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# An Act

HOUSE BILL 10-1365

BY REPRESENTATIVE(S) Solano and Roberts, Benefield, Carroll T., Court, Fischer, Frangas, Gerou, Hullinghorst, Kagan, Kerr A., Kerr J., King S., Levy, Liston, Massey, May, McFadyen, McNulty, Merrifield, Middleton, Miklosi, Peniston, Pommer, Primavera, Rice, Ryden, Scanlan, Schafer S., Stephens, Todd, Tyler, Vaad, Vigil, Ferrandino, Kefalas, Labuda, McCann, Nikkel, Riesberg, Summers;  
also SENATOR(S) Whitehead and Penry, Bacon, Boyd, Brophy, Carroll M., Foster, Heath, Johnston, Morse, Romer, Shaffer B., Steadman, Williams.

CONCERNING INCENTIVES FOR ELECTRIC UTILITIES TO REDUCE AIR EMISSIONS, AND, IN CONNECTION THEREWITH, REQUIRING PLANS TO ACHIEVE SUCH REDUCTIONS THAT GIVE PRIMARY CONSIDERATION TO REPLACING OR REPOWERING COAL GENERATION WITH NATURAL GAS AND ALSO CONSIDERING OTHER LOW-EMITTING RESOURCES, AND MAKING AN APPROPRIATION.

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

**SECTION 1.** Article 3.2 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

## PART 2

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

## 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".

**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.

**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.

**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 SUBSECTION (2) OF THIS SECTION, 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.

**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 CLEAN AIR 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.

**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 THE EFFECTIVE DATE OF THIS PART 2 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.

**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 THE EFFECTIVE DATE OF THIS PART 2.

(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 PRE-SERVICE 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.

**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.

**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.

**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.

**SECTION 2.** 40-6-111 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**40-6-111. Hearing on schedules - suspension - new rates - rejection of tariffs.** (1) (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.

**SECTION 3.** 40-6-111 (2) (a), Colorado Revised Statutes, is amended to read:

**40-6-111. Hearing on schedules - suspension - new rates - rejection of tariffs.** (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 ~~or regulations~~ proposed, in

whole or in part, or others in lieu thereof, ~~which~~ 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 ~~which~~ 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 ~~which~~ 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 ~~or regulations~~ 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 ~~from~~ 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 ~~and regulations~~ 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.

**SECTION 4. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the public utilities commission fixed utility fund created in section 40-2-114, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the public utilities commission, for the fiscal year beginning July 1, 2010, the sum of seventy-four thousand one hundred fifteen dollars (\$74,115) cash funds and 0.6 FTE, or so much

thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2010, the sum of thirteen thousand forty-one dollars (\$13,041) and 0.1 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

**SECTION 5. Applicability.** This act shall apply to conduct occurring on or after the effective date of this act.

**SECTION 6. Safety clause.** The general assembly hereby finds,



determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Terrance D. Carroll  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Karen Goldman  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO