BALLOT TITLE BOARD

MOTION FOR REHEARING

IN RE PROPOSED INITIATIVE FOR 2009-2010 # 57 ("Utility Exemption from Renewable Energy")

Jon Goldin-Dubois and Richard Kuehn, being registered electors of the State of Colorado, through their undersigned counsel, respectfully submit this Motion for Rehearing, pursuant to C.R.S. §1-40-107(1), concerning the title and ballot title and submission clause set for Proposed Initiative for 2009-2010 # 57 ("Utility Exemption from Renewable Energy") at the Title Board hearing on April 21, 2010.

1. The title and ballot title and submission clause, as presently set, refer to an exemption from "specific electric resource standards." This phrase is unclear, incomplete in terms of the subject matter of the initiative, does not fairly express the true and complete intent and meaning of the initiative, and is substantially misleading as to the content of the initiative.

a. The text of the initiative refers to an exemption "from all or part of the requirements of section 40-2-124, C.R.S., or its successor section." C.R.S. §40-2-124 contains, at a minimum, "requirements" for "electric resource standards" – para. (1)(c) – a mandated "standard rebate offer program" for solar generation on a customer's premises – para. (1)(e) – a "retail rate impact rule" – para. (1)(g) – a resource purchase mandate applicable to wholesale energy providers and their wholesale customers– subpara. (1)(g)(II) – an annual report requirement – para. (1)(h) – a separate "renewable energy standard" for municipally owned electric utilities – subsec. (3) – and interconnect and credit requirements applicable to "customer-generators" and "municipally owned utilities" – subsec. (7). The title omits reference to all but the first of these items and affirmatively indicates that the subject exemptions would only have applicability to the "electric resource standards" of para. (1)(c) of C.R.S. §40-2-124.

b. The terminology "electric resource standards" has no commonly understood meaning for the voters. And, as described above, to the extent it may be accurately understood by any voters, it is affirmatively incomplete and misleading as to the actual scope of the content of the initiative.

c. The commonly understood terminology by which the voters identify the compendium of provisions of C.R.S. §40-2-124 – from all or any part of which the ability to obtain an electoral exemption is sought by this initiative – is "renewable energy standard." "Renewable energy standard" is the headnote to the entirety of C.R.S. §40-2-124 (Ex. 1). "Renewable Energy Standard" was the

headnote to Amendment 37 by which C.R.S. §40-2-124 was presented to and adopted by the voters in 2004 (Ex. 2). "Concerning Increased Renewable Energy Standards" was the title to House Bill 07-1281 passed by the General Assembly to amend C.R.S. §40-2-124 in 2007 (Ex. 3).

d. At a minimum, to avoid misstating and affirmatively misrepresenting to the voters the contents and effect of the initiative, it is submitted that an amendment to the title (with a conforming amendment to the ballot title and submission clause) consistent with the following format is necessary:

> An amendment to the Colorado Revised Statutes concerning elections for customers to exempt electric utilities from ~~specific electric resource~~Colorado's renewable energy standard~~s~~, and, in connection therewith, authorizing members or customers of an electric utility to approve by majority vote the exemption of the utility from ~~specific electric resource~~ Colorado's renewable energy standard~~s~~; and specifying procedures for calling and conducting an election.

2. Subparagraph (5)(c)(IV) of the initiative, though an implementation measure, carries sufficient implications to the rights of voters, proponents, and opponents under the First Amendment to the Constitution of the United States, both in terms of the imposition of restrictions upon political speech and the involuntary compulsion of political speech, that the voters are entitled to be apprised of its existence in the title and ballot title and submission clause.

Respectfully submitted April 28, 2010.

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Ex. 1

40-2-124. Renewable energy standard - definitions - net metering.

(1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or less, shall be considered 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, shall be subject to the rules established under this article by the commission. No additional regulatory authority of the commission other than that specifically contained in this section is provided or implied. In accordance with article 4 of title 24, C.R.S., on or before October 1, 2007, 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. "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. 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 byproducts, 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) "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.

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

(D) Fifteen percent of its retail electricity sales in Colorado for the years 2015 through 2019; and

(E) Twenty percent of its retail electricity sales in Colorado for the years 2020 and thereafter.

(II) (A) Of the amounts in subparagraph (I) of this paragraph (c), at least four percent shall be derived from solar electric generation technologies. At least one-half of this four percent shall be derived from solar electric technologies located on-site at customers' facilities.

(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.

(III) Each kilowatt-hour of electricity generated from eligible energy resources in Colorado shall be counted as one and one-quarter 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 article.

(V) Notwithstanding any other provision of law but subject to subsection (4) of this section, the electric resource standards shall require each cooperative electric association and 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.

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

(A) That is owned by individual residents of a community, nonprofit organization, cooperative, 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 subparagraph (V) of this paragraph

(c), each kilowatt-hour of renewable electricity generated from solar electric generation technologies shall be counted as three kilowatt-hours.

(B) Sub-subparagraph (A) of this subparagraph (VII) applies only to solar electric technologies that begin producing electricity prior to July 1, 2015. 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.

(VIII) Each kilowatt-hour of electricity from eligible energy resources may take advantage of only one of the methods for counting kilowatt-hours set forth in subparagraphs (III), (VI), and (VII) of this paragraph (c).

(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) and does not exceed the retail rate impact established by paragraph (g) of this subsection (1).

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

(I) 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 minimum of two dollars per watt for the installation of eligible solar electric generation on customers' premises up to a maximum of one hundred kilowatts per installation. Such 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.

(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 shall provide incentives to qualifying retail utilities to invest in eligible energy resources in the state of Colorado. Such policies shall include:

(I) Allowing a qualifying retail utility to develop and own as utility rate-based property up to twenty-five percent of the total new eligible energy resources the utility acquires from entering into power purchase agreements and from developing and owning resources after March 27, 2007, if the new eligible energy resources proposed to be developed and owned by the utility can be constructed at reasonable cost compared to the cost of similar eligible energy resources available in the market. The qualifying retail utility shall be allowed to develop and own as utility rate-based property more than twenty-five percent but not more than fifty percent of total new eligible energy resources acquired after March 27, 2007, if the qualifying retail utility shows that its proposal would provide significant economic development, employment, energy security, or other benefits to the state of Colorado. The qualifying retail utility may develop and own these resources either by itself or jointly with other owners, and, if owned jointly, the entire jointly owned resource shall count toward the percentage limitations in this subparagraph (I). For the resources addressed in this subparagraph (I), the qualifying retail utility shall not be required to comply with the competitive bidding requirements of the commission's rules; except that nothing in this subparagraph (I) shall preclude the qualifying retail utility from bidding to own a greater percentage of new eligible energy resources than permitted by this subparagraph (I). In addition, nothing in this subparagraph (I) shall prevent the commission from waiving, repealing, or revising any commission rule in a manner otherwise consistent with applicable law.

(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.

(g) Retail rate impact rule:

(I) 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 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. 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.

(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 one hundred kilowatts.

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

(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). 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.

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.

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

(3) Section 12 of chapter 157, Session Laws of Colorado 2009, provides that the act amending subsections (1)(c)(II), (1)(e), and (1)(f)(V) and adding subsection (1.5) applies to agreements entered into on or after September 1, 2009. The act was passed without a safety clause and the act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For an explanation concerning the effective date, see page ix of this volume.

Ex. 2

AMENDMENT 37
RENEWABLE ENERGY REQUIREMENT

Ballot Title: An amendment to the Colorado revised statutes concerning renewable energy standards for large providers of retail electric service, and, in connection therewith, defining eligible renewable energy resources to include solar, wind, geothermal, biomass, small hydroelectricity, and hydrogen fuel cells; requiring that a percentage of retail electricity sales be derived from renewable sources, beginning with 3% in the year 2007 and increasing to 10% by 2015; requiring utilities to offer customers a rebate of $2.00 per watt and other incentives for solar electric generation; providing incentives for utilities to invest in renewable energy resources that provide net economic benefits to customers; limiting the retail rate impact of renewable energy resources to 50 cents per month for residential customers; requiring public utilities commission rules to establish major aspects of the measure; prohibiting utilities from using condemnation or eminent domain to acquire land for generating facilities used to meet the standards; requiring utilities with requirements contracts to address shortfalls from the standards; and specifying election procedures by which the customers of a utility may opt out of the requirements of this amendment.

Text of Proposal:

Be it enacted by the People of the State of Colorado:

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.

SECTION 2. Article 2 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

ARTICLE 2
Renewable Energy Standard

40-2-124. Renewable Energy Standard. (1) EACH PROVIDER OF RETAIL ELECTRIC SERVICE IN THE STATE OF COLORADO THAT SERVES OVER 40,000 CUSTOMERS SHALL BE CONSIDERED A QUALIFYING RETAIL UTILITY AND SHALL BE SUBJECT TO THE RULES ESTABLISHED UNDER THIS ARTICLE BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO (COMMISSION). NO ADDITIONAL REGULATORY AUTHORITY OF THE COMMISSION OTHER THAN THAT SPECIFICALLY CONTAINED HEREIN IS PROVIDED OR IMPLIED. IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., ON OR BEFORE APRIL 1, 2005, THE COMMISSION SHALL INITIATE ONE OR MORE RULEMAKING PROCESSES TO ESTABLISH THE FOLLOWING:

(A) DEFINITIONS OF ELIGIBLE RENEWABLE ENERGY RESOURCES THAT CAN BE USED TO MEET THE STANDARDS. ELIGIBLE RENEWABLE ENERGY RESOURCES ARE SOLAR, WIND, GEOTHERMAL, BIOMASS, AND HYDROELECTRICITY WITH A NAMEPLATE RATING OF 10 MEGAWATTS OR LESS. THE COMMISSION SHALL DETERMINE, FOLLOWING AN EVIDENTIARY HEARING, THE EXTENT THAT 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 THESE ELIGIBLE RESOURCES IS ALSO AN ELIGIBLE ELECTRIC GENERATION TECHNOLOGY. FOSSIL AND NUCLEAR FUELS AND THEIR DERIVATIVES ARE NOT ELIGIBLE RESOURCES. FURTHER, "BIOMASS" SHALL BE DEFINED TO MEAN:

(I) NONTOXIC PLANT MATTER THAT IS THE BYPRODUCT OF AGRICULTURAL CROPS, URBAN WOOD WASTE, MILL RESIDUE, SLASH, OR BRUSH;

(II) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES; OR

(III) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF THE TREATMENT OF WASTEWATER RESIDUALS.

(B) STANDARDS FOR THE DESIGN, PLACEMENT AND MANAGEMENT OF ELECTRIC GENERATION TECHNOLOGIES THAT USE ELIGIBLE RENEWABLE ENERGY RESOURCES TO ENSURE THAT THE ENVIRONMENTAL IMPACTS OF SUCH FACILITIES ARE MINIMIZED.

(C) (I) ELECTRIC RESOURCE STANDARDS FOR RENEWABLE ENERGY RESOURCES. THE ELECTRIC RESOURCE STANDARD SHALL REQUIRE EACH QUALIFYING RETAIL UTILITY TO GENERATE, OR CAUSE TO BE GENERATED, ELECTRICITY FROM ELIGIBLE RENEWABLE ENERGY RESOURCES IN THE FOLLOWING MINIMUM AMOUNTS:

(A) 3% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2007 THROUGH 2010;

(B) 6% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2011 THROUGH 2014;

(C) 10% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2015 AND THEREAFTER.

(II) OF THE AMOUNTS IN SUBPART (C)(I), AT LEAST 4% SHALL BE DERIVED FROM SOLAR ELECTRIC GENERATION TECHNOLOGIES. AT LEAST ONE-HALF OF THIS 4% SHALL BE DERIVED FROM SOLAR ELECTRIC TECHNOLOGIES LOCATED ON-SITE AT CUSTOMERS' FACILITIES.

(III) EACH KILOWATT-HOUR OF RENEWABLE ELECTRICITY GENERATED IN COLORADO SHALL BE COUNTED AS 1.25 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 RENEWABLE ELECTRIC GENERATION 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 PART (C)(I), THE QUALIFYING RETAIL UTILITY SHALL ACQUIRE AN EQUIVALENT AMOUNT OF EITHER (I) RENEWABLE ENERGY CREDITS, (II) DOCUMENTED AND VERIFIED ENERGY SAVINGS THROUGH ENERGY EFFICIENCY AND CONSERVATION PROGRAMS, OR (III) A COMBINATION OF BOTH. ANY CONTRACT ENTERED INTO BY A QUALIFYING RETAIL UTILITY AFTER THE EFFECTIVE DATE OF THIS ARTICLE SHALL NOT CONFLICT WITH THIS ARTICLE.

(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 RULEMAKING PROCESS AND DETERMINE IF THE SYSTEM IS GOVERNED BY RULES THAT ARE CONSISTENT WITH THE RULES ESTABLISHED FOR THIS ARTICLE.

(E) A STANDARD REBATE OFFER PROGRAM. EACH QUALIFYING RETAIL UTILITY SHALL MAKE AVAILABLE TO ITS RETAIL ELECTRICITY CUSTOMERS A STANDARD REBATE OFFER OF A MINIMUM OF $2.00 PER WATT FOR THE INSTALLATION OF ELIGIBLE SOLAR ELECTRIC GENERATION ON CUSTOMERS' PREMISES UP TO A MAXIMUM OF ONE-HUNDRED KILOWATTS PER INSTALLATION. SUCH OFFER SHALL ALLOW 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. 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.

(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. SUCH POLICIES SHALL INCLUDE:

(I) ALLOWING QUALIFYING RETAIL UTILITIES TO EARN AN EXTRA PROFIT ON THEIR INVESTMENT IN RENEWABLE ENERGY 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 50% OF THE NET ECONOMIC BENEFIT.

(II) ALLOWING QUALIFYING RETAIL UTILITIES TO EARN THEIR MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN, BUT NO BONUS, ON INVESTMENTS IN RENEWABLE ENERGY TECHNOLOGIES IF THESE INVESTMENTS DO NOT PROVIDE A NET ECONOMIC BENEFIT TO CUSTOMERS.

(III) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A RENEWABLE ENERGY CONTRACT BETWEEN THE QUALIFYING RETAIL UTILITY AND ANOTHER PARTY, THE RENEWABLE ENERGY 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 RENEWABLE ELECTRICITY SHALL HAVE A MINIMUM TERM OF 20 YEARS. 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.

(IV) A REQUIREMENT THAT QUALIFYING RETAIL UTILITIES CONSIDER PROPOSALS OFFERED BY THIRD PARTIES FOR THE SALE OF RENEWABLE ENERGY AND/OR RENEWABLE ENERGY CREDITS. THE COMMISSION MAY DEVELOP STANDARD TERMS FOR THE SUBMISSION OF SUCH PROPOSALS.

(G) RETAIL RATE IMPACT RULE. THE COMMISSION SHALL ANNUALLY ESTABLISH A MAXIMUM RETAIL RATE IMPACT FOR THIS SECTION OF 50 CENTS ($0.50) PER MONTH FOR THE AVERAGE RESIDENTIAL CUSTOMER OF A QUALIFYING RETAIL UTILITY. THE RETAIL RATE IMPACT SHALL BE DETERMINED NET OF NEW NON-RENEWABLE ALTERNATIVE

SOURCES OF ELECTRICITY SUPPLY REASONABLY AVAILABLE AT THE TIME OF THE DETERMINATION.

(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. UNDER NO CIRCUMSTANCES SHALL THE COSTS OF ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO RETAIL CUSTOMERS.

(2) THE COMMISSION SHALL ESTABLISH ALL RULES CALLED FOR IN SUBSECTIONS (A) THROUGH (G) OF THIS SECTION BY MARCH 31, 2006.

(3) IF A MUNICIPALLY OWNED ELECTRIC UTILITY OR A RURAL ELECTRIC COOPERATIVE IMPLEMENTS A RENEWABLE ENERGY STANDARD SUBSTANTIALLY SIMILAR TO THIS SECTION 40-2-124, THEN THE GOVERNING BODY OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR RURAL ELECTRIC COOPERATIVE MAY SELF-CERTIFY ITS RENEWABLE ENERGY STANDARD AND UPON SELF-CERTIFICATION WILL HAVE NO OBLIGATIONS UNDER THIS ARTICLE. THE MUNICIPALLY OWNED UTILITY OR COOPERATIVE SHALL SUBMIT A STATEMENT TO THE COMMISSION THAT DEMONSTRATES SUCH UTILITY OR COOPERATIVE HAS A SUBSTANTIALLY SIMILAR RENEWABLE ENERGY STANDARD. IN ORDER FOR SUCH UTILITY OR COOPERATIVE TO SELF-CERTIFY, SUCH RENEWABLE ENERGY STANDARD SHALL, AT A MINIMUM, MEET THE FOLLOWING CRITERIA:
(A) THE ELIGIBLE RENEWABLE ENERGY RESOURCES MUST BE LIMITED TO THOSE IDENTIFIED IN SUBSECTION 40-2-124(1)(A),
(B) THE PERCENTAGE REQUIREMENTS MUST BE EQUAL TO OR GREATER IN THE SAME YEARS THAN THOSE IDENTIFIED IN SUBSECTION 40-2-124(1)(C)(I), 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) PROCEDURE FOR EXEMPTION AND INCLUSION - ELECTION.

(A) THE BOARD OF DIRECTORS OF EACH QUALIFYING RETAIL UTILITY SUBJECT TO SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS EXEMPTION FROM SECTION 40-2-124 CRS, 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 EXEMPTION, PROVIDING THAT A MINIMUM OF 25% OF ELIGIBLE CONSUMERS PARTICIPATES IN THE ELECTION.

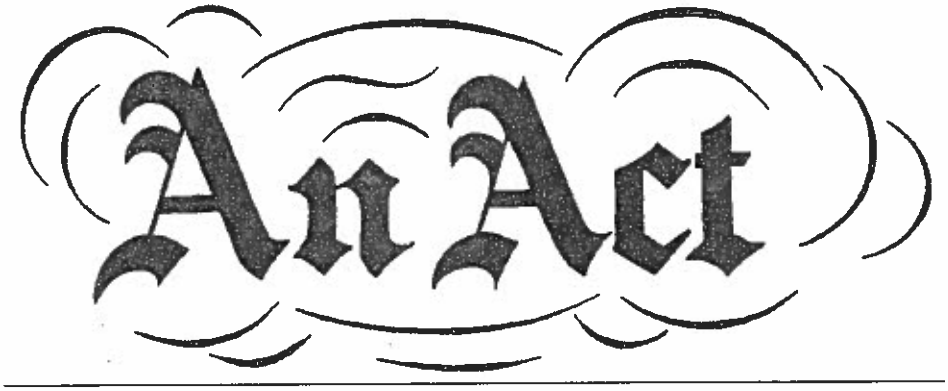
(B) THE BOARD OF DIRECTORS OF EACH MUNICIPALLY OWNED ELECTRIC UTILITY OR RURAL ELECTRIC COOPERATIVE NOT SUBJECT TO SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS INCLUSION IN SECTION 40-2-124 CRS, TO ITS CONSUMERS ON A ONE METER EQUALS ONE VOTE BASIS. APPROVAL BY A MAJORITY OF THOSE VOTING IN THE ELECTION SHALL BE REQUIRED FOR SUCH INCLUSION, PROVIDING THAT A MINIMUM OF 25% OF ELIGIBLE CONSUMERS PARTICIPATES IN THE ELECTION.

40-2-125 Eminent Domain Restrictions. 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.

SECTION 3. This article shall be effective on December 1, 2004.

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

Ex. 3



HOUSE BILL 07-1281

BY REPRESENTATIVE(S) Pommer and Witwer, Benefield, Borodkin, Buescher, Butcher, Casso, Cerbo, Fischer, Frangas, Gagliardi, Garcia, Gibbs, Green, Hicks, Jahn, Kefalas, Kerr A., Kerr J., Labuda, Levy, Looper, Madden, Marostica, Marshall, Massey, McFadyen, McGihon, McKinley, Merrifield, Peniston, Primavera, Rice, Riesberg, Roberts, Solano, Summers, Todd, Vaad, Carroll M., Carroll T., Hodge, Romanoff, Sonnenberg, Soper, Weissmann, Gallegos, Liston, Stafford, and White; also SENATOR(S) Schwartz, Bacon, Boyd, Fitz-Gerald, Gordon, Groff, Johnson, Keller, Kester, Morse, Romer, Shaffer, Tapia, Tochtrop, Tupa, Veiga, Williams, and Windels.

CONCERNING INCREASED RENEWABLE ENERGY STANDARDS.

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

SECTION 1. 40-2-124, Colorado Revised Statutes, is amended to read:

40-2-124. Renewable energy standard. (1) Each provider of retail electric service in the state of Colorado, ~~that serves over~~ OTHER THAN MUNICIPALLY OWNED UTILITIES THAT SERVE forty thousand customers OR LESS, shall be considered a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have

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

voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, shall be subject to the rules established under this article by the commission. No additional regulatory authority of the commission other than that specifically contained ~~herein~~ IN THIS SECTION is provided or implied. In accordance with article 4 of title 24, C.R.S., on or before ~~April 1, 2005~~ OCTOBER 1, 2007, the commission shall ~~initiate one or more rule-making processes~~ REVISE OR CLARIFY EXISTING RULES to establish the following:

(a) Definitions of eligible ~~renewable~~ energy resources that can be used to meet the standards. "Eligible ~~renewable~~ energy resources" ~~are~~ MEANS RECYCLED ENERGY AND RENEWABLE ENERGY RESOURCES. "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. 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 ~~these~~ AN eligible ~~resources~~ ENERGY RESOURCE is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible ENERGY resources. ~~Further~~ FOR PURPOSES OF THIS SECTION:

(I) "Biomass" ~~shall be defined to mean~~ MEANS:

~~(I)~~ (A) Nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush;

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

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

(II) "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.

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

(c) ~~(I)~~ Electric resource standards: ~~for renewable energy resources:~~

(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 ~~renewable~~ energy resources in the following minimum amounts:

(A) Three percent of its retail electricity sales in Colorado for the ~~years~~ YEAR 2007; ~~through 2010;~~

(B) FIVE PERCENT OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2008 THROUGH 2010;

~~(B)~~ (C) ~~Six~~ TEN percent of its retail electricity sales in Colorado for the years 2011 through 2014;

~~(C)~~ (D) ~~Ten~~ FIFTEEN percent of its retail electricity sales in Colorado for the years 2015 ~~and thereafter.~~ THROUGH 2019; AND

(E) TWENTY PERCENT OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2020 AND THEREAFTER.

(II) Of the amounts in subparagraph (I) of paragraph (c) of this subsection (1), at least four percent shall be derived from solar electric generation technologies. At least one-half of this four percent shall be derived from solar electric technologies located on-site at customers' facilities.

(III) Each kilowatt-hour of ~~renewable~~ electricity generated FROM ELIGIBLE ENERGY RESOURCES in Colorado shall be counted as one and one-quarter 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 ~~renewable electric generation~~ 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), ~~of this subsection (1),~~ 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 article.

(V) NOTWITHSTANDING ANY OTHER PROVISION OF LAW BUT SUBJECT TO SUBSECTION (4) OF THIS SECTION, THE ELECTRIC RESOURCE STANDARDS SHALL REQUIRE EACH COOPERATIVE ELECTRIC ASSOCIATIONS AND MUNICIPALLY OWNED UTILITIES THAT ARE QUALIFYING RETAIL UTILITIES 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.

(VI) EACH KILOWATT-HOUR OF ELECTRICITY GENERATED FROM ELIGIBLE ENERGY RESOURCES AT A COMMUNITY-BASED PROJECT SHALL BE COUNTED AS ONE AND ONE-HALF KILOWATT-HOURS. FOR PURPOSES OF THIS SUBPARAGRAPH (VI), "COMMUNITY-BASED PROJECT" MEANS A PROJECT LOCATED IN COLORADO:

(A) THAT IS OWNED BY INDIVIDUAL RESIDENTS OF A COMMUNITY, NONPROFIT ORGANIZATION, COOPERATIVE, 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 SUBPARAGRAPH (V) OF THIS PARAGRAPH (c), EACH KILOWATT-HOUR OF RENEWABLE ELECTRICITY GENERATED FROM SOLAR ELECTRIC GENERATION TECHNOLOGIES SHALL BE COUNTED AS THREE KILOWATT-HOURS.

(B) SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (VII) APPLIES ONLY TO SOLAR ELECTRIC TECHNOLOGIES THAT BEGIN PRODUCING ELECTRICITY PRIOR TO JULY 1, 2015. 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.

(VIII) EACH KILOWATT-HOUR OF ELECTRICITY FROM ELIGIBLE ENERGY RESOURCES MAY TAKE ADVANTAGE OF ONLY ONE OF THE METHODS FOR COUNTING KILOWATT-HOURS SET FORTH IN SUBPARAGRAPHS (III), (VI), AND (VII) OF THIS PARAGRAPH (c).

(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) AND DOES NOT EXCEED THE RETAIL RATE IMPACT ESTABLISHED BY PARAGRAPH (g) OF THIS SUBSECTION (1).

(e) A standard rebate offer program. 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 minimum of two dollars per watt for the installation of eligible solar electric generation on customers' premises up to a maximum of one hundred kilowatts per installation. Such 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. 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.

(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 SHALL PROVIDE INCENTIVES TO QUALIFYING RETAIL UTILITIES TO INVEST IN ELIGIBLE ENERGY RESOURCES IN THE STATE OF COLORADO. Such policies shall include:

(I) ALLOWING A QUALIFYING RETAIL UTILITY TO DEVELOP AND OWN AS UTILITY RATE-BASED PROPERTY UP TO TWENTY-FIVE PERCENT OF THE TOTAL NEW ELIGIBLE ENERGY RESOURCES THE UTILITY ACQUIRES FROM ENTERING INTO POWER PURCHASE AGREEMENTS AND FROM DEVELOPING AND OWNING RESOURCES AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (I), IF THE NEW ELIGIBLE ENERGY RESOURCES PROPOSED TO BE DEVELOPED AND OWNED BY THE UTILITY CAN BE CONSTRUCTED AT REASONABLE COST COMPARED TO THE COST OF SIMILAR ELIGIBLE ENERGY RESOURCES AVAILABLE IN THE MARKET. THE QUALIFYING RETAIL UTILITY SHALL BE ALLOWED TO DEVELOP AND OWN AS UTILITY RATE-BASED PROPERTY MORE THAN TWENTY-FIVE PERCENT BUT NOT MORE THAN FIFTY PERCENT OF TOTAL NEW ELIGIBLE ENERGY RESOURCES ACQUIRED AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (I), IF THE QUALIFYING RETAIL UTILITY SHOWS THAT ITS PROPOSAL WOULD PROVIDE SIGNIFICANT ECONOMIC DEVELOPMENT, EMPLOYMENT, ENERGY SECURITY, OR OTHER BENEFITS TO THE STATE OF COLORADO. THE QUALIFYING RETAIL UTILITY MAY DEVELOP AND OWN THESE RESOURCES EITHER BY ITSELF OR JOINTLY WITH OTHER OWNERS, AND,

IF OWNED JOINTLY, THE ENTIRE JOINTLY OWNED RESOURCE SHALL COUNT TOWARD THE PERCENTAGE LIMITATIONS IN THIS SUBPARAGRAPH (I). FOR THE RESOURCES ADDRESSED IN THIS SUBPARAGRAPH (I), THE QUALIFYING RETAIL UTILITY SHALL NOT BE REQUIRED TO COMPLY WITH THE COMPETITIVE BIDDING REQUIREMENTS OF THE COMMISSION'S RULES; EXCEPT THAT NOTHING IN THIS SUBPARAGRAPH (I) SHALL PRECLUDE THE QUALIFYING RETAIL UTILITY FROM BIDDING TO OWN A GREATER PERCENTAGE OF NEW ELIGIBLE ENERGY RESOURCES THAN PERMITTED BY THIS SUBPARAGRAPH (I). IN ADDITION, NOTHING IN THIS SUBPARAGRAPH (I) SHALL PREVENT THE COMMISSION FROM WAIVING, REPEALING, OR REVISING ANY COMMISSION RULE IN A MANNER OTHERWISE CONSISTENT WITH APPLICABLE LAW.

~~(I)~~ (II) Allowing qualifying retail utilities to earn an extra profit on their investment in ~~renewable~~ 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.

~~(II)~~ (III) Allowing qualifying retail utilities to earn their most recent commission authorized rate of return, but no bonus, on investments in ~~renewable~~ 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.

~~(III)~~ (V) If the commission approves the terms and conditions of ~~a renewable~~ AN ELIGIBLE energy RESOURCE contract between the qualifying retail utility and another party, the ~~renewable energy~~ 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 ~~renewable electricity~~ 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.

~~(IV)~~ (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.

(g) Retail rate impact rule:

(I) 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 of ~~one~~ TWO percent of the total electric bill annually for each customer. The retail rate impact shall be determined net of new ~~nonrenewable~~ alternative sources of electricity supply FROM NONELIGIBLE ENERGY RESOURCES THAT ARE reasonably available at the time of the determination. 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.

(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 ~~renewable~~ 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 ONE HUNDRED KILOWATTS.

(IV) FOR COOPERATIVE ELECTRIC ASSOCIATIONS, THE MAXIMUM RETAIL RATE IMPACT FOR THIS SECTION IS ONE PERCENT OF THE TOTAL ELECTRIC BILL ANNUALLY FOR EACH CUSTOMER.

(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). Under no circumstances shall the costs of administrative penalties be recovered from Colorado retail customers.

(2) ~~The commission shall establish all rules called for in paragraphs (a) to (g) of subsection (1) of this section by March 31, 2006.~~

(3) Each municipally owned electric utility ~~and each cooperative electric association that has voted to exempt itself from commission jurisdiction but~~ THAT is a qualifying retail utility shall implement a

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

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

(b) The percentage requirements ~~must~~ SHALL be equal to or greater in the same years than those identified in subparagraph ~~(I)~~ (V) of paragraph (c) of subsection (1) of this section, counted in the manner allowed by ~~subparagraph (III) of~~ 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 ~~and cooperative electric associations~~ that become qualifying retail utilities after December 31, 2006, the percentage requirements identified in subparagraph ~~(I)~~ (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 ~~four:~~ three: ONE percent of retail electricity sales;

(b) Years ~~five~~ FOUR through ~~eight: Six~~ SEVEN: THREE percent of retail electricity sales; ~~and~~

(c) ~~Year nine and thereafter: Ten~~ 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) ~~The board of directors of each qualifying retail utility subject to this section may, at its option, submit the question of its exemption from 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 exemption, providing that a minimum of twenty-five percent of eligible consumers participates in the election.~~

(b) The board of directors of each municipally owned electric utility ~~or cooperative electric association~~ 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) ~~Section 3 of this initiated measure provides that this section and section 40-2-125 shall be effective December 1, 2004.~~

SECTION 2. Article 2 of title 40, Colorado Revised Statutes, is

amended BY THE ADDITION OF A NEW SECTION to read:

40-2-127. Community energy funds. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT 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.

SECTION 3. Safety clause. The general assembly hereby finds,

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

Andrew Romanoff SPEAKER OF THE HOUSE OF REPRESENTATIVES	Joan Fitz-Gerald PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Karen Goldman SECRETARY OF THE SENATE

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO