C.R.S. 40-2-124

Statutes current through Chapter 122 of the 2022 Regular Session and effective on or before April 22, 2022. The inclusion of the 2022 legislation is not final. It will be final later in 2022 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

Colorado Revised Statutes Annotated Title 40. Utilities (§§ 40-1-101 — 40-42-108) Public Utilities (§§ 40-1-101 — 40-17.5-105) General and Administrative (Arts. 1 — 9.7) Article 2. Public Utilities Commission - Renewable Energy Standard (Pts. 1 — 2) Part 1. General and Administrative Provisions (§§ 40-2-101 — 40-2-137)

40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration - rules.

(1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, is a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, is subject to the rules established under this article 2 by the commission. No additional regulatory authority is provided to the commission other than that specifically contained in this section. In accordance with article 4 of title 24, the commission shall revise or clarify existing rules to establish the following:

(a) Definitions of eligible energy resources that can be used to meet the standards. "Eligible energy resources" means recycled energy, renewable energy resources, and renewable energy storage. In addition, resources using coal mine methane and

synthetic gas produced by pyrolysis of waste materials are eligible energy resources if the commission determines that the electricity generated by those resources is greenhouse gas neutral. The commission shall determine, following an evidentiary hearing, the extent to which such electric generation technologies utilized in an optional pricing program may be used to comply with this standard. A fuel cell using hydrogen derived from an eligible energy resource is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible energy resources. As used in this section:

(I) "Biomass" means:

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

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

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

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

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

(A) Retail distributed generation; and

(B) Wholesale distributed generation.

(IV) "Greenhouse gas neutral", with respect to electricity generated using biomass or by a coal mine methane or synthetic gas facility, means that the greenhouse gases emitted into the atmosphere as a result of the process of converting the fuel source to electricity do not exceed the greenhouse gases that would have been emitted into the atmosphere over the next five years, beginning with the commencement of the process or initial date of operation of the facility, if the fuel source had not been converted to electricity, where greenhouse gases are measured in terms of carbon dioxide equivalent.

(IV.5) "Off-site" means located on noncontiguous property owned or leased by a customer of a qualifying retail utility.

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

(VI)

(A) "Recycled energy" means energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that either converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and does not combust additional fossil fuel or is pumped hydroelectricity generation that does not combust fossil fuel to pump water; is not located on a natural waterway; includes measures to prevent fish mortality in the facility; does not impact any decreed in-stream flow; and does not cause any violation of state water quality standards when operated.

(B) Subject to subsection (1)(a)(VI)(A) of this section, "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.

(VII) "Renewable energy resources" means solar, wind, geothermal, biomass that is

greenhouse gas neutral, 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 and that does not require the construction of any new dams or reservoirs. Notwithstanding any other provision of this subsection (1)(a)(VII), a biomass electric generation facility that was in existence on or before January 1, 2021, or that has a nameplate rating of ten megawatts or less, shall be considered a renewable energy resource.

(VII.5) "Renewable energy storage" means an energy storage system, as defined in section 40-2-130 (2)(a), that stores energy produced only by renewable energy resources.

(VIII) Except as provided in subsection (1)(c)(II)(D) of this section with respect to cooperative electric associations, "retail distributed generation" means a renewable energy resource or renewable energy storage that is located on any property owned or leased by the customer within the service territory of the qualifying retail utility and is interconnected on the customer's side of the utility meter. In addition, retail distributed generation shall provide electric energy primarily to serve the customer's loads and shall be sized to supply no more than two hundred percent of the reasonably expected average annual total consumption of electricity at all properties owned or leased by the customer within the utility's service territory.

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

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

(c) Electric resource standards:

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

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

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

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

(D) Twenty percent of its retail electricity sales in Colorado for the years 2015 through 2019, with distributed generation equaling at least one and three-fourths percent of its retail electricity sales in 2015 and 2016 and two percent of its retail electricity sales in 2017, 2018, and 2019; and

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

(II)

(A) Of the amounts of distributed generation in sub-subparagraphs (C), (D), and (E) of subparagraph (I), sub-subparagraph (D) of subparagraph (V), and subparagraph

(V.5) of this paragraph (c), at least one-half must be derived from retail distributed generation; except that this sub-subparagraph (A) does not apply to a qualifying retail utility that is a municipal utility.

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

(B) A qualifying retail utility that is investor-owned shall not limit the sizing of on-site retail distributed generation capacity based solely on past consumption. Cooperative electric associations are not subject to this subsection (1)(c)(II)(B).

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

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

(III) Each kilowatt-hour of electricity generated from eligible energy resources, other than retail distributed generation and other than eligible energy resources beginning operation on or after January 1, 2015, counts as one and one-fourth kilowatt-hours for the purposes of compliance with this standard.

(IV) To the extent that the ability of a qualifying retail utility to acquire eligible energy resources is limited by a requirements contract with a wholesale electric supplier, the qualifying retail utility shall acquire the maximum amount allowed by the contract. For any shortfalls to the amounts established by the commission pursuant to subparagraph (I) of this paragraph (c), the qualifying retail utility shall acquire an equivalent amount of either renewable energy credits; documented and verified energy savings through energy efficiency and conservation programs; or a combination of both. Any contract entered into by a qualifying retail utility after December 1, 2004, shall not conflict with this section.

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

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

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

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

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

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

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

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

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

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

(VII)

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

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

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

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

this paragraph (c).

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

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

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

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

(d)

(I)

(A) Subject to rules promulgated pursuant to subsection (1)(d)(II) of this section, a system of tradable renewable energy credits that a qualifying retail utility may use 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 2.

(B) The commission shall not restrict the qualifying retail utility’s ownership or purchase of renewable energy if: The qualifying retail utility complies with the electric

resource standard of subsection (1)(c) of this section and the conditions of any rate recovery mechanism adopted pursuant to subsection (1)(f)(IV) of this section; the qualifying retail utility uses definitions of eligible energy resources that are limited to those identified in subsection (1)(a) of this section, as clarified by the commission, and does not exceed the retail rate impact established by subsection (1)(g) of this section; and the commission finds that the resources are prudently acquired at a reasonable cost and rate impact.

(C) Once a qualifying retail utility either receives a permit pursuant to article 7 or 8 of title 25 for a generation facility that relies on or is affected by the definitions of eligible energy resources or enters into a contract that relies on or is affected by the definitions of eligible energy resources, the definitions apply to the contract or facility notwithstanding any subsequent alteration of the definitions, whether by statute or rule.

(D) For purposes of compliance with the renewable energy standard, if a generation system uses a combination of fossil fuel and eligible renewable energy resources to generate electricity, a qualifying retail utility that is not an investor-owned utility may count as eligible renewable energy only the proportion of the total electric output of the generation system that results from the use of eligible renewable energy resources.

(II) The system of tradable renewable energy credits must include requirements for the retirement of renewable energy credits to ensure that compliance with the renewable energy standard:

(A) Is effectuated in a manner that benefits Colorado's cities, counties, and businesses;

(B) Enables a utility's customers to account for the environmental benefits of the renewable energy generated to serve those customers and purchased for those customers; and

(C) Is consistent with timely attainment of the state's clean energy and climate goals.

(e) A requirement that each qualifying retail utility, except for cooperative electric associations and municipally owned utilities, make available to their customers a standard rebate offer and net metering service, under which:

(I)

(A) Customers are offered a specified amount per watt for the installation of eligible solar electric generation on the customers' premises, up to a maximum of one hundred kilowatts per installation.

(A.5) A qualifying retail utility's interconnection standards for distributed energy resources must allow for customer ownership and use of a meter collar adapter to permit the interconnection of distributed energy resources and for electrical isolation of the customer's site for energy backup purposes. The qualifying retail utility shall, within one hundred eighty days after June 21, 2021, adopt a transparent process for approving customer-owned meter collar adapters that meet minimum safety requirements. The commission shall resolve any disputes concerning the substance or procedures involved in the approval process or its application in any specific case. The approval process must take no more than sixty days after the date of submission for approval of a specific meter collar adapter by the proposing party. Approved meter collar adapters must be UL listed and must be suitable per the adapter's UL listing documentation for use in meter sockets of up to two hundred amperes. The qualifying

retail utility shall define and publish in its tariffs a process to request and install a meter collar adapter, which process is timely and not unduly burdensome to the customer. The qualifying retail utility shall post on its website its list of approved meter collar adapters, which list must be updated at least annually.

(B) The qualifying retail utility's net metering service must allow the customer's retail electricity consumption to be offset by the electricity generated by customer-sited renewable energy generation facilities. To the extent that the electricity thus generated exceeds the customer's consumption during a billing month, the qualifying retail utility shall carry forward the value of the excess electricity as a credit to the customer's consumption in the following month. The monthly carry-forward continues from month to month indefinitely until the customer terminates service with the qualifying retail utility at all service addresses within the service territory of the qualifying retail utility, at which time the qualifying retail utility is not required to pay the customer for any remaining excess electricity supplied by the customer; except that, to the extent that solar electricity generation exceeds the customer's consumption during a calendar year, the customer may elect, in writing, to be reimbursed by the qualifying retail utility at the end of each calendar year at the qualifying retail utility's average hourly incremental cost of electricity supply over that calendar year. The customer, at the end of the calendar year, and the qualifying retail utility, upon termination of service to the customer, shall be permitted to donate any of the customer's remaining excess billing credits to a third-party administrator that is qualified and approved by the qualifying retail utility or the commission for the purpose of providing low-income energy assistance and bill reductions within the qualifying retail utility's service territory. The qualifying retail utility shall not apply unreasonably burdensome requirements to interconnection, reimbursement, or donation options in connection with the qualifying retail utility's net metering service. Electricity generated under this program is eligible for purposes of the qualifying retail utility's compliance with this article 2 so long as the qualifying retail utility purchases the associated renewable energy credits. The commission shall not permit a qualifying retail utility to place a customer in a different rate class, other than the customer's default rate class, solely as a result of the customer's participation in a rebate offer or net metering service.

(C) For retail distributed generation that is used to meet loads of a noncontiguous property owned or leased by the customer, a qualifying retail utility's net metering program must provide the customer a net metering credit minus a reasonable charge, as determined by the commission, to cover the utility's costs of delivering to the customer's premises the electricity generated by the retail distributed generation and of administering the off-site net metering credits. The reasonable charge shall be fixed for the term of the interconnection agreement pertaining to the retail distributed generation facilities and shall be determined by a utility tariff filing, which may be updated once annually. The commission shall ensure that this charge does not reflect costs that are already recovered by the utility from the customer through other charges. If, and to the extent that, a customer's net metering credit exceeds the customer's electric bill in any billing period, the net metering credit shall be carried forward and applied against future bills.

(D) The commission may permit a qualifying retail utility to limit the total amount carried forward on behalf of a customer pursuant to subsection (1)(e)(I)(B) of this section so long as the limit is not less than one hundred percent of the customer's

reasonably expected average annual consumption. Any excess electricity above the limit shall be reimbursed at the qualifying retail utility's average hourly incremental cost of electricity supply over the immediately preceding twelve-month period.

(E) For the 2022 and 2023 compliance years, each qualifying retail utility shall issue one or more standard offers to interconnect and net meter off-site, customer-owned distributed generation and shall reserve, for this purpose, capacity equal to one-quarter of one percent of the utility's annual retail sales from the immediately preceding year. Thereafter, the commission may set limits, based on market demand, on annual minimum and maximum available capacity for newly installed off-site distributed generation that the qualifying retail utility shall plan to interconnect and net meter. The customer may choose to retain or sell to the qualifying retail utility the customer's renewable energy credits.

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

(II) The owner or operator of solar electric generation facilities located on any property owned or leased by the consumer, which property is within the service territory of the qualifying retail utility, may sell electricity to the consumer. If a solar electric generation facility is not owned by the consumer, then the commission shall not require the qualifying retail utility 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 eligible energy resources on the customer's premises so long as the generation is one megawatt or less in size. When establishing the standard offers, the qualifying retail utility should set the prices for renewable energy credits at levels sufficient to encourage increased distributed generation and renewable energy storage 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 subsection (1)(c) of this section without exceeding the retail rate impact limit in subsection (1)(g) of this section.

(IV) The commission shall encourage qualifying retail utilities to design rebate offers and other incentive programs that allow consumers of all income levels, particularly those in low-income and disproportionately impacted communities, to obtain the benefits offered by distributed generation and energy storage, and shall encourage programs that are designed to extend participation to customers in these and other market segments that have previously been underrepresented in the standard offer program.

(f) Policies for the recovery of costs incurred with respect to these standards for qualifying retail utilities that are subject to rate regulation by the commission. These policies must provide incentives to qualifying retail utilities to invest in eligible energy resources and must include:

(I) Repealed.

(II) Allowing qualifying retail utilities to earn an extra profit on their investment in eligible energy resource technologies if these investments provide net economic

benefits to customers as determined by the commission. The allowable extra profit in any year shall be the qualifying retail utility's most recent commission authorized rate of return plus a bonus limited to fifty percent of the net economic benefit.

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

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

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

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

(V) If the commission approves the terms and conditions of an eligible energy resource contract between the qualifying retail utility and another party, the contract and its terms and conditions shall be deemed to be a prudent investment, and the commission shall approve retail rates sufficient to recover all just and reasonable costs associated with the contract. All contracts for acquisition of eligible energy resources shall have a minimum term of twenty years; except that the contract term may be shortened at the sole discretion of the seller. All contracts for the acquisition of renewable energy credits from solar electric technologies located on site at customer facilities shall also have a minimum term of twenty years; except that such contracts for systems of between one hundred kilowatts and one megawatt may have a different term if mutually agreed to by the parties.

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

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

(g) Retail rate impact rule:

(I)

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

(B) If the retail rate impact does not exceed the maximum impact permitted by this paragraph (g), the qualifying utility may acquire more than the minimum amount of eligible energy resources and renewable energy credits required by this section. At the request of the qualifying retail utility and upon the commission's approval, the qualifying retail utility may advance funds from year to year to augment the amounts

collected from retail customers under this paragraph (g) for the acquisition of more eligible energy resources. Such funds shall be repaid from future retail rate collections, with interest calculated at the qualifying retail utility's after-tax weighted average cost of capital, so long as the retail rate impact does not exceed two percent of the total annual electric bill for each customer.

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

(D) To address historical equity issues concerning access by low-income customers to renewable energy and retail distributed generation programs and prioritize investment and direct benefits for disproportionately impacted communities, the commission shall require qualifying retail utilities to plan their expenditures so that, before reaching the limits imposed by this subsection (1)(g), they will prioritize renewable energy investment and programs for low-income customers and disproportionately impacted communities. Beginning on January 1, 2022, and continuing through at least December 31, 2028, not less than forty percent of such expenditures, not including any funds set aside to recover the cost of clean energy resources and directly related interconnection facilities pursuant to section 40-2-125.5 (4)(a)(VIII), shall be directed to programs, incentives, or other direct investments benefitting low-income customers and disproportionately impacted communities.

(II) Each wholesale energy provider shall offer to its wholesale customers that are cooperative electric associations the opportunity to purchase their load ratio share of the wholesale energy provider's electricity from eligible energy resources. If a wholesale customer agrees to pay the full costs associated with the acquisition of eligible energy resources and associated renewable energy credits by its wholesale provider by providing notice of its intent to pay the full costs within sixty days after the wholesale provider extends the offer, the wholesale customer shall be entitled to receive the appropriate credit toward the renewable energy standard as well as any associated renewable energy credits. To the extent that the full costs are not recovered from wholesale customers, a qualifying retail utility shall be entitled to recover those costs from retail customers.

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

(IV)

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

(B) Notwithstanding subparagraph (I) of this paragraph (g), the commission may ensure that customers who install distributed generation continue to contribute, in a nondiscriminatory fashion, their fair share to their utility's renewable energy program fund or equivalent renewable energy support mechanism even if such contribution results in a charge that exceeds two percent of such customers' annual electric bills.

(h) Annual reports. Each qualifying retail utility shall submit to the commission an annual report that provides information relating to the actions taken to comply with

this article including the costs and benefits of expenditures for renewable energy. The report shall be within the time prescribed and in a format approved by the commission.

(i) Rules necessary for the administration of this article including enforcement mechanisms necessary to ensure that each qualifying retail utility complies with this standard, and provisions governing the imposition of administrative penalties assessed after a hearing held by the commission pursuant to section 40-6-109. The commission shall exempt a qualifying retail utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact cap described in paragraph (g) of this subsection (1) has been reached and the utility has not achieved full compliance with paragraph (c) of this subsection (1). The qualifying retail utility's actions under an approved compliance plan shall carry a rebuttable presumption of prudence. Under no circumstances shall the costs of administrative penalties be recovered from Colorado retail customers.

(j) Rules to accommodate aggregation and interconnection of retail distributed generation, including:

(I) Allowing electricity generated from a single renewable retail distributed generation resource on a multi-unit property to be allocated as net metering credits to either common areas of the property or to individually metered accounts without requiring the resource to be physically interconnected with each owner's or lessee's meter;

(II) Allowing a utility customer with retail distributed generation interconnected with a master meter to allocate excess net metering credits to any meter on property owned or leased by the customer in accordance with a customer-defined system share for each additional meter, with excess net metering credits applied to the additional meter;

(III) Where retail distributed generation is being used to offset the load of multiple, separately metered properties that are not on the same rate schedule, allowing allocation of the bill credits that may be applied to any of the metered accounts;

(IV) Requiring qualifying retail utilities to apply the same installation standards and list of approved meter collar adapters developed pursuant to subsection (1)(e)(I)(A.5) of this section to all customers desiring to use retail distributed generation to offset their individual energy loads;

(V) Requiring qualifying retail utilities to develop optional programs and tariffs to support the adoption and use of dispatchable renewable distributed generation and storage resources to provide grid benefits, such as enhancing the efficiency, capacity, and resilience of the electric grid, and to reduce greenhouse gas emissions. As used in this subsection (1)(j)(V), "dispatchable" means that the power output supplied to the electric grid by a customer-sited renewable energy generation or storage facility can be turned on and off or otherwise adjusted on demand.

(VI) Requiring qualifying retail utilities to adopt procedures designed to ensure that, for all renewable distributed generation or storage facilities included in their net metering service:

(A) The size of any off-site, single-meter installation does not exceed five hundred kilowatts;

(B) The size of any off-site, multi-meter installation does not exceed three hundred kilowatts per meter; and

(C) For any off-site facility exceeding three hundred kilowatts, the installation and any necessary repair or maintenance work is performed by a licensed master electrician,

licensed journeyman electrician, or licensed residential wireman or by properly supervised apprentices, in addition to complying with all applicable interconnection rules.

(1.5) Notwithstanding any provision of law to the contrary, subsections (1)(e) and (1)(j) of this section do not apply to a municipally owned utility or to a cooperative electric association.

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

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

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

(b) The percentage requirements shall be equal to or greater in the same years than those identified in subparagraph (V) of paragraph (c) of subsection (1) of this section, counted in the manner allowed by said paragraph (c); and

(c) The utility must have an optional pricing program in effect that allows retail customers the option to support through utility rates emerging renewable energy technologies.

(4) For municipal utilities that become qualifying retail utilities after December 31, 2006, the percentage requirements identified in subparagraph (V) of paragraph (c) of subsection (1) of this section shall begin in the first calendar year following qualification as follows:

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

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

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

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

(5) Procedure for exemption and inclusion - election.

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

(b) The board of directors of each municipally owned electric utility not subject to this section may, at its option, submit the question of its inclusion in this section to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such inclusion, providing that a minimum of twenty-five percent of eligible consumers participates in the election.

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

jurisdictional utilities. Cooperative electric associations shall not be required to obtain commission approval of annual compliance reports, and no additional regulatory authority of the commission other than that specifically contained in this subsection (5.5) is created or implied by this subsection (5.5).

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

(7)

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

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

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

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

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

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

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

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

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

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

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

(8) Qualifying wholesale utilities - definition - electric resource standard - tradable credits - reports.Electric resource standard.Tradable renewable energy credits.Reports.

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

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

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

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

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

(f) In implementing the electric resource standard established in this subsection (8), a qualifying wholesale utility shall assure that the costs, both direct and indirect, attributable to compliance with the standard are recovered from its Colorado members. The qualifying wholesale utility shall employ such cost allocation methods as are required to assure that any direct or indirect costs attributable to compliance with the standard established in this subsection (8) do not affect the cost or price of the qualifying wholesale utility's sales to customers outside of Colorado.

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

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

(II) In the years before 2020, describe whether it is making sufficient progress toward meeting the standard in 2020 or is likely to meet the 2020 standard early. If it is not making sufficient progress toward meeting the standard in 2020, it shall explain why

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

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

History

Source: Initiated 2004: Entire section added, see L. 2005, p. 2337, effective December 1, 2004, proclamation of the Governor issued December 1, 2004. **L. 2005:**Entire section amended, p. 234, § 1, effective August 8; (6) added by revision, see L. 2005, p. 2340, § 3. **L. 2007:**Entire section amended, p. 257, § 1, effective March 27. **L. 2008:**(7) added, p. 190, § 3, effective August 5. **L. 2009:**(1)(c)(II), (1)(e), and (1)(f)(V) amended and (1.5) added,(SB 09-051), ch. 157, p. 678, § 11, effective September 1. **L. 2010:**IP(1), (1)(a), (1)(c)(I), (1)(c)(II), (1)(c)(III), (1)(c)(IV), (1)(c)(VIII), (1)(e)(I), (1)(f)(IV), (1)(g)(I), (1)(g)(III), (1)(g)(IV), and (1)(i) amended and (1)(e)(I.5) and (1)(f)(VII) added, (HB 10-1001), ch. 37, pp. 144, 147, 148, §§ 1, 2, 3, effective August 11; (1)(c)(VI)(A) amended and (1)(c)(IX) added,(HB 10-1418), ch. 406, p. 2007, § 1, effective August 11; (1)(d) amended,(SB 10-177), ch. 392, p. 1864, § 7, effective August 11. **L. 2013:**IP(1), (1)(a), (1)(c)(II)(A), (1)(c)(III), IP(1)(c)(V), IP(1)(c)(VI), (1)(c)(VII)(A), IP(1)(f), (1)(g)(I)(A), and (1)(g)(IV)(A) amended and (1)(c)(V.5), (1)(c)(X), and (8) added,(SB 13-252), ch. 414, p. 2452, § 1, effective July 1. **L. 2015:**(1)(c)(VII) amended,(SB 15-254), ch. 257, p. 934, § 1, effective May 29; (1)(c)(II)(A.5) added,(SB 15-046), ch. 142, p. 433, § 1, effective August 5; (1)(c)(II)(D) added,(HB 15-1377), ch. 200, p. 691, § 1, effective August 5. **L. 2019:**IP(1) amended and (1)(f)(I) repealed,(SB 19-236), ch. 359, p. 3291, § 4, effective May 30. **L. 2021:**(1)(d) amended and (1)(g)(I)(D) added,(SB 21-272), ch. 220, p. 1159, § 6, effective June 10; IP(1)(a), (1)(a)(IV), (1)(a)(VII), (1)(a)(VIII), (1)(c)(II)(B), IP(1)(e), (1)(e)(I), (1)(e)(II), (1)(e)(III), and (1.5) amended and (1)(a)(IV.5), (1)(a)(VII.5), (1)(e)(IV), and (1)(j) added,(SB 21-261), ch. 280, p. 1619, § 5, effective June 21; IP(1)(a) and (1)(a)(VI) amended,(HB 21-1052), ch. 52, p. 220, § 1, effective September 7.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 40

State Notes

Notes

Editor's note:

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

:u360 FOR: :u1080 1,066,023

:u360 AGAINST: :u1080 922,577

(3) Amendments to subsection IP(1)(a) by SB 21-261 and HB 21-1052 were harmonized.

(4) Section 14 of chapter 220 (SB 21-272), Session Laws of Colorado 2021, provides that the act changing this section applies to conduct occurring on or after June 10, 2021.

(5) Section 7 of chapter 280 (SB 21-261), Session Laws of Colorado 2021, provides that the act changing this section applies to contracts for distributed generation and energy storage facilities executed on or after June 21, 2021.

ANNOTATION

Law reviews.

For comment, "Compromise in Colorado: Solar Net Metering and the Case for 'Renewable Avoided Cost'", see 86 U. Colo. L. Rev. 1095 (2015).

The requirement that Colorado utility companies obtain an increasing proportion of their electricity from renewable sources does not violate the commerce clause of the United States constitution.

Energy & Env't Legal Inst. v. Epel, 43 F. Supp. 3d 1171 (D. Colo. 2014), aff'd, 793 F. 3d 1169 (10th Cir.), cert. denied, __ U.S. __, 136 S. Ct. 595, 193 L. Ed. 2d 487 (2015).

Research References & Practice Aids

Cross references:

For the legislative declaration in SB 21-261, see section 1 of chapter 280, Session Laws of Colorado 2021.

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