commission and rural telecommunications providers are encouraged to work together in a cooperative and proactive fashion to implement this section.

Source: L. 93: Entire section added, p. 2080, § 51, effective July 1. **L. 2000:** Entire section amended, p. 47, § 5, effective March 10.

40-15-204. Transfer of certificate. Any certificate of public convenience and necessity issued pursuant to this part 2 may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

Source: L. 87: Entire article R&RE, p. 1483, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-106 as it existed prior to 1987.

40-15-205. Violations. Violations of this part 2 by a telecommunications provider are subject to enforcement and penalties as provided in article 7 of this title.

Source: L. 87: Entire article R&RE, p. 1483, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-109 as it existed prior to 1987.

40-15-206. Regulation of the discontinuation or rearrangement of basic local exchange service - measured or message rate service not required. (Repealed)

Source: L. 87: Entire article R&RE, p. 1483, § 1, effective July 2. **L. 99:** (2) amended, p. 186, § 4, effective March 31. **L. 2014:** Entire section repealed, (HB 14-1331), ch. 152, p. 526, § 4, effective May 9.

40-15-207. Reclassification of services and products. (1) (a) Notwithstanding any other provision of this title, upon its own motion or upon application by any person, the commission shall regulate, pursuant to part 3 of this article, specific telecommunications services regulated under this part 2 upon a finding that there is effective competition in the relevant market for such service and that such regulation under part 3 of this article will promote the public interest and the provision of adequate and reliable service at just and reasonable rates.

(b) In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors:

(I) The extent of economic, technological, or other barriers to market entry and exit;

(II) The number of other providers offering similar services in the relevant geographic area;

(III) The ability of consumers in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions;

(IV) The ability of any provider of such telecommunications service to affect prices or deter competition; and

(V) Such other factors as the commission deems appropriate.

(c) In determining geographic areas under paragraph (b) of this subsection (1), the commission shall not be unduly restrictive.

Source: L. 87: Entire article R&RE, p. 1484, § 1, effective July 2.

40-15-208. High cost support mechanism - Colorado high cost administration fund - creation - purpose - operation - rules - report - repeal.

(1) (Deleted by amendment, L. 2008, p. 1703, § 3, effective June 2, 2008.)

(2) (a) (I) The commission is hereby authorized to establish a mechanism for the support of universal service, also referred to in this section as the "high cost support mechanism", which must operate in accordance with rules adopted by the commission. The primary purpose of the high cost support mechanism is to provide financial assistance as a support mechanism to:

(A) Help make basic local exchange service affordable and allow for reimbursement to providers, as specified in subsections (2)(a)(IV) and (4) of this section; and

(B) Provide access to broadband service in unserved areas pursuant to this section and section 40-15-509.5 only.

(II) The high cost support mechanism shall be supported through a neutral assessment on all telecommunications providers in Colorado.

(III) The commission shall maintain the rate of the high cost support mechanism surcharge at the surcharge rate established as of January 1, 2018; except that, on and after July 1, 2023, the commission may reduce the surcharge rate to ensure that the amount of money collected does not exceed twenty-five million dollars in calendar year 2024.

(IV) The commission shall allocate to the high cost support mechanism account dedicated to broadband deployment, on a quarterly basis and by the end of the month following the previous quarter, the following percentages of the total quarterly amount of high cost support mechanism money collected, minus administrative costs and distributions required under subsection (4) of this section:

(A) For each quarter in 2019, sixty percent;

(B) For each quarter in 2020, seventy percent;

(C) For each quarter in 2021, eighty percent;

(D) For each quarter in 2022, ninety percent; and

(E) For each quarter in 2023, one hundred percent.

(V) The nonrural incumbent local exchange carrier will receive, on a quarterly basis and by the end of the month following the previous quarter, the balance of the remaining quarterly high cost support mechanism collections after the distributions required by subsections (2)(a)(IV) and (4) of this section have been made.

(VI) In accordance with subsection (2)(a)(IV) of this section, the commission, in making distributions of high cost support mechanism money in the years 2019 through 2023, shall neither:

(A) Make effective competition determinations; nor

(B) Apply any section of this article 15 that requires an effective competition determination be made or that in any way conflicts with subsections (2)(a)(IV) and (4) of this section with regard to the distributions.

(b) Notwithstanding section 24-1-136 (11)(a)(I), on or before December 1 of each year, the commission shall submit a written report to the committees of reference in the senate and house of representatives that are assigned to hear telecommunications issues, in accordance with section 24-1-136, C.R.S., accounting for the operation of the high cost support mechanism during the preceding calendar year and containing the following information, at a minimum:

(I) The total amount of money that the commission determined should constitute the high cost support mechanism from which distributions would be made;

(II) The total amount of money ordered to be contributed through a neutral assessment collected by each telecommunications service provider;

(III) The basis on which the contribution of each telecommunications service provider was calculated;

(IV) The benchmarks used and the basis on which the benchmarks were determined;

(V) The total amount of money that the commission determined should be distributed from the high cost support mechanism;

(VI) The total amount of money distributed to each telecommunications service provider from the high cost support mechanism;

(VII) The basis on which the distribution to telecommunications service providers was calculated;

(VIII) As to each telecommunications service provider receiving a distribution, the amount received by geographic support area and type of customer, the way in which the benefit of the distribution was applied or accounted for;

(IX) The proposed benchmarks, the proposed contributions to be collected through a neutral assessment on each telecommunications provider, and the proposed total amount of the high cost support mechanism from which distributions are to be made for the following calendar year; and

(X) The total amount of distributions made from the high cost support mechanism, directly or indirectly, and how they are balanced by rate reductions by all providers for the same period and a full accounting of and justification for any difference.

(c) If the report submitted pursuant to paragraph (b) of this subsection (2) contains a proposal for an increase in any of the amounts listed in subparagraph (IX) of said paragraph (b), such increase shall be suspended until March 31 of the following year.

(d) Repealed.

(e) In addition to the annual report submitted under paragraph (b) of this subsection (2) by the commission, the department of regulatory agencies shall include in its presentation to the appropriate legislative committee under the requirements of part 2 of article 7 of title 2, C.R.S., an update on the implementation and administration of the high cost support mechanism.

(3) (a) There is hereby created, in the state treasury, the Colorado high cost administration fund, referred to in this section as the "fund", which shall be used to reimburse the commission and its contractors for reasonable expenses incurred in the administration of the high cost support mechanism, including administrative costs incurred in association with broadband service, as determined by rules of the commission. The general assembly shall appropriate annually the money in the fund that is to be used for the direct and indirect

administrative costs incurred by the commission and its contractors. At the end of any fiscal year, all unexpended and unencumbered money in the fund remains in the fund and shall not be credited or transferred to the general fund or any other fund. Only the money in the high cost support mechanism that is necessary for administering the high cost support mechanism shall be transmitted to the state treasurer, who shall credit the same to the fund. All interest derived from the deposit and investment of money in the fund remains in the fund and does not revert to the general fund.

(b) Repealed.

(c) Notwithstanding any provision of paragraph (a) of this subsection (3) to the contrary, on July 31, 2009, the state treasurer shall deduct from the fund an amount equal to the amount transferred to the fund pursuant to Senate Bill 09-272, enacted in 2009, and transfer such amount to the general fund.

(4) Notwithstanding any other provision to the contrary in sections 40-15-207 and 40-15-502 or this section, rural telecommunications providers receiving support from the high cost support mechanism as of January 1, 2017, will continue to receive support, on a quarterly basis and by the end of the month following the previous quarter, at the same level of reimbursement established by averaging the payments received for calendar years 2015 and 2016, for the period of January 1, 2019, through December 1, 2023. The commission shall administer the high cost support mechanism to ensure compliance with this section.

(5) On or before December 31, 2018, the commission shall establish a plan to eliminate, on an exchange-area-by-exchange-area basis, obligations imposed pursuant to sections 40-15-401 (1)(b)(IV) and 40-15-502 (5)(b) and (6)(a) consistent with the reductions in the high cost support mechanism distributions for basic service pursuant to subsection (2)(a)(IV) of this section.

(6) This section is repealed, effective September 1, 2024. Before the repeal, the department of regulatory agencies shall, in accordance with section 24-34-104, review the powers, duties, and functions of the commission regarding the administration of the high cost support mechanism.

Source: L. 92: Entire section added, p. 2126, § 1, effective April 16. **L. 95:** Entire section amended, p. 756, § 5, effective May 24. **L. 98:** Entire section amended, p. 702, § 1, effective July 1. **L. 2001:** IP(2)(b) amended, p. 1181, § 23, effective August 8. **L. 2008:** (1) and (2)(a) amended, p. 1703, § 3, effective June 2. **L. 2009:** (2)(a), (2)(b)(II), (2)(b)(IX), (2)(b)(X), and (3) amended, (SB 09-272), ch. 209, p. 948, § 1, effective May 1; (3) amended, (SB 09-279), ch. 367, p. 1932, § 25, effective June 1. **L. 2013:** (2)(a)(I) amended, (HB 13-1300), ch. 316, p. 1707, § 132, effective August 7. **L. 2014:** (2)(a)(I) amended, (HB 14-1331), ch. 152, p. 526, § 5, effective May 9; (2)(a) and (3)(a) amended and (2)(e) added, (HB 14-1328), ch. 173, p. 630, § 2, effective May 10. **L. 2017:** IP(2)(b) amended, (SB 17-044), ch. 4, p. 8, § 7, effective August 9. **L. 2018:** (2)(a) and (3)(a) amended and (4) to (6) added, (SB 18-002), ch. 89, p. 707, § 2, effective August 8.

Editor's note: (1) Subsection (2)(d)(II) provided for the repeal of subsection (2)(d), effective December 31, 1999. (See L. 98, p. 702.)

(2) Amendments to subsection (3) by Senate Bill 09-272 and Senate Bill 09-279 were harmonized.

(3) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective July 1, 2010. (See L. 2009, p. 948.)

(4) Amendments to subsections (2)(a) and (2)(a)(I) by HB 14-1328 and HB 14-1331 were harmonized.

40-15-209. Net neutrality conditions for internet service providers to receive high cost support mechanism money - definitions. (1) Except as provided in subsection (3) of this section, an internet service provider that is otherwise eligible to receive money through a grant from the broadband deployment board pursuant to section 40-15-509.5 or through any state fund established to help finance broadband deployment is not eligible to receive that money if the internet service provider:

(a) Blocks any lawful internet content, applications, services, or devices unless the blocking is conducted in a manner consistent with reasonable network management practices;

(b) Engages in paid prioritization of internet content;

(c) Regulates network traffic by throttling bandwidth or otherwise impairs or degrades lawful internet traffic on the basis of internet content, application, service, or use of a nonharmful device unless the impairment or degradation results solely from the evenhanded application of reasonable network management practices; or

(d) Fails or refuses to disclose, subject to reasonable conditions to protect proprietary information, its network management practices.

(2) (a) If the commission learns from the broadband deployment board that a federal agency has issued a final order or entered into a settlement or consent decree regarding, or a court of competent jurisdiction has issued a final judgment against, an internet service provider and that the board has determined from the order, decree, or judgment that the internet service provider has engaged in conduct specified in subsection (1) of this section, the commission shall issue a written order to the internet service provider requiring the internet service provider to fully refund any money that the internet service provider received in the twenty-four months preceding the board's determination from the high cost support mechanism pursuant to a grant awarded by the broadband deployment board under section 40-15-509.5.

(b) An order issued by the commission pursuant to subsection (2)(a) of this section must include an itemized statement of the amount of money that the internet service provider is required to refund and instructions on how to refund the money.

(c) The third-party contractor that maintains the high cost support mechanism shall allocate any money refunded to the high cost support mechanism pursuant to this subsection (2) to the high cost support mechanism account dedicated to broadband deployment, which account is described in section 40-15-509.5 (3).

(d) A requirement that an internet service provider refund money to the high cost support mechanism pursuant to this section does not relieve the internet service provider of any provider-of-last-resort obligations that the internet service provider otherwise has pursuant to this article 15.

(3) An internet service provider is exempt from the obligations set forth in subsections (1) and (2) of this section if the internet service provider engages in any of the practices listed in subsections (1)(a) to (1)(d) of this section in the course of:

(a) Providing, facilitating the provision of, or addressing emergency communications, as permitted or required by law or at the request or direction of authorities serving in law enforcement, public safety, or national security; or

(b) Addressing copyright infringement or other unlawful activity.

(4) As used in this section:

(a) (I) "Broadband internet access service" means a mass-market retail service that provides the capability to transmit and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up internet access service.

(II) "Broadband internet access service" includes services provided over any technology platform, including wire, terrestrial wireless, and satellite.

(b) "Internet service provider" means a provider of broadband internet access service in Colorado.

(c) "Paid prioritization" means the management of an internet service provider's network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either:

(I) In exchange for consideration, monetary or otherwise, from a third party;

(II) To benefit an affiliated entity; or

(III) To disadvantage a competing entity or its affiliates.

(d) "Reasonable network management" means a network management practice that is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband internet access service.

(e) "Throttling" means the intentional slowing of broadband internet access service.

Source: L. 2019: Entire section added, (SB 19-078), ch. 210, p. 2213, § 1, effective May 17.

PART 3

EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE

40-15-301. Regulation by the commission. (1) The commission shall regulate the terms and conditions, including rates and charges, under which telecommunications service pursuant to this part 3 is offered and provided to customers exclusively in accordance with the provisions of sections 40-4-101 (1), 40-4-111, 40-4-112, and 40-5-105 and articles 2, 3, 6, and 7 of this title, unless otherwise specified in this article.

(2) Switched access is declared to be initially subject to regulation under this part 3, subject to section 40-15-307.

Source: L. 87: Entire article R&RE, p. 1484, § 1, effective July 2. **L. 94:** (2)(g) added, p. 1064, § 3, effective May 4. **L. 2000:** (2)(f) amended, p. 418, § 2, effective April 14. **L. 2014:** (2) amended, (HB 14-1329), ch. 150, p. 513, § 2, effective May 9; (2) amended, (HB 14-1331), ch. 152, p. 526, § 6, effective May 9.

Editor's note: This section is similar to former § 40-15-102 as it existed prior to 1987.

40-15-302. Manner of regulation - rules. (1) (a) The commission shall promulgate rules as may be appropriate to regulate services and products provided pursuant to this part 3. In promulgating such rules, the commission shall consider such alternatives to traditional rate of return regulations as flexible pricing, detariffing, and other such manner and methods of regulation as are deemed consistent with the general assembly's expression of intent pursuant to section 40-15-101. If a provider applies for and receives commission approval of an alternative form of regulation, or if a provider is a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2)(d), the commission shall not consider the provider's overall rate of return or overall revenue requirements when determining the just and reasonable rate for a particular product or service. A local exchange provider that does not elect an alternative form of regulation and that is subject to rate of return regulation shall furnish such rate of return information as requested by the commission.

(b) (I) For a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2)(d), price ceilings shall be established for all products and services regulated under this part 3 as follows:

(A) For switched access service, prices shall not rise above the level in effect on March 31, 1999; except that price ceilings may be adjusted by the commission to conform to its rules concerning the high cost support mechanism established under section 40-15-208 or to conform to any company filing that is subject to the commission's rate-of-return jurisdiction.

(B) For all other products and services, price ceilings shall be established by reference to the prices for such products and services in effect under an alternative form of regulation approved by the commission.

(II) This paragraph (b) shall not be construed to preclude a rural telecommunications provider from electing traditional rate-of-return regulation or requesting price regulation or another alternative form of regulation under part 5 of this article; and the fact of such election or request shall not be considered in connection with a proceeding to adjust prices for products or services offered under any alternative form of regulation.

(2) The commission shall promulgate rules and regulations for the certification of providers of emerging competitive telecommunications services, but nothing in this part 3 shall require the commission to certificate providers of telecommunications service regulated in this part 3.

(3) Repealed.

(4) A provider of telecommunications service holding a certificate of public convenience and necessity to offer or provide services and products regulated pursuant to this part 3 immediately prior to July 2, 1987, shall continue to have such authority without having to make application to the commission for additional or continued authority.

(5) Repealed.

Source: L. 87: Entire article R&RE, p. 1485, § 1, effective July 2. **L. 93:** (1) and (2) amended, p. 2081, § 52, effective July 1. **L. 94:** (5) added, p. 1064, § 4, effective May 4. **L. 96:** (5) amended, p. 365, § 1, effective August 7. **L. 99:** (1) amended, p. 186, § 5, effective March 31. **L. 2000:** (1)(a), IP(1)(b)(I), and (1)(b)(II) amended, p. 48, § 6, effective March 10; (5) amended, p. 418, § 3, effective April 14. **L. 2014:** (3) repealed, (HB 14-1331), ch. 152, p. 527, §

7, effective May 9; (5) amended, (HB 14-1330), ch. 151, p. 518, § 3, effective May 9. **L. 2019:** (5) repealed, (SB 19-236), ch. 359, p. 3315, § 22, effective May 30.

Editor's note: This section is similar to former § 40-15-104 as it existed prior to 1987.

40-15-302.5. Resellers of toll services - registration required. (1) Interexchange providers shall register with the commission in a form satisfactory to the commission. A registration must include, at a minimum, the following information updated within fifteen days after any change:

(a) The interexchange provider's name and complete address;

(b) All names under which the interexchange provider does business;

(c) All names and identification numbers under which the interexchange provider has registered with the Colorado secretary of state or the Colorado department of revenue;

(d) The name, title, address, and telephone number of an authorized representative to whom the commission may make inquiries; and

(e) A toll-free telephone number to which consumer inquiries or complaints may be made.

(2) An interexchange provider that registers in accordance with subsection (1) of this section is exempt from regulation by the commission except as otherwise provided in this section.

(3) For the purpose of enforcing section 40-15-112, the commission may exercise any of the powers conferred under articles 1 to 7 of this title against an interexchange provider and, in cases of complaints filed under section 40-6-108, may order an interexchange provider to make due reparations to the complaining party.

(4) Pursuant to section 24-50-504 (2)(a), C.R.S., the commission shall enter into personal services contracts that create an independent contractor relationship for the administration of this section and section 40-15-112.

Source: L. 98: Entire section added, p. 844, § 2, effective May 26. **L. 2004:** (4) amended, p. 1703, § 48, effective July 1, 2005. **L. 2014:** IP(1), (1)(a), (1)(b), (1)(c), (2), and (3) amended, (HB 14-1330), ch. 151, p. 518, § 4, effective May 9.

40-15-303. Transfer of certificate. Any certificate of public convenience and necessity issued pursuant to this part 3 may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

Source: L. 87: Entire article R&RE, p. 1485, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-106 as it existed prior to 1987.

40-15-304. Violations. Violations of this part 3 by a telecommunications provider are subject to enforcement and penalties as provided in article 7 of this title.

Source: L. 87: Entire article R&RE, p. 1485, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-109 as it existed prior to 1987.

40-15-305. Time period for consideration of deregulation of emerging competitive telecommunications service. (1) (a) Notwithstanding any other provision of this title, upon its own motion or upon application by any person, the commission shall deregulate, pursuant to part 4 of this article, specific telecommunications services subject to this part 3 upon a finding that there is effective competition in the relevant market for such service and that such deregulation will promote the public interest and the provision of adequate and reliable service at just and reasonable rates.

(b) In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors as the commission deems applicable in particular cases:

(I) The extent of economic, technological, or other barriers to market entry and exit;

(II) The number of other entities offering similar services;

(III) The ability of consumers to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions;

(IV) The ability of any provider of such telecommunications service to affect prices or deter competition;

(V) Such other relevant and necessary factors, including but not limited to relevant geographic areas, as the commission deems appropriate.

(c) The commission shall approve or deny any such application for deregulation within one hundred eighty days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of ninety days upon a finding that the proceeding cannot be completed within one hundred eighty days and that the additional time period is necessary for the commission to adequately and completely fulfill its duty under this subsection (1). If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(d) In determining geographic areas under paragraph (b) of this subsection (1), the commission shall not be unduly restrictive.

(2) Any telecommunications service or product not defined in part 1 of this article or not already classified pursuant to parts 2 to 4 of this article shall be classified as an emerging competitive telecommunications service under this part 3.

Source: L. 87: Entire article R&RE, p. 1486, § 1, effective July 2. **L. 2014:** (1)(b)(II) amended, (HB 14-1330), ch. 151, p. 519, § 5, effective May 9.

Editor's note: This section is similar to former § 40-15-110 as it existed prior to 1987.

40-15-306. IntraLATA interexchange services. (Repealed)

Source: L. 87: Entire article R&RE, p. 1486, § 1, effective July 2. **L. 2014:** Entire section repealed, (HB 14-1331), ch. 152, p. 527, § 8, effective May 9.

40-15-307. Switched access. Switched access shall not be deregulated pursuant to section 40-15-305 prior to the enactment of enabling legislation authorizing such deregulation.

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2.

40-15-308. Private line services. (Repealed)

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2. **L. 93:** Entire section amended, p. 2081, § 53, effective July 1. **L. 2000:** Entire section repealed, p. 419, § 4, effective April 14.

PART 4

DEREGULATION

40-15-401. Services, products, and providers exempt from regulation - definition. (1) The following products, services, and providers are exempt from regulation under this article 15 or under the "Public Utilities Law" of the state of Colorado:

(a) Cable services as defined by section 602 (5) of the federal "Cable Communications Policy Act of 1984";

(b) Basic service; except that:

(I) The high cost support mechanism, as described in sections 40-15-208 and 40-15-502, remains effective to support basic service regardless of the classification of basic service or voice-over-internet protocol service in this part 4;

(II) (A) Until July 1, 2016, each incumbent local exchange carrier shall charge a uniform price for basic service throughout its service territory; except that an incumbent local exchange carrier shall not charge a price for basic service that is more than the price that the carrier charged on December 31, 2013, unless the price charged is lower than the urban rate floor prescribed by the federal communications commission. If a carrier charges less than the urban rate floor, the carrier may increase the price to equal but not exceed the urban rate floor; except that, if the commission orders reductions in intercarrier compensation rates, an incumbent local exchange carrier may increase local rates to recover some or all of the lost revenues associated with the commission's action.

(B) As used in this subparagraph (II), "urban rate floor" means the basic local exchange service rate required to be charged in order to prevent a reduction in federal high cost support.

(III) Until July 1, 2016, each incumbent local exchange carrier remains subject to any obligations as provider of last resort, as established by the commission under section 40-15-502 (6), throughout its service territory;

(IV) On and after July 1, 2016, throughout each geographic area for which the commission provides high cost support mechanism distributions for basic service under sections 40-15-208 and 40-15-502 (5), the commission retains the authority to:

(A) Designate providers of last resort under section 40-15-502 (6);

(B) Determine a maximum price for basic service under section 40-15-502 (3)(b);

(C) Prohibit providers from discontinuing basic service, notwithstanding section 40-15-111; and

(D) Audit, investigate, and enforce compliance with regulation permitted in this section and sections 40-15-208 and 40-15-502 (5);

(V) Providers of basic service remain subject to the following fees and surcharges:

(A) High cost support mechanism assessments calculated under section 40-15-502 (5)(a);

(B) Emergency service surcharges assessed under part 1 of article 11 of title 29, C.R.S., to support 911 service; and

(C) Telecommunications relay service charges assessed under article 17 of this title; and

(VI) If, after July 1, 2018, the commission finds that re-regulation of basic local exchange service is necessary to protect the public interest following a hearing and upon findings of fact and conclusions of law, the commission may regulate basic local exchange service under part 3 of this article.

(c) Commercial mobile radio services;

(d) Repealed.

(e) New products and services other than those included in the definition of basic local exchange service;

(f) Centron and centron-like services;

(g) Special arrangements;

(h) Special assemblies;

(i) Information services;

(j) Optional operator services;

(k) Advanced features;

(l) Special access;

(m) Public coin telephone service;

(n) Retail digital private line service;

(o) Retail private line service with a capacity of at least twenty-four voice grade circuits;

(p) Retail directory assistance;

(p.5) Private telecommunications networks;

(q) Internet-protocol-enabled services;

(r) Voice-over-internet protocol service;

(s) InterLATA toll, except with respect to interexchange carrier registration under section 40-15-302.5, complaints of unauthorized charges on a subscriber's bill, or complaints of changing a subscriber's service without the subscriber's consent;

(t) IntraLATA toll, except with respect to interexchange carrier registration under section 40-15-302.5, complaints of unauthorized charges on a subscriber's bill, or complaints of changing a subscriber's service without the subscriber's consent; and

(u) Nonoptional operator services.

(2) Nothing in this section affects, modifies, or expands:

(a) An entity's obligations under sections 251 and 252 of the federal "Communications Act of 1934", as amended, and codified in 47 U.S.C. secs. 251 and 252;

(b) Any commission authority over wholesale telecommunications rates, services, agreements, providers, or tariffs;

(c) Any commission authority addressing or affecting the resolution of disputes regarding intercarrier compensation; or

(d) The requirements for the receipt of state or federal financial assistance through a high cost support mechanism.

(3) If a telecommunications service or product is not defined in part 1 of this article and is not classified under part 2 or 3 of this article, the telecommunications service or product is classified as a deregulated telecommunications service under this part 4.

(4) Nothing in this part 4 shall be construed to affect, modify, limit, or expand the commission's authority to regulate basic emergency service.

(5) This section does not affect the establishment or enforcement of standards, requirements, procedures, or procurement policies, applicable to any department, agency, commission, or political subdivision of the state, or to the employees, agents, or contractors of a department, agency, commission, or political subdivision of the state, relating to the protection of intellectual property.

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2. **L. 93:** (1)(e) amended, p. 2082, § 54, effective July 1. **L. 94:** (1)(j) amended, p. 1064, § 5, effective May 4. **L. 99:** (1)(e) amended and (1)(m) added, p. 187, § 6, effective March 31. **L. 2000:** (1) amended, p. 419, § 5, effective April 14. **L. 2008:** (1)(a) amended, p. 1915, § 133, effective August 5. **L. 2014:** (1)(b) amended and (1)(p.5), (2), (3), (4), and (5) added, (HB 14-1331), ch. 152, p. 527, § 9, effective May 9; (1)(c), (1)(i), (1)(k), and (1)(p) amended, (1)(d) repealed, and (1)(q), (1)(r), (1)(s), (1)(t), (2), (3), (4), and (5) added, (HB 14-1329), ch. 150, p. 514, § 3, effective May 9. **L. 2019:** IP(1), (1)(s), and (1)(t) amended and (1)(u) added, (SB 19-236), ch. 359, p. 3316, § 23, effective May 30.

Editor's note: Section 602(5) of the federal "Cable Communications Policy Act of 1984" referenced in subsection (1)(a) was repealed October 25, 1994. For the "Cable Communications Policy Act of 1984", see Pub.L. 98-549.

Cross references: For the "Public Utilities Law", see articles 1 to 7 of this title.

40-15-402. No regulation by the commission - no certificate required. (1) Nothing in articles 1 to 7 of this title or parts 2 and 3 of this article shall apply to deregulated services and products pursuant to this part 4.

(2) No certificate of public convenience and necessity shall be required for the provision of services under this part 4.

(3) The commission may not reclassify deregulated services or products under this part 4 or services and products deregulated by the commission pursuant to section 40-15-305 (1).

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-108 as it existed prior to 1987.

40-15-403. General assembly may reregulate. Any telecommunications service or product deregulated pursuant to this part 4 may be reregulated by action of the general assembly.

Source: L. 87: Entire article R&RE, p. 1488, § 1, effective July 2.

40-15-404. Dispute - interconnection or access. In the event of a dispute between providers of telecommunications services or products deregulated pursuant to this part 4 concerning the terms, conditions, quality, or compensation for the interconnection or access of lines or facilities between providers, any such provider may apply to the commission for resolution of such dispute. After notice and hearing, the commission shall enter its decision resolving any such interconnection or access dispute.

Source: L. 87: Entire article R&RE, p. 1488, § 1, effective July 2.

PART 5

TELECOMMUNICATIONS POLICY AND PLANNING

Law reviews: For article, "Telecommunications Changes: State Opens Local Exchange Service to Competition", see 24 Colo. Law. 2147 (1995).

40-15-501. Legislative declaration - purpose and scope of part. (1) The general assembly hereby finds, determines, and declares that competition in the market for basic local exchange service will increase the choices available to customers and reduce the costs of such service. Accordingly, it is the policy of the state of Colorado to encourage competition in this market and strive to ensure that all consumers benefit from such increased competition. The commission is encouraged, where competition is not immediately possible, to utilize other interim marketplace mechanisms wherever possible, with the ultimate goal of replacing the regulatory framework established in part 2 of this article with a fully competitive telecommunications marketplace statewide as contemplated in this part 5.

(2) The general assembly further finds, determines, and declares that:

(a) Wise public policy relating to the telecommunications industry and the other crucial services it provides is in the interest of Colorado and its citizens;

(b) Sound and well-informed decisions need to be made on a continuing basis to ensure that the benefits of existing and new telecommunications services continue to be available to the greatest number of Colorado citizens;

(c) The involvement of telecommunications providers and others with experience and expertise in the area of telecommunications is essential to keep legislators informed of developing technology and evolving markets, thus to avoid costly errors and enhance the efficiency of the state's growing telecommunications network; and

(d) The rural nature of Colorado requires that special rules and support mechanisms be adopted to achieve the goal of ensuring that universal basic local exchange service be available to all residents of the state at reasonable rates. Rules adopted by the commission under this part 5 shall be designed to achieve this goal.

(3) This part 5 is enacted for the following purposes:

(a) To set forth, in concise fashion, the policy of this state in specific subject matter areas within the general topic of telecommunications, both for the guidance of the commission in carrying out its duties under this article and for the information of the citizens of Colorado;

(b) To create a framework for the identification of other subject matter areas should the need arise, the formulation of suggested policies in areas in which a policy direction has not yet

been stated, and the reaching of consensus, wherever possible, among parties affected by such policies so as to minimize conflicts, ease the commission's considerable workload, and enhance the efficient delivery of telecommunications services to the public; and

(c) To adapt the regulatory structure of parts 2, 3, and 4 of this article to accommodate multiple providers of telecommunications services and to permit alternate forms of regulation for providers of local exchange service.

Source: L. 95: Entire part added, p. 746, § 1, effective May 24. **L. 2014:** (3)(c) amended, (HB 14-1331), ch. 152, p. 529, § 10, effective May 9.

40-15-502. Expressions of state policy. (1) **Competitive local exchange market.** Local exchange telecommunications markets shall be open to competition, under conditions determined by the commission by rule pursuant to this part 5, on or before July 1, 1996.

(2) **Basic service.** Basic service is the availability of high quality, minimum elements of local exchange telecommunications service, as defined by the commission, at just, reasonable, and affordable rates to all people of the state of Colorado. The commission shall conduct a proceeding no less frequently than every three years to consider the revision of the definition of basic service, with the goal that every citizen of this state shall have access to a wider range of services at rates that are reasonably comparable as between urban and rural areas.

(3) **Universal basic service - affordability of basic service.** (a) The commission shall require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado. The general assembly acknowledges the use of low-income telephone assistance programs, including "life-line" and "link-up", and telecommunications relay services for disabled telephone users to further the goal of universal service. The commission may regulate providers of telecommunications services to the extent necessary to assure that universal basic service is available to all consumers in the state at fair, just, and reasonable rates.

(b) (I) Consistent with the public interest goal of maintaining affordable, just, and reasonably priced basic local exchange service for all citizens of the state, the commission shall structure telecommunications regulation to achieve a transition to a fully competitive telecommunications market with the policy that prices for residential basic local exchange service, including zone charges, if any, do not rise above the levels determined by the commission.

(I.5) In determining the appropriate maximum price for residential basic service for each regulated provider, the commission:

(A) Shall consider the changes since May 24, 1995, in the costs of providing such service;

(B) Shall consider the changes since May 24, 1995, in the nationwide average price for comparable service;

(C) Shall consider flexible-pricing tariff options; and

(D) May, for any affected provider, consider the net revenues derived from other services regulated under part 2 or 3 of this article, with the exception of switched access service, notwithstanding any provision of section 40-15-201 to the contrary. Nothing in this sub-subparagraph (D) shall permit the commission to limit the affected provider's overall rate of

return or overall revenues when determining the appropriate maximum price for residential basic service for that provider.

(II) The commission may delay or deny a price increase for residential basic service if a provider is in substantial violation of the commission's rules governing quality of service or held service orders.

(III) This section shall not be construed to prohibit the commission from granting an increase in residential basic local exchange service rates for local exchange carriers under rate-of-return regulation if such increase was approved before May 24, 1995, or if, and to the extent that, such increase is necessary to recover a provider's costs associated with investments for network upgrades made for the purpose of provisioning residential basic local exchange service if such investments are approved or required by the commission and not previously included in the calculation of residential basic local exchange service rates.

(IV) (A) For service provided to residential customers outside the base rate area of a local exchange provider, the commission shall limit rate increases to maintain rates at affordable levels and shall employ universal service funding mechanisms as contemplated in subsection (5) of this section to compensate for the high cost of serving such customers in preference to allowing rate increases.

(B) If there are areas within a provider's base rate area, as determined by the commission, that are receiving subsidies, those areas may continue to receive subsidies or be eligible for funding under the universal service support funding mechanisms at the commission's discretion.

(V) If and when additional elements are included in the definition of basic service as a result of review by the commission under subsection (2) of this section, prices may increase as is reasonably necessary to cover the cost and account for the inclusion of such additional elements.

(4) **Universal access to advanced service.** The general assembly acknowledges the goal of universal access to advanced service to all citizens of this state. The commission shall consider the impact of opening entry to the local exchange market and shall determine whether additional support mechanisms may be necessary to promote this goal if competition for local exchange services fails to deliver advanced services in all areas of the state.

(5) **Universal service support mechanisms.** (a) In order to accomplish the goals of universal basic service, universal access to advanced service under section 40-15-509.5, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of basic service and advanced service in high-cost areas. The commission shall fund these support mechanisms equitably and on a nondiscriminatory, competitively neutral basis through assessments, which may include a rate element, on all telecommunications providers in Colorado. A provider's eligibility to receive support for basic service under the support mechanisms is conditioned upon the provider's offering basic service throughout an entire support area.

(b) A provider that offers basic local exchange service throughout an entire support area through use of its own facilities or on a resale basis may be qualified as a provider of last resort.

(c) A provider that fails to pay an assessment due and payable under paragraph (a) of this subsection (5) shall have its certificate revoked after notice and the opportunity for a hearing as provided in article 6 of this title.

(6) **Provider of last resort - duty to follow evolving definition of basic service.** (a) In all relevant geographic areas of the state, as defined by the commission, the commission shall

designate at least one provider as the provider of last resort and adopt procedures for changing or terminating such designations. A provider of last resort designation carries the responsibility to offer basic local exchange service to all consumers who request it.

(b) A person holding a certificate of public convenience and necessity to provide basic service shall be subject to the evolving definition of basic service developed by the commission under subsection (2) of this section and the system of financial support for universal service established by the commission under subsection (5) of this section.

(7) **Barriers to entry.** It is the policy of this state that all barriers to entry into the provision of telecommunications services in Colorado be removed as soon as is practicable, subject to the commission's authority to ensure quality of service and other matters as provided in this article.

Source: L. 95: Entire part added, p. 747, § 1, effective May 24. **L. 98:** (5)(a) amended, p. 705, § 2, effective July 1. **L. 2008:** (3)(b)(I) amended and (3)(b)(I.5) added, p. 1805, § 27, effective July 1. **L. 2014:** (2), (3)(a), (3)(b)(I), (3)(b)(IV)(B), and (4) amended, (HB 14-1330), ch. 151, p. 519, § 6, effective May 9; (5)(a) amended (HB 14-1331), ch. 152, p. 529, § 11, effective May 9; (5)(a) amended (HB 14-1328), ch. 173, p. 632, § 3, effective May 10. **L. 2018:** (5)(a) and (5)(b) amended, (SB 18-002), ch. 89, p. 709, § 3, effective August 8.

Editor's note: Amendments to subsection (5)(a) by HB 14-1331 and HB 14-1328 were harmonized.

40-15-503. Opening of competitive local exchange market - process of negotiation and rule-making - issues to be considered by commission - definition.

(1) Repealed.

(2) (a) and (b) Repealed.

(c) (I) The commission shall consider changing to forms of price regulation other than rate-of-return regulation for any telecommunications provider that provides services regulated under part 2 or 3 of this article and shall consider the conditions under which such a change may take place to ensure that telecommunications services continue to be available to all consumers in the state at fair, just, and reasonable rates. This paragraph (c) shall not be construed to limit the manner and methods of regulation available under section 40-15-302.

(II) As used in this paragraph (c), "price regulation" means a form of regulation that may contain, without limitation, any of the following elements:

(A) Regulation of the price and quality of services;

(B) Price floors and price ceilings;

(C) Flexibility in pricing between price floors and price ceilings;

(D) Modified tariff requirements;

(E) Incentives for increased efficiency, productivity, and quality of service.

(d) The commission shall adopt rules providing for simplified regulatory treatment for rural telecommunications providers as defined in section 40-15-102 (24.5). Such simplified treatment may include, but shall not be limited to, optional methods of regulatory treatment that reduce regulatory requirements, reduce the financial burden of regulation, and allow pricing flexibility. Such simplified treatment may also allow extensions of time for the implementation

of requirements under this part 5 in rural exchanges for which there are no competing basic local exchange providers certified.

(e) Applications for certificates of public convenience and necessity to provide basic local exchange service may be filed with the commission at any time. A person that, on or before January 1, 1995, held a certificate of public convenience and necessity to provide basic local exchange service under part 2 of this article and who still holds the certificate need not reapply to the commission for additional or continued authority. A provider of local exchange services shall not operate in this state without a certificate of public convenience and necessity.

(f) A telecommunications provider that is granted a certificate of public convenience and necessity to provide local exchange telecommunications service in competition with an incumbent provider of local exchange service shall be regulated under part 3 of this article unless the commission determines that the services of such provider are not subject to effective competition from the incumbent local exchange provider.

(g) (I) to (III) Repealed.

(IV) (A) Repealed.

(B) In adopting commission tariffs, the commission shall determine whether the rates, terms, and conditions of sale to be set forth in such tariffs are based on cost and are nondiscriminatory. Such rates, terms, and conditions of sale may include a reasonable profit.

(V) As used in this paragraph (g), "true-up" means recovery of the difference between:

(A) The rates paid under temporary interim tariffs before the adoption of commission tariffs or, if interconnection agreements as contemplated in subparagraph (III) of this paragraph (g) are in effect, the rates paid under temporary interim tariffs before the effective dates of such agreements; and

(B) The rates that would have been paid during the same time period had the commission tariffs or interconnection agreements been in effect instead of such temporary interim tariffs.

(VI) True-up shall be accomplished by means of lump-sum cash payments unless the commission orders another method of payment. If the commission orders a refund or an additional payment to be made at the time of true-up, such refund or additional payment shall be paid with interest at a rate to be determined by the commission.

(VII) Repealed.

(VIII) In all proceedings initiated pursuant to this paragraph (g), the burden of proof shall be on the telecommunications service provider.

(IX) The following entities shall be exempt from the requirements of this paragraph (g):

(A) A basic local exchange provider that serves only rural exchanges of ten thousand or fewer access lines;

(B) As to the interim rates, a college or vocational school as defined in section 23-3-103, C.R.S.

(h) The commission shall require by rule that any telecommunications service provider required to file temporary interim tariffs and, to the extent such a requirement is permissible under federal law, any basic local exchange provider that serves only rural exchanges of ten thousand or fewer access lines and that has received a bona fide request for interconnection shall file advice letters with the commission to place into effect temporary interim tariffs and commission tariffs for unbundled facilities or functions, interconnection, services for resale, or local number portability by such dates certain as the commission may determine by rule.

(3) During the period of negotiation and rule-making as contemplated in this section, the director of the commission may request, on a case-by-case basis, and the commission may grant, extensions to the statutorily directed times for completion of proceedings before the commission; except that no such extension shall be requested for proceedings under this section. During rule-making under this section, the commission may, on its own motion and on a case-by-case basis, grant such extensions; except that no such extension shall be granted for proceedings under this section.

Source: L. 95: Entire part added, p. 750, § 1, effective May 24. **L. 96:** (2)(g) and (2)(h) added, p. 706, § 1, effective May 15. **L. 2000:** (2)(d) amended, p. 48, § 7, effective March 10. **L. 2013:** (2)(b)(V) amended, (HB 13-1300), ch. 316, p. 1708, § 133, effective August 7. **L. 2014:** (1), (2)(a), (2)(b), (2)(g)(I), (2)(g)(II), (2)(g)(III), (2)(g)(IV)(A), and (2)(g)(VII) repealed and (2)(e) amended, (HB 14-1330), ch. 151, p. 520, § 7, effective May 9. **L. 2019:** (2)(h) amended, (SB 19-236), ch. 359, p. 3316, § 24, effective May 30.

40-15-503.5. Financial assurance - rules. (1) The commission may require regulated telecommunications service providers to post a bond or provide other security as a condition of obtaining a certificate, registration, or operating authority, whichever instrument or instruments apply. In setting the amount of the bond or security, the commission may consider the following criteria:

(a) The financial viability of the service provider, as evidenced by its audited financial statements and its general credit history;

(b) The total amount of deposits made by customers to the provider to obtain service and the aggregate amount of prepayments made by customers for monthly regulated service; and

(c) The history of the provider's statutory payment obligations, including those to the Colorado high cost support mechanism, the Colorado telephone relay system, and the Colorado telecommunications utility fund.

(2) The commission may promulgate rules to implement this section and may impose additional criteria consistent with this section.

Source: L. 2003: Entire section added, p. 1700, § 7, effective May 14. **L. 2013:** (1)(c) amended, (SB 13-194), ch. 89, p. 289, § 3, effective April 1. **L. 2019:** (1)(c) amended, (SB 19-236), ch. 359, p. 3316, § 25, effective May 30.

40-15-504. Working support group - duties - composition - repeal. (Repealed)

Source: L. 95: Entire part added, p. 752, § 1, effective May 24.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 1997. (See L. 95, p. 752.)

40-15-505. Committee on telecommunications policy - creation - duties - repeal. (Repealed)

Source: L. 95: Entire part added, p. 753, § 1, effective May 24.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 1997. (See L. 95, p. 753.)

40-15-506. Advisory committee to committee on telecommunications policy - creation - duties - repeal. (Repealed)

Source: L. 95: Entire part added, p. 754, § 1, effective May 24.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 1997. (See L. 95, p. 754.)

40-15-507. Funding and appropriations - telecommunications policy development fund - creation - repeal. (Repealed)

Source: L. 95: Entire part added, p. 754, § 1, effective May 24.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1996. (See L. 95, p. 754.)

40-15-508. Local exchange administration fund - repeal. (Repealed)

Source: L. 95: Entire part added, p. 755, § 1, effective May 24.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1999. (See L. 95, p. 755.)

40-15-509. Transfer of certificate. Any certificate of public convenience and necessity to provide local exchange service may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

Source: L. 95: Entire part added, p. 755, § 1, effective May 24.

40-15-509.5. Broadband service - report - broadband deployment board - broadband administrative fund - creation - definitions - rules - repeal. (1) **Short title.** This section shall be known and may be cited as the "Connect Colorado to Enhance Economic Development, Telehealth, Education, and Safety Act".

(2) The general assembly hereby finds, determines, and declares that to promote the state policy of providing universal access to broadband service, as set forth in section 40-15-502 (4), it may be necessary to provide financial assistance through additional support mechanisms if competition for local exchange services fails to deliver broadband service throughout the state. "Advanced service" includes "broadband service" for purposes of this section only.

(3) The commission may allocate the Colorado high cost support mechanism, established under section 40-15-208 and referred to in this section as the "HCSM", for the deployment of broadband service in unserved areas of the state pursuant to this section and section 40-15-208 only. The commission may fund the deployment of broadband service in

unserved areas of the state through use of the HCSM surcharge and surcharge rate in effect on January 1, 2018. Pursuant to subsection (4) of this section and consistent with sections 40-15-207 and 40-15-208, the commission shall determine funds available for broadband deployment and the administration of the board as prescribed in section 40-15-208 or from the HCSM money that it determines is no longer required by the HCSM to support universal basic service through an effective competition determination. The money available for broadband deployment shall be maintained by the HCSM third-party contractor and held in a separate account from money used for basic voice service. Money held for broadband deployment shall not be disbursed for basic voice service, and money held for basic voice service shall not be disbursed for broadband deployment. The commission shall only disburse money for broadband deployment grants from the HCSM as directed by the board. Nothing in this section increases any surcharge rate charged to help fund the HCSM.

(4) (a) There is hereby created in the state treasury the broadband administrative fund, referred to in this section as the "fund". The fund consists of all money allocated from the HCSM for the administration of the board and all money that the general assembly may appropriate to the fund. The money in the fund is subject to annual appropriation by the general assembly for the purposes set forth in this section. All interest earned from the investment of money in the fund is credited to the fund. All money not expended at the end of the fiscal year remains in the fund and does not revert to the general fund or any other fund.

(b) Repealed.

(5) (a) There is hereby created in the department of regulatory agencies the broadband deployment board, referred to in this section as the "board". The board is an independent board created to implement and administer the deployment of broadband service in unserved areas. The department of regulatory agencies shall staff the board. The board has the powers and duties specified in this section.

(b) The board consists of sixteen members, fifteen of whom are voting members. The members of the board shall be selected on the basis of their knowledge of and interest in broadband service and shall serve for four-year terms. A member of the board shall not serve more than two consecutive full four-year terms.

(c) No more than eight voting members of any one major political party may serve on the board at the same time. Members of the board are entitled to seventy-five dollars per diem for attendance at official meetings plus actual and necessary expenses incurred in the conduct of official business. Members of the board shall be appointed as follows:

(I) At least one member from the commission; one member from the Colorado office of economic development and international trade in the office of the governor; one member from the department of local affairs, created in section 24-1-125, C.R.S.; and one member from the office of information technology, created in section 24-37.5-103, C.R.S., as appointed by the governor. The governor shall select three of these four appointees to serve as voting members of the board.

(II) Three voting members representing local entities:

(A) One of whom is a county commissioner, as appointed by the president of the senate in consultation with Colorado Counties, Inc.;

(B) One of whom is a mayor or city councilperson, as appointed by the speaker of the house of representatives in consultation with the Colorado municipal league; and

(C) One of whom is any other representative of a local entity and who has a background in broadband service and expertise in rural economic development, education, or telemedicine, as appointed by the minority leader of the senate;

(III) Seven voting members representing the broadband industry:

(A) One of whom represents a wireless provider, as appointed by the minority leader of the house of representatives;

(B) One of whom represents a wireline provider, as appointed by the minority leader of the senate;

(C) One of whom represents a broadband satellite provider, as appointed by the governor;

(D) One of whom represents a cable provider, as appointed by the president of the senate;

(E) One of whom represents a rural local exchange carrier, as appointed by the governor;

(F) One of whom represents a competitive local exchange carrier, as appointed by the speaker of the house of representatives; and

(G) One of whom represents a cable provider serving rural areas, as appointed by the president of the senate; and

(IV) Two voting members of the public:

(A) One of whom resides in an unserved area of the western slope of the state, as appointed by the speaker of the house of representatives; and

(B) One of whom resides in an unserved area of the eastern slope of the state, as appointed by the minority leader of the house of representatives.

(C) (Deleted by amendment, L. 2018.)

(d) The board shall meet as often as necessary to carry out its duties as defined in this section.

(e) The term of any member of the board who misses more than two consecutive regular board meetings without good cause shall be terminated, and his or her successor shall be appointed in the manner provided for appointments under this section.

(f) (I) If a board member has a conflict of interest with respect to any matter addressed by the board, including a financial interest in the matter, the member shall recuse himself or herself from any discussion or decisions on the matter.

(II) (A) A board member appointed pursuant to subsection (5)(c)(I), (5)(c)(II), or (5)(c)(IV) of this section is not deemed to have a conflict of interest merely by virtue of residing in or representing an unserved area or an area that is the subject of an application before the board.

(B) A board member appointed pursuant to subsection (5)(c)(III) of this section is deemed to have a conflict of interest with respect to an application filed by an entity that the board member represents; however, if such application is filed, the board member may still participate in discussions about other applications before the board, but shall not vote on those other applications.

(g) In the event of a tie vote of the board, the application, appeal, proposition, or other matter being voted upon fails.

(6) Repealed.

(7) The board shall provide notice to and requests for proposals from incumbent providers, incumbent broadband providers, and local entities about the board's purpose to deploy

broadband service in unserved areas. The board shall ensure that both the manner and amount of notice provided under this subsection (7) are adequate and equitable for all potentially eligible applicants.

(8) The board shall direct the commission to transfer money, in a manner consistent with this section, from the account for broadband deployment established in the HCSM to approved grant applicants. The board shall develop criteria for awarding money for new projects to deploy broadband in unserved areas, including:

(a) (I) Developing a project application process that places the burden on an eligible applicant to demonstrate that its proposed project meets the project eligibility criteria established in this subsection (8), including a requirement that the proposal concern a new project, and not a project already in progress, and a requirement to prove that the area to be served by the proposed project is an unserved area.

(II) To prove that the area to be served is an unserved area, the applicant:

(A) Must submit a map and a list of household addresses demonstrating the insufficient availability of broadband service in the area to the board; the board of county commissioners, city council, or other local entity with authority over the area to be served; and all incumbent providers or incumbent broadband providers that provide broadband internet service or broadband service in the area proposed to be served in the application; and

(B) May submit to the board the written certification of a local entity as described in subsection (8)(a)(III) of this section.

(III) As additional evidence of the insufficient availability of broadband service in the area that an applicant proposes to serve, the applicant may request from a local entity with jurisdiction over the area proposed to be served a written certification that the area is an unserved area. The local entity shall not provide written certification until after the local entity has:

(A) Provided public notice, including notification to any incumbent provider, if any, and held a hearing on the issue; and

(B) Collected, solicited, and reviewed any quantitative data that it deems appropriate regarding the availability of broadband service in the area that the applicant proposes to serve. A local entity must collect, solicit, and review quantitative data in accordance with rules adopted by the executive director of the department of regulatory agencies, in consultation with the office of information technology created in section 24-37.5-103 and the board, regarding standards concerning quantitative data.

(IV) The board shall establish a notice and comment period of at least sixty days within which any interested party, including a local entity with jurisdiction over the area proposed to be served, whether or not the entity provided a written certification as described in subsection (8)(a)(III) of this section, may review and comment on the application.

(b) Developing a methodology for determining whether a proposed project will serve unserved areas. The board's methodology must give substantial weight to a local entity's written certification on the issue of whether the area to be served is an unserved area.

(c) Denying funding for applications that overbuild areas receiving federal sources of high cost support or federal broadband grants for construction of a broadband network that will be completed within twenty-four months after the date that the applicant filed the application so as to maximize the total available state and federal support for rural broadband development. An incumbent broadband provider receiving federal funds must submit to the board an affidavit

from a company officer that the build-out will be completed within the twenty-four-month period. Upon completion of the project, an incumbent broadband provider will provide documentation to the board that demonstrates that the unserved addresses meet the minimum download and upload speeds established in the FCC's definition of high-speed internet access or broadband. If the incumbent broadband provider fails to meet the commitment made in the affidavit filed, the board may award a grant to another provider to provide service for the addresses that remain unserved.

(c.5) Denying funding for overbuilding of existing broadband networks in order to maximize the total available support for financing rural broadband development;

(d) Ensuring that a proposed project includes:

(I) Access to measurable speeds of at least ten megabits per second downstream and one megabit per second upstream or measurable speeds at least equal to the FCC's definition of high-speed internet access or broadband, whichever is faster;

(II) Independent funding secured for at least twenty-five percent of the total cost of the proposed project; and

(III) A requirement to utilize any award granted from the fund for infrastructure purposes only and not for operations;

(e) Providing additional consideration for proposed projects that include at least some of the following factors:

(I) Proposed projects that provide service to residential and business addresses that lack broadband internet service at measurable speeds of at least ten megabits per second downstream and one megabit per second upstream;

(II) Proposed projects that are endorsed by local entities interested in obtaining broadband internet service in unserved areas of the state;

(III) Proposed projects that have speeds of at least ten megabits per second downstream and one megabit per second upstream or measurable speeds at least equal to the FCC's definition of high-speed internet access or broadband, whichever is faster;

(IV) Proposed projects for which the applicant has an established record of operation in the area of the grant application; and

(V) Proposed projects providing last-mile broadband service, which is defined as the portion of broadband service that delivers an internet connection to an end user that lacks access to broadband service at measurable speeds greater than fifty-six kilobits per second;

(f) Providing an assessment of the following factors:

(I) Whether the proposed project will provide services via a licensed or unlicensed means of transmission;

(II) The cost-effectiveness of the proposed project's proposed method for expanding broadband internet service into unserved areas; and

(III) The reliability of the network providing broadband services;

(g) (I) With regard to an applicant that has submitted a proposed project to the board, affording each incumbent provider in the area that is not providing access to a broadband network in the unserved area a right of first refusal regarding the implementation of a project in the unserved area.

(II) If an incumbent provider proposes a project for the area, the incumbent provider commits to providing access to a broadband network:

(A) Within one year after the applicant's submission of a proposed project;

(B) At demonstrated downstream and upstream speeds equal to or faster than the speeds indicated in the applicant's proposed project; and

(C) At a cost per household in the area to be served that is equal to or less than the cost per household indicated in the applicant's proposed project.

(h) Ensuring that broadband service grant awards are not provided in areas other than unserved areas;

(i) In the case of a franchise agreement, ensuring that broadband service grant awards are not provided in areas with a population density large enough to require service under an existing franchise agreement;

(j) Establishing a grant award process that:

(I) Allows an applicant to apply for grants on multiple projects in a given year if the applicant makes a separate application for each project. The board may approve more than one of the applicant's projects within a single year.

(II) Ensures the geographically equitable distribution of grant awards;

(III) Provides for an appeals process for any party aggrieved by an award or denial of grant money, whether exercising a right of first refusal, having filed any comments regarding the initial grant application, or both. If a provider of broadband service or a broadband network that alleges funding provided pursuant to this section will overbuild the provider's broadband network, the provider is an aggrieved party with standing to appeal under this subsection (8)(j)(III).

(IV) Requires the board to consider appeals alleging that the application area is no longer unserved because federal support improves a broadband network for service locations that are adjacent to the area receiving the federal award and are within the application area.

(k) Establishing reporting and accountability requirements for a project receiving financial support from the fund, including contractual requirements that:

(I) The applicant secure a performance bond for the project, as appropriate;

(II) The applicant demonstrate an ability to provide broadband service at a reasonable cost per household in the area to be served by the proposed project;

(III) The applicant demonstrate an ability to complete the proposed project within a reasonable time, not to exceed two years, unless delayed by a government entity; and

(IV) Prohibit an applicant from using grant award moneys to offer, provide, or sell broadband services in an area not meeting the definition of unserved area.

(8.3) (a) The board shall periodically review the websites of the federal trade commission and the FCC to determine whether either of those federal agencies has issued a final order or entered into a settlement or consent decree regarding any:

(I) Applicant seeking broadband deployment grant money from the board; or

(II) Internet service provider, as defined in section 40-15-209 (4)(b), to which the board has awarded broadband deployment grant money.

(b) The board shall review any order or decree described in subsection (8.3)(a) of this section to determine whether the internet service provider that is the subject of the order or decree has engaged in conduct prohibited by section 40-15-209 (1)(a) to (1)(d). The board shall deny the application of any applicant subject to such a federal order or decree and shall inform the commission pursuant to section 40-15-209 (2)(a) about any internet service provider awarded broadband deployment grant money that is subject to such an order or decree.

(8.5) (a) The board shall deny an application that contains an area that does not meet the definition of unserved area and shall grant an appeal to an incumbent broadband provider that demonstrates, by a preponderance of the evidence, that an area covered by an application does not meet the definition of unserved area.

(b) If all other application requirements remain met, an application may be amended at any time to remove from the application coverage of an area that does not meet the criteria established pursuant to this section. Alternatively, the board may award a partial grant for an area that does meet the criteria.

(9) (a) The board shall report annually to the transportation and energy committee and the business affairs and labor committee in the house of representatives and to the agriculture, natural resources, and energy committee and business, labor, and technology committee in the senate, or their successor committees, on the projects supported by money from the HCSM account dedicated to broadband deployment in a given year, including information on:

(I) The number of projects;

(II) The location of each project;

(III) The amount of funding received for each project; and

(IV) A description of each project.

(b) Notwithstanding section 24-1-136 (11), C.R.S., the report required under this subsection (9) continues indefinitely.

(10) Local entities are encouraged to cooperate with respect to timelines and permit fees concerning projects in their geographic area.

(10.5) (a) The board may apply for federal funding of broadband deployment projects and programs. The HCSM third-party contractor shall maintain any federal money awarded for broadband deployment in a separate account of the HCSM that is dedicated to allocating federal broadband deployment money. The commission is authorized to disburse any money from the account as directed by the board.

(b) (I) Following the model of New York's petition for expedited waiver, the board shall immediately petition the FCC for a waiver from the auction rules that prohibit a state entity from applying for connect America fund phase II auction money to allow the board itself to allocate auction money for broadband deployment projects approved by the board.

(II) After submitting the petition to the FCC, the board may:

(A) File any additional documentation that the FCC requires of the board in considering the board's petition; and

(B) Coordinate with the FCC to develop any conditions that the FCC might require to grant the petition.

(III) If the FCC grants the board's petition and awards the board auction money:

(A) The HCSM third-party contractor shall maintain any federal money awarded from the auction in the separate account of the HCSM described in subsection (10.5)(a) of this section; and

(B) The commission is authorized to disburse the federal money in that account for broadband deployment grants as directed by the board.

(IV) The board may coordinate with the FCC to comply with any conditions established by the FCC in granting the petition. If any such FCC conditions impose project eligibility, application process, award criteria, or other requirements that are distinct from the requirements set forth in this section or established by the board pursuant to this section, the commission may,

by rule and in consultation with the board, establish requirements that comply with the FCC's conditions; except that any requirements established by the commission by rule pursuant to this subsection (10.5)(b) must apply only to broadband deployment projects that are eligible to receive auction money.

(c) As used in this subsection (10.5):

(I) "Auction rules" refers to the FCC's rules in 47 CFR 54.309 to 54.316, which rules concern the implementation of the connect America fund phase II auction.

(II) "Connect America fund phase II auction" or "auction" refers to a ten-year auction of federal money through which the FCC will allocate money, by means of a competitive bidding process, to telecommunications providers who commit to providing voice and broadband service in high-cost areas of the nation in accordance with the FCC's auction rules.

(III) "New York's petition for expedited waiver" refers to a petition that the state of New York filed with the FCC seeking a waiver from the FCC's auction rules with regard to the rules' limitation prohibiting state entities from applying for federal money through the auction. The FCC granted the waiver request on January 26, 2017, thus authorizing the state of New York to directly receive and allocate auction money to broadband projects within the state.

(10.6) (a) (I) Following the model of New York's petition for expedited waiver, the board, on or before January 1, 2019, shall petition the FCC for a waiver from the FCC's rules concerning the remote areas fund to seek FCC authorization for the board to itself allocate remote areas fund money for broadband deployment projects in Colorado.

(II) After submitting the petition to the FCC, the board may:

(A) File any additional documentation that the FCC requires of the board in considering the board's petition; and

(B) Coordinate with the FCC to develop any conditions that the FCC might require to grant the petition.

(b) If the FCC denies the board's petition, the board shall not file a new petition or otherwise subsequently apply for money from the remote areas fund.

(c) If the FCC grants the board's petition:

(I) The HCSM third-party contractor shall maintain any federal money awarded through the remote areas fund in a separate account of the HCSM that is dedicated to allocating the federal money in compliance with any conditions established by the FCC in granting the petition;

(II) The commission is authorized to disburse the federal money in that account for broadband deployment grants as authorized by the board and in compliance with any conditions established by the FCC in granting the petition; and

(III) The board is authorized to coordinate with the FCC to comply with any conditions established by the FCC in granting the petition. If any such FCC conditions impose project eligibility, application process, award criteria, or other requirements that are distinct from the requirements set forth in this section or established by the board pursuant to this section, the commission may, by rule and in consultation with the board, establish requirements that comply with the FCC's conditions; except that any requirements established by the commission by rule pursuant to this subsection (10.6) must apply only to broadband deployment projects that are eligible to receive the federal remote areas fund money.

(d) As used in this subsection (10.6):

(I) "Auction rules" refers to the FCC's rules in 47 CFR 54.309 to 54.316, which rules concern the implementation of the connect America fund phase II auction.

(II) "Connect America fund" refers to the federal universal service high-cost program that allows eligible telecommunications providers to recover some of their costs from the federal government for providing voice and broadband service in high-cost areas.

(III) "Connect America phase II auction" refers to a ten-year auction of federal money through which the FCC will allocate money through a competitive bidding process to telecommunications providers who commit to providing voice and broadband service in high-cost areas of the nation in accordance with the FCC's auction rules.

(IV) "New York's petition for expedited waiver" refers to a petition that the state of New York filed with the FCC seeking a waiver from the FCC's auction rules, which waiver the FCC granted on January 26, 2017.

(V) "Remote areas fund" refers to a fund created by the FCC as part of its connect America fund to facilitate broadband deployment in extremely high-cost areas of the nation.

(10.7) The board shall make every effort to ensure that a project funded pursuant to this section does not overbuild any project supported or approved by the department of local affairs.

(10.9) As used in this section:

(a) "Incumbent broadband provider" means a provider that offers broadband internet service over a broadband network in an area covered by an application filed pursuant to this section.

(b) "Overbuild" or "overbuilding" means providing a broadband network to a household or households that:

(I) At the time of application, either have access to a broadband network or have received federal sources of high cost support or federal broadband grants to provide access to a broadband network; and

(II) Account for twenty percent or more of the total household or households to be served by a proposed wireless project.

(11) This section is repealed, effective September 1, 2024. Before its repeal, the powers, duties, and functions of the board regarding the deployment of broadband services into unserved areas are scheduled for review in accordance with section 24-34-104.

Source: L. 2014: Entire section added, (HB 14-1328), ch. 173, p. 632, § 4, effective May 10. **L. 2016:** (4)(a) amended, (HB 16-1184), ch. 77, p. 200, § 1, effective January 1, 2017. **L. 2017:** (3), (4)(a), and IP(8) amended, (SB 17-306), ch. 365, p. 1907, § 1, effective June 6. **L. 2018:** (10.5) added, (HB 18-1116), ch. 2, p. 24, § 1, effective January 29; (3), (5)(a), (5)(b), IP(5)(c), (5)(c)(II)(C), (5)(c)(III), (5)(c)(IV), (5)(f), (7), IP(8), (8)(a), (8)(c), (8)(d)(I), (8)(e), (8)(j), IP(9)(a), and (11) amended, (4)(b) and (6) repealed, and (5)(g), (8)(c.5), (8.5), (10.7), and (10.9) added, (SB 18-002), ch. 89, p. 710, § 4, effective August 8; (8)(g) amended, (HB 18-1099), ch. 92, p. 731, § 1, effective August 8; (10.6) added, (SB 18-104), ch. 93, p. 734, § 2, effective August 8. **L. 2019:** (8.3) added, (SB 19-078), ch. 210, p. 2215, § 2, effective May 17. **L. 2020:** IP(8), (8)(a), and (8)(b) amended, (HB 20-1137), ch. 241, p. 1162, § 2, effective September 14.

Editor's note: (1) Section 5 of chapter 210 (SB 19-078), Session Laws of Colorado 2019, provides that the act changing this section applies to conduct occurring on or after May 17, 2019.

(2) Section 3 of chapter 241 (HB 20-1137), Session Laws of Colorado 2020, provides that the act changing this section applies to applications submitted on or after September 14, 2020.

Cross references: For the legislative declaration in SB 18-104, see section 1 of chapter 93, Session Laws of Colorado 2018.

40-15-510. Violations. Violations of this part 5 by a telecommunications provider are subject to enforcement and penalties as provided in article 7 of this title.

Source: L. 95: Entire part added, p. 755, § 1, effective May 24.

PART 6

ELECTRIC UTILITY EASEMENTS

40-15-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Attached facility" means a broadband facility, as defined in section 38-5.5-102 (2), or a broadband network or any portion of a broadband network, in each case located substantially:

(a) Aboveground and attached to an electric utility's electric service infrastructure; or

(b) Underground in an electric easement and existing before the delivery of notice pursuant to section 40-15-602 (2).

(2) "Broadband affiliate" means a commercial broadband supplier that is a separate legal entity from any electric utility but is controlled by, controls, or is under common control with an electric utility.

(3) "Commercial broadband service" means broadband service, as that term is defined in section 38-5.5-102 (1), or broadband internet service.

(4) (a) "Commercial broadband supplier" means:

(I) A provider of broadband internet service or an existing broadband provider, as that term is defined in section 38-5.5-102 (3), or a person that intends to provide broadband internet service or broadband service; or

(II) A person that directly or indirectly sells, leases, or otherwise transfers attached facilities or a right to install, operate, maintain, or use attached facilities for another person's provision of commercial broadband service or a person that intends to sell, lease, or otherwise transfer attached facilities or a right to install, operate, maintain, or use attached facilities.

(b) "Commercial broadband supplier" does not include an electric utility.

(5) "Electric easement" means a recorded or unrecorded easement, right-of-way under section 38-4-103 or otherwise, or similar right in or to real property, including prescriptive rights, no matter how acquired, held by an electric utility for the siting of electric service infrastructure or for the purpose of delivering electric service, regardless of whether:

(a) The easement or other right is exclusively for the provision of electric service or for use in connection with commercial broadband service, telecommunication service, or another purpose; or

(b) The electric utility or a commercial broadband supplier uses the easement or other right to provide commercial broadband service.

(6) "Electric utility" means a cooperative electric association, as defined in section 40-9.5-102.

(7) "Interest holder" means a property owner or other person with an interest in the real property upon which an electric easement is located.

(8) "Memorandum" means a written instrument that includes, at a minimum, the name and address of the electric utility, the date on which the notice was mailed, and the information required to be included in a notice under section 40-15-602 (2)(b)(III) and (2)(b)(IV).

(9) "Notice" means a written letter substantially complying with the requirements set forth in section 40-15-602 (2)(b), which notice shall be deemed delivered on the date postmarked or otherwise time stamped.

(10) "Person" has the meaning set forth in section 40-1-102 (10).

(11) "Property owner" means a person with a recorded fee simple interest in real property upon which an electric easement is located.

(12) "Request for notice" means a written instrument recorded by an interest holder in compliance with the requirements set forth in section 40-15-602 (2)(c).

Source: L. 2019: Entire part added, (SB 19-107), ch. 424, p. 3704, § 1, effective August 2.

40-15-602. Electric easements - commercial broadband service - broadband affiliates - notice required. (1) With regard to real property subject to an electric easement, if an electric utility, or any commercial broadband supplier designated by the electric utility to act on its behalf, complies with the notice and filing requirements set forth in subsection (2) of this section, the electric utility holding the electric easement may, subject to subsection (4) of this section and without the consent of an interest holder in the real property subject to the electric easement, take the following actions to the extent not already permitted by the electric easement:

(a) Install, maintain, or own, or permit any commercial broadband supplier, including a broadband affiliate, to install, maintain, or own, an attached facility for operation by a commercial broadband supplier, including a broadband affiliate, in providing commercial broadband service; and

(b) Lease or otherwise provide to a commercial broadband supplier, including a broadband affiliate, any excess capacity of attached facilities for purposes of providing commercial broadband service.

(2) (a) At least thirty days before first exercising its rights under one or both of subsection (1)(a) or (1)(b) of this section with respect to an electric easement or portion of an electric easement, an electric utility or its designated commercial broadband supplier must send notice to each property owner that holds an interest in the real property subject to the electric easement and any other interest holder that has recorded a request for notice and must record a memorandum in the office of the county clerk and recorder in each county in which the electric utility is exercising its rights under subsection (1) of this section. An electric utility or its

designated commercial broadband supplier may only commence exercising its rights under subsection (1) of this section upon delivery of sufficient notice.

(b) A letter providing notice pursuant to this subsection (2) must:

(I) Be sent by certified mail from or on behalf of the electric utility to the property owner and any interest holder that has recorded a request for notice at each of the following, as applicable:

(A) The last-known address for the property owner based on the electric utility's records;

(B) The address listed for the property owner in the records of the office of the county assessor; and

(C) The address set forth in a request for notice;

(II) Include the name, address, telephone number, and named point of contact for the electric utility and, if delivered by a commercial broadband supplier designated by the electric utility, the name, address, telephone number, and named point of contact for the designated commercial broadband supplier;

(III) Include the property address; the recording number, if any, of the electric easement or recorded memorandum of the electric easement; a general description of any existing electric service infrastructure currently located in the electric easement; and the approximate location of the electric easement, which need not include a legal description, land title survey, plat, or other designation of the exact boundaries of the electric easement;

(IV) Include:

(A) A citation to this part 6; and

(B) A copy of the language of subsection (1) of this section with an indication of whether the electric utility is exercising rights under one or both of subsection (1)(a) or (1)(b) of this section;

(V) Give an estimated time for the start of installation or construction with regard to any new installation or construction that will occur in connection with the exercise of rights under subsection (1) of this section;

(VI) Include a statement regarding the right and obligation of the electric utility, or its designated commercial broadband supplier, to record a memorandum; and

(VII) Include a statement regarding the statute of limitations for the interest holder to file a claim with respect to the electric utility's exercise of rights.

(c) An interest holder that desires to obtain notice under this part 6 at a specific address may file in the office of the county clerk and recorder for the county in which the real property is situated a request for notice that identifies the interest holder's name and address, the instrument granting the interest holder's interest in the property, and the recording number of the instrument or a recorded memorandum of the instrument.

(3) Upon exercise of the rights set forth in subsection (1) of this section, the rights run with the land and are assignable by the electric utility.

(4) The terms and conditions of a written electric easement apply to an electric utility's uses of the electric easement set forth in subsection (1) of this section, except those terms and conditions that would prohibit the electric utility's exercise of rights under subsection (1) of this section. A prohibition on aboveground electric service infrastructure contained within a written electric easement constitutes a prohibition on aboveground attached facilities. In connection with the exercise of rights under subsection (1) of this section, an electric utility or its designated commercial broadband supplier must comply with any notice requirements contained in a

written electric easement held by the electric utility related to entering the real property subject to the electric easement or commencing any construction or installation on the real property.

(5) Nothing in this part 6 requires an electric utility to comply with subsection (2) of this section in order to take any action or exercise any rights under an electric easement that are already permitted within the scope of the electric easement. Unless expressly prohibited by the terms of an electric easement, an electric easement will be deemed to allow an electric utility to install, maintain, or own, or permit a third party to install, maintain, or own for beneficial use by the electric utility, telecommunications facilities and equipment for use in connection with the electric utility's provision of electricity.

Source: L. 2019: Entire part added, (SB 19-107), ch. 424, p. 3706, § 1, effective August 2.

40-15-603. Statute of limitations - damages - limitations on damages. (1) (a) No claim or cause of action against an electric utility or a commercial broadband supplier concerning the electric utility's or commercial broadband supplier's exercise of rights under this part 6 or any actions that the electric utility or commercial broadband supplier takes before August 2, 2019, that, if taken after August 2, 2019, would be authorized under section 40-15-602 (1) may be brought by or on behalf of an interest holder more than two years after the latest of:

(I) August 2, 2019;

(II) The date of delivery of notice pursuant to section 40-15-602 (2); or

(III) The date of recording of a memorandum pursuant to section 40-15-602 (2).

(b) Subsection (1)(a) of this section does not apply to a claim or cause of action based on:

(I) Physical damage to property;

(II) Injury to natural persons; or

(III) Breach of the terms and conditions of a written electric easement as the terms and conditions apply in accordance with section 40-15-602 (4).

(c) Nothing in this section extends the statutory limitation period applicable to a claim or revives an expired claim.

(2) A claim or cause of action to which subsection (1)(a) of this section applies shall not be brought by or on behalf of an interest holder against a commercial broadband supplier for actions that the commercial broadband supplier has taken under section 40-15-602 (2) on behalf of an electric utility. Nothing in this subsection (2) prohibits an electric utility and a commercial broadband supplier from contracting to allocate liability for actions taken under section 40-15-602 (2).

(3) If an interest holder brings a trespass claim, inverse condemnation claim, or any other claim or cause of action to which subsection (1)(a) of this section applies for an electric utility's or commercial broadband supplier's exercise of rights or performance of actions described in section 40-15-602 (1)(a) or (1)(b), the following applies to the claim or cause of action:

(a) The measure of damages for all claims or causes of action to which subsection (1)(a) of this section applies, taken together, is the fair market value of the reduction in value of the interest holder's interest in the real property, as contemplated by section 38-1-121 (1). In determining or providing the fair market value under this subsection (3)(a):

(I) The following shall not be used and are not admissible as evidence in any proceeding:

(A) Profits, fees, or revenue derived from the attached facilities; or

(B) The rental value of the real property interest or the electric easement, including the rental value of any attached facilities or an assembled broadband corridor; and

(II) Consideration must be given to any increase in value to the real property interest resulting from the availability of commercial broadband service to the real property underlying the real property interest that arises from the installation of attached facilities.

(b) The interest holder must make reasonable accommodations for the electric utility or commercial broadband supplier to perform an appraisal or inspection of the real property within ninety days following any written request for an appraisal or inspection. If an interest holder fails to make such accommodations, the electric utility or commercial broadband supplier has no further liability to the interest holder. The electric utility or commercial broadband supplier shall promptly provide to the interest holder a copy of any appraisal performed pursuant to this subsection (3)(b).

(c) Any damages for any claims or causes of action to which subsection (1)(a) of this section applies:

(I) Are limited to those damages that existed at the time that the electric utility or commercial broadband supplier first exercised the rights or performed the actions; and

(II) Shall not be deemed to continue, accrue, or accumulate.

(d) With regard to a claim or cause of action to which subsection (1)(a) of this section applies:

(I) Except for an electric utility's or commercial broadband supplier's failure to comply with section 40-15-602 (2), negligence, or willful misconduct, or in accordance with the terms and conditions of a written electric easement as the terms and conditions apply in accordance with section 40-15-602 (4), an interest holder is not entitled to reimbursement from an electric utility or commercial broadband supplier for the cost of any appraisal, attorney fees, or award for special, consequential, indirect, or punitive damages;

(II) For purposes of this subsection (3)(d), any action or failure to act by an electric utility or commercial broadband supplier in furtherance of the electric utility's or commercial broadband supplier's exercise of rights set forth in section 40-15-602 (1) shall not be deemed negligence or willful misconduct.

(4) By accepting a damage award for any claim or cause of action to which subsection (1)(a) of this section applies, an interest holder shall be deemed to have granted an increase in the scope of the electric easement, equal in duration to the term of the electric easement and subject to section 40-15-602 (4), to the extent of the interest holder's rights in the real property, for all of the uses of the real property and actions set forth in section 40-15-602 (1).

Source: L. 2019: Entire part added, (SB 19-107), ch. 424, p. 3708, § 1, effective August 2.

40-15-604. Electric utility obligations. (1) An electric utility that exercises any rights under section 40-15-602 (1)(a) or (1)(b) for the provision of commercial broadband service shall:

(a) Not discriminate among commercial broadband suppliers, including broadband affiliates, in offering or granting rights to install or attach any attached facilities; or

(b) Charge fees that are nondiscriminatory among commercial broadband suppliers for a substantially similar lease or use of the capacity of attached facilities owned or controlled by the electric utility, but only to the extent an electric utility chooses, in its sole discretion, to offer the lease or use to a particular commercial broadband supplier.

(2) An electric utility that has a broadband affiliate and, if applicable, the broadband affiliate shall:

(a) Charge just and reasonable attachment fees, including recurring fees, that are related to the costs associated with such attachments, such as a just and reasonable share of the carrying costs of the per-pole investment, including ongoing maintenance of the pole based on the portion of the usable space on the pole occupied by the attachment;

(b) Provide all commercial broadband suppliers access to all poles and similar support structures owned by the electric utility or broadband affiliate for the purpose of attaching equipment for the provision of commercial broadband service. Access provided in accordance with this subsection (2)(b) must be provided:

(I) On a just, reasonable, and nondiscriminatory basis; and

(II) Under terms and conditions that are no less favorable than the terms and conditions offered to broadband affiliates, including terms and conditions regarding application requirements, technical requirements, electric lineworker health and safety requirements, administrative fees, timelines, and make-ready requirements; and

(c) Charge fees that are nondiscriminatory among commercial broadband suppliers for a substantially similar lease or use of the capacity of attached facilities owned or controlled by the electric utility or broadband affiliate and that are equal to or less than the fees that the electric utility charges to its broadband affiliates, but only to the extent an electric utility or broadband affiliate chooses, in its sole discretion, to offer the lease or use to a particular commercial broadband supplier.

(3) Subject to the requirements of subsection (1) of this section, nothing in this section requires an electric utility to offer or grant a right to access or use an electric easement or to use attached facilities or electric service infrastructure owned or controlled by the electric utility in a manner that would, in the electric utility's reasonable discretion, materially interfere with the electric utility's construction, maintenance, or use of any electric utility infrastructure for the provision of electric service.

(4) (a) An electric utility with a broadband affiliate shall not unreasonably withhold authorization or delay its decision whether to provide authorization to a commercial broadband supplier to install, maintain, own, operate, or use the commercial broadband supplier's attached facilities on electric service infrastructure owned or controlled by the electric utility. An electric utility may only withhold authorization pursuant to this subsection (4) if the reason for withholding authorization is that:

(I) There is insufficient capacity for the attached facilities; or

(II) Concerns of safety or reliability or generally applicable engineering purposes weigh against granting the authorization.

(b) An electric utility that withholds authorization pursuant to this subsection (4) shall promptly notify the commercial broadband supplier in writing of the reasons for withholding authorization.

(5) An electric utility shall not directly provide retail commercial broadband service but may cause or allow a broadband affiliate to offer retail commercial broadband service. As long

as an electric utility maintains its exclusive right to provide electric service to customers within its exclusive service territory, both the electric utility that has a broadband affiliate and the broadband affiliate shall:

(a) Maintain or cause to be maintained an accounting system for the broadband affiliate separate from the electric utility's accounting system, using generally accepted accounting principles or another reasonable and customary allocation method;

(b) Cause a financial audit to be performed by an independent certified public accountant, within two years after commencement of commercial operation of retail commercial broadband service and at least once every two years thereafter, with respect to the broadband affiliate's provision of commercial broadband service, including an audit of the allocation of costs for property and services that are used in both the provision of commercial broadband service and the electric utility's provision of electric service; and

(c) (I) Not cause or allow the electric utility to use its exclusive right to provide electric services within its exclusive territory to cross-subsidize the broadband affiliate or its provision of commercial broadband service, whether by: Below fair market value pricing; payment of capital or operating costs properly charged to the broadband affiliate under applicable accounting rules; or use of any revenue from or subsidy for the provision of electric service to provide commercial broadband service below market value, except in connection with the electric utility's provision of electricity.

(II) Nothing in this subsection (5)(c) prohibits an electric utility from:

(A) Entering into a transaction with a broadband affiliate on terms and conditions substantially similar to those that would be agreed to between two similarly situated parties in an arm's length commercial transaction;

(B) Loaning funds to a broadband affiliate if the interest rate on the loan is no less than the electric utility's lowest cost of capital;

(C) Exchanging services or materials for other services or materials of equivalent value;

(D) Providing reduced-cost commercial broadband service to low-income retail customers; or

(E) Conducting and funding due diligence, operational analysis, entity set-up, and associated noncapital expenditures relating to and prior to the establishment of a broadband affiliate.

(6) Upon request of a commercial broadband supplier, an electric utility and any broadband affiliate subject to this section shall cause an officer of the electric utility and an officer of the broadband affiliate to certify that the electric utility and the broadband affiliate, respectively, are in compliance with this section. If a dispute arises between an electric utility or its broadband affiliate and an unaffiliated commercial broadband supplier:

(a) Regarding matters addressed in this part 6, the parties to the dispute have standing to file a claim or cause of action in any court of competent jurisdiction in the state; and

(b) The following are discoverable and admissible as evidence in court regarding the electric utility's and its broadband affiliate's compliance with this section:

(I) Any certification requested and produced pursuant to this subsection (6);

(II) The terms and conditions applied to the electric utility's or broadband affiliate's offer to or grant of a right to the unaffiliated commercial broadband supplier to install, maintain, own, operate, or use attached facilities; and

(III) Any audit required to be performed pursuant to subsection (5) of this section.

(7) Notwithstanding any provision of this part 6 to the contrary, an electric utility that is subject to regulation under 47 U.S.C. sec. 224, as amended, and the FCC regulations promulgated pursuant to that federal law, is not subject to this section.

(8) Nothing in this part 6:

(a) Subjects an electric utility to regulation by the FCC;

(b) Constitutes an exercise of, or an obligation or intention to exercise, the right of the state under 47 U.S.C. sec. 224 (c) to regulate the rates, terms, and conditions for pole attachments, as defined in 47 U.S.C. sec. 224 (a)(4); or

(c) Constitutes a certification, or an obligation or intention to certify, to the FCC under 47 U.S.C. sec. 224.

Source: L. 2019: Entire part added, (SB 19-107), ch. 424, p. 3710, § 1, effective August 2.

ARTICLE 16

Motor Vehicle Carriers Exempt from
Regulation as Public Utilities

40-16-101 to 40-16-111. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was added in 1985. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning carriers that are not public utilities, see article 10.1 of this title.

ARTICLE 16.5

Carriers of Sludge

40-16.5-101 to 40-16.5-109. (Repealed)

Source: L. 95: Entire article repealed, p. 1211, § 28, effective May 31.

Editor's note: This article was added in 1994 and was not amended prior to its repeal in 1995. For the text of this article prior to 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 17

Telecommunications Relay Services
for Telephone Users with Disabilities

Editor's note: This article was added in 1989 and was not amended prior to 1992. The provisions of this article were repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For the text of this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

40-17-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that many of Colorado's residents are unable to utilize telecommunications facilities without assistance and are therefore telephone users with disabilities. Telephone users with disabilities include people who are deaf, hard of hearing, speech-impaired, deaf-blind, blind and visually impaired, and those with central nervous system disabilities. Telephone users with disabilities constitute a substantial and valuable resource within the United States and the state of Colorado, and this segment of our population needs access to telecommunications facilities in order to be contributing and productive members of our society. The role of telecommunications in our world today is inestimable. Telecommunications is the primary vehicle of commerce and industry, the means to convey and receive information and knowledge, and is one of the ways we communicate with others on a personal as well as business level. Telecommunications results in greater independence and self-sufficiency by expanding the channels for employment opportunities, the market for goods and services, human contact, and fellowship. Telephone users with disabilities should have equal access to this critical tool, not only for their own sake, but for the benefit of society at large. The ability to use telecommunications will enhance the business and personal lives of telephone users with disabilities while stimulating and promoting economic development in Colorado. The general assembly recognizes the vitality and potential of Colorado's individuals with disabilities, including telephone users with disabilities. Telecommunications is vital to our society, and supporting its availability to telephone users with disabilities is a beneficial investment for all of Colorado.

(2) The general assembly therefore concludes that it is appropriate to provide access to telecommunications for telephone users with disabilities by establishing telecommunications relay services that replace and expand the dual party relay system required pursuant to this article as the article existed prior to July 1, 1992.

Source: L. 92: Entire article R&RE, p. 2132, § 1, effective July 1. **L. 2016:** Entire section amended, (HB 16-1414), ch. 155, p. 483, § 2, effective September 1.

Editor's note: This section is similar to former § 40-17-101 as it existed prior to 1992.

40-17-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the public utilities commission of the state of Colorado.

(2) Repealed.

(3) "Telecommunications relay services" means any telecommunications transmission services that allow a person who has a hearing or speech disability to communicate by wire or radio in a manner that is functionally equivalent to the ability of a person who does not have a hearing or speech disability. Such term includes any service that enables two-way communication between a person who uses a telecommunications device or other nonvoice terminal device and a person who does not use such a device.

(4) "Telephone access line" means each voice grade channel or its equivalent assigned to a residential or commercial end user customer by a voice service provider, regardless of the technology used to provide the service.

(5) "Voice service provider"means a company that provides telephone access lines to members of the general public who are its customers for voice service.

Source: L. 92: Entire article R&RE, p. 2133, § 1, effective July 1. **L. 2015:** (4) amended, (SB 15-178), ch. 151, p. 457, § 6, effective July 1. **L. 2016:** (2) repealed, (4) amended, and (5) added, (HB 16-1414), ch. 155, p. 484, § 3, effective September 1.

Editor's note: This section is similar to former § 40-17-102 as it existed prior to 1992.

40-17-103. Commission - powers and duties - rules. (1) The commission shall administer and contract for telecommunications relay services.

(2) The commission shall adopt rules for the implementation of this article. The rules shall:

(a) Conform with section 401 of the federal "Americans with Disabilities Act of 1990", 47 U.S.C. sec. 225, including provision for state application to the federal communications commission for certification;

(b) Be consistent with the commission's quality of service rules;

(c) Require that providers relay communicated messages promptly and accurately, maintain the privacy of persons who receive telecommunications relay services, and preserve confidentiality of all parties in connection with relayed messages;

(d) Specify the types of calls that are included as telecommunications relay services, specifically requiring that the costs of any long-distance service or any other service that is not a basic local exchange service be borne by the telephone user with disabilities.

(3) The commission shall, through the promulgation of rules, develop and implement a mechanism to recover its costs and the cost to voice service providers in implementing and administering telecommunications relay services required by this article 17. The mechanism must, at a minimum, provide for the following:

(a) (I) The assessment of a monthly surcharge not to exceed fifteen cents on each telephone access line, whereby each voice grade channel of a multiline voice communications service that is capable of simultaneous outbound calling constitutes a separate telephone access line; however, the number of telephone access lines for which a customer may be assessed a monthly surcharge cannot exceed the number of outbound voice calls that the voice service provider has enabled and activated to be made simultaneously.

(II) The monthly surcharge may be adjusted by the commission in accordance with paragraph (d) of this subsection (3).

(III) Without exceeding the maximum monthly surcharge set forth in subsection (3)(a)(I) of this section, the monthly surcharge must be an amount sufficient to:

(A) Reimburse the commission for its costs in developing, implementing, and administering telecommunications relay services;

(B) Reimburse voice service providers for their administrative costs in imposing and collecting the surcharge;

(C) Cover the costs of providers in rendering the service;

(D) Pursuant to section 40-17-104, cover annual appropriations to the reading services for the blind cash fund and the Colorado commission for the deaf, hard of hearing, and deafblind cash fund;

(E) Reimburse the department of revenue for its administrative costs in collecting prepaid wireless TRS charges on prepaid wireless phones pursuant to section 29-11-102.7; and

(F) Provide support for library services as authorized by section 24-90-105 (1)(e).

(b) A requirement that the monthly surcharge be imposed upon and collected from each individual telephone access line provided by a voice service provider;

(b.5) With respect to prepaid wireless service, a requirement that a seller collect a prepaid wireless TRS charge from a consumer, as those terms are defined in section 29-11-102.7, C.R.S., and remit the charge to the department of revenue, which shall transmit the money to the state treasurer for deposit into the Colorado telephone users with disabilities fund created in section 40-17-104 (1);

(c) A requirement that the surcharge be listed or included as a separate item that appears on each customer's monthly billing statement;

(d) An annual adjustment to the surcharge by the commission when necessary to accurately reflect a change in the cost of providing telecommunications relay services;

(e) The authority of a voice service provider to deduct and retain as reimbursement for its administrative costs an amount not to exceed three-quarters of one percent of the amount of total monthly surcharges collected by a voice service provider. In addition, the mechanism must include a requirement that any remaining amount of money be transmitted to the state treasurer, who shall credit the money to the Colorado telephone users with disabilities fund created by section 40-17-104.

(f) A requirement that each voice service provider maintain a record of the monthly surcharge imposed on each customer and collected by the voice service provider. The record of any monthly surcharge imposed and collected shall be maintained for three years from the date of billing. The commission may require an audit of a voice service provider's records, which audit must be at the commission's expense.

(g) The surcharge imposed by this section shall not be imposed on the provider or the consumer with respect to federally supported lifeline service.

(4) Repealed.

Source: L. 92: Entire article R&RE, p. 2134, § 1, effective July 1. **L. 93:** (3)(e) amended, p. 1794, § 93, effective June 6. **L. 96:** (4) repealed, p. 1225, § 32, effective August 7. **L. 2001:** (2)(a) amended, p. 1283, § 65, effective June 5. **L. 2016:** IP(3), (3)(a), (3)(b), (3)(c), (3)(e), and (3)(f) amended and (3)(b.5) and (3)(g) added, (HB 16-1414), ch. 155, p. 484, § 4, effective September 1. **L. 2017:** (2)(d) amended, (SB 17-294), ch. 264, p. 1415, § 111, effective May 25. **L. 2018:** IP(3), IP(3)(a)(III), and (3)(a)(III)(D) amended, (HB 18-1108), ch. 303, p.

1846, § 20, effective August 8. **L. 2019:** (3)(a)(III)(D) and (3)(a)(III)(E) amended and (3)(a)(III)(F) added, (HB 19-1332), ch. 432, p. 3742, § 1, effective August 2.

Editor's note: This section is similar to former § 40-17-104 as it existed prior to 1992.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

40-17-104. Colorado telephone users with disabilities fund - creation - purpose. (1) (a) Except as otherwise authorized to be retained by section 40-17-103 (3)(e), all money collected by the voice service providers in accordance with section 40-17-103 shall be transmitted to the state treasurer, who shall credit the money to the Colorado telephone users with disabilities fund, which fund is hereby created and is referred to in this article 17 as the "fund".

(b) The general assembly:

(I) Shall make annual appropriations out of the fund:

(A) For the administration of the fund; and

(B) To the reading services for the blind cash fund, created in section 24-90-105.5 (5), for use by the state librarian in support of privately operated reading services for people who are blind; and

(II) May make annual appropriations out of the fund to provide support for library services as authorized by section 24-90-105 (1)(e).

(c) The money in the fund not used for administration of the fund, the reading services for the blind cash fund, the Colorado commission for the deaf, hard of hearing, and deafblind cash fund created in section 26-21-107, and library services as authorized by section 24-90-105 (1)(e) is hereby continuously appropriated to the public utilities commission for the reimbursement of providers who render telecommunications services authorized by this article 17.

(2) and (3) Repealed.

(4) (a) Notwithstanding any provision of subsection (1) of this section to the contrary, the general assembly shall make annual appropriations from the Colorado telephone users with disabilities fund to the Colorado commission for the deaf, hard of hearing, and deafblind cash fund, created in section 26-21-107.

(b) to (d) Repealed.

(5) and (6) (Deleted by amendment, L. 2006, p. 1170, § 1, effective May 25, 2006.)

Source: L. 92: Entire article R&RE, p. 2135, § 1, effective July 1. **L. 98:** Entire section amended, p. 1361, § 122, effective June 1. **L. 99:** (1) amended and (3) added, p. 971, § 1, effective May 28. **L. 2000:** (1) amended and (4) added, p. 1628, § 4, effective June 1. **L. 2002:** (5) added, p. 159, § 20, effective March 27; (4)(c) added, p. 777, § 3, effective May 30; (2) and (3) repealed, p. 1006, § 2, effective August 7; (3) repealed, p. 261, § 2, effective August 7. **L. 2003:** (6) added, p. 459, § 21, effective March 5. **L. 2006:** (4)(a), (5), and (6) amended, p. 1170, § 1, effective May 25. **L. 2007:** (4)(d) added, p. 1222, § 4, effective August 3. **L. 2013:** (4)(d) repealed, (HB 13-1300), ch. 316, p. 1708, § 134, effective August 7. **L. 2016:** (1) and (4)(a) amended, (HB 16-1414), ch. 155, p. 486, § 5, effective September 1. **L. 2018:** (1) and (4)(a)

amended, (HB 18-1108), ch. 303, p. 1846, § 21, effective August 8. **L. 2019:** (1) amended, (HB 19-1332), ch. 432, p. 3743, § 2, effective August 2.

Editor's note: (1) This section is similar to former § 40-17-103 as it existed prior to 1992.

(2) (a) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective July 1, 2001. (See L. 2000, p. 1628.)

(b) Subsection (4)(c)(II) provided for the repeal of subsection (4)(c), effective July 1, 2003. (See L. 2002, p. 777.)

40-17-105. Effect of article on method of regulation. (1) Nothing in this article:

(a) Affects the method of regulation of providers of telecommunications or voice-over-internet-protocol service by the commission, as set forth in article 15 of this title; or

(b) Grants to the commission any ability to assert jurisdiction regarding any telecommunications or voice-over-internet-protocol service provider for any purpose other than the purposes specifically described in this article.

Source: L. 2016: Entire section added, (HB 16-1414), ch. 155, p. 486, § 6, effective September 1.

RAILROADS

ARTICLE 18

Rail Fixed Guideway System Safety Oversight

40-18-101. Definitions. As used in this article 18, unless the context otherwise requires:

(1) Repealed.

(2) "Commission" means the public utilities commission of the state of Colorado.

(3) "Rail fixed guideway system" means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway used to transport passengers that is not regulated by the federal railroad administration. The term "rail fixed guideway system" does not include funiculars that are passenger tramways as defined in section 12-150-103 (5)(c) and are subject to the jurisdiction of the Colorado passenger tramway safety board created in section 12-150-104.

(4) "System safety program plan" means a document adopted by a transit agency that details its safety policies, objectives, responsibilities, and procedures.

(5) "System safety program standard" means a safety standard developed by the commission in conformance with 49 CFR 659, "Rail Fixed Guideway Systems; State Safety Oversight".

(6) "Transit agency" means an entity operating a rail fixed guideway system.

Source: L. 97: Entire article added, p. 930, § 1, effective August 6. **L. 2008:** (1) repealed, p. 1807, § 31, effective July 1. **L. 2019:** IP and (3) amended, (HB 19-1172), ch. 136, p. 1733, § 259, effective October 1.

40-18-102. Rail fixed guideway system safety oversight program - commission may establish. The commission is authorized to establish an oversight program for the safety and security of rail fixed guideway systems in accordance with section 28 of the "Intermodal Surface Transportation Efficiency Act of 1991", 49 U.S.C. sec. 5330, and the "Moving Ahead for Progress in the 21st Century Act", 49 U.S.C. sec. 5329.

Source: L. 97: Entire article added, p. 931, § 1, effective August 6. **L. 2013:** Entire section amended, (HB 13-1103), ch. 96, p. 310, § 2, effective August 7.

40-18-103. Commission to promulgate rules. (1) The commission shall promulgate rules as are necessary to:

(a) Require, review, approve, and monitor the creation and implementation of a system safety program plan for each rail fixed guideway system operating in Colorado;

(b) Investigate hazardous conditions and accidents on rail fixed guideway systems;

(c) Require corrective action by a transit agency to correct or eliminate hazardous conditions;

(d) Require that system safety program standards comply with the requirements of 49 CFR 659, "Rail Fixed Guideway Systems; State Safety Oversight", at a minimum, and also adequately address the issue of personal security.

(2) The commission shall promulgate rules to establish a system safety oversight program for rail fixed guideway systems operating within the state that, at a minimum, meets the requirements of 49 CFR 659, "Rail Fixed Guideway Systems; State Safety Oversight".

Source: L. 97: Entire article added, p. 931, § 1, effective August 6. **L. 2008:** (1)(d) amended, p. 1807, § 32, effective July 1.

40-18-104. Confidential investigative reports. Investigative reports of the commission compiled under this article shall be confidential and shall not be discoverable nor used as evidence in any court or administrative action.

Source: L. 97: Entire article added, p. 931, § 1, effective August 6.

40-18-105. Calculation and assessment of fees.

(1) Repealed.

(2) (a) At each regular session, the general assembly shall determine the amounts to be expended by the commission from the public utilities commission fixed utility fund created in section 40-2-114 for its administrative expenses under this article, including any additional FTE that may be necessary.

(b) The director of the public utilities commission shall provide written notice to the revisor of statutes once the federal grant moneys made available under the "Moving Ahead for Progress in the 21st Century Act", 49 U.S.C. sec. 5329, have been awarded to the state. This subsection (2) takes effect upon the receipt by the revisor of statutes of such written notice.

Source: L. 97: Entire article added, p. 931, § 1, effective August 6. **L. 2013:** Entire section amended, (HB 13-1103), ch. 96, p. 310, § 3, effective August 7.

Editor's note: (1) The revisor of statutes received the notice referred to in former subsection (1)(b) that caused the repeal of that provision, effective May 1, 2017. (See L. 2013, p. 310.)

(2) The revisor of statutes received the notice referred to in subsection (2)(b) that allowed that provision to become effective May 1, 2017.

ARTICLE 20

Organization and Government

PART 1

GENERAL

40-20-101. Certificate of incorporation. (1) Any number of persons, not less than five, may associate to form a company for the purpose of constructing and operating a railroad.

(2) The certificate of incorporation, in addition to the matter otherwise required, shall specify as follows:

(a) The places from and to which it is intended to construct the proposed railway;

(b) The time of the commencement and the period of the continuance of such proposed corporation;

(c) The names and places of residence of the several persons forming the association for incorporation; and

(d) In what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

Source: G.L. § 298. **G.S.** § 333. **R.S. 08:** § 5410. **C.L.** § 2815. **CSA:** C. 139, § 1. **CRS 53:** § 116-1-1. **C.R.S. 1963:** § 116-1-1. **L. 69:** p. 966, § 1.

Cross references: For the disposition of unclaimed freight, see article 13 of title 38; for lien on goods and baggage, see § 38-20-105; for the assessment of railroad property for the purpose of taxation, see article 4 of title 39; for provisions applicable to public utilities generally, see articles 1 to 9.5 of this title.

40-20-102. Powers of corporation. (1) Every such corporation, in addition to the powers conferred in articles 101 to 117 of title 7, C.R.S., has the power:

(a) To lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of the railway; and to cut down any standing trees that may be in danger of falling or obstructing the railway, making proper compensation therefor;

(b) To cross, intersect, or connect its railway with any other railway;

(c) To connect at the state line with railroads of other states and territories;

(d) To receive and convey persons and property on its railway;

(e) To erect and maintain all buildings and stations, fixtures, and machinery necessary and convenient for the accommodation, and use of passengers, freights, and business interests or which may be necessary for the construction or operation of said railway;

(f) To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor;

(g) From time to time, to borrow such sums of money as may be necessary for completing, finishing, improving, or operating any such railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for such purposes, in such manner as the shareholders representing a majority of the stock of any such corporation may direct;

(h) Notwithstanding any provision of law to the contrary, to invest in any of the following if such investment is consistent with sound investment policy:

(I) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;

(II) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.;

(III) Repealed.

(IV) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

Source: G.L. § 301. **G.S.** § 336. **R.S. 08:** § 5411. **C.L.** § 2816. **CSA:** C. 139, § 2. **CRS 53:** § 116-1-2. **C.R.S. 1963:** § 116-1-2. **L. 93:** IP(1) amended, p. 866, § 45, effective July 1, 1994. **L. 98:** (1)(h) added, p. 447, § 9, effective August 5. **L. 2005:** (1)(h)(III) repealed, p. 290, § 42, effective August 8.

Cross references: For the legislative declaration contained in the 1998 act enacting subsection (1)(h), see section 1 of chapter 154, Session Laws of Colorado 1998.

40-20-103. Right-of-way for changed line - sale of right-of-way for public passenger rail service - definitions. (1) Any railroad company having located its line of road, whether the same is completed or not, may make a new location of its line and may acquire the right-of-way for such new line in the same manner as is now provided for acquiring the right-of-way by the statutes of Colorado; but in acquiring said new right-of-way, the previous right-of-way shall revert to the owner of the land through which said previous right-of-way was granted upon the payment or tendering payment to the railroad company of the amount assessed by the board of appraisers and paid by said railroad company for said previous right-of-way.

(2) (a) Any railroad company may sell its right-of-way for the operation of a public passenger rail service. In such case, the right-of-way shall continue to be used as a public highway only for operation of public passenger rail service for purposes of section 4 of article XV of the state constitution if ownership of the right-of-way is transferred to a public passenger rail service provider, regardless of:

(I) Whether or not an order of abandonment has been issued for the right-of-way by the federal surface transportation board, any successor federal agency, or any court of competent jurisdiction;

(II) The technology used to operate the public passenger rail service; or

(III) Whether ownership of the railroad is public or private.

(b) No rail service provider operating public passenger rail service as authorized by paragraph (a) of this subsection (2) shall be required to offer its right-of-way for use by any other rail service provider by operation of Colorado law after an order of abandonment has been issued.

(3) Nothing in this section shall be construed to affect any vested right of any party.

(4) For purposes of this section, "public passenger rail service" means any passenger service that runs on rails or electromagnetic guideways, including but not limited to:

(a) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area;

(b) High-speed ground transportation systems that connect metropolitan areas; or

(c) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Source: L. 1874: p. 224, § 1. **G.L.** § 2234. **G.S.** § 2795. **R.S. 08:** § 5519. **C.L.** § 2902. **CSA:** C. 139, § 88. **CRS 53:** § 116-1-3. **C.R.S. 1963:** § 116-1-3. **L. 2010:** Entire section amended, (HB 10-1276), ch. 201, p. 875, § 1, effective August 11.

Cross references: For procedure in eminent domain, see articles 1 to 7 of title 38.

40-20-104. May guarantee bonds and interest. It is lawful for any railroad company organized, existing, or doing business in the state of Colorado under the laws of the state of Colorado, upon good consideration, to guarantee the payment of any mortgage, mortgage bonds, or interest coupons of any other railroad connecting with said first named railroad. It is also lawful for any such railroad, upon good consideration, to guarantee to said road the payment of interest upon its capital stock.

Source: L. 1887: p. 369, § 1. **R.S. 08:** § 5412. **C.L.** § 2817. **CSA:** C. 139, § 3. **CRS 53:** § 116-1-4. **C.R.S. 1963:** § 116-1-4.

40-20-105. Construction started within two years. If any railway corporation, within two years after its articles of association have been filed and recorded, does not begin the construction of its road and expend thereon twenty percent of the amount of its capital within five years after the date of its organization, its corporate existence and power shall cease; but any such railway corporation at any time may reduce its capital stock in the manner and form provided by the laws of this state, and if twenty percent of the amount of its capital, as so reduced, has at any time been expended in good faith in the construction of its road, then its corporate existence and power shall not cease or be deemed to have ceased.

Source: G.L. § 303. **G.S.** § 337. **L. 1889:** p. 95 § 1. **R.S. 08:** § 5413. **C.L.** § 2818. **CSA:** C. 139, § 4. **CRS 53:** § 116-1-5. **C.R.S. 1963:** § 116-1-5.

40-20-106. Directors - election. At any meeting of the stockholders of any railroad corporation formed under the laws of this state for the election of directors, managers, or trustees, the stockholders may classify the directors in three equal classes, as near as may be, one

of which classes shall hold office for one year, one for two years, and one for three years until its successors are respectively elected; and at all subsequent elections, in the event such classification is made, directors shall be elected for three years to fill the places made vacant by the class whose term of office expires at that time.

Source: G.L. § 319. **G.S.** § 362. **R.S. 08:** § 5414. **C.L.** § 2819. **CSA:** C. 139, § 5. **CRS 53:** § 116-1-6. **C.R.S. 1963:** § 116-1-6.

Cross references: For provisions regarding directors and their election, see part 1 of article 108 of title 7.

40-20-107. Stockholders to fix interest and loans. At all general meetings of the stockholders, those holding a majority in the value of the stock of any such corporation may fix the rates of interest which shall be paid by the corporation for loans for the construction of such railway and its appendages and the amount of such loans.

Source: G.L. § 300. **G.S.** § 335. **R.S. 08:** § 5415. **C.L.** § 2820. **CSA:** C. 139, § 6. **CRS 53:** § 116-1-7. **C.R.S. 1963:** § 116-1-7.

40-20-108. Purchase or lease of other lines - sale. Any railroad company owning or operating, or formed to own or operate, a line of railroad in this state may lease or purchase other lines of railroad within or without this state which shall connect with the road operated or to be operated by such company, directly or by means of any other line which such company has the right by contract or otherwise, when constructed, to use or operate, and may acquire and may hold the obligations and stock of other companies owning or operating any such line of railroad which such company is so authorized to lease or purchase or with which, under the laws of the state of Colorado, it may be authorized to consolidate, and any railroad corporation may lease or sell its line of railroad to any other company authorized to lease or purchase the same. No line of railroad shall be so leased, purchased, or sold until a meeting of the stockholders of the companies party to such agreement of lease or sale has been called for that purpose in such manner as provided for the annual stockholders' meeting, and the holders of at least two-thirds of the stock of such companies consent thereto or, in the case of a foreign corporation, unless the consent thereto of the stockholders has been obtained to the extent required and in the manner provided by the laws of the place of incorporation. Nothing in this section shall be deemed to authorize the lease, purchase, or sale of competing or parallel lines or to exclude the jurisdiction of this state over the control or regulation of all railroads or parts of the same as are situated within the boundaries of this state.

Source: L. 1899: p. 313, § 1. **R.S. 08:** § 5418. **C.L.** § 2821. **L. 27:** p. 580, § 1. **CSA:** C. 139, § 7. **CRS 53:** § 116-1-8. **C.R.S. 1963:** § 116-1-8.

Cross references: For the call of stockholders' meeting, see §§ 7-107-102 and 7-107-103.

40-20-109. Dining cars need no license. No person or corporation shall be required to obtain or pay any town, city, county, or state license or tax within the state of Colorado by reason of furnishing or serving to passengers upon any railroad train meals, luncheons, or refreshments in any hotel car, dining car, or buffet car operated by such person or corporation.

Source: L. 1891: p. 260, § 1. **R.S. 08:** § 5521. **C.L.** § 2904. **CSA:** C. 139, § 90. **CRS 53:** § 116-1-9. **C.R.S. 1963:** § 116-1-9.

40-20-110. Title to equipment. In any written contract for the sale of railroad equipment or rolling stock, deliverable immediately or subsequently, at stipulated periods, by the terms of which the purchase money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be sold shall not pass to or vest in the vendee until the purchase money has been fully paid or that the vendor shall retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof to and possession by the vendee for a period not to exceed twenty-five years in any one contract, which terms shall be expressed in said contract; but the situs or location of all such property shall, for the purposes of taxation and revenue, be deemed to be within the state of Colorado.

Source: L. 1885: p. 302, § 1. **L. 05:** p. 305, § 1. **R.S. 08:** § 5523. **C.L.** § 2906. **CSA:** C. 139, § 92. **CRS 53:** § 116-1-10. **C.R.S. 1963:** § 116-1-10.

40-20-111. Lease may stipulate sale. In any written contract for the leasing or renting of railroad equipment or rolling stock, it is lawful to stipulate for a conditional sale thereof at the termination of such lease and to stipulate that the rentals received, as paid or when paid in full, may be applied and treated as purchase money and that the title to such property shall not vest in such lessee or vendee until the purchase money has been paid in full, notwithstanding delivery to and possession by such lessee or vendee.

Source: L. 1885: p. 303, § 2. **R.S. 08:** § 5524. **C.L.** § 2907. **CSA:** C. 139, § 93. **CRS 53:** § 116-1-11. **C.R.S. 1963:** § 116-1-11.

40-20-112. Execution of contract. (1) Every such contract, specified in sections 40-20-110 and 40-20-111, shall be good, valid, and effectual, both in law and equity, against all purchasers and creditors, provided:

(a) The contract is acknowledged by the vendee or lessee before some officer authorized by law to take acknowledgments of deeds;

(b) Such instrument is recorded or a copy thereof filed in the office of the secretary of state and in the office of the county clerk and recorder of each of the counties in which the railroad may be operated in this state;

(c) Each locomotive engine or car so sold or contracted to be sold or leased has the name of the vendor or lessor or the assignee of such vendor or lessor plainly placed or marked on each side thereof or otherwise marked so as to indicate the ownership thereof or that the same is covered by such special contract.

Source: L. 1885: p. 303, § 3. **R.S. 08:** § 5525. **C.L.** § 2908. **CSA:** C. 139, § 94. **CRS 53:** § 116-1-12. **C.R.S. 1963:** § 116-1-12.

40-20-113. Acknowledgments. The acknowledgments of such contracts may be made in the form required as to conveyances of real estate.

Source: L. 1885: p. 303, § 5. **R.S. 08:** § 5527. **C.L.** § 2910. **CSA:** C. 139, § 96. **CRS 53:** § 116-1-13. **C.R.S. 1963:** § 116-1-13.

Cross references: For form of real estate conveyance acknowledgments, see § 38-35-101.

40-20-114. Term of existence - renewal. No such corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, in such manner as may be provided by law, for periods not longer than fifty years.

Source: G.L. § 299. **G.S.** § 334. **R.S. 08:** § 5419. **C.L.** § 2822. **CSA:** C. 139, § 8. **CRS 53:** § 116-1-14. **C.R.S. 1963:** § 116-1-14.

PART 2

ABANDONMENT OF RAILROAD RIGHTS-OF-WAY

40-20-201 to 40-20-206. (Repealed)

Editor's note: (1) This part 2 was added in 1996 and was not amended prior to its repeal in 1997. For the text of this part 2 prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 40-20-206 provided for the repeal of this part 2, effective July 1, 1997. (See L. 96, p. 839.)

ARTICLE 21

General Offices

40-21-101. Domestic railroads - headquarters. Every railroad company chartered by this state shall keep and maintain permanently its general offices within the state of Colorado at the place named in its charter for the location of its general offices; and, if no certain place is named in its charter where its general offices shall be located and maintained, said railroad company shall keep and maintain its general offices at the place within this state where it contracts or agrees for a valuable consideration to locate its general offices; and, if said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this state, such general offices shall be located and maintained at such place on its line in this state as said railroad company may designate.

Source: L. 09: p. 471, § 1. **C.L.** § 2824. **CSA:** C. 139, § 10. **CRS 53:** § 116-2-1. **C.R.S. 1963:** § 116-2-1. **L. 2000:** Entire section amended, p. 218, § 6, effective March 29.

40-21-102. Officials at general offices. It is the duty of said railroad company to keep and maintain at the place within this state where its said general offices are located the office of its president or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, and general claim agent; and each of its general offices, by whatsoever name known, shall be so kept and maintained at said place. This article shall apply to every person who performs the duties of any of said offices, by whatever title known, and the railroad company shall not be allowed to have any of the offices usually known as general offices at any other place than the place where it is required by this article to keep its general offices. Where the principal shops of any company are situated on its line in the state at a place other than the place where its general offices are located, the superintendent of motive power and machinery and the master mechanic, either or both, may have his office and residence at the place where such principal shops are located. The public utilities commission of the state of Colorado, where it is made to appear that any officer other than the general officers of any railroad company can more conveniently perform his duties by residing at some place on the line in Colorado other than the place where the general offices are situated, by order entered on its record may authorize any such officer so to reside and keep his office at such place.

Source: L. 09: p. 472, § 2. **C.L.** § 2825. **CSA:** C. 139, § 11. **CRS 53:** § 116-2-2. **C.R.S. 1963:** § 116-2-2.

40-21-103. Violation of article - penalty. Each railroad company chartered by this state or owning, operating, or controlling any line of railroad within this state which violates any of the provisions of this article shall forfeit to the state of Colorado the charter or right by which it operates its railroad in this state and be subject to a penalty of not less than five hundred dollars nor more than five thousand dollars for each and every day in which it violates any of the provisions of this article, to be recovered by suit in the name of the state of Colorado prosecuted by the district attorney of any judicial district in which any violation occurs to recover the penalty provided in this section for such violation. Any money recovered from any railroad company under the provisions of this article shall be paid into the state treasury and become a part of the available public school fund.

Source: L. 09: p. 473, § 3. **C.L.** § 2826. **CSA:** C. 139, § 12. **CRS 53:** § 116-2-3. **C.R.S. 1963:** § 116-2-3. **L. 2000:** Entire section amended, p. 218, § 7, effective March 29.

ARTICLE 22

Consolidation

40-22-101. Consolidation of roads - restrictions. It is lawful for any railroad company or corporation, organized or existing under the laws of this state, and whose line or road is made

or is in the process of construction to the boundary line of the state or to any point either in or out of the state, under authority of its laws, to merge and consolidate its capital stock, franchises, and property into and with the capital stock, franchises, and property of any other railroad company or corporation organized and existing under the laws of any adjoining state whenever the two or more railroads of the companies or corporations so to be consolidated form a continuous line of railroad with each other or by means of any intervening railroad; and roads running to the bank of a river which is not bridged shall be held to be continuous. Nothing in this article shall be taken to authorize the consolidation of any company or corporation of this state with that of any other state, unless the laws of such other state authorize such consolidation; but parallel or competing lines of railroad shall not be consolidated.

Source: L. 1883: p. 117, § 1. **G.S.** § 353. **R.S. 08:** § 5421. **C.L.** § 2827. **CSA:** C. 139, § 13. **CRS 53:** § 116-3-1. **C.R.S. 1963:** § 116-3-1. **L. 2002:** Entire section amended, p. 1006, § 3, effective August 7.

40-22-102. Conditions necessary for consolidation. (1) Said consolidation shall be made under the conditions, provisions, and restrictions and with the powers as follows:

(a) The directors of the several corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each company, for the consolidation of said companies and railroads, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the principal place of business of the new company in each state or territory traversed by its line of railway, and such other provisions as may be required by law to be inserted in an original certificate of incorporation, the manner of converting the capital stock of each of said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies and railroads.

(b) Said agreement shall be submitted to the stockholders of each of the companies or corporations, at a meeting thereof, called separately, for the purpose of taking the same into consideration; due notice of the time and place of holding such meeting, and the object thereof, shall be given by written or printed notices, addressed to each of the persons in whose names the capital stock of said companies stands on the books thereof, and delivered to such persons respectively or sent to them by mail when their post-office addresses are known to the company and also by a general notice published in some newspaper in the city, town, or county where such company has its principal office or place of business. At the said meeting of stockholders, the agreement of the said directors shall be considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and said ballots shall be cast in person or by proxy, and, if a majority of all the votes of all the stockholders are for the adoption of said agreement, that fact shall be certified thereon by the secretaries of the respective companies under the seals thereof. The agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state and shall be deemed the agreement and act of consolidation of the said companies. A copy of said agreement and act of consolidation, duly certified by the secretary of state under the seal thereof, shall be evidence of the existence of said

new corporation; but, if the mode of ratifying said agreement of consolidation in such other state or territory varies from the mode prescribed in this section, such agreement may be ratified by the railroad company or corporation of such other state or territory in the mode prescribed by the laws thereof.

Source: L. 1883: p. 118, § 2. **G.S.** § 354. **R.S. 08:** § 5422. **C.L.** § 2828. **CSA:** C. 139, § 14. **CRS 53:** § 116-3-2. **C.R.S. 1963:** § 116-3-2.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

40-22-103. Result of consolidation. Upon making and perfecting the agreement and act of consolidation and filing the same or a copy with the secretary of state, the several corporations which are parties thereto shall be deemed to be one corporation by the name provided in said agreement, possessing within this state all the rights, privileges, and franchises, and subject to all the restrictions, disabilities, and duties of each of such corporations so consolidated.

Source: L. 1883: p. 119, § 3. **G.S.** § 355. **R.S. 08:** § 5423. **C.L.** § 2829. **CSA:** C. 139, § 15. **CRS 53:** § 116-3-3. **C.R.S. 1963:** § 116-3-3.

Cross references: For merger and consolidation of domestic corporations, see article 111 of title 7.

40-22-104. Property of each transferred. (1) Upon the consummation of said act of consolidation, all the rights, privileges, and franchises of each of said corporations, parties to the same, and all the property, real, personal, and mixed, and all debts due on whatever account, as well as stock subscriptions and other things in action, belonging to each of such corporations shall be deemed to be transferred to and vested in such new corporation without further act or deed. All property, all rights-of-way, and every other interest shall be as effectually the property of the new corporation as they were of the former corporations.

(2) The title to real estate, either by deed or otherwise, under the laws of this state or of the United States, vested in any of such corporations, shall not be deemed to revert or be in any way impaired by reason of this article, nor shall the lien, operation, or effect of any trust deed or mortgage executed by any of the corporations so consolidating be in any way divested, impaired, or affected. The new corporation shall have the right to execute any future trust deed or mortgage upon its property, as shall be provided in the agreement of consolidation, not inconsistent with the laws of this state, and all debts, liabilities, and duties of either of said companies shall attach to said new corporation, and be enforced against it, to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.

Source: L. 1883: p. 120, § 4. **G.S.** § 356. **R.S. 08:** § 5424. **C.L.** § 2830. **CSA:** C. 139, § 16. **CRS 53:** § 116-3-4. **C.R.S. 1963:** § 116-3-4.

40-22-105. Offices - one in this state. Such new company, as soon as convenient after such consolidation, shall establish such offices as may be desired, one of which shall be at some

point in this state on the line of its road, and may change the same to any other point in this state at pleasure, giving public notice thereof in some newspaper published in this state.

Source: L. 1883: p. 120, § 5. **G.S.** § 357. **R.S. 08:** § 5425. **C.L.** § 2831. **CSA:** C. 139, § 17. **CRS 53:** § 116-3-5. **C.R.S. 1963:** § 116-3-5.

Cross references: For the duty of railroad companies to maintain general offices in this state, see § 40-21-101.

40-22-106. Consolidation of domestic and foreign corporation. If any railroad company organized under the laws of this state consolidates with any railroad company organized under the laws of any other state or of the United States, the same shall not become a foreign corporation, and the courts of this state shall retain jurisdiction in all cases which may arise, as if said consolidation had not taken place.

Source: L. 1883: p. 121, § 6. **G.S.** § 358. **R.S. 08:** § 5426. **C.L.** § 2832. **CSA:** C. 139, § 18. **CRS 53:** § 116-3-6. **C.R.S. 1963:** § 116-3-6.

40-22-107. Taxation. The portion of the road of such consolidated company in this state and all its real estate and other property shall be subject to like taxation and assessed in the same manner and with like effect as property of other railroad companies within this state.

Source: L. 1883: p. 121, § 7. **G.S.** § 359. **R.S. 08:** § 5427. **C.L.** § 2833. **CSA:** C. 139, § 19. **CRS 53:** § 116-3-7. **C.R.S. 1963:** § 116-3-7.

Cross references: For the taxation of railroads, see article 4 of title 39.

ARTICLE 23

Reorganization

40-23-101. Right to reorganize. Whenever the railroads, property, and franchises of any railroad company, organized and existing under the laws of this state, are sold and conveyed under or by virtue of any power contained in any trust deed or mortgage or pursuant to the judgment or decree of any court of competent jurisdiction, it is lawful to organize a railroad company under the laws of this state for the purpose of purchasing, maintaining, operating, extending, or completing the railroads, property, and franchises so sold and conveyed.

Source: L. 1885: p. 150, § 1. **R.S. 08:** § 5428. **C.L.** § 2834. **CSA:** C. 139, § 20. **CRS 53:** § 116-4-1. **C.R.S. 1963:** § 116-4-1. **L. 2008:** Entire section amended, p. 1807, § 33, effective July 1.

40-23-102. Power of company so organized. The railroad company so organized has the power to acquire and purchase the property and franchises so sold and conveyed, and to take, hold, exercise, and enjoy all the estate, franchises, rights, powers, privileges, and claims or

demands at law or in equity of the corporation whose property and franchises have been so sold and conveyed; and, in payment of the price therefor, such railroad company may issue its capital stock and bonds and may mortgage its property and franchises with such classification of capital stock and bonds as may be agreed upon by and between such railroad company and the parties who may be beneficially interested or who may have the ownership and control of such property and franchises.

Source: L. 1885: p. 150, § 2. **R.S. 08:** § 5429. **C.L.** § 2835. **CSA:** C. 139, § 21. **CRS 53:** § 116-4-2. **C.R.S. 1963:** § 116-4-2.

ARTICLE 24

Electric and Street Railroads

40-24-101. Street railway - consent necessary. Nothing in articles 20 to 33 of this title shall be construed to allow the construction of any street or other railroad or other structure or substructure for any purpose on, below, or elevated above the surface of the ground of any street or alley within the limits of any such city or town by any corporation or person without the consent of the local authorities of such city or town; but no such consent, however enacted or expressed, on any consideration whatever shall operate to relieve or protect any person or corporation constructing any such street or other railroad or structure or substructure against any claim for damages to private property which otherwise, without such consent, might be lawfully maintained against such person or corporation.

Source: G.L. § 219. **G.S.** § 266. **L. 1885:** p. 152, § 1. **R.S. 08:** § 5420. **C.L.** § 2823. **CSA:** C. 139, § 9. **CRS 53:** § 116-5-1. **C.R.S. 1963:** § 116-5-1. **L. 77:** Entire section amended, p. 1240, § 2, effective July 1.

40-24-102. Grant right-of-way - condemnation. The boards of county commissioners in their respective counties in the state of Colorado, with the written consent of a majority of the holders of property (measured by the front foot) abutting on each side of such county roads, have the power to grant to any person, company, corporation, or association outside of cities and towns the right-of-way and franchise for the construction, operation, or maintenance of any electric railroad over, along, and across any county road in their respective counties, upon the terms and conditions provided in section 40-24-103; and, when necessary to enter upon and use private property in the construction and operation of such roads, such person, company, corporation, or association has the same power of operation and condemnation that the railroad companies have.

Source: L. 07: p. 407, § 1. **R.S. 08:** § 5432. **C.L.** § 2836. **CSA:** C. 139, § 22. **CRS 53:** § 116-5-2. **C.R.S. 1963:** § 116-5-2.

Cross references: For condemnation of rights-of-way, see article 2 of title 38.

40-24-103. Petition for right-of-way. Any person, company, corporation, or association desiring in good faith to construct, maintain, and operate an electric railroad over, along, or across any county road within any county in this state may petition the board of county commissioners of such county for a franchise and right-of-way for the construction, maintenance, and operation of an electric railroad. The board of county commissioners, in accordance with the conditions provided in this section, may grant said right-of-way and franchise for a period not exceeding twenty years. Before any such person, company, association, or corporation commences the construction of any such electric railroad, there shall be filed with and approved by the board of county commissioners of any such county specifications and surveys with maps, showing all grades and curves of such proposed line of road, together with the exact location and description of all tracks, culverts, bridges, and poles, and the difference, if any, in all grades between such county road and the said proposed line of railroad. Before such specifications, surveys, or maps shall be so approved, at least ten days' public notice of the filing thereof shall be given by such board of county commissioners by publication in some newspaper of general circulation in such county and by the posting of a copy thereof in the office of the county clerk and recorder of such county.

Source: L. 07: p. 407, § 2. **R.S. 08:** § 5433. **C.L.** § 2837. **CSA:** C. 139, § 23. **CRS 53:** § 116-5-3. **C.R.S. 1963:** § 116-5-3.

40-24-104. Railroad to maintain and keep joint road and bridges in good repair. Any person, company, corporation, or association to whom any such right-of-way and franchise is granted shall construct and maintain its railroad on either side of the county road, and, at its own expense and in good substantial manner, shall strengthen and repair all bridges and culverts on said county road which are used or occupied jointly by said electric railroad and the traveling public, and, thereafter during the existence of said franchise, shall contribute and pay not less than one-half of the necessary expense of keeping said bridges and culverts in good repair, and shall pay all expense of keeping public and private crossings planked and in good repair, and, at its own expense, shall widen to not less than twenty-four feet all bridges, culverts, cuts, and embankments on said public highway which are used or occupied jointly by said electric railroad and the traveling public.

Source: L. 07: p. 408, § 3. **R.S. 08:** § 5434. **C.L.** § 2838. **CSA:** C. 139, § 24. **CRS 53:** § 116-5-4. **C.R.S. 1963:** § 116-5-4.

40-24-105. New bridges - construction and maintenance. Whenever it becomes necessary to build or construct any new bridges or culverts on any county road over or along which any person, company, corporation, or association is operating and maintaining an electric railroad, said person, company, corporation, or association shall pay to the party constructing or erecting the same one-half of the expense for the erection and construction of the bridges or culverts which are used jointly by the public and said railroad and shall thereafter pay one-half of the necessary expense of keeping said bridges or culverts used jointly by the public and said railroad in good repair; and the county in which said county road is situated shall contribute and pay out of the county road fund the other one-half of the expense for the construction and maintenance thereafter of any such culverts or bridges. Said bridges or culverts shall be

constructed under the joint supervision of the owner or operator of said electric railroad and the board of county commissioners of such county.

Source: L. 07: p. 409, § 4. **R.S. 08:** § 5435. **C.L.** § 2839. **CSA:** C. 139, § 25. **CRS 53:** § 116-5-5. **C.R.S. 1963:** § 116-5-5.

40-24-106. Width of joint bridges. Any bridge or culvert constructed upon any county road or public highway which is to be used jointly by any electric railroad and the traveling public shall not be less than twenty-four feet in width.

Source: L. 07: p. 409, § 5. **R.S. 08:** § 5436. **C.L.** § 2840. **CSA:** C. 139, § 26. **CRS 53:** § 116-5-6. **C.R.S. 1963:** § 116-5-6.

40-24-107. Forfeiture of right-of-way - cause. Whenever any person, company, corporation, or association obtains a franchise and right-of-way to operate an electric railroad over or along any county road in any county in this state and fails, refuses, or neglects, for a period of six months after the granting of any such franchise, to commence the work of constructing such electric railroad and in good faith to continuously prosecute the construction thereof to a final completion or fails, refuses, or neglects to operate or maintain said railroad in good condition and in good faith, for a period of one year at any one time after the granting of said franchise or right-of-way, such person, company, corporation, or association or its assigns shall forfeit all its right, title, and interest in and to such franchise and right-of-way, and the same shall become null and void; and it shall be the duty of the board of county commissioners of the county granting such franchise and the district attorney of the judicial district in which the county is situated to immediately institute the proper legal proceedings to cancel said franchise and all right, title, and interest of said person, company, corporation, or association or its assigns to use or occupy any portion of said county road.

Source: L. 07: p. 409, § 6. **R.S. 08:** § 5437. **C.L.** § 2841. **CSA:** C. 139, § 27. **CRS 53:** § 116-5-7. **C.R.S. 1963:** § 116-5-7.

Cross references: For the penalty for failure of railroad company to commence construction, see § 40-20-105.

40-24-108. Railroad subject to assignment. Any person, company, corporation, or association obtaining any right-of-way or franchise to construct, operate, and maintain an electric railroad along, over, and across any county road within such county has the right to assign and transfer such franchise and right-of-way to any other person, company, corporation, or association, and the person, company, corporation, or association taking such franchise and right-of-way shall be subject to all the requirements and provisions of sections 40-24-102 to 40-24-108.

Source: L. 07: p. 410, § 7. **R.S. 08:** § 5438. **C.L.** § 2842. **CSA:** C. 139, § 28. **CRS 53:** § 116-5-8. **C.R.S. 1963:** § 116-5-8.

40-24-109. Protection of employees from weather. (Repealed)

Source: L. 01: p. 379, § 1. **R.S. 08:** § 5439. **C.L.** § 2843. **CSA:** C. 139, § 29. **CRS 53:** § 116-5-9. **C.R.S. 1963:** § 116-5-9. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-24-110. Motormen to have unobstructed view - trailing car excepted. (Repealed)

Source: L. 01: p. 379, § 2. **R.S. 08:** § 5440. **C.L.** § 2844. **CSA:** C. 139, § 30. **CRS 53:** § 116-5-10. **C.R.S. 1963:** § 116-5-10. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-24-111. Each day an offense - penalty. (Repealed)

Source: L. 01: p. 380, § 3. **R.S. 08:** § 5441. **C.L.** § 2845. **CSA:** C. 139, § 31. **CRS 53:** § 116-5-11. **C.R.S. 1963:** § 116-5-11. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

ARTICLE 25

Express Business

40-25-101 to 40-25-103. (Repealed)

Source: L. 2000: Entire article repealed, p. 219, § 8, effective March 29.

Editor's note: This article was numbered as article 6 of chapter 116, C.R.S. 1963, and was not amended prior to its repeal in 2000. For the text of this article prior to 2000, consult the 1999 Colorado Revised Statutes.

ARTICLE 26

Railroad Tickets

40-26-101 to 40-26-109. (Repealed)

Source: L. 2000: Entire article repealed, p. 219, § 8, effective March 29.

Editor's note: This article was numbered as article 7 of chapter 116, C.R.S. 1963. For amendments to this article prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 27

40-27-101. Owner driving stock on track. If the owner of any stock drives any stock on the line of the track of any railway company or corporation, with intent to injure such company or corporation, and if said stock is killed or injured, the owner shall not receive any damages from the railroad company or corporation therefor, and shall be liable to such company or corporation for all damage such company or corporation may suffer in consequence of said act, and commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.; but nothing in this section shall be construed to prevent any person from allowing his or her stock to pasture on the lands adjacent to the line of such railroads or to drive his or her stock over or across any such track at suitable times and places.

Source: G.L. § 2573. **G.S.** § 2808. **R.S. 08:** § 5475. **C.L.** § 2858. **CSA:** C. 139, § 44. **CRS 53:** § 116-8-1. **C.R.S. 1963:** § 116-8-1. **L. 77:** Entire section amended, p. 887, § 75, effective July 1, 1979. **L. 89:** Entire section amended, p. 853, § 147, effective July 1. **L. 2002:** Entire section amended, p. 1559, § 360, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

40-27-102. Fence right-of-way - cattle guards. (1) Every railway company or corporation whose lines or roads, or any part thereof, are open for use, within six months after the lines of such railways or any part thereof are open, except at the crossings of public roads and highways and within the limits of incorporated towns and cities or the yard limits of established stations, shall erect and thereafter maintain fences on the sides of their roads, or the part thereof open to use, where the same pass through, along, or adjoining enclosed or cultivated fields or unenclosed lands, with openings and gates therein to be hung and have latches and hinges, so that they may be opened and shut at all necessary farm crossings of the road, for the use of the proprietors or owners of the land adjoining such railroad, and shall construct and maintain at all public road crossings good and sufficient cattle guards.

(2) Such fences, gates, and cattle guards for the protection of livestock shall be constructed as defined in section 35-46-101 (1), C.R.S., and shall be amply sufficient to prevent horses, mules, asses, and cattle from getting on said railroads; and, so long as such fences and guards, or any part thereof, are not sufficient or not in sufficiently good repair to accomplish the objective for which they are intended, such railroad corporation shall be liable for any and all damages which are done by the agent, employees, engines, trains, or cars of any other corporation permitted and running over and upon their said railroad to any such cattle, horses, asses, or mules thereon. When such fences, gates, and guards have been built and duly made and are kept in good and sufficient repair, such railroad corporation shall not be liable for any such

damages unless the same were occasioned by the negligence or carelessness of such railway company or corporation or the assignee or lessee thereof.

(3) Where gates are constructed and maintained at farm crossings, opening into enclosed pastures or cultivated fields, it is the duty of the owner or occupant of such fields or pastures so provided with gates to see that such gates are kept closed at all times when not actually in use, and where it is shown that any such gate has been left open, the owner or occupant of such lands shall be held responsible for any stock killed or damaged because of such open gate.

Source: L. 11: p. 400, § 1. **C.L.** § 2863. **CSA:** C. 139, § 49. **CRS 53:** § 116-8-2. **C.R.S. 1963:** § 116-8-2.

40-27-103. Liability for injury to stock. Any railroad company running or operating its roads in this state and failing to fence on both sides thereof against livestock running at large at all points shall be absolutely liable to the owners of any such livestock killed, injured, or damaged by their agents, employees, engines, or cars or by the agents, employees, engines, or cars belonging to any other railroad company or corporation running over and upon such road.

Source: L. 11: p. 401, § 2. **C.L.** § 2864. **CSA:** C. 139, § 50. **CRS 53:** § 116-8-3. **C.R.S. 1963:** § 116-8-3.

40-27-104. Compliance prima facie defense. Any railway company or corporation or the assignee or lessee thereof whose road is enclosed with good and sufficient fences, gates, and cattle guards, as provided in section 40-27-102, capable of keeping such animals from being upon such road may plead and prove the same as a defense to any action under sections 40-27-102 to 40-27-113 for any killing, damaging, or injury to such animals occurring within such enclosure; but such plea or fact shall not be held to preclude the owner or his agent from showing that such killing, damage, or injury was caused by the negligence or carelessness of such railway company or corporation or the assignee or lessee thereof, for the purpose of showing liability notwithstanding such fencing.

Source: L. 11: p. 402, § 3. **C.L.** § 2865. **CSA:** C. 139, § 51. **CRS 53:** § 116-8-4. **C.R.S. 1963:** § 116-8-4.

40-27-105. Burden of proof. The killing or injury of any animal by a railway company or corporation shall be prima facie evidence of the negligence of said railway company or corporation, and every railway company or corporation in this state and every assignee or lessee thereof shall be liable to pay to the owner the full value of each animal killed and all damages to each animal injured by the engines or cars of such railway company or corporation in this state or the assignee or lessee thereof unless the railway company or corporation, by competent evidence, shall affirmatively show that such killing or wounding was not caused by the negligence of such railway company or corporation or the assignee or lessee thereof. On the trial of all actions for damages arising under this article, in order to admit evidence of absence of negligence, the defendants shall first be held to show a compliance with sections 40-27-102 to 40-27-113 in relation to the erection and maintenance of fences, gates, and cattle guards.

Source: L. 11: p. 402, § 4. **C.L.** § 2866. **CSA:** C. 139, § 52. **CRS 53:** § 116-8-5. **C.R.S. 1963:** § 116-8-5.

40-27-106. Engineer to notify agent - inspection. (1) Whenever any cattle, sheep, horses, mules, or asses are killed or injured by any train, engine, or car upon any railway in this state, it is the duty of the engineer operating the engine, train, or car to notify the station agent at the first station at which the train stops after the killing or wounding or the superintendent or other proper official at the end of the division where the engineer's run ends. Should none of the employees of the train be aware of such killing or wounding, then it is the duty of any employee of the railway who becomes aware of such accident to notify the station agent at the nearest station to the point where the accident occurred.

(2) It is the duty of the railroad company, through its station agent or such other official as may be designated, upon receipt of the information of the killing or wounding of any such livestock by any engine, train, or car, as soon as may be, to notify the section foreman upon whose section the accident occurred and also the nearest inspector of the state board of stock inspection commissioners.

(3) It is the duty of the section foreman upon receiving the information to go to the point where the animal was killed or injured as soon as may be and there inspect the same, securing a full description of the animal together with any brands or marks that are upon the same and such other details as may serve to determine the ownership of such animal.

(4) It is the duty of said stock inspector, as soon as may be after receiving said notice, to go to the point where the animal was killed or injured and there inspect the same, securing a full description of the animal together with any brands or marks that may be on the same and such other details as may serve to determine ownership of such animal. It is also the duty of the inspector to estimate as nearly as possible the probable value of said animal if killed or the amount of damages if injured.

(5) Should the animal be so badly injured that it is in great suffering and cannot live or recover, it is the duty of either the stock inspector or the section foreman upon inspection to immediately kill the animal. If through any cause such an authorized inspector does not appear to inspect such animal so killed within thirty-six hours after such killing, it is the duty of the section foreman to remove the hide of said animal and preserve the same until it has been inspected by such inspector, and thereafter the carcass of such animal shall be disposed of by the railroad company, without prejudice to its rights, in such manner as it may determine.

Source: L. 11: p. 402, § 5. **C.L.** § 2867. **CSA:** C. 139, § 53. **CRS 53:** § 116-8-6. **C.R.S. 1963:** § 116-8-6.

Cross references: For the creation of a state board of stock inspection commissioners, see article 41 of title 35.

40-27-107. Reports of inspector and foreman. After making such examination it is the duty of the stock inspector to immediately forward a report to the secretary of the state board of stock inspection commissioners showing all the facts in regard to the killing or wounding of said animal, together with a full description and the estimated value of same, and it is the duty of the

foreman of the section to likewise make a similar report to the claim agent of said railroad company or corporation or the assignee or lessee thereof.

Source: L. 11: p. 403, § 6. **C.L.** § 2868. **CSA:** C. 139, § 54. **CRS 53:** § 116-8-7. **C.R.S. 1963:** § 116-8-7.

40-27-108. Notification of owner and claim agent. (1) Upon receipt of the information from any authorized stock inspector of the killing or wounding of any animal by any railroad company or by its engine, cars, or trains, it is the duty of the secretary of the state board of stock inspection commissioners to notify the owner of said animal so killed or injured, informing him of the facts and the estimated value placed upon said animal by the stock inspector, and he shall also send a copy of this report to the claim agent or other authorized official of the railway company responsible for said killing or injuring.

(2) Should the secretary be unable to determine from the description furnished by the stock inspector the owner or probable owner of such animal so killed or injured, he shall cause an advertisement to be placed in a newspaper published in the county where said killing or wounding occurred, describing the animal so killed or injured, giving the marks or brands appearing on said animal, if any, and notifying the owner to appear within six months of the date of such killing or injuring and make claim for said animal. Said advertisement shall appear for two consecutive weeks. The cost of such advertisement shall be paid out of the brand inspection fund of the state board of stock inspection commissioners and shall be deducted from the amount of damages that may be awarded against the railway company or corporation. Should no claim be made for any animal so advertised, the cost of such advertising shall be paid by the railroad company responsible for such killing or injuring and shall be deposited in the brand inspection fund of said board.

Source: L. 11: p. 404, § 7. **C.L.** § 2869. **CSA:** C. 139, § 55. **CRS 53:** § 116-8-8. **C.R.S. 1963:** § 116-8-8. **L. 2002:** (2) amended, p. 1007, § 4, effective August 7.

40-27-109. Proof of ownership and value. (1) The owner or duly authorized agent of the owner of any animal so killed or injured by any railway company within this state, within thirty days after notice of such killing or injuring, shall make proof that he was the owner or authorized agent of the owner of the animal so killed or injured or that he is the owner of the recorded brand found upon the animal so killed or damaged at the time of such killing or damaging, and said proof may be delivered to the secretary of the state board of stock inspection commissioners who shall notify said railway company or corporation or the assignee or lessee thereof and make demand that said railway company pay to the said state board of stock inspection commissioners for the benefit of the owner the estimated value of said animal if killed or the estimated amount of damages if injured, which shall be settlement in full of all claim for such damage. The secretary of the state board of stock inspection commissioners shall give a receipt in full of said money when received and shall deposit the same in the brand inspection fund of said board, and after paying any advertising charges that may be due against said amount, the balance shall be paid out on voucher to the owner or authorized agent of the owner entitled to receive same.

(2) Should the owner or authorized agent of the owner of any such animal so killed or injured be dissatisfied with the estimated value placed upon such animal by the stock inspector, he may file with the said state board of stock inspection commissioners a claim for such amount of damage he thinks is justly due, and he has the right to produce such evidence in support of his claim as he may think necessary at any regular meeting of said board. Should the railroad company or corporation against whom such claim is made be dissatisfied with the estimated value placed upon any animal so killed or injured, it also has the right, through its claim agent or other authorized officer, to appear before the said state board of stock inspection commissioners at any regular meeting of said board and present such evidence as it may desire in support of its contention.

Source: L. 11: p. 404, § 8. **C.L.** § 2870. **CSA:** C. 139, § 56. **CRS 53:** § 116-8-9. **C.R.S. 1963:** § 116-8-9.

40-27-110. Value of animal - finding of board. Whenever any owner of any animal so killed or wounded or any railroad company or corporation or the assignee or lessee thereof submits any such claim for killing or damaging of livestock to the state board of stock inspection commissioners for determination as to what damage if any shall be paid by said railroad company, the finding of said state board of stock inspection commissioners in regard thereto shall be considered as an arbitration thereof. The finding of said board shall be final and shall also be so accepted by the said owner or his authorized agent or by said railroad company or corporation, and the state board of stock inspection commissioners shall have the right to make such investigation, through its inspectors or otherwise, as it may think necessary in order to determine the just and equitable amount that should be paid as damages or it may determine that no damages shall be paid, as the facts may warrant.

Source: L. 11: p. 405, § 9. **C.L.** § 2871. **CSA:** C. 139, § 57. **CRS 53:** § 116-8-10. **C.R.S. 1963:** § 116-8-10.

40-27-111. Owner declining estimate. Should any owner of any animal so killed or wounded by any railroad company decline to accept the estimated value of such animal or the estimated amount of such damage as fixed by the stock inspector or to submit the same to the arbitration of the said board, within six months he shall file sworn proof and affidavit of his claim with the station agent of such railroad company or corporation, and the railway company or corporation or the assignee or lessee thereof shall pay to such person delivering such demand the actual value of said animal if killed or the actual amount of damage if injured. If such claim for damages and such proof of ownership is not presented to the station agent of said railway company or corporation within six months of the date of such killing or injuring, it shall thereafter be forever barred.

Source: L. 11: p. 406, § 10. **C.L.** § 2872. **CSA:** C. 139, § 58. **CRS 53:** § 116-8-11. **C.R.S. 1963:** § 116-8-11.

40-27-112. Time for payment and suit. In case such railway company or corporation or the assignee or lessee thereof fails for thirty days after demand made therefor by the owner of

any animal or his agent or attorney to pay such owner or his agent or attorney the value of said animal as claimed, then such owner, within six months from date of filing claim, may sue and recover the same from such railroad company or corporation or the assignee or lessee thereof in any court of competent jurisdiction in the county in which said animal was killed or injured, together with the legal interest thereon from the date such animal was killed or injured. Any person having a claim arising under the provisions of sections 40-27-102 to 40-27-113 may assign same in writing to any other claimant or person for value or for the purpose of suit, who shall thereupon have all the rights and remedies of the assignor; but, in case it becomes necessary on the part of any owner to establish claim for any animal so killed or injured in a court of competent jurisdiction, he shall have the right to establish the actual and market value of such animal or the actual damage so sustained.

Source: L. 11: p. 406, § 11. **C.L.** § 2873. **CSA:** C. 139, § 59. **CRS 53:** § 116-8-12. **C.R.S. 1963:** § 116-8-12.

40-27-113. Evidence destroyed - penalty. Any person who in any way conceals the evidence of the killing or wounding of any animal by any railroad train, engine, or cars on any railroad in this state or who in any way destroys or covers up the evidence that may lead to the identification of any animal so killed or injured is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars for each offense, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: L. 11: p. 407, § 12. **C.L.** § 2874. **CSA:** C. 139, § 60. **CRS 53:** § 116-8-13. **L. 63:** p. 340, § 57. **C.R.S. 1963:** § 116-8-13.

40-27-114. Care of animals injured. Whenever any horse, cow, or other animal is injured by a train or otherwise on the right-of-way of any railroad company, it is the duty of trackwalkers, section men, brakemen, conductors, firefighters, engineers, and other employees of said company to care for such animal at once and report the facts to the nearest station agent and then notify the state board of stock inspection commissioners. It is the duty of the agent to give immediate notice, when possible, of the condition of such animal to the owner or the owner's agent whose duty it is forthwith upon receipt of notice to have such animal properly cared for. When immediate notice to the owner is not possible, it is the duty of the station agent to have such injured animal properly cared for without delay.

Source: L. 05: p. 286, § 1. **R.S. 08:** § 5497. **C.L.** § 2875. **CSA:** C. 139, § 61. **CRS 53:** § 116-8-14. **C.R.S. 1963:** § 116-8-14. **L. 97:** Entire section amended, p. 1031, § 64, effective August 6.

40-27-115. Admission of liability - waiver of claim. No act of the said railroad company, its employees or agent, or the owner of such injured animal shall be held to be an admission of liability or responsibility on the part of the said company for the injury of the said animal nor a waiver or relinquishment by said owner of any right or claim to damages from said company.

Source: L. 05: p. 286, § 2. **R.S. 08:** § 5498. **C.L.** § 2876. **CSA:** C. 139, § 62. **CRS 53:** § 116-8-15. **C.R.S. 1963:** § 116-8-15.

ARTICLE 28

Crossings

40-28-101 to 40-28-105. (Repealed)

Source: L. 2000: Entire article repealed, p. 219, § 8, effective March 29.

Editor's note: This article was numbered as article 9 of chapter 116, C.R.S. 1963, and was not amended prior to its repeal in 2000. For the text of this article prior to 2000, consult the 1999 Colorado Revised Statutes.

ARTICLE 29

Safety Appliances

40-29-101. Switch lights. Any railroad or railway company owning or operating within this state any line or branch of railroad connecting with any main line of railroad by means of a switch shall provide such switch with a reflector signal or with a suitable light such as is commonly used for such purposes and, if a light is provided, shall keep the same lighted from sunset on each and every calendar day of the year until sunrise on the following day.

Source: L. 03: p. 405, § 1. **R.S. 08:** § 5504. **C.L.** § 2882. **CSA:** C. 139, § 68. **L. 45:** p. 545, § 1. **CRS 53:** § 116-10-1. **C.R.S. 1963:** § 116-10-1.

40-29-102. Violation - penalty. Any railroad or railway company which violates, or permits to be violated, any of the provisions of section 40-29-101, or any officer, agent, or employee of such railroad or railway company who violates, or permits to be violated, any of the provisions of said section shall be fined not more than three hundred dollars for each violation.

Source: L. 03: p. 405, § 2. **R.S. 08:** § 5505. **C.L.** § 2883. **CSA:** C. 139, § 69. **CRS 53:** § 116-10-2. **C.R.S. 1963:** § 116-10-2.

40-29-103. Jurisdiction of county courts. The county court has jurisdiction of any offense under sections 40-29-101 and 40-29-102.

Source: L. 03: p. 405, § 3. **R.S. 08:** § 5506. **C.L.** § 2884. **CSA:** C. 139, § 70. **CRS 53:** § 116-10-3. **C.R.S. 1963:** § 116-10-3. **L. 64:** p. 307, § 267.

40-29-104. Blocking switch rails, guardrails, wing rails, and split rails. (Repealed)

Source: L. 1897: p. 258, § 1. **R.S. 08:** § 5507. **C.L.** § 2885. **CSA:** C. 139, § 71. **CRS 53:** § 116-10-4. **C.R.S. 1963:** § 116-10-4. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-105. Prima facie evidence of neglect. (Repealed)

Source: L. 1897: p. 258, § 2. **R.S. 08:** § 5508. **C.L.** § 2886. **CSA:** C. 139, § 72. **CRS 53:** § 116-10-5. **C.R.S. 1963:** § 116-10-5. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-106. Locomotive headlights - exceptions. It is the duty of every railroad corporation, receiver, or lessee thereof operating any line of railroad in this state to equip all locomotive engines used in the transportation of trains over said railroad with headlights of not less than twelve hundred candle power, measured without the aid of a reflector; but this section and section 40-29-107 shall not apply to locomotive engines which are regularly employed in yard service, known as switch engines; engines running for a distance of not more than sixteen miles within the limits of this state to complete their runs; those used exclusively between sunrise and sunset; nor engines going to or returning from repair shops when ordered to such shops for repair.

Source: L. 13: p. 516, § 1. **C.L.** § 2887. **CSA:** C. 139, § 73. **CRS 53:** § 116-10-6. **C.R.S. 1963:** § 116-10-6.

40-29-107. Violation - penalty. Any railroad company or the receiver or lessee thereof doing business in the state of Colorado which violates the provisions of section 40-29-106 shall be liable to the state of Colorado for a penalty of not less than one hundred dollars nor more than one thousand dollars for each and every locomotive not so equipped, counting each train hauled by such locomotive a separate and distinct offense, and such penalties shall be recovered and suit brought in the name of the state of Colorado in a court of proper jurisdiction in any county in or through which such line of railroad may be operated.

Source: L. 13: p. 516, § 2. **C.L.** § 2888. **CSA:** C. 139, § 74. **CRS 53:** § 116-10-7. **C.R.S. 1963:** § 116-10-7.

40-29-108. Track motorcars - lights, windshield, and wiper - top. (Repealed)

Source: L. 57: p. 601, § 1. **CRS 53:** § 116-10-8. **L. 59:** p. 634, § 1. **C.R.S. 1963:** § 116-10-8. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-109. Violations - penalty - exception. (Repealed)

Source: L. 57: p. 602, § 2. **CRS 53:** § 116-10-9. **L. 59:** p. 635, § 2. **C.R.S. 1963:** § 116-10-9. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-110. Duties of commission. For the purpose of protecting the health and safety of employees of railroads, the public utilities commission of Colorado shall prescribe standards of safety.

Source: L. 57: p. 603, § 1. **CRS 53:** § 116-10-10. **C.R.S. 1963:** § 116-10-10. **L. 2000:** Entire section amended, p. 219, § 9, effective March 29.

40-29-111. Compliance. (1) It is the duty of all persons engaged in the operation of railroads to comply with any regulation or order of the commission issued under the provisions of section 40-29-110 and to furnish any information required by the commission for purposes of section 40-29-110. The provisions of said section shall not apply to any caboose operated on tracks of less than standard gauge nor to any caboose used only in yard service.

(2) The commission or its authorized agent may, during reasonable hours, enter the place of operation of any person engaged in the operation of railroads for the purpose of ascertaining whether the standards prescribed by authority of section 40-29-110 are being complied with.

Source: L. 57: p. 603, § 2. **CRS 53:** § 116-10-11. **C.R.S. 1963:** § 116-10-11. **L. 2000:** (1) amended, p. 219, § 10, effective March 29.

40-29-112. Complaint - hearing. (Repealed)

Source: L. 57: p. 604, § 3. **CRS 53:** § 116-10-12. **C.R.S. 1963:** § 116-10-12. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-113. Order. (Repealed)

Source: L. 57: p. 604, § 4. **CRS 53:** § 116-10-13. **C.R.S. 1963:** § 116-10-13. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-114. Penalty. (Repealed)

Source: L. 57: p. 604, § 5. **CRS 53:** § 116-10-14. **C.R.S. 1963:** § 116-10-14. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-115. Extension of time. (Repealed)

Source: L. 57: p. 604, § 6. **CRS 53:** § 116-10-15. **C.R.S. 1963:** § 116-10-15. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-116. Highway-rail crossing signalization fund created - annual appropriation. (1) The highway-rail crossing signalization fund is hereby created in the state treasury, in order to promote the public safety and to provide for the payment of the costs of installing, reconstructing, and improving automatic and other safety appliance signals or devices at crossings at grade of public highways or roads over the tracks of any railroad or street railway corporation in this state. None of the moneys in the highway-rail crossing signalization fund

shall be used to pay any part of the cost of the installation, reconstruction, or improvement of any such signals or devices at any crossing when any part of such cost will be paid from moneys available under any federal or federal-aid highway act.

(2) For the 2016-17 fiscal year, the sum of two hundred forty thousand dollars is appropriated from the highway users tax fund created in section 43-4-201 (1)(a), C.R.S., to the highway-rail crossing signalization fund as authorized by section 43-4-201 (3)(a)(VI), C.R.S. Pursuant to section 40-2-114 (1)(a)(II), for the 2017-18 fiscal year and for each fiscal year thereafter, the lesser of three percent of the fees collected under section 40-2-113 or an amount of the fees equal to two hundred forty thousand dollars plus a cumulative inflation adjustment of two percent for each fiscal year beginning with the 2017-18 fiscal year is credited to the highway-rail crossing signalization fund. Notwithstanding section 24-36-114 (1), C.R.S., any interest earned on the deposit and investment of moneys in the highway-rail crossing signalization fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund. Such earned interest moneys are hereby continuously appropriated to the public utilities commission for use for the purposes of the highway-rail crossing signalization fund.

(3) Notwithstanding any other provision of this section, on July 1, 2020, the state treasurer shall transfer one million seven thousand one hundred seventy-six dollars from the highway-rail crossing signalization fund to the general fund.

Source: L. 2003: Entire section added, p. 1701, § 10, effective May 14. **L. 2008:** Entire section amended, p. 1807, § 34, effective July 1. **L. 2016:** (2) amended, (SB 16-087), ch. 217, p. 832, § 2, effective June 6. **L. 2020:** (3) added, (HB 20-1406), ch. 178, p. 814, § 22, effective June 29.

ARTICLE 30

Fire Guards

40-30-101. Fire guard by plowing. Every railroad corporation operating its lines of road or any part thereof within this state, between the fifteenth day of July and the first day of November of each and every year, upon each side of its line of road, shall plow as a fire guard a continuous strip of not less than six feet in width, which said strip of land shall run parallel with said line of railroad and be plowed in such a good and workmanlike manner as to effectually destroy and cover up the vegetation thereon and be sufficient to prevent the spread of fire. In addition thereto all such railroad corporations shall cause to be burned, between said dates, all the grass and vegetation lying between the said plowed strips and the track of said road, and the outer line of said strip of plowed land shall be upon the outer line of such corporation's right-of-way or, if upon land owned by said corporation, one hundred feet on either side from the center of the road. Such fire guard to be so plowed need not be constructed within the limits of any town or city, nor along the line of a railroad running through the mountains, nor in other lands where plowing would be impracticable, but the provisions respecting the burning of a strip on each side shall be duly conformed with whenever any vegetation is found along such line of road. The boards of county commissioners of the various counties of the state shall prescribe for their respective counties where the plowing of such fire guard and burning shall be done.

Source: L. 1874: p. 224, § 1. **G.L.** § 2235. **L. 1879:** p. 73, § 1. **L. 1883:** p. 198, § 1. **G.S.** § 2796. **R.S. 08:** § 5509. **C.L.** § 2889. **CSA:** C. 139, § 75. **CRS 53:** § 116-11-1. **C.R.S. 1963:** § 116-11-1.

40-30-102. Penalty for noncompliance. Any railroad company failing to comply with the provisions of section 40-30-101 shall be liable to pay a penalty of two hundred dollars for each and every mile or fractional part thereof of such strip of land it neglects to plow on either side of the line of its road in this state, in each and every year, the same to be collected in an action of debt in any court of competent jurisdiction in the name of the people of the state of Colorado, and when collected it shall be paid into the school fund of the county wherein the cause of action accrued. The action shall be brought within the time period prescribed in section 13-80-101, C.R.S.

Source: L. 1874: p. 225, § 2. **G.L.** § 2236. **G.S.** § 2797. **R.S. 08:** § 5510. **C.L.** § 2890. **CSA:** C. 139, § 76. **CRS 53:** § 116-11-2. **C.R.S. 1963:** § 116-11-2. **L. 86:** Entire section amended, p. 705, § 18 effective July 1.

40-30-103. Liability of railroad company. Every railroad company operating its line of road, or any part thereof, within this state shall be liable for all damages by fires that are set out or caused by operating any such line of road, or any part thereof, in this state, whether negligently or otherwise. Such damages may be recovered by the party damaged by a proper action in any court of competent jurisdiction; but said action shall be brought by the party injured within two years next ensuing after it accrues. The liability imposed in this section shall inure solely in favor of the owner or mortgagee of the property so damaged or destroyed by fire, and the same shall not pass by assignment or subrogation to any insurance company that has written a policy thereon.

Source: L. 03: p. 404, § 1. **R.S. 08:** § 5512. **C.L.** § 2892. **CSA:** C. 139, § 78. **CRS 53:** § 116-11-3. **C.R.S. 1963:** § 116-11-3.

ARTICLE 31

Overcharges

40-31-101. Railroad company claim agent. Every railroad corporation or the lessee or receiver thereof or other person operating the same doing business in this state shall have and keep an agent or other person residing and having his office in the principal city or town along its line within the state whose duty it is and who is fully authorized by such railroad company to adjust and settle all claims for overcharge collected within this state and for all loss or damage. Any railroad corporation or the lessee or receiver thereof or other person so doing business in this state who fails to have and keep such agent or representative within such city or town shall be subject to a penalty of three thousand dollars for each and every month during which said railroad company or the lessee or receiver thereof or other person fails to have and keep said agent, which said penalty shall be recovered by the attorney general for the use of the state in an action commenced for that purpose in any court of competent jurisdiction of this state.

Source: L. 1881: p. 204, § 1. **G.S.** § 2799. **R.S. 08:** § 5513. **C.L.** § 2893. **CSA:** C. 139, § 79. **CRS 53:** § 116-12-1. **C.R.S. 1963:** § 116-12-1.

Cross references: For the lien of common carrier on goods and baggage, see § 38-20-105; for the general claim agent being required to have headquarters at general offices, see § 40-21-102.

40-31-102. Overcharges - recovery - damages. (1) All overcharges made by any such railroad corporation or the lessee or receiver thereof or other person operating the same and all claims for loss or damage shall be paid by the representative of such railroad corporation or the lessee or receiver thereof or other person operating the same, appointed as provided in section 40-31-101, within sixty days after the same has been duly presented to such representative or agent for settlement accompanied by the expense bill of the freight on which such overcharge has been made or loss or damage suffered, together with a statement, properly verified, of the amount of such overcharge, loss, or damage. If any such railroad corporation or the lessee or receiver thereof or other person operating the same fails to refund the amount of such overcharge, loss, or damage within the time aforesaid, the person or corporation so suffering the same may recover from the railroad company or the lessee or receiver thereof or other person operating the same so in default the sum of one hundred dollars for each month and fraction of a month during which said company or the lessee or receiver thereof or other person operating the same is in default, which said sum may be recovered by the parties so aggrieved or their assignees in any court of competent jurisdiction.

(2) In any suit brought under this section, service upon such agent or representative of said railroad company or the lessee or receiver thereof or other person operating the same shall be deemed and held proper service upon such railroad company or the lessee or receiver thereof or other person operating the same; but the claimant shall not recover such penalty unless he recovers a larger amount in a court than the sum tendered him by such railroad corporation, agent, representative, lessee, or receiver or other person.

Source: L. 1881: p. 205, § 2. **G.S.** § 2800. **R.S. 08:** § 5514. **C.L.** § 2894. **CSA:** C. 139, § 80. **CRS 53:** § 116-12-2. **C.R.S. 1963:** § 116-12-2.

ARTICLE 32

Employees

40-32-101. Working hours of trainmen. (Repealed)

Source: L. 01: p. 233, § 1. **R.S. 08:** § 5515. **C.L.** § 2895. **CSA:** C. 139, § 81. **CRS 53:** § 116-13-1. **C.R.S. 1963:** § 116-13-1. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

40-32-102. Violation - penalty. (Repealed)

Source: L. 01: p. 233, § 2. **R.S. 08:** § 5516. **C.L.** § 2896. **CSA:** C. 139, § 82. **CRS 53:** § 116-13-2. **C.R.S. 1963:** § 116-13-2. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

40-32-103. Telegraph operators - qualifications. (Repealed)

Source: L. 1891: p. 280, § 1. **R.S. 08:** § 5517. **C.L.** § 2897. **CSA:** C. 139, § 83. **CRS 53:** § 116-13-3. **C.R.S. 1963:** § 116-13-3. **L. 96:** Entire section repealed, p. 564, § 27, effective April 24.

40-32-104. Violation - penalty. (Repealed)

Source: L. 1891: p. 280, § 2. **R.S. 08:** § 5518. **C.L.** § 2898. **CSA:** C. 139, § 84. **CRS 53:** § 116-13-4. **C.R.S. 1963:** § 116-13-4. **L. 96:** Entire section repealed, p. 564, § 28, effective April 24.

40-32-104.5. Railroad peace officer - defined - scope of authority - responsibility and liability of railroad. (1) As used in this section, "railroad peace officer" means any person who is employed by a class I railroad corporation operating within the state of Colorado to protect and investigate offenses against the railroad corporation.

(2) A class I railroad corporation may employ a railroad peace officer to protect and investigate offenses against the corporation. Such railroad peace officer, while engaged in the conduct of his or her employment, shall possess and exercise all the powers vested in a peace officer of this state, pursuant to sections 16-2.5-101 and 16-2.5-142, C.R.S. Such authority shall be exercised only in the protection of persons, including on-duty employees, who are located on the class I railroad corporation's property and in the protection of all real and personal property in the current physical possession of such railroad corporation. Such authority may include engaging in immediate pursuit. In the exercise of his or her duties, the railroad peace officer shall have the power to arrest for violation of laws upon railroad property; except that he or she shall be required to notify the appropriate local law enforcement agency before applying for any warrant or lodging any criminal complaint unless the arrest is pursuant to section 40-32-107.

(3) The class I railroad corporation employing the railroad peace officer shall be solely responsible for any liability resulting from acts or omissions of the railroad peace officer which arise within the scope and course of his employment.

Source: L. 87: Entire section added, p. 1489, § 2, effective April 30. **L. 2000:** (2) amended, p. 219, § 12, effective March 29. **L. 2003:** (2) amended, p. 1627, § 55, effective August 6.

40-32-105. Conductors to have police powers. (Repealed)

Source: L. 13: p. 436, § 1. **C.L.** § 2899. **CSA:** C. 139, § 85. **CRS 53:** § 116-13-5. **C.R.S. 1963:** § 116-13-5. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

40-32-106. Eject disorderly passengers. When any passenger is guilty of disorderly conduct, or uses any obscene language to the annoyance and vexation of passengers and refuses to desist therefrom when requested by the conductor, the conductor is authorized to stop the train at any station and eject such passenger from the train, using only such force as may be necessary, and may command the assistance of the employees of the railroad company to assist in such removal; but nothing in this section shall relieve any railroad company from liability for damages to any passenger for an unwarranted exercise of such power by any such conductor.

Source: L. 13: p. 436, § 2. **C.L.** § 2900. **CSA:** C. 139, § 86. **CRS 53:** § 116-13-6. **C.R.S. 1963:** § 116-13-6. **L. 2000:** Entire section amended, p. 219, § 13, effective March 29.

40-32-107. Arrest and take before county court. When any passenger is guilty of any crime or misdemeanor upon any train, a railroad peace officer of such train may arrest such passenger, take such passenger before any county court in any county in which such crime or misdemeanor was committed, and file a complaint charging such passenger with such crime or misdemeanor.

Source: L. 13: p. 437, § 3. **C.L.** § 2901. **CSA:** C. 139, § 87. **CRS 53:** § 116-13-7. **C.R.S. 1963:** § 116-13-7. **L. 64:** p. 307, § 268. **L. 2000:** Entire section amended, p. 220, § 14, effective March 29.

40-32-108. Duties of commission. The commission shall establish standards for the employment of railroad peace officers relating to education or experience in law enforcement.

Source: L. 57: p. 606, § 1. **CRS 53:** § 116-13-8. **C.R.S. 1963:** § 116-13-8. **L. 87:** (2) added, p. 1490, § 3, effective April 30. **L. 2000:** Entire section amended, p. 220, § 15, effective March 29.

40-32-109. Compliance. (Repealed)

Source: L. 57: p. 606, § 2. **CRS 53:** § 116-13-9. **C.R.S. 1963:** § 116-13-9. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

40-32-110. Complaint - hearing. (Repealed)

Source: L. 57: p. 607, § 3. **CRS 53:** § 116-13-10. **C.R.S. 1963:** § 116-13-10. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

40-32-111. Order. (Repealed)

Source: L. 57: p. 607, § 4. **CRS 53:** § 116-13-11. **C.R.S. 1963:** § 116-13-11. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

40-32-112. Penalty. (Repealed)

Source: L. 57: p. 607, § 5. **CRS 53:** § 116-13-12. **C.R.S. 1963:** § 116-13-12. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

40-32-113. Extension of time. (Repealed)

Source: L. 57: p. 607, § 6. **CRS 53:** § 116-13-13. **C.R.S. 1963:** § 116-13-13. **L. 2000:** Entire section repealed, p. 219, § 11, effective March 29.

ARTICLE 33

Damages to Employees

40-33-101. Damages for injury of employee. Every common carrier by railroad in the state of Colorado shall be liable in damages to any person suffering injury while he is employed by such carrier in or about the transporting or handling of any freight, property, passengers, engine, locomotive, or other vehicle upon the tracks of such carrier, or in case of the death of such employee, to his personal representative for the benefit of the surviving widow, or husband, children, parents, or dependents of such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such employer, or by reason of any defect or insufficiency due to the employer's negligence.

Source: L. 37: p. 512, § 1. **CSA:** C. 139, § 87(1). **CRS 53:** § 116-14-1. **C.R.S. 1963:** § 116-14-1.

40-33-102. Contributory negligence no bar. In all actions brought against any such common carrier under or by virtue of any of the provisions of this article to recover damages for personal injury to the employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; but no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such employer of any state or federal statute enacted for the safety of employees contributed to the injury or death of such employee.

Source: L. 37: p. 513, § 2. **CSA:** C. 139, § 87(2). **CRS 53:** § 116-14-2. **C.R.S. 1963:** § 116-14-2.

40-33-103. Employee does not assume risks. In any action brought against any common carrier under or by virtue of any of the provisions of this article to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Source: L. 37: p. 513, § 3. **CSA:** C. 139, § 87(3). **CRS 53:** § 116-14-3. **C.R.S. 1963:** § 116-14-3.

40-33-104. Jury question. In any action brought against any such common carrier under or by virtue of any of the provisions of this article, to recover damages for injury to, or the death of, any of its employees, the question as to whether the negligence or violation of law claimed to have caused or contributed to the injury or death of such employee did in substance cause or contribute to such injury or death, and the question as to whether such negligence or violation of law was the proximate cause of such injury or death shall, in all cases, be for the determination of the jury.

Source: L. 37: p. 513, § 4. **CSA:** C. 139, § 87(4). **CRS 53:** § 116-14-4. **C.R.S. 1963:** § 116-14-4.

40-33-105. Presumptive evidence. In all actions brought against any such common carrier under or by virtue of any of the provisions of this article to recover damages for personal injury to the employee, or where such injuries have resulted in his death, the fact of any such injury or death occurring to such employee and arising out of and in the course of his employment shall be presumptive evidence of the want of reasonable skill and care on the part of such carrier and its agents, servants, and employees in reference to such injury or death unless and until rebutted.

Source: L. 37: p. 514, § 5. **CSA:** C. 139, § 87(5). **CRS 53:** § 116-14-5. **C.R.S. 1963:** § 116-14-5.

40-33-106. Attempts to exempt carrier from liability void. Any contract, rule, regulation, or stratagem whatsoever, the purpose or intent of which is to enable any common carrier to exempt itself from any liability created by this article, shall to that extent be void; but in any action brought against any such common carrier under or by virtue of any of the provisions of this article, such carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto on account of the injury or death for which said action was brought.

Source: L. 37: p. 514, § 6. **CSA:** C. 139, § 87(6). **CRS 53:** § 116-14-6. **C.R.S. 1963:** § 116-14-6.

40-33-107. Definitions. As used in this article, unless the context otherwise requires:

(1) "Common carrier" includes the receiver or other persons or corporations charged with the duty of management and operation of the business of a common carrier.

Source: L. 37: p. 514, § 7. **CSA:** C. 139, § 87(7). **CRS 53:** § 116-14-7. **C.R.S. 1963:** § 116-14-7.

40-33-108. Right of action survives. Any right of action given by this article, to a person suffering injury shall survive to his personal representative, for the benefit of the

surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

Source: L. 37: p. 514, § 8. **CSA:** C. 139, § 87(8). **CRS 53:** § 116-14-8. **C.R.S. 1963:** § 116-14-8.

40-33-109. Right of action limited. No action shall be maintained under this article, unless commenced within the time period prescribed in section 13-80-102, C.R.S.

Source: L. 37: p. 515, § 9. **CSA:** C. 139, § 87(9). **CRS 53:** § 116-14-9. **C.R.S. 1963:** § 116-14-9. **L. 86:** Entire section amended, p. 705, § 19, effective July 1.

GEOTHERMAL HEAT

ARTICLE 40

Geothermal Heat Suppliers

Cross references: For the "Colorado Geothermal Resources Act", see article 90.5 of title 37.

40-40-101. Short title. This article shall be known and may be cited as the "Geothermal Heat Suppliers Act".

Source: L. 83: Entire article added, p. 1422, § 2, effective June 10.

40-40-102. Legislative declaration. The general assembly hereby declares that geothermal heat is a valuable, indigenous resource, the development of which will enhance local economies, and that it is in the public interest of the state to promote the development of geothermal heat supply systems. Therefore, it is the policy of this state to remove the barriers to such development which might result from the imposition of comprehensive regulation by the public utilities commission.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the public utilities commission of the state of Colorado.

(2) "Geothermal heat supplier" means any person who supplies geothermally heated groundwater or other substances to the public or other customers for industrial process heat, commercial use, space heating, or other purposes. The term includes systems which enhance the thermal content of the substance supplied through the use of heat pumps, solar assistance, or other means.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-104. Public utility status - exceptions. (1) Geothermal heat suppliers are found to be affected with the public interest and subject to the limited jurisdiction and regulation of the commission as described in this article only.

(2) Geothermal heat suppliers which are selling at wholesale to other entities which are reselling the heat or converting it to electricity are exempt from the provisions of this article and any other provisions which might subject such geothermal heat suppliers to the jurisdiction of the commission.

(3) Municipal and county geothermal heat suppliers acting alone, together, or in concert with private parties are exempt from the provisions of this article and any other provisions which might subject such entities to the jurisdiction of the commission, except as to service provided outside of their boundaries.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-105. Operating permits. (1) The commission shall establish a system of operating permits for geothermal heat suppliers. Before commencing construction of distribution facilities, a geothermal heat supplier must obtain an operating permit from the commission. An operating permit:

(a) May not be denied because the area which the applicant proposes to serve is already being served by a gas or electric utility;

(b) May not convey an exclusive right to supply geothermal heat in the area which the applicant proposes to serve;

(c) Shall describe the area the applicant intends to serve and the nature of such service;

(d) Shall require the applicant to enter into a contract with each customer. The contract, of which only the form and scope are subject to commission review, must specify, at least:

(I) The period of time during which service will be provided;

(II) The rates or the method for determining rates to be charged during the term of the contract, as negotiated by the parties and not subject to commission approval;

(III) That the geothermal heat supplier will submit to the complaint procedures contained in section 40-6-108.

(2) Before issuing an operating permit, the commission must find that:

(a) The applicant is fit, willing, and able to provide the proposed services; and

(b) The applicant has made an adequate showing that the geothermal heat supply and distribution system appears reasonably capable of delivering the proposed services.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-106. Continuing review. The commission has continuing authority over geothermal heat suppliers to enforce the provisions of this article and to ensure that a geothermal heat supplier adheres to the conditions of its operating permit.

Source: L. 83: Entire article added, p. 1424, § 2, effective June 10.

ENERGY IMPACTS

ARTICLE 41

Colorado Energy Impact Bond Act

40-41-101. Short title. The short title of this article 41 is the "Colorado Energy Impact Bond Act".

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3317, § 26, effective May 30.

40-41-102. Definitions. As used in this article 41, unless the context otherwise requires:

(1) "Adjustment mechanism" means a formula-based mechanism for making automatic adjustments to CO-EI charges authorized in a financing order and for making any adjustments that are necessary to correct for overcollection or undercollection of such charges or otherwise ensure the timely and complete payment of the CO-EI bonds and all financing costs.

(2) "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with CO-EI bonds that is designed to promote the credit quality and marketability of the CO-EI bonds or to mitigate the risk of an increase in interest rates.

(3) "Assignee" means any person to which an interest in CO-EI property is sold, assigned, transferred, or conveyed, other than as security, and any successor to or subsequent assignee of such a person.

(4) "Bondholder" means any holder or owner of CO-EI bonds.

(5) "CO-EI bonds" means Colorado energy impact bonds that are low-cost corporate securities, such as senior secured bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a scheduled maturity date as determined reasonable by the commission but not later than thirty-two years following issuance, that are rated "AA" or "AA2" or better by at least one major independent credit rating agency at the time of pricing, and that are issued by an electric utility or an assignee pursuant to a financing order, the proceeds of which are used, directly or indirectly, to recover, finance, or refinance commission-approved CO-EI costs and financing costs.

(6) "CO-EI charge" means a charge in an amount authorized by the commission in a financing order in order to provide a source of revenue solely to repay, finance, or refinance CO-EI costs and financing costs that are imposed on and are a part of all customer bills and are collected in full by the electric utility to which the financing order applies, its successors or assignees, or a collection agent through a nonbypassable charge that is separate and apart from the electric utility's base rates.

(7) (a) "CO-EI costs" means:

(I) (A) At the option of and upon petition by an electric utility, and as approved by the commission, any of the pretax costs that the electric utility has incurred or will incur that are caused by, associated with, or remain as a result of the retirement of an electric generating facility located in the state.

(B) As used in this subsection (7), "pretax costs", if approved by the commission, include, but are not limited to, the unrecovered capitalized cost of a retired electric generating facility, costs of decommissioning and restoring the site of the electric generating facility, and other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds and the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

(II) Amounts for assistance to affected workers and communities if approved by the commission;

(III) Pretax costs that an electric utility has previously incurred related to the commission-approved closure of an electric generating facility occurring before May 30, 2019.

(b) "CO-EI costs" do not include any monetary penalty, fine, or forfeiture assessed against an electric utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

(8) "CO-EI property" means:

(a) All rights and interests of an electric utility or successor or assignee of an electric utility under a financing order for the right to impose, bill, collect, and receive CO-EI charges as it is authorized to do solely under the financing order and to obtain periodic adjustments to such CO-EI charges as provided in the financing order; and

(b) All revenue, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in subsection (8)(a) of this section, regardless of whether such revenue, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenue, collections, rights to payment, payments, money, or proceeds.

(9) "CO-EI revenue" means all revenue, receipts, collections, payments, money, claims, or other proceeds arising from CO-EI property.

(10) "Commission" means the public utilities commission of the state of Colorado.

(11) "Customer" means a person that takes electric distribution or electric transmission service from an electric utility or its successors or assignees under commission-approved rate schedules or pursuant to special contracts for consumption of electricity in the state. The term includes a customer's successors and assignees.

(12) "Electric utility" means an entity operating for the purpose of supplying electricity to the public for domestic, mechanical, or public uses and includes an investor-owned electric utility subject to regulation under articles 1 to 7 of this title 40, a municipally owned utility, and a cooperative electric association.

(13) "Financing costs" means, if approved by the commission in a financing order, costs to issue, service, repay, or refinance CO-EI bonds, whether incurred or paid upon issuance of the CO-EI bonds or over the life of the CO-EI bonds, and includes:

(a) Principal, interest, and redemption premiums that are payable on CO-EI bonds;

(b) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to CO-EI bonds;

(c) Any other costs related to issuing, supporting, repaying, refunding, and servicing CO-EI bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and

underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other demonstrable costs necessary to otherwise ensure and guarantee the timely payment of CO-EI bonds or other amounts or charges payable in connection with CO-EI bonds;

(d) Any taxes and license fees imposed on the revenue generated from the collection of a CO-EI charge;

(e) Any state and local taxes, including franchise, sales and use, and other taxes or similar charges, including, but not limited to, regulatory assessment fees, whether paid, payable, or accrued; and

(f) Any costs incurred by an electric utility to pay the commission's costs of engaging specialized counsel and expert consultants experienced in securitized electric utility ratepayer-backed bond financing similar to CO-EI bonds as authorized by section 40-41-107 (3).

(14) "Financing order" means an order of the commission issued pursuant to section 40-41-106 that grants, in whole or in part, an application filed pursuant to section 40-41-103 and that authorizes the issuance of CO-EI bonds in one or more series, the imposition, charging, and collection of CO-EI charges, and the creation of CO-EI property.

(15) "Financing party" means a holder of CO-EI bonds and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of a holder of CO-EI bonds.

(16) "Financing statement" has the same meaning as set forth in section 4-9-102 (39).

(17) "Nonbypassable" means that the payment of a CO-EI charge may not be avoided by any future or existing customer located within an electric utility service area as such service area existed as of the date of the financing order or, if the financing order so provides, as such service area may be expanded, even if the customer elects to purchase electricity from a supplier other than the electric utility.

(18) "Successor" means, with respect to any legal entity, another legal entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring, other insolvency proceeding, merger, acquisition, consolidation, or sale or transfer of assets, whether any of these occur due to a restructuring of the electric power industry or otherwise. Solely for the purpose of implementing this article 41, "successor" does not include any municipally owned electric utility established and providing retail electric service before the date on which CO-EI bonds are issued pursuant to a financing order relating to electric generating facilities that serve or previously served the service area of the municipally owned electric utility.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3317, § 26, effective May 30.

40-41-103. Financing orders - application requirements. (1) An electric utility, in its sole discretion, may apply to the commission for a financing order as authorized by this section.

(2) (a) An investor-owned or other regulated electric utility may file an application for approval to issue CO-EI bonds in one or more series, impose, charge, and collect CO-EI charges, and create CO-EI property related to the retirement of an electric generating facility in Colorado that has previously been approved by the commission.

(b) An electric utility that is not regulated may file an application for approval to issue CO-EI bonds in one or more series, impose, charge, and collect CO-EI charges, and create CO-EI property related to the retirement of an electric generating facility in Colorado.

(c) The commission shall take final action to approve, deny, or modify any application for a financing order as described in subsection (2)(a) or (2)(b) of this section in a final order issued in accordance with the commission's rules for addressing applications.

(3) (a) An application for a financing order must include the following information:

(I) A description of the CO-EI costs that the applicant proposes to recover with the proceeds of the CO-EI bonds;

(II) An estimate of the financing costs related to the CO-EI bonds;

(III) An estimate of the CO-EI charges necessary to pay the CO-EI costs and all financing costs, and the period over which such costs will be recovered, including the proposed scheduled and final maturity of the CO-EI bonds;

(IV) A proposed methodology for allocating the revenue requirement for the CO-EI charge among customer classes, including special contract customers;

(V) A description of the nonbypassable CO-EI charge required to be paid by customers within the electric utility's service area for recovery of CO-EI costs and a proposed adjustment mechanism reflecting the allocation methodology referred to in subsection (3)(a)(IV) of this section;

(VI) An estimate of the timing of the issuance of the CO-EI bonds or series of bonds; and

(VII) An estimate of the net projected cost savings or a demonstration of how the issuance of CO-EI bonds and the imposition of CO-EI charges would avoid or significantly mitigate rate impacts to customers as compared with traditional methods of financing and recovering CO-EI costs from customers.

(b) In addition to furnishing the information specified in subsection (3)(a) of this section, an applicant shall:

(I) Specify a future rate-making process to reconcile any difference between the CO-EI costs financed by CO-EI bonds and the final CO-EI costs incurred by the utility or the assignee. The reconciliation may affect the electric utility's base rates or any rider adopted pursuant to section 40-41-104 (4), but shall not affect the amount of the bonds or the associated CO-EI charges paid by customers.

(II) Provide direct testimony supporting the application.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3320, § 26, effective May 30.

40-41-104. Issuance of financing orders. (1) Following notice and hearing on an application for a financing order as required by the commission's rules, practice, and procedure, the commission may issue a financing order if the commission finds that:

(a) The CO-EI costs described in the application related to the retirement of the electric generating facilities are reasonable;

(b) The proposed issuance of CO-EI bonds and the imposition and collection of CO-EI charges:

(I) Are just and reasonable;

(II) Are consistent with the public interest;

(III) Constitute a prudent and reasonable mechanism for the financing of the CO-EI costs described in the application; and

(IV) Will provide substantial, tangible, and quantifiable net present value savings or other benefits to customers that are greater than the benefits that would have been achieved absent the issuance of CO-EI bonds; and

(c) The provisions of the financing order will ensure that the proposed structuring, marketing, and pricing of the CO-EI bonds will:

(I) Materially lower overall costs to customers or avoid or mitigate rate impacts to customers relative to traditional methods of financing and recovering CO-EI costs from customers; and

(II) Achieve the maximum net present value of customer savings, as determined by the commission in a financing order, consistent with market conditions at the time of sale and the terms of the financing order.

(2) The financing order must:

(a) Determine the maximum amount of CO-EI costs that may be financed from proceeds of CO-EI bonds authorized to be issued by the financing order;

(b) Approve a methodology for allocating the revenue requirement for the CO-EI charge among customer classes;

(c) Describe the proposed customer billing mechanism for CO-EI charges and include a finding that the mechanism is just and reasonable;

(d) Describe and estimate the financing costs that may be recovered through CO-EI charges and the period over which the costs may be recovered, subject to section 40-41-105;

(e) Determine whether the proposed structuring, expected pricing, and financing costs of CO-EI bonds have a significant likelihood of lowering overall costs to customers or avoiding or significantly mitigating rate impacts to customers as compared with traditional methods of financing and recovering CO-EI costs from customers. A financing order must provide detailed findings of fact addressing cost-effectiveness and associated rate impacts upon customers and customer classes.

(f) Require the imposition and collection of the nonbypassable CO-EI charges authorized under a financing order for the period specified in subsection (2)(d) of this section;

(g) Describe the CO-EI property that may be created in favor of the utility and its successors and assignees and that will be used to pay, and secure the payment of, the CO-EI bonds and financing costs authorized in the financing order;

(h) Authorize and approve an adjustment mechanism reflecting the allocation methodology specified in subsection (2)(b) of this section;

(i) Authorize the applicant electric utility to finance CO-EI costs through the issuance of one or more series of CO-EI bonds. An electric utility is not required to secure a separate financing order for each issuance of CO-EI bonds or for each scheduled phase of the previously approved retirement of electric generating facilities approved in the financing order.

(j) Include any additional findings or conclusions deemed appropriate by the commission;

(k) Specify the degree of flexibility afforded to the electric utility in establishing the terms and conditions of the CO-EI bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs;

(l) Specify the timing of actions required by the order, including:

(I) The timing of issuance of the CO-EI bonds, independent of the schedule of retirement of the electric generating facility;

(II) The energy assistance funds, if included in the bond issue, may be transferred to a third-party entity designated by the commission to administer transition assistance on behalf of displaced workers and affected communities no later than the date on which the electric generating facility ceases operation; and

(III) The applicant electric utility files to reduce its rates as required in subsection (4) of this section simultaneously with the inception of the CO-EI charges and independently of the schedule of closing and decommissioning of the electric generating facility; and

(m) Specify a future rate-making process to reconcile any difference between the actual CO-EI costs financed by CO-EI bonds and the final CO-EI costs incurred by the utility or the assignee. The reconciliation may affect the electric utility's base rates or any rider adopted pursuant to subsection (4) of this section, but shall not affect the amount of the bonds or the associated CO-EI charges paid by customers.

(3) A financing order issued to an electric utility must permit and may require the creation of an electric utility's CO-EI property pursuant to subsection (2)(g) of this section to be conditioned upon, and simultaneous with, the sale or other transfer of the CO-EI property to an assignee and the pledge of the CO-EI property to secure CO-EI bonds.

(4) A financing order must require the applicant electric utility, simultaneously with the inception of the collection of CO-EI charges, to reduce its rates through a reduction in base rates or by a negative rider on customer bills in an amount equal to the revenue requirement associated with the utility assets being financed by CO-EI bonds.

(5) If the voters of a local government or school district have approved projects, the costs of which are expected to be paid for from property taxes that are directly impacted by the retirement of an electric generating facility pursuant to the terms of a financing order, the financing order must provide for the payment of community assistance to the local government in an amount equal to the costs of the voter-approved projects that were expected to be paid from the revenue sources directly impacted by the retirement of an electric generating facility pursuant to the terms of the financing order, including the costs of financing such projects, including but not limited to the payment of bonds, notes, or other multiple-fiscal year obligations or lease purchase agreements that have been issued or entered into to pay the costs of such projects. Any payment of community assistance shall be reduced on an equivalent basis to the extent that property tax is derived from new electric infrastructure developed in the same impacted community.

(6) In a financing order, the commission may include any conditions that are necessary to promote the public interest and may grant relief that is different from that which was requested in the application so long as the relief is within the scope of the matters addressed in the commission's notice of the application.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3321, § 26, effective May 30.

40-41-105. Effect of financing order. (1) A financing order remains in effect until the CO-EI bonds issued as authorized by the financing order have been paid in full and all financing costs relating to the CO-EI bonds have been paid in full.

(2) A financing order remains in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of the electric utility to which the financing order applies or any affiliate of the electric utility or successor entity or assignee.

(3) Subject to judicial review as provided for in section 40-41-108, a financing order is irrevocable. Therefore, notwithstanding section 40-6-112 (1), the commission may not reduce, impair, postpone, or terminate CO-EI charges approved in a financing order or impair CO-EI property or the collection or recovery of CO-EI revenue.

(4) Notwithstanding subsection (3) of this section, upon the request of an electric utility or at the request of parties in the commission proceeding, the commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding CO-EI bonds issued pursuant to the original financing order if:

(a) The commission makes all of the findings specified in section 40-41-104 (1) with respect to the subsequent financing order; and

(b) The subsequent financing order does not impair in any way the covenants and terms of the CO-EI bonds to be refinanced, retired, or refunded.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3324, § 26, effective May 30.

40-41-106. Effect on commission jurisdiction - rules. (1) Except as otherwise provided in subsection (2) of this section, if the commission issues a financing order to an electric utility, the commission shall not, in exercising its powers and carrying out its duties pursuant to this article 41:

(a) Consider the CO-EI bonds issued pursuant to the financing order to be debt of the electric utility other than for income tax purposes;

(b) Consider the CO-EI charges paid under the financing order to be revenue of the electric utility;

(c) Consider the CO-EI costs or financing costs specified in the financing order to be the regulated costs or assets of the electric utility; or

(d) Determine any prudent action taken by an electric utility that is consistent with the financing order to be unjust or unreasonable.

(2) Nothing in subsection (1) of this section:

(a) Prevents or precludes the commission from investigating the compliance of an electric utility with the terms and conditions of a financing order and requiring compliance with the financing order; or

(b) Prevents or precludes the commission from imposing regulatory sanctions against a regulated electric utility for failure to comply with the terms and conditions of a financing order or the requirements of this article 41.

(3) The commission may not refuse to allow the recovery of any costs associated with the retirement of electric generating facilities by an electric utility solely because the electric utility has elected to recover those costs through traditional rate-making methods or to finance those activities through a financing mechanism other than CO-EI bonds, whether or not a

financing order with respect to such costs has been applied for by the utility or issued by the commission.

(4) The commission may adopt rules to implement this article 41.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3325, § 26, effective May 30.

40-41-107. Electric utility customer protection. (1) In addition to any other authority of the commission:

(a) The commission may attach such conditions to the approval of a financing order as the commission deems appropriate to maximize the benefits and minimize the risks of the transaction to customers, directly impacted Colorado workers and communities, and the electric utility;

(b) The commission shall specify in the financing order a process to structure, market, and price CO-EI bonds, including the selection of the underwriter or underwriters, in a manner consistent with the public interest and the legal obligations of the electric utility;

(c) The commission shall review and determine the reasonableness of all proposed up-front and ongoing financing costs; and

(d) The commission has the authority required to perform comprehensive due diligence in its evaluation of an application for a financing order and has the authority to oversee the process used to structure, market, and price CO-EI bonds.

(2) Within one hundred twenty days after the issuance of CO-EI bonds, the applicant shall file with the commission information regarding the actual up-front issuance costs of the CO-EI bonds. The commission shall review, on a reasonably comparable basis, such information to determine if the issuance resulted in the lowest overall costs that were reasonably consistent with both market conditions at the time of the pricing and the terms of the financing order. The commission may disallow incremental up-front issuance costs in excess of the lowest overall costs by requiring the electric utility to make a credit in an amount equal to the excess of actual issuance costs incurred, and paid for out of CO-EI bond proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the CO-EI charges for any such excess up-front issuance costs.

(3) In performing its responsibilities under this article 41, the commission may engage outside consultants and counsel, selected by the commission, who are experienced in securitized electric utility ratepayer-backed bond financing similar to CO-EI bonds. These outside consultants and counsel have a duty of loyalty solely to the commission, must not have any financial interest in the CO-EI bonds, and shall not participate in the underwriting or secondary market trading of the CO-EI bonds. The expenses associated with any engagement shall be paid by the applicant utility and shall be included as financing costs and included in the CO-EI charge, are not an obligation of the state, and are assigned solely to the transaction.

(4) If an electric utility's application for a financing order is denied or withdrawn or for any reason no CO-EI bonds are issued, any costs of retaining expert consultants and counsel on behalf of the commission, as authorized by subsection (3) of this section and approved by the commission, shall be paid by the applicant electric utility and shall be eligible for recovery by the electric utility, including carrying costs, in the electric utility's future rates.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3326, § 26, effective May 30.

40-41-108. Judicial review of financing orders. A financing order is a final order of the commission. Notwithstanding section 40-6-115 (5) specifying proper venue for petition filings, a party aggrieved by the issuance of a financing order may petition for suspension and review of the financing order only in the district court for the city and county of Denver. In the case of any petition for suspension and review, the court shall proceed to hear and determine the action as expeditiously as practicable and shall give the action precedence over other matters not accorded similar precedence by law.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3327, § 26, effective May 30.

40-41-109. Electric utilities - duties - rate impact notice to customers. (1) The electric bills of an electric utility that has obtained a financing order and caused CO-EI bonds to be issued:

(a) Must explicitly reflect that a portion of the charges on the bill represents CO-EI charges approved in a financing order issued to the electric utility and, if the CO-EI property has been transferred to an assignee, must include a statement that the assignee is the owner of the rights to CO-EI charges and that the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee;

(b) Must include the CO-EI charge on each customer's bill as a separate line item titled "energy impact assistance charge" and may include both the rate and the amount of the charge on each bill. The failure of an electric utility to comply with this subsection (1) does not invalidate, impair, or affect any financing order, CO-EI property, CO-EI charge, or CO-EI bonds, but may subject the electric utility to penalties under applicable commission rules.

(c) Must explain to customers in an annual filing with the commission the rate impact that financing the retirement of electric generating facilities will have on customer rates.

(2) An electric utility that has obtained a financing order and caused CO-EI bonds to be issued must demonstrate in an annual filing with the commission that CO-EI bond proceeds are applied solely to the repayment of CO-EI costs and that CO-EI revenues are applied solely to the repayment of CO-EI bonds and other financing costs in accordance with the financing order. The cost of such annual filing is a financing cost recoverable by the electric utility from the CO-EI charge.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3327, § 26, effective May 30.

40-41-110. CO-EI property. (1) CO-EI property that is described in a financing order constitutes an existing present property right or interest in an existing present property right even though the imposition and collection of CO-EI charges depends on the electric utility to which the financing order is issued performing its servicing functions relating to the collection of CO-EI charges and on future electricity consumption. The property right or interest exists regardless of whether the revenues or proceeds arising from the CO-EI property have been billed, have

accrued, or have been collected and notwithstanding the fact that the value or amount of the property right or interest is dependent on the future provision of service to customers by the electric utility or a successor or assignee of the electric utility.

(2) CO-EI property described in a financing order exists until all CO-EI bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of the CO-EI bonds have been recovered in full.

(3) All or any portion of CO-EI property described in a financing order issued to an electric utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the electric utility and is created for the limited purpose of acquiring, owning, or administering CO-EI property or issuing CO-EI bonds as authorized by the financing order. All or any portion of CO-EI property may be pledged to secure CO-EI bonds issued pursuant to a financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Each transfer, sale, conveyance, assignment, or pledge by an electric utility or an affiliate of an electric utility is a transaction in the normal course of business for purposes of section 40-5-105 (1)(a).

(4) If an electric utility defaults on any required payment of charges arising from CO-EI property described in a financing order, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenue arising from the CO-EI property to the financing parties. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assignees.

(5) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in CO-EI property specified in a financing order issued to an electric utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any other entity.

(6) A successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of, and has the same duties and rights under a financing order as, the electric utility to which the financing order applies and shall perform the duties and exercise the rights in the same manner and to the same extent as the electric utility, including collecting and paying to any person entitled to receive them the revenues, collections, payments, or proceeds of CO-EI property described in the financing order.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3328, § 26, effective May 30.

40-41-111. CO-EI bonds - legal investments - not public debt - pledge of state. (1) Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any money within their control in CO-EI bonds. Public entities, as defined in section 24-75-601 (1), may invest public funds in CO-EI bonds only if the CO-EI bonds satisfy the investment requirements established in part 6 of article 75 of title 24.

(2) CO-EI bonds issued as authorized by a financing order are not debt of or a pledge of the faith and credit or taxing power of the state, any agency of the state, or any county, municipality, or other political subdivision of the state. Holders of CO-EI bonds have no right to have taxes levied by the state or by any county, municipality, or other political subdivision of the state for the payment of the principal or interest on CO-EI bonds. The issuance of CO-EI bonds does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of principal or interest on the CO-EI bonds.

(3) (a) The state pledges to and agrees with holders of CO-EI bonds, any assignee, and any financing parties that the state will not:

(I) Take or permit any action that impairs the value of CO-EI property; or

(II) Reduce, alter, or impair CO-EI charges, except through application of the adjustment mechanism, that are imposed, collected, and remitted for the benefit of holders of CO-EI bonds, any assignee, and any financing parties, until any principal, interest, and redemption premium payable on CO-EI bonds, all financing costs, and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid in full.

(b) A person who issues CO-EI bonds may include the pledge specified in subsection (3)(a) of this section in the CO-EI bonds, ancillary agreements, and documentation related to the issuance and marketing of the CO-EI bonds.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3329, § 26, effective May 30.

40-41-112. Assignee or financing party not automatically subject to commission regulation. An electric utility, assignee, or financing party that is not already regulated by the commission does not become subject to commission regulation solely as a result of engaging in any transaction authorized by or described in this article 41.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3329, § 26, effective May 30.

40-41-113. Effect of other laws and judicial decisions. (1) If any provision of this article 41 conflicts with any other law regarding the attachment, assignment, perfection, effect of perfection, or priority of any security interest in or transfer of CO-EI property, the provision of this article 41 governs to the extent of the conflict.

(2) Effective on the date that CO-EI bonds are first issued, if any provision of this article 41 is held to be invalid or is invalidated, superseded, replaced, repealed, or expires, that occurrence does not affect any action allowed under this article 41 that was lawfully taken by the commission, an electric utility, an assignee, a collection agent, a financing party, a bondholder, or a party to an ancillary agreement before the occurrence, and any such action remains in full force and effect.

(3) Nothing in subsection (1) or (2) of this section precludes an electric utility for which the commission has initially issued a financing order from applying to the commission for:

(a) A subsequent financing order amending the financing order as authorized by section 40-41-105 (4); or

(b) Approval of the issuance of CO-EI bonds to refund all or a portion of an outstanding series of CO-EI bonds.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3330, § 26, effective May 30.

40-41-114. Choice of law. The laws of this state govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in any CO-EI property, CO-EI charge, or financing order.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3330, § 26, effective May 30.

40-41-115. Security interests in CO-EI property. (1) The creation, perfection, and enforcement of any security interest in CO-EI property to secure the repayment of the principal of and interest on CO-EI bonds, amounts payable under any ancillary agreement, and other financing costs are governed by this section and not by the "Uniform Commercial Code", title 4, to the extent of any conflict.

(2) The description or indication of CO-EI property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to this article 41 and the financing order creating the CO-EI property.

(3) (a) A security interest in CO-EI property is created, valid, and binding as soon as all of the following events have occurred:

(I) The financing order that describes the CO-EI property is issued;

(II) A security agreement is executed and delivered; and

(III) Value is received for the CO-EI bonds.

(b) Once a security interest in CO-EI property is created under subsection (3)(a) of this section, the security interest attaches without any physical delivery of collateral or any other act. The lien of the security interest is valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether such parties have notice of the lien, upon the filing of a financing statement with the secretary of state. The secretary of state shall maintain a financing statement filed pursuant to this subsection (3)(b) in the same manner in which the secretary maintains and in the same record-keeping system in which the secretary maintains financing statements filed pursuant to article 9 of title 4. The filing of any financing statement pursuant to this subsection (3)(b) is governed by article 9 of title 4 regarding the filing of financing statements.

(4) A security interest in CO-EI property is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, which may subsequently attach to the CO-EI property unless the holder of the security interest has agreed in writing otherwise.

(5) The priority of a security interest in CO-EI property is not affected by the commingling of CO-EI property or CO-EI revenue with other money. An assignee, bondholder, or financing party has a perfected security interest in the amount of all CO-EI property or CO-EI revenue that is pledged for the payment of CO-EI bonds even if the CO-EI property or CO-EI

revenue is deposited in a cash or deposit account of the electric utility in which the CO-EI revenue is commingled with other money, and any other security interest that applies to the other money does not apply to the CO-EI revenue.

(6) Neither a subsequent order of the commission amending a financing order as authorized by section 40-41-105 (4), nor application of an adjustment mechanism as authorized by section 40-41-104 (2)(h), affects the validity, perfection, or priority of a security interest in or transfer of CO-EI property.

Source: L. 2019: Entire article added, (SB 19-236), ch. 359, p. 3330, § 26, effective May 30.

40-41-116. Sales of CO-EI property. (1) (a) A sale, assignment, or transfer of CO-EI property is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the CO-EI property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in CO-EI property may be created only when all of the following have occurred:

(I) The financing order creating and describing the CO-EI property has become effective;

(II) The documents evidencing the transfer of the CO-EI property have been executed and delivered to the assignee; and

(III) Value is received.

(b) Upon the filing of a financing statement with the secretary of state, a transfer of an interest in CO-EI property is perfected against all third persons, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest, or assignment in the CO-EI property previously perfected in accordance with this subsection (1) or section 40-41-115. The secretary of state shall maintain a financing statement filed pursuant to this subsection (1)(b) in the same manner in which the secretary maintains and in the same record-keeping system in which the secretary maintains financing statements filed pursuant to article 9 of title 4. The filing of any financing statement pursuant to this subsection (1)(b) is governed by article 9 of title 4 regarding the filing of financing statements.

(2) The characterization of a sale, assignment, or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the assignee is not affected or impaired by the existence or occurrence of any of the following:

(a) Commingling of CO-EI revenue with other money;

(b) The retention by the seller of:

(I) A partial or residual interest, including an equity interest, in the CO-EI property, whether direct or indirect, or whether subordinate or otherwise; or

(II) The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of CO-EI revenue;

(c) Any recourse that the purchaser may have against the seller;

(d) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;

(e) An obligation of the seller to collect CO-EI revenues on behalf of an assignee;

(f) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes;

(g) Any subsequent financing order amending a financing order as authorized by section 40-41-105 (4); or

(h) Any application of an adjustment mechanism as authorized by section 40-41-104 (2)(h).

Source: Entire article added, (SB 19-236), ch. 359, p. 3331, § 26, effective May 30.