

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

(1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, 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., 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. 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) "Distributed renewable electric generation" or "distributed generation" means:

(A) Retail distributed generation; and

(B) Wholesale distributed generation.

(III) "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.

(IV) "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.

(V) "Retail distributed generation" means a renewable energy resource that is located on the site of a customer's facilities 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 load and shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the customer at that site. For purposes of this subparagraph (V), the customer's "site"

includes all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(VI) "Wholesale distributed generation" means a renewable energy resource in Colorado 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) of this paragraph (c), at least one-half shall be derived from retail distributed generation.

(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.

(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.

(III) Each kilowatt-hour of electricity generated from eligible energy resources in Colorado, other than retail distributed generation, 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 section.

(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, 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 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) 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.

(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), uses definitions of eligible energy resources that are limited to those identified in paragraph (a) of this subsection (1), as clarified by the commission, and does not exceed the retail rate impact established by paragraph (g) of this subsection (1). Once a qualifying retail utility either receives a permit pursuant to article 7 or 8 of title 25, C.R.S., 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, such definitions apply to the contract or facility notwithstanding any subsequent alteration of the definitions, whether by statute or rule. 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 qualified 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.

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

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

(B) The standard rebate 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.

(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) 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.

(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 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.

(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 one 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.

(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

effective August 11.

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 2 of chapter 406 and section 8 of chapter 392, Session Laws of Colorado 2010, provide that the acts amending subsections (1)(c)(VI)(A) and (1)(d) and adding subsection (1)(c)(IX) apply to conduct occurring on or after August 11, 2010.