

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-1089.01 Duane Gall x4335

HOUSE BILL 14-1397

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A BILL FOR AN ACT

101 CONCERNING ADDITIONAL CRITERIA GOVERNING PARTICIPATION BY
102 THE OFFICE OF CONSUMER COUNSEL IN THE REGULATION OF
103 PUBLIC UTILITIES.

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 <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill specifies that the "public interest", as used in statutes outlining the duties of the office of consumer counsel, encompasses consideration of:

! Disparities between the rates paid by consumers in

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.

- different geographic areas of the state, where those disparities cannot be justified by inherent differences between the service territories of the utilities involved;
- ! Disparities between a utility's rate increases and the corresponding increase or decrease in the quantity or quality of service provided;
- ! Disparities between a utility's reported earnings and the quantity or quality of service provided during the reported earnings period;
- ! The economic situation of the utility's customers, or of specified classes of its customers, within its service territory, including their ability to absorb rate increases without suffering undue economic or social harm;
- ! The utility's policies concerning the shutoff and reinstatement of service for customers who fall behind in their payments; and
- ! The utility's history of compliance with its legal obligations regarding net metering and interconnection policies for customers who wish to deploy distributed generation under Colorado's renewable energy standard.

Section 1 also directs the consumer counsel to investigate and report to the general assembly on geographic disparities in rates charged to consumers.

Section 2 allows the consumer counsel to intervene in individual complaints when doing so would vindicate the interests of a class of consumers, under criteria borrowed from the court rules governing certification of class actions.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 40-6.5-104
 3 as follows:

4 **40-6.5-104. Representation by consumer counsel - duty to**
 5 **pursue public interest - definition.** (1) The consumer counsel shall
 6 represent the public interest and, to the extent consistent therewith, the
 7 specific interests of residential consumers, agricultural consumers, and
 8 small business consumers by appearing in proceedings before the
 9 commission and appeals therefrom in matters ~~which~~ THAT involve:

10 (a) Proposed changes in a public utility's rates and charges; ~~in~~

1 ~~matters involving~~

2 (b) Rule-making, ~~which~~ TO THE EXTENT THAT THE PROPOSED
3 RULES MAY have an impact on the charges, ~~the~~ provision of services, OR
4 COSTS OF RESOURCE ACQUISITION FOR ANY UTILITY or the ~~rates~~ COSTS
5 THAT A UTILITY PASSES THROUGH to consumers; and ~~in matters which~~
6 ~~involve~~

7 (c) Certificates of public convenience and necessity for facilities
8 employed in the provision of utility service, the construction of which
9 would have a material effect on the utility's rates and charges.

10 (2) (a) In exercising his OR HER discretion whether or not to
11 appear in a proceeding, the consumer counsel shall consider the
12 importance and the extent of the public interest involved. In evaluating
13 the public interest, the consumer counsel shall give due consideration to
14 the short- and long-term impact of the proceedings upon various classes
15 of consumers so as not to jeopardize the interest of one class in an action
16 by another NOR TO PERPETUATE GROSS DISPARITIES BETWEEN THE RATES
17 PAID BY CONSUMERS IN DIFFERENT GEOGRAPHIC AREAS OF THE STATE,
18 WHERE THOSE DISPARITIES CANNOT BE JUSTIFIED BY INHERENT
19 DIFFERENCES BETWEEN THE SERVICE TERRITORIES OF THE UTILITIES
20 INVOLVED. If the consumer counsel determines that there may be
21 inconsistent interests among the various classes of the consumers he OR
22 SHE represents in a particular matter, ~~he~~ THE CONSUMER COUNSEL may
23 choose to represent one of the interests or to represent no interest.
24 Nothing in this section ~~shall be construed to limit~~ LIMITS the right of any
25 person, firm, or corporation to petition or make complaint to the
26 commission or otherwise intervene in proceedings or other matters before
27 the commission.

1 (b) (I) DURING THE 2014 INTERIM, THE CONSUMER COUNSEL SHALL
2 CONDUCT AN INVESTIGATION OF THE DISPARITIES IN RATES CHARGED TO
3 CUSTOMERS IN THE SERVICE TERRITORIES OF ALL ELECTRIC UTILITIES IN
4 THE STATE AND DETERMINE WHETHER THOSE DISPARITIES CAN BE
5 JUSTIFIED BY INHERENT DIFFERENCES IN THE COST OF PROVIDING SERVICE
6 TO CUSTOMERS IN THOSE AREAS. THE CONSUMER COUNSEL SHALL REPORT
7 THE FINDINGS FROM THIS INVESTIGATION, TOGETHER WITH THE CONSUMER
8 COUNSEL'S RECOMMENDATIONS FOR LEGISLATION, IF ANY, BASED ON
9 THOSE FINDINGS, TO THE GENERAL ASSEMBLY ON OR BEFORE JANUARY 15,
10 2015.

11 (II) AS PART OF THE INVESTIGATION UNDER SUBPARAGRAPH (I) OF
12 THIS PARAGRAPH (b), THE CONSUMER COUNSEL SHALL CONVENE AT LEAST
13 THREE PUBLIC HEARINGS AT DIFFERENT LOCATIONS THROUGHOUT THE
14 STATE AND SHALL INVITE PUBLIC TESTIMONY.

15 (c) AS USED IN THIS SECTION, "PUBLIC INTEREST" MEANS THE
16 HEALTH, SAFETY, DISPOSABLE INCOME, PROPERTY VALUES, AND ECONOMIC
17 AND SOCIAL STABILITY OF UTILITY CONSUMERS. WITH REGARD TO RATE
18 CASES AND PROPOSED RESOURCE ACQUISITION PLANS SUBMITTED BY
19 UTILITIES, THE PUBLIC INTEREST ENCOMPASSES CONSIDERATION OF:

20 (I) DISPARITIES BETWEEN A UTILITY'S PAST OR PROPOSED RATE
21 INCREASES AND ANY CORRESPONDING INCREASE OR DECREASE IN THE
22 QUANTITY OR QUALITY OF SERVICE PROVIDED TO CONSUMERS;

23 (II) DISPARITIES BETWEEN A UTILITY'S REPORTED EARNINGS AND
24 THE QUANTITY OR QUALITY OF SERVICE PROVIDED DURING THE REPORTED
25 EARNINGS PERIOD;

26 (III) THE ECONOMIC SITUATION OF THE UTILITY'S CUSTOMERS, OR
27 OF SPECIFIED CLASSES OF ITS CUSTOMERS, WITHIN ITS SERVICE TERRITORY,

1 INCLUDING THEIR ABILITY TO ABSORB RATE INCREASES WITHOUT
2 SUFFERING UNDUE ECONOMIC OR SOCIAL HARM SUCH AS EVICTION OR THE
3 INABILITY TO AFFORD FOOD OR VITAL MEDICATIONS;

4 (IV) THE UTILITY'S HISTORY AND CURRENT PRACTICES REGARDING
5 SHUTOFF OF SERVICE FOR NONPAYMENT, INCLUDING ITS POLICIES
6 REGARDING WARNINGS AND GRACE PERIODS, STRUCTURED REPAYMENT
7 PLANS FOR ARREARAGES, AND REINSTATEMENT OR RECONNECTION FEES;
8 AND

9 (V) THE UTILITY'S HISTORY AND CURRENT PRACTICES REGARDING
10 COMPLIANCE WITH ITS LEGAL OBLIGATIONS UNDER SECTION 40-2-124,
11 INCLUDING ITS ADOPTION OF, AND ADHERENCE TO, REASONABLE POLICIES
12 GOVERNING NET METERING AND INTERCONNECTION FOR CUSTOMERS WHO
13 WISH TO DEPLOY DISTRIBUTED GENERATION.

14 (3) The consumer counsel shall be served with notices of all
15 proposed gas, electric, and telephone tariffs and ~~he shall be served~~ with
16 copies of all orders of the commission affecting the charges of
17 agricultural consumers, residential consumers, and small business
18 consumers.

19 **SECTION 2.** In Colorado Revised Statutes, 40-6.5-106, **amend**
20 (2) as follows:

21 **40-6.5-106. Powers of consumer counsel.** (2) The consumer
22 counsel may petition for, request, initiate, and appear and intervene as a
23 party in any proceeding before the commission concerning rate changes,
24 rule-making, charges, tariffs, modifications of service, RESOURCE
25 PLANNING AND ACQUISITION, and matters involving certificates of public
26 convenience and necessity. ~~Notwithstanding any provision of this article~~
27 ~~to the contrary,~~ The consumer counsel shall not be a party to any

1 individual complaint between a utility and an individual EXCEPT TO THE
2 EXTENT THAT THE INDIVIDUAL COMPLAINT IS REPRESENTATIVE OF THE
3 INTERESTS OF ALL CONSUMERS OR OF A CLASS OF CONSUMERS AND THOSE
4 INTERESTS WOULD BE VINDICATED THROUGH A SUCCESSFUL RESOLUTION
5 OF THE COMPLAINT. IN DETERMINING WHETHER TO PARTICIPATE IN AN
6 INDIVIDUAL COMPLAINT PROCEEDING, THE CONSUMER COUNSEL SHALL
7 APPLY SUBSTANTIALLY THE SAME FACTORS AS APPLIED BY DISTRICT
8 COURTS IN DETERMINING WHETHER A CLASS ACTION MAY BE CERTIFIED
9 UNDER C.R.C.P. 23.

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