

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0144.01 Thomas Morris

HOUSE BILL 10-1365

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House Committees

Transportation & Energy
Appropriations

Senate Committees

Agriculture and Natural Resources
Appropriations

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
3rd Reading Unamended
March 22, 2010

HOUSE
Amended 2nd Reading
March 19, 2010

[http://www.leg.state.co.us/bills/summaries.](http://www.leg.state.co.us/bills/summaries/))

In order to meet anticipated federal "Clean Air Act" requirements to reduce emissions from coal-fired power plants, **section 1** of the bill requires all rate-regulated utilities that own or operate coal-fired electric generating units to submit to the public utilities commission (PUC) an emission reduction plan for emissions from those units covering the lesser of 900 megawatts or 50% of the utility's coal-fired electric generating units in Colorado. The plans have to give primary consideration to replacing or repowering coal-fired electric generators with natural gas and to also consider other low-emitting resources, including energy efficiency.

The PUC will provide the department of public health and environment (department) an opportunity to comment on the utilities' plans. The department will determine whether certain new or repowered electric generating units proposed under the plans will emit more than 1,100 pounds of carbon dioxide per megawatt-hour and whether the plans comply with applicable requirements of the federal and state clean air laws. The plans are to be implemented by December 31, 2017.

In evaluating the plans, the PUC is to consider the following factors: The pollution reductions to be achieved; the increased use of existing natural gas-fired electric generating capacity; and the plan's effect on economic development, electricity reliability, cost and rate increases, compliance with renewable energy standards, and reliance on energy efficiency or other low-emitting resources. The PUC is to approve, deny, or modify the plans by December 15, 2010. The utilities' actions in complying with the plans are presumed to be prudent actions, the costs of which are recoverable in rates.

The air quality control commission will consider incorporating the emissions reductions derived from the plans into the regional haze element of the state implementation plan. Early reductions of greenhouse gas emissions will count as voluntary for purposes of early reduction credits under federal law.

Section 2 authorizes the PUC to approve interim rates taking effect no later than 60 days after a rate increase filing. **Section 3** directs the PUC to require a utility to rebate rates if a final rate is lower than an interim rate.

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

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

4 **PART 2**

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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 IN COLORADO. A COORDINATED PLAN OF EMISSION REDUCTIONS FROM COAL-FIRED POWER PLANTS WILL ENABLE COLORADO 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 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 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 THE UTILITY, WHICH IN TURN COULD INCREASE THE COST OF CAPITAL TO THE UTILITY. 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

1 CONTRACTS WITHOUT THE RISK OF FUTURE REGULATORS DISALLOWING
2 CONTRACTS.

3 (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
4 COLORADO UTILITIES REQUIRE TIMELY AND FORWARD-LOOKING REVIEWS
5 OF THEIR COSTS OF PROVIDING UTILITY SERVICE IN ORDER TO UNDERTAKE
6 THE COMPREHENSIVE AND EXTENSIVE PLANNING AND CHANGES TO THEIR
7 BUSINESS OPERATIONS CONTEMPLATED BY THIS PART 2. IN ORDER TO
8 ALLOW THESE UTILITIES TO CONTINUE TO PROVIDE RELIABLE ELECTRIC
9 SERVICE, ALTER THEIR OPERATIONS IN THE MANNER DESCRIBED BY THIS
10 PART 2, AND MEET OTHER STATE PUBLIC POLICY GOALS, IT IS
11 IMPERATIVE THAT COLORADO UTILITIES CONTINUE IN SOUND FINANCIAL
12 CONDITION AND REMAIN ATTRACTIVE INVESTMENTS SO THAT SUFFICIENT
13 CAPITAL IS PROVIDED TO ACHIEVE THE STATE'S GOALS. TO THAT END, THE
14 GENERAL ASSEMBLY FINDS THAT THE COMMISSION SHOULD HAVE
15 ADDITIONAL TOOLS AND MORE FLEXIBILITY IN ITS REGULATORY
16 AUTHORITY TO ENSURE THE CONTINUED FINANCIAL HEALTH OF THESE
17 UTILITIES.

18 **40-3.2-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "AIR QUALITY CONTROL COMMISSION" MEANS THE COMMISSION
21 CREATED IN SECTION 25-7-104, C.R.S.

22 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
23 AND ENVIRONMENT.

24 (3) "FEDERAL ACT" MEANS THE FEDERAL "CLEAN AIR ACT", 42
25 U.S.C. SEC. 7401 ET SEQ., AS AMENDED.

26 (4) "STATE ACT" MEANS THE "COLORADO AIR POLLUTION
27 PREVENTION AND CONTROL ACT", ARTICLE 7 OF TITLE 25, C.R.S.

1 (5) "STATE IMPLEMENTATION PLAN" MEANS THE PLAN REQUIRED
2 BY AND DESCRIBED IN SECTION 110 (a) AND OTHER PROVISIONS OF THE
3 FEDERAL ACT.

4 **40-3.2-204. Emission control plans - role of the department of**
5 **public health and environment - timing of emission reductions -**
6 **approval.** (1) ON OR BEFORE AUGUST 15, 2010, AND IN COORDINATION
7 WITH CURRENT OR EXPECTED REQUIREMENTS OF THE FEDERAL ACT AND
8 THE STATE ACT, ALL RATE-REGULATED UTILITIES THAT OWN OR OPERATE
9 COAL-FIRED ELECTRIC GENERATING UNITS LOCATED IN COLORADO SHALL
10 SUBMIT TO THE COMMISSION AN EMISSION REDUCTION PLAN FOR
11 EMISSIONS FROM THOSE UNITS.

12 (2) (a) THE PLAN FILED UNDER THIS SECTION SHALL COVER A
13 MINIMUM OF NINE HUNDRED MEGAWATTS OR FIFTY PERCENT OF THE
14 UTILITY'S COAL-FIRED ELECTRIC GENERATING UNITS IN COLORADO,
15 WHICHEVER IS SMALLER. EXCEPT AS SET FORTH IN SECTION 40-3.2-206,
16 THE COAL-FIRED CAPACITY COVERED UNDER THE PLAN FILED UNDER THIS
17 SECTION SHALL NOT INCLUDE ANY COAL-FIRED CAPACITY THAT THE
18 UTILITY HAS ALREADY ANNOUNCED THAT IT PLANS TO RETIRE PRIOR TO
19 JANUARY 1, 2015. AT THE UTILITY'S DISCRETION, THE PLAN MAY INCLUDE
20 SOME OR ALL OF THE FOLLOWING ELEMENTS:

21 (I) NEW EMISSION CONTROL EQUIPMENT FOR OXIDES OF NITROGEN
22 AND OTHER POLLUTANTS;

23 (II) RETIREMENT OF COAL-FIRED UNITS, IF THE RETIRED
24 COAL-FIRED UNITS ARE REPLACED BY NATURAL GAS-FIRED ELECTRIC
25 GENERATION OR OTHER LOW-EMITTING RESOURCES AS DEFINED IN SECTION
26 40-3.2-206, INCLUDING ENERGY EFFICIENCY;

27 (III) CONVERSION OF COAL-FIRED GENERATION TO RUN ON

1 NATURAL GAS;
2 (IV) LONG-TERM FUEL SUPPLY AGREEMENTS;
3 (V) NEW NATURAL GAS PIPELINES AND OTHER SUPPORTING GAS
4 INFRASTRUCTURE;
5 (VI) INCREASED UTILIZATION OF EXISTING GAS-FIRED GENERATING
6 CAPACITY;
7 (VII) NEW TRANSMISSION LINES AND OTHER SUPPORTING
8 TRANSMISSION INFRASTRUCTURE;
9 (VIII) EMISSION CONTROL EQUIPMENT THAT IS REQUIRED TO BE
10 INSTALLED AT AFFECTED UNITS PRIOR TO OR IN CONJUNCTION WITH ANY
11 RETIREMENT, CONVERSION, OR EMISSION CONTROL EQUIPMENT RETROFIT
12 SET FORTH UNDER THE PLAN IN ORDER TO LIMIT ANY POLLUTANT OTHER
13 THAN OXIDES OF NITROGEN; AND
14 (IX) ANY OTHER CAPITAL, FUEL, AND OPERATIONS AND
15 MAINTENANCE EXPENDITURES APPROPRIATE TO SUPPORT THE
16 IMPLEMENTATION OF THE PLAN.

17 (b) (I) PRIOR TO FILING THE PLAN, THE UTILITY SHALL CONSULT
18 WITH THE DEPARTMENT AND SHALL WORK WITH THE DEPARTMENT IN
19 GOOD FAITH TO DESIGN A PLAN TO MEET THE CURRENT AND REASONABLY
20 FORESEEABLE REQUIREMENTS OF THE FEDERAL ACT AND STATE LAW IN A
21 COST-EFFECTIVE AND FLEXIBLE MANNER.

22 (II) THE COMMISSION SHALL PROVIDE THE DEPARTMENT AN
23 OPPORTUNITY TO:

24 (A) COMMENT ON THE AIR QUALITY, ALL OTHER AIR POLLUTANTS,
25 AND OTHER EMISSION REDUCTIONS OF THE PLAN; AND

26 (B) EVALUATE AND DETERMINE WHETHER THE PLAN IS
27 CONSISTENT WITH THE CURRENT AND REASONABLY FORESEEABLE

1 REQUIREMENTS OF THE FEDERAL ACT.

2 (III) IN COMMENTING UPON THE UTILITY'S PLAN, THE DEPARTMENT
3 SHALL DETERMINE WHETHER ANY NEW OR REPOWERED ELECTRIC
4 GENERATING UNIT PROPOSED UNDER THE PLAN, OTHER THAN A PEAKING
5 FACILITY UTILIZED LESS THAN TWENTY PERCENT ON AN ANNUAL BASIS OR
6 A FACILITY THAT CAPTURES AND SEQUESTERS MORE THAN SEVENTY
7 PERCENT OF EMISSIONS NOT SUBJECT TO A NATIONAL AMBIENT AIR
8 QUALITY STANDARD OR A HAZARDOUS AIR POLLUTANT STANDARD, WILL
9 ACHIEVE EMISSION RATES EQUIVALENT TO OR LESS THAN A
10 COMBINED-CYCLE NATURAL GAS GENERATING UNIT.

11 (IV) THE COMMISSION SHALL NOT APPROVE A PLAN EXCEPT AFTER
12 AN EVIDENTIARY HEARING AND UNLESS THE DEPARTMENT HAS
13 DETERMINED THAT THE PLAN IS CONSISTENT WITH THE CURRENT AND
14 REASONABLY FORESEEABLE REQUIREMENTS OF THE FEDERAL ACT.

15 (c) THE PLAN SHALL INCLUDE A SCHEDULE THAT WOULD RESULT
16 IN FULL IMPLEMENTATION OF THE PLAN ON OR BEFORE DECEMBER 31,
17 2017. THE SCHEDULE MAY INCLUDE INTERIM MILESTONES. THE UTILITY
18 SHALL DESIGN THE SCHEDULE TO PROTECT SYSTEM RELIABILITY, CONTROL
19 OVERALL COST, AND ASSURE CONSISTENCY WITH THE REQUIREMENTS OF
20 THE FEDERAL ACT.

21 (d) THE PLAN SHALL SET FORTH THE COSTS ASSOCIATED WITH
22 ACTIVITIES IDENTIFIED IN THE PLAN, INCLUDING THE PLANNING,
23 DEVELOPMENT, CONSTRUCTION, AND OPERATION OF ELEMENTS IDENTIFIED
24 PURSUANT TO SUBPARAGRAPHS (I) TO (IX) OF PARAGRAPH (a) OF
25 SUBSECTION (2) OF THIS SECTION, AS WELL AS THE COSTS OF ANY
26 SHUTDOWN, DECOMMISSIONING, OR REPOWERING OF EXISTING COAL-FIRED
27 ELECTRIC GENERATING UNITS THAT ARE SET FORTH IN THE PLAN.

1 **40-3.2-205. Review - approval.** (1) IN EVALUATING THE PLAN,
2 THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

3 (a) WHETHER THE DEPARTMENT REPORTS THAT THE PLAN IS
4 LIKELY TO ACHIEVE AT LEAST A SEVENTY TO EIGHTY PERCENT REDUCTION,
5 OR GREATER, IN ANNUAL EMISSIONS OF OXIDES OF NITROGEN AS
6 NECESSARY TO COMPLY WITH CURRENT AND REASONABLY FORESEEABLE
7 REQUIREMENTS OF THE FEDERAL ACT AND THE STATE ACT. THE
8 REDUCTION IN EMISSIONS UNDER THIS PARAGRAPH (a) SHALL BE
9 MEASURED FROM 2008 LEVELS AT COAL-FIRED POWER PLANTS IDENTIFIED
10 IN THE PLAN. IN DETERMINING THE REDUCTION IN EMISSIONS UNDER THIS
11 PARAGRAPH (a), THE DEPARTMENT SHALL INCLUDE:

12 (I) EMISSIONS FROM COAL-FIRED POWER PLANTS IDENTIFIED IN THE
13 PLAN AND CONTINUING TO OPERATE AFTER RETROFIT WITH EMISSION
14 CONTROL EQUIPMENT; AND

15 (II) EMISSIONS FROM ANY FACILITIES CONSTRUCTED TO REPLACE
16 ANY RETIRED COAL-FIRED POWER PLANTS IDENTIFIED IN THE PLAN.

17 (b) WHETHER THE DEPARTMENT HAS MADE THE DETERMINATION
18 UNDER SECTION 40-3.2-204 (2) (b) (III);

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20 (c) THE DEGREE TO WHICH THE PLAN WILL RESULT IN REDUCTIONS
21 IN OTHER AIR POLLUTANT EMISSIONS;

22 (d) THE DEGREE TO WHICH THE PLAN WILL INCREASE UTILIZATION
23 OF EXISTING NATURAL GAS-FIRED GENERATING CAPACITY;

24 (e) THE DEGREE TO WHICH THE PLAN ENHANCES THE ABILITY OF
25 THE UTILITY TO MEET STATE OR FEDERAL CLEAN ENERGY REQUIREMENTS,
26 RELIES ON ENERGY EFFICIENCY, OR RELIES ON OTHER LOW EMITTING
27 RESOURCES;

1 (f) WHETHER THE PLAN PROMOTES COLORADO ECONOMIC
2 DEVELOPMENT;

3 (g) WHETHER THE PLAN PRESERVES RELIABLE ELECTRIC SERVICE
4 FOR COLORADO CONSUMERS;

5 (h) WHETHER THE PLAN IS LIKELY TO HELP PROTECT COLORADO
6 CUSTOMERS FROM FUTURE COST INCREASES, INCLUDING COSTS
7 ASSOCIATED WITH REASONABLY FORESEEABLE EMISSION REDUCTION
8 REQUIREMENTS; AND

9 (i) WHETHER THE COST OF THE PLAN RESULTS IN REASONABLE
10 RATE IMPACTS. IN EVALUATING THE RATE IMPACTS OF THE PLAN, THE
11 COMMISSION SHALL EXAMINE THE IMPACT OF THE RATES ON LOW-INCOME
12 CUSTOMERS.

13 (2) THE COMMISSION SHALL REVIEW THE PLAN AND ENTER AN
14 ORDER APPROVING, DENYING, OR MODIFYING THE PLAN BY DECEMBER 15,
15 2010. ANY MODIFICATIONS REQUIRED BY THE COMMISSION SHALL RESULT
16 IN A PLAN THAT THE DEPARTMENT DETERMINES IS LIKELY TO MEET
17 CURRENT AND REASONABLY FORESEEABLE FEDERAL AND STATE CLEAN AIR
18 ACT REQUIREMENTS.

19 (3) ALL ACTIONS TAKEN BY THE UTILITY IN FURTHERANCE OF, AND
20 IN COMPLIANCE WITH, AN APPROVED PLAN ARE PRESUMED TO BE PRUDENT
21 ACTIONS, THE COSTS OF WHICH ARE RECOVERABLE IN RATES AS PROVIDED
22 IN SECTION 40-3.2-207.

23 (4) IF THE UTILITY DISAGREES WITH THE COMMISSION'S
24 MODIFICATIONS TO ITS PROPOSED PLAN WITH RESPECT TO RESOURCE
25 SELECTION, THE UTILITY MAY WITHDRAW ITS APPLICATION.

26 **40-3.2-206. Coal plant retirements - replacement resources.**

27 (1) (a) THE GENERAL ASSEMBLY FINDS THAT, IN DESIGNING A

1 COORDINATED EMISSION REDUCTION PLAN AS DESCRIBED IN SECTION
2 40-3.2-204 AND TO EXPEDITIOUSLY ACCELERATE COAL PLANT
3 RETIREMENTS, IT IS IN THE PUBLIC INTEREST FOR UTILITIES TO GIVE
4 PRIMARY CONSIDERATION TO REPLACING OR REPOWERING THEIR COAL
5 GENERATION WITH NATURAL GAS GENERATION AND THAT UTILITIES SHALL
6 ALSO CONSIDER OTHER LOW-EMITTING RESOURCES, INCLUDING ENERGY
7 EFFICIENCY, IF THIS REPLACEMENT OR REPOWERING CAN BE
8 ACCOMPLISHED PRUDENTLY AND FOR REASONABLE RATE IMPACTS
9 COMPARED WITH PLACING ADDITIONAL EMISSION CONTROLS ON
10 COAL-FIRED GENERATING UNITS, AND IF ELECTRIC SYSTEM RELIABILITY
11 CAN BE PRESERVED. TO THAT END, IN THE PLAN REQUIRED UNDER
12 SECTION 40-3.2-204, EACH UTILITY SHALL INCLUDE AN EVALUATION OF
13 THE FOLLOWING PROPOSALS:

14 (I) THE COST AND SYSTEM RELIABILITY IMPACTS OF RETIRING A
15 MINIMUM OF NINE HUNDRED MEGAWATTS OF COAL-FIRED ELECTRIC
16 GENERATING CAPACITY, OR FIFTY PERCENT OF THE UTILITY'S COAL-FIRED
17 GENERATING UNITS IN COLORADO, WHICHEVER IS LESS, BY JANUARY 1,
18 2015, AND REPOWERING THE AFFECTED COAL-FIRED FACILITIES WITH
19 NATURAL GAS OR REPLACING THEM WITH NATURAL GAS-FIRED
20 GENERATION OR OTHER LOW-EMITTING RESOURCES, INCLUDING ENERGY
21 EFFICIENCY. THE COAL-FIRED CAPACITY EVALUATED UNDER THIS
22 SUBPARAGRAPH (I) SHALL NOT INCLUDE ANY COAL-FIRED CAPACITY THAT
23 THE UTILITY HAS ALREADY ANNOUNCED THAT IT PLANS TO RETIRE PRIOR
24 TO JANUARY 1, 2015. THE UTILITY MAY ALSO PREPARE EVALUATIONS OF
25 ADDITIONAL SCENARIOS, INCLUDING SCENARIOS THAT RESULT IN THE
26 RETIREMENT OF LESS THAN NINE HUNDRED MEGAWATTS OF COAL-FIRED
27 ELECTRIC GENERATING CAPACITY OR THE RETIREMENT OF SOME PORTION

1 OF THE NINE HUNDRED MEGAWATTS OF CAPACITY AFTER JANUARY 1,
2 2015, BUT BEFORE JANUARY 1, 2018.

3 (II) RETIREMENTS OF A PORTION OF ITS COAL-FIRED GENERATING
4 CAPACITY IN THE PERIOD AFTER THE EFFECTIVE DATE OF THIS PART 2 BUT
5 PRIOR TO JANUARY 1, 2015. AT A MINIMUM, THE UTILITY SHALL
6 EVALUATE WHETHER TO RETIRE A PORTION OF ITS COAL-FIRED CAPACITY
7 ON OR BEFORE JANUARY 1, 2013, OR WHETHER THE RETIREMENTS OF
8 COAL-FIRED GENERATING FACILITIES THAT HAVE ALREADY BEEN
9 ANNOUNCED COULD BE ADVANCED TO AN EARLIER RETIREMENT DATE.

10 (b) (I) FOR ALL EVALUATIONS REQUIRED BY THIS SUBSECTION (1),
11 THE UTILITY SHALL REPORT:

12 (A) THE ESTIMATED OVERALL IMPACTS ON THE UTILITY'S
13 EMISSIONS OF OXIDES OF NITROGEN AND OTHER POLLUTANTS;

14 (B) THE FEASIBILITY OF THE RETIREMENT, REPOWERING, OR
15 REPLACEMENT ON THE SCHEDULE PROPOSED IN THE EVALUATION;

16 (C) THE COSTS AND IMPACT ON ELECTRIC RATES FROM THESE
17 PROPOSALS; AND

18 (D) THE IMPACT OF THE RETIREMENTS ON THE RELIABILITY OF THE
19 UTILITY'S ELECTRIC SERVICE.

20 (II) ALL EVALUATIONS REQUIRED BY THIS SUBSECTION (1) SHALL
21 CONTRAST THE COSTS OF REPLACING COAL GENERATION WITH NATURAL
22 GAS GENERATION AND OTHER LOW-EMITTING RESOURCES, INCLUDING
23 ENERGY EFFICIENCY, WITH THE COSTS OF INSTALLING ADDITIONAL
24 EMISSION CONTROLS ON THE COAL PLANTS.

25 (2) THE UTILITY SHALL SET FORTH IN ITS PLAN THE UTILITY'S
26 PROPOSAL FOR THE BEST WAY OF TIMELY MEETING THE EMISSION
27 REDUCTION REQUIREMENTS REQUIRED BY FEDERAL AND STATE LAW,

1 GIVEN THE NEED TO PRESERVE ELECTRIC SYSTEM RELIABILITY, TO AVOID
2 UNREASONABLE RATE INCREASES, AND THE ECONOMIC AND
3 ENVIRONMENTAL BENEFITS OF COORDINATED EMISSION REDUCTIONS.

4 (3) IN REVIEWING THE REASONABLENESS OF THE UTILITY'S
5 PROPOSED PLAN, THE COMMISSION SHALL:

6 (a) COMPARE THE RELATIVE COSTS OF REPOWERING OR REPLACING
7 COAL FACILITIES WITH NATURAL GAS GENERATION OR OTHER
8 LOW-EMITTING RESOURCES, INCLUDING ENERGY EFFICIENCY, TO AN
9 ALTERNATIVE THAT INCORPORATES EMISSION CONTROLS ON THE EXISTING
10 COAL-FIRED UNITS;

11 (b) USE REASONABLE PROJECTIONS OF FUTURE COAL AND
12 NATURAL GAS COSTS;

13 (c) INCORPORATE A REASONABLE ESTIMATE FOR THE COST OF
14 REASONABLY FORESEEABLE EMISSION REGULATION CONSISTENT WITH THE
15 COMMISSION'S EXISTING PRACTICE;

16 (d) CONSIDER THE DEGREE TO WHICH THE PLAN WILL INCREASE
17 UTILIZATION OF EXISTING NATURAL GAS-FIRED GENERATING RESOURCES
18 AVAILABLE TO THE UTILITY, TOGETHER WITH INCREASED UTILIZATION OF
19 OTHER LOW-EMITTING RESOURCES INCLUDING ENERGY EFFICIENCY; AND

20 (e) CONSIDER THE ECONOMIC AND ENVIRONMENTAL BENEFITS OF
21 A COORDINATED EMISSIONS REDUCTION STRATEGY.

22 (4) THE UTILITY MAY ENTER INTO LONG-TERM GAS SUPPLY
23 AGREEMENTS TO IMPLEMENT THE REQUIREMENTS OF THIS PART 2. A
24 LONG-TERM GAS SUPPLY AGREEMENT IS AN AGREEMENT WITH A TERM OF
25 NOT LESS THAN THREE YEARS OR MORE THAN TWENTY YEARS. ALL
26 LONG-TERM GAS SUPPLY AGREEMENTS MAY BE FILED WITH THE
27 COMMISSION FOR REVIEW AND APPROVAL. THE COMMISSION SHALL

1 DETERMINE WHETHER THE UTILITY ACTED PRUDENTLY BY ENTERING INTO
2 THE SPECIFIC AGREEMENT, WHETHER THE PROPOSED AGREEMENT APPEARS
3 TO BE BENEFICIAL TO CONSUMERS, AND WHETHER THE AGREEMENT IS IN
4 THE PUBLIC INTEREST. IF AN AGREEMENT IS APPROVED, THE UTILITY IS
5 ENTITLED TO RECOVER THROUGH RATES THE COSTS IT INCURS UNDER THE
6 APPROVED AGREEMENT, AND ANY APPROVED AMENDMENTS TO THE
7 AGREEMENT, NOTWITHSTANDING ANY CHANGE IN THE MARKET PRICE OF
8 NATURAL GAS DURING THE TERM OF THE AGREEMENT. THE COMMISSION
9 SHALL NOT REVERSE ITS APPROVAL OF THE LONG-TERM GAS AGREEMENT
10 EVEN IF THE AGREEMENT PRICE IS HIGHER THAN A FUTURE MARKET PRICE
11 OF NATURAL GAS.

12 **40-3.2-207. Cost recovery - legislative declaration.** (1) (a) A
13 UTILITY IS ENTITLED TO FULLY RECOVER THE COSTS THAT IT PRUDENTLY
14 INCURS IN EXECUTING AN APPROVED EMISSION REDUCTION PLAN,
15 INCLUDING THE COSTS OF PLANNING, DEVELOPING, CONSTRUCTING,
16 OPERATING, AND MAINTAINING ANY EMISSION CONTROL OR REPLACEMENT
17 CAPACITY CONSTRUCTED PURSUANT TO THE PLAN, AS WELL AS ANY
18 INTERIM AIR QUALITY EMISSION CONTROL COSTS THE UTILITY INCURS
19 WHILE THE PLAN IS BEING IMPLEMENTED.

20 (b) THE GENERAL ASSEMBLY FINDS THAT THE EMISSIONS
21 REDUCTIONS UNDER THIS PART 2 ARE BEING MADE TO ASSIST THE STATE
22 OF COLORADO TO COMPLY WITH CURRENT AND REASONABLY
23 FORESEEABLE EMISSION RESTRICTIONS UNDER FEDERAL LAW. TO PROVIDE
24 THIS ASSISTANCE, THE UTILITY IS BEING ASKED TO MAKE SUBSTANTIAL
25 CAPITAL INVESTMENTS AND TO ENTER INTO SUBSTANTIAL CONTRACTUAL
26 COMMITMENTS IN AN EXPEDITED TIME PERIOD OUTSIDE OF THE NORMAL
27 RESOURCE PLANNING PROCESS.

1 (2) (a) IF A PUBLIC UTILITY'S WHOLESALE SALES ARE SUBJECT TO
2 REGULATION BY THE FEDERAL ENERGY REGULATORY COMMISSION, AND IF
3 THE PUBLIC UTILITY SELLS POWER ON THE WHOLESALE MARKET FROM A
4 PROJECT DEVELOPED PURSUANT TO THE PLAN, THE COMMISSION SHALL
5 DETERMINE WHETHER TO ASSIGN A PORTION OF THE PLAN COST TO BE
6 RECOVERED FROM THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS. THE
7 COMMISSION MAY MAKE SUCH ASSIGNMENT TO THE EXTENT THAT IT DOES
8 NOT CONFLICT WITH THE PUBLIC UTILITY'S WHOLESALE CONTRACTS
9 ENTERED INTO BEFORE THE EFFECTIVE DATE OF THIS PART 2.

10 (b) EXCEPT AS SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION
11 (2), IF THE COMMISSION MAKES AN ASSIGNMENT OF COSTS PURSUANT TO
12 PARAGRAPH (a) OF THIS SUBSECTION (2) AND IF THE UTILITY APPLIES TO
13 THE FEDERAL ENERGY REGULATORY COMMISSION FOR RECOVERY AND
14 PURSUES THAT APPLICATION IN GOOD FAITH, THEN:

15 (I) TO THE EXTENT THAT THE FEDERAL ENERGY REGULATORY
16 COMMISSION DOES NOT PERMIT RECOVERY OF THE ALLOCATED
17 WHOLESALE PORTION OF PLAN-RELATED INVESTMENT, THE COMMISSION
18 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER SUCH DISALLOWED
19 WHOLESALE PORTION OF THE INVESTMENT THROUGH THE RECOVERY
20 MECHANISM DETAILED IN THIS SECTION; AND

21 (II) THE PUBLIC UTILITY MAY NOT RECOVER ANY REVENUE
22 SHORTFALL CAUSED BY A DELAY IN MAKING ANY FILING WITH THE
23 FEDERAL ENERGY REGULATORY COMMISSION OR DUE TO ANY RATE
24 SUSPENSION PERIOD EMPLOYED BY THE FEDERAL ENERGY REGULATORY
25 COMMISSION OR BECAUSE THE PUBLIC UTILITY FAILED TO PURSUE
26 RECOVERY OF THE AMOUNTS AT THE FEDERAL ENERGY REGULATORY
27 COMMISSION IN GOOD FAITH.

1 (c) IF THE PUBLIC UTILITY FAILS TO APPLY TO THE FEDERAL
2 ENERGY REGULATORY COMMISSION WITHIN SIX MONTHS AFTER THE
3 COMMISSION'S FINAL ORDER ASSIGNING A PORTION OF THE PLAN'S COSTS
4 TO THE PUBLIC UTILITY'S WHOLESALE CUSTOMERS, THE PUBLIC UTILITY IS
5 NOT ENTITLED TO RECOVER THE ASSIGNED PORTION OF THE COSTS FROM
6 ITS RETAIL CUSTOMERS.

7 (3) CURRENT RECOVERY SHALL BE ALLOWED ON CONSTRUCTION
8 WORK IN PROGRESS AT THE UTILITY'S WEIGHTED AVERAGE COST OF
9 CAPITAL, INCLUDING ITS MOST RECENTLY AUTHORIZED RATE OF RETURN
10 ON EQUITY, FOR EXPENDITURES ON PROJECTS ASSOCIATED WITH THE PLAN
11 DURING THE CONSTRUCTION, STARTUP, AND PRE-SERVICE
12 IMPLEMENTATION PHASES OF THE PROJECTS.

13 (4) TO THE EXTENT THAT AN APPROVED PLAN INCLUDES THE
14 EARLY CONVERSION OR CLOSURE OF COAL-BASED GENERATION CAPACITY
15 BY JANUARY 1, 2015, AND TO THE EXTENT THAT THE UTILITY
16 DEMONSTRATES THAT A LAG IN THE RECOVERY OF THE COSTS OF THE PLAN
17 RELATED TO THE INVESTMENT REQUIRED BY SUCH PLAN CONTRIBUTES TO
18 A UTILITY EARNING LESS THAN ITS AUTHORIZED RETURN ON EQUITY, THE
19 COMMISSION SHALL EMPLOY RATE-MAKING MECHANISMS, IN ADDITION TO
20 ALLOWING A CURRENT RETURN ON CONSTRUCTION WORK IN PROGRESS,
21 THAT PERMIT RATE ADJUSTMENTS, NO LESS FREQUENTLY THAN ONCE PER
22 YEAR, WITHOUT REQUIRING THE UTILITY TO FILE A GENERAL RATE CASE TO
23 ALLOW RECOVERY OF THE APPROVED PLAN'S COSTS. SUCH RATE-MAKING
24 MECHANISMS MAY INCLUDE A SEPARATE RATE ADJUSTMENT CLAUSE,
25 REGULAR MAKE-WHOLE RATE INCREASES, OR OTHER APPROPRIATE
26 MECHANISMS AS DETERMINED BY THE COMMISSION.

27 (5) DURING THE TIME ANY SPECIAL REGULATORY PRACTICE IS IN

1 EFFECT, THE UTILITY SHALL FILE A NEW RATE CASE AT LEAST EVERY TWO
2 YEARS OR FILE A BASE RATE RECOVERY PLAN THAT SPANS MORE THAN ONE
3 YEAR.

4 (6) THE COMMISSION SHALL ALLOW, BUT NOT REQUIRE, THE
5 UTILITY TO DEVELOP AND OWN AS UTILITY RATE-BASED PROPERTY ANY
6 NEW ELECTRIC GENERATING PLANT CONSTRUCTED PRIMARILY TO REPLACE
7 ANY COAL-FIRED ELECTRIC GENERATING UNIT RETIRED PURSUANT TO THE
8 PLAN FILED UNDER THIS PART 2.

9 **40-3.2-208. Air quality planning.** (1) THE AIR QUALITY
10 PROVISIONS OF THE EMISSION REDUCTION PLAN FILED UNDER THIS PART 2
11 ARE INTENDED TO FULFILL THE REQUIREMENTS OF THE STATE AND
12 FEDERAL ACTS AND SHALL BE PROPOSED BY THE DEPARTMENT TO THE AIR
13 QUALITY CONTROL COMMISSION AFTER THE UTILITY FILES THE PLAN WITH
14 THE COMMISSION TO BE CONSIDERED FOR INCORPORATION INTO THE
15 REGIONAL HAZE ELEMENT OF THE STATE IMPLEMENTATION PLAN.

16 (2) (a) UPON THE UTILITY'S FILING OF THE UTILITY PLAN WITH THE
17 COMMISSION PURSUANT TO SECTION 40-3.2-204, THE AIR QUALITY
18 CONTROL COMMISSION, IN RESPONSE TO THE PROPOSAL BY THE
19 DEPARTMENT, SHALL INITIATE A PROCEEDING TO INCORPORATE THE AIR
20 QUALITY PROVISIONS OF THE UTILITY PLAN INTO THE REGIONAL HAZE
21 ELEMENT OF THE STATE IMPLEMENTATION PLAN. EXCEPT AS SET FORTH IN
22 THIS SUBSECTION (2), THE AIR QUALITY CONTROL COMMISSION SHALL NOT
23 ACT ON THE UTILITY PLAN OR THE PROVISIONS OF THE REGIONAL HAZE
24 ELEMENT OF THE STATE IMPLEMENTATION PLAN THAT WOULD ESTABLISH
25 CONTROLS FOR THOSE UNITS COVERED BY THE UTILITY PLAN UNTIL AFTER
26 THE COMMISSION'S APPROVAL OF THE UTILITY PLAN.

27 (b) THE AIR QUALITY CONTROL COMMISSION SHALL VACATE THE

1 ENTIRE PROCEEDING RELATED TO THE UTILITY PLAN AND SHALL INITIATE
2 A NEW PROCEEDING FOR THE CONSIDERATION OF ALTERNATIVE PROPOSALS
3 FOR THE APPROPRIATE CONTROLS FOR THOSE UNITS COVERED BY THE
4 UTILITY PLAN FOR INCLUSION IN THE REGIONAL HAZE ELEMENT OF THE
5 STATE IMPLEMENTATION PLAN IF:

6 (I) THE COMMISSION DOES NOT APPROVE THE UTILITY PLAN BY
7 DECEMBER 15, 2010;

8 (II) THE UTILITY WITHDRAWS ITS APPLICATION PURSUANT TO
9 SECTION 40-3.2-205 (4); OR

10 (III) THE AIR QUALITY CONTROL COMMISSION REJECTS ANY
11 PORTION OF THE UTILITY PLAN AS APPROVED BY THE COMMISSION.

12 (c) THE AIR QUALITY CONTROL COMMISSION SHALL CONDUCT THE
13 PROCEEDINGS SPECIFIED IN THIS SUBSECTION (2) AFTER PUBLIC NOTICE
14 AND AN OPPORTUNITY FOR THE PUBLIC TO PARTICIPATE IN ACCORDANCE
15 WITH THE AIR QUALITY CONTROL COMMISSION'S PROCEDURES.

16 (3) IF THE FINAL APPROVED PROVISIONS OF THE STATE
17 IMPLEMENTATION PLAN ARE NOT CONSISTENT WITH THE AIR QUALITY
18 PROVISIONS OF THE UTILITY PLAN, THE UTILITY MAY FILE A REVISED
19 UTILITY PLAN WITH THE COMMISSION THAT MODIFIES THE ORIGINAL PLAN
20 TO BE CONSISTENT WITH THE FINAL APPROVED STATE IMPLEMENTATION
21 PLAN. THE REVISED UTILITY PLAN IS SUBJECT TO ALL OF THE REVIEW AND
22 COST RECOVERY PROVISIONS CONTAINED IN THIS PART 2.
23 NOTWITHSTANDING ANY REVISION REQUIRED TO THE UTILITY PLAN, THE
24 UTILITY IS ENTITLED TO FULLY RECOVER ANY COSTS IT PRUDENTLY
25 INCURRED OR CONTRACTED TO INCUR UNDER THE ORIGINALLY APPROVED
26 PLAN PRIOR TO THE PLAN'S REVISION AND ANY COSTS INCURRED AS A
27 RESULT OF ANY ENFORCEABLE STATE IMPLEMENTATION PLAN OR OTHER

1 AIR QUALITY REQUIREMENTS.

2 **40-3.2-209. Early reductions. REDUCTIONS IN EMISSIONS**
3 **ACHIEVED PURSUANT TO THIS PART 2** THROUGH A COMPLIANCE STRATEGY
4 BEFORE SUCH REDUCTIONS ARE MANDATED UNDER FEDERAL LAW ARE
5 VOLUNTARY FOR PURPOSES OF DETERMINING EARLY REDUCTION CREDITS
6 UNDER FEDERAL LAW. ==

7 **40-3.2-210. Exemption from limits on voluntary emission**
8 **reductions.** THE LIMITS ON UTILITY EXPENDITURES ON VOLUNTARY
9 EMISSION REDUCTIONS IN SECTION 40-3.2-102 DO NOT APPLY TO UTILITY
10 EXPENDITURES UNDER A PLAN APPROVED BY THE COMMISSION UNDER THIS
11 PART 2.

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

14 **40-6-111. Hearing on schedules - suspension - new rates -**
15 **rejection of tariffs.** (1) (d) NOTWITHSTANDING ANY ORDER OF
16 SUSPENSION OF A PROPOSED INCREASE IN ELECTRIC, GAS, OR STEAM RATES
17 UNDER THIS SUBSECTION (1), THE COMMISSION MAY ORDER, WITHOUT
18 HEARING, INTERIM RATES, AT ANY LEVEL UP TO THE PROPOSED NEW
19 RATES, TO TAKE EFFECT NOT LATER THAN SIXTY DAYS AFTER THE FILING
20 FOR THE PROPOSED RATE INCREASE. IN MAKING A DETERMINATION AS TO
21 WHETHER TO ALLOW INTERIM RATES, THE COMMISSION SHALL CONSIDER
22 THE AMOUNT OF THE REVENUE DEFICIENCY PRESENTED BY THE UTILITY
23 AND THE EXTENT TO WHICH THIS DEFICIENCY WOULD ADVERSELY AFFECT
24 THE UTILITY DURING THE TIME PERIOD REQUIRED TO HOLD HEARINGS ON
25 THE SUSPENDED RATES.

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

1 **40-6-111. Hearing on schedules - suspension - new rates -**
2 **rejection of tariffs.** (2) (a) (I) If a hearing is held thereon, whether
3 completed before or after the expiration of the period of suspension, the
4 commission shall establish the rates, fares, tolls, rentals, charges,
5 classifications, contracts, practices, OR rules ~~or regulations~~ proposed, in
6 whole or in part, or others in lieu thereof, ~~which~~ THAT it finds just and
7 reasonable. In making such finding in the case of a public utility other
8 than a rail carrier, the commission may consider current, future, or past
9 test periods or any reasonable combination thereof and any other factors
10 ~~which~~ THAT may affect the sufficiency or insufficiency of such rates,
11 fares, tolls, rentals, charges, or classifications during the period the same
12 may be in effect and may consider any factors ~~which~~ THAT influence an
13 adequate supply of energy, encourage energy conservation, or encourage
14 renewable energy development. THE COMMISSION SHALL CONSIDER THE
15 REASONABLENESS OF THE TEST PERIOD REVENUE REQUIREMENTS
16 PRESENTED BY THE UTILITY.

17 (II) IF THE RATES ESTABLISHED BY THE COMMISSION AFTER
18 HEARING ARE LOWER THAN ANY INTERIM RATES ESTABLISHED UNDER
19 PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION, THEN THE
20 COMMISSION SHALL ORDER THE UTILITY TO RETURN TO CUSTOMERS ON
21 THEIR UTILITY BILLS THROUGH A NEGATIVE RATE RIDER THE DIFFERENCE
22 BETWEEN THE TOTAL AMOUNT THAT WOULD HAVE BEEN COLLECTED
23 UNDER THE FINAL APPROVED RATES AND THE AMOUNT COLLECTED UNDER
24 THE INTERIM RATES FOR THE PERIOD THAT THE INTERIM RATES WERE IN
25 EFFECT, WITH INTEREST AT A RATE ESTABLISHED BY THE COMMISSION.

26 (III) All such rates, fares, tolls, rentals, charges, classifications,
27 contracts, practices, OR rules ~~or regulations~~ not so suspended, on the

1 effective date thereof, which, in the case of a public utility other than a
2 rail carrier, shall not be less than thirty days ~~from~~ AFTER the time of filing
3 the same with the commission, or of such lesser time as the commission
4 may grant, shall go into effect and be the established and effective rates,
5 fares, tolls, rentals, charges, classifications, contracts, practices, AND rules
6 ~~and regulations~~ subject to the power of the commission, after a hearing
7 on its own motion or upon complaint, as provided in this article, to alter
8 or modify the same.

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

18 (2) In addition to any other appropriation, there is hereby
19 appropriated to the department of law, for the fiscal year beginning July
20 1, 2010, the sum of thirteen thousand forty-one dollars (\$13,041) and 0.1
21 FTE, or so much thereof as may be necessary, for the provision of legal
22 services to the department of regulatory agencies related to the
23 implementation of this act. Said sum shall be from reappropriated funds
24 received from the department of regulatory agencies out of the
25 appropriation made in subsection (1) of this section.

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

1 **SECTION 6. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.