

AMENDMENT 37
RENEWABLE ENERGY REQUIREMENT

1 **Ballot Title:** An amendment to the Colorado revised statutes concerning renewable
2 energy standards for large providers of retail electric service, and, in connection
3 therewith, defining eligible renewable energy resources to include solar, wind,
4 geothermal, biomass, small hydroelectricity, and hydrogen fuel cells; requiring that a
5 percentage of retail electricity sales be derived from renewable sources, beginning with
6 3% in the year 2007 and increasing to 10% by 2015; requiring utilities to offer
7 customers a rebate of \$2.00 per watt and other incentives for solar electric generation;
8 providing incentives for utilities to invest in renewable energy resources that provide
9 net economic benefits to customers; limiting the retail rate impact of renewable energy
10 resources to 50 cents per month for residential customers; requiring public utilities
11 commission rules to establish major aspects of the measure; prohibiting utilities from
12 using condemnation or eminent domain to acquire land for generating facilities used to
13 meet the standards; requiring utilities with requirements contracts to address shortfalls
14 from the standards; and specifying election procedures by which the customers of a
15 utility may opt out of the requirements of this amendment.

16 **Text of Proposal:**

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

18 **SECTION 1. Legislative declaration of intent:**

19 Energy is critically important to Colorado's welfare and development, and its use
20 has a profound impact on the economy and environment. Growth of the state's
21 population and economic base will continue to create a need for new energy resources,
22 and Colorado's renewable energy resources are currently underutilized.

23 Therefore, in order to save consumers and businesses money, attract new businesses
24 and jobs, promote development of rural economies, minimize water use for electricity
25 generation, diversify Colorado's energy resources, reduce the impact of volatile fuel
26 prices, and improve the natural environment of the state, it is in the best interests of the
27 citizens of Colorado to develop and utilize renewable energy resources to the maximum
28 practicable extent.

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

3 **ARTICLE 2**
4 **Renewable Energy Standard**

5 **40-2-124. Renewable Energy Standard.** (1) EACH PROVIDER OF RETAIL ELECTRIC
6 SERVICE IN THE STATE OF COLORADO THAT SERVES OVER 40,000 CUSTOMERS SHALL BE
7 CONSIDERED A QUALIFYING RETAIL UTILITY AND SHALL BE SUBJECT TO THE RULES
8 ESTABLISHED UNDER THIS ARTICLE BY THE PUBLIC UTILITIES COMMISSION OF THE STATE
9 OF COLORADO (COMMISSION). NO ADDITIONAL REGULATORY AUTHORITY OF THE
10 COMMISSION OTHER THAN THAT SPECIFICALLY CONTAINED HEREIN IS PROVIDED OR
11 IMPLIED. IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., ON OR BEFORE APRIL 1,
12 2005, THE COMMISSION SHALL INITIATE ONE OR MORE RULEMAKING PROCESSES TO
13 ESTABLISH THE FOLLOWING:

14 (A) DEFINITIONS OF ELIGIBLE RENEWABLE ENERGY RESOURCES THAT CAN BE USED TO
15 MEET THE STANDARDS. ELIGIBLE RENEWABLE ENERGY RESOURCES ARE SOLAR, WIND,
16 GEOTHERMAL, BIOMASS, AND HYDROELECTRICITY WITH A NAMEPLATE RATING OF 10
17 MEGAWATTS OR LESS. THE COMMISSION SHALL DETERMINE, FOLLOWING AN
18 EVIDENTIARY HEARING, THE EXTENT THAT SUCH ELECTRIC GENERATION TECHNOLOGIES
19 UTILIZED IN AN OPTIONAL PRICING PROGRAM MAY BE USED TO COMPLY WITH THIS
20 STANDARD. A FUEL CELL USING HYDROGEN DERIVED FROM THESE ELIGIBLE RESOURCES
21 IS ALSO AN ELIGIBLE ELECTRIC GENERATION TECHNOLOGY. FOSSIL AND NUCLEAR FUELS
22 AND THEIR DERIVATIVES ARE NOT ELIGIBLE RESOURCES. FURTHER, "BIOMASS" SHALL
23 BE DEFINED TO MEAN:

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

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

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

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

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

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

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

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

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

11 (III) EACH KILOWATT-HOUR OF RENEWABLE ELECTRICITY GENERATED IN COLORADO
12 SHALL BE COUNTED AS 1.25 KILOWATT-HOURS FOR THE PURPOSES OF COMPLIANCE WITH
13 THIS STANDARD.

14 (IV) TO THE EXTENT THAT THE ABILITY OF A QUALIFYING RETAIL UTILITY TO
15 ACQUIRE ELIGIBLE RENEWABLE ELECTRIC GENERATION IS LIMITED BY A REQUIREMENTS
16 CONTRACT WITH A WHOLESALE ELECTRIC SUPPLIER, THE QUALIFYING RETAIL UTILITY
17 SHALL ACQUIRE THE MAXIMUM AMOUNT ALLOWED BY THE CONTRACT. FOR ANY
18 SHORTFALLS TO THE AMOUNTS ESTABLISHED BY THE COMMISSION PURSUANT TO PART
19 (C)(I), THE QUALIFYING RETAIL UTILITY SHALL ACQUIRE AN EQUIVALENT AMOUNT OF
20 EITHER (I) RENEWABLE ENERGY CREDITS, (II) DOCUMENTED AND VERIFIED ENERGY
21 SAVINGS THROUGH ENERGY EFFICIENCY AND CONSERVATION PROGRAMS, OR (III) A
22 COMBINATION OF BOTH. ANY CONTRACT ENTERED INTO BY A QUALIFYING RETAIL
23 UTILITY AFTER THE EFFECTIVE DATE OF THIS ARTICLE SHALL NOT CONFLICT WITH THIS
24 ARTICLE.

25 (D) A SYSTEM OF TRADABLE RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A
26 QUALIFYING RETAIL UTILITY TO COMPLY WITH THIS STANDARD. THE COMMISSION SHALL
27 ALSO ANALYZE THE EFFECTIVENESS OF UTILIZING ANY REGIONAL SYSTEM OF
28 RENEWABLE ENERGY CREDITS IN EXISTENCE AT THE TIME OF ITS RULEMAKING PROCESS
29 AND DETERMINE IF THE SYSTEM IS GOVERNED BY RULES THAT ARE CONSISTENT WITH THE
30 RULES ESTABLISHED FOR THIS ARTICLE.

31 (E) A STANDARD REBATE OFFER PROGRAM. EACH QUALIFYING RETAIL UTILITY SHALL
32 MAKE AVAILABLE TO ITS RETAIL ELECTRICITY CUSTOMERS A STANDARD REBATE OFFER
33 OF A MINIMUM OF \$2.00 PER WATT FOR THE INSTALLATION OF ELIGIBLE SOLAR ELECTRIC
34 GENERATION ON CUSTOMERS' PREMISES UP TO A MAXIMUM OF ONE-HUNDRED
35 KILOWATTS PER INSTALLATION. SUCH OFFER SHALL ALLOW CUSTOMER'S RETAIL
36 ELECTRICITY CONSUMPTION TO BE OFFSET BY THE SOLAR ELECTRICITY GENERATED. TO
37 THE EXTENT THAT SOLAR ELECTRICITY GENERATION EXCEEDS THE CUSTOMER'S
38 CONSUMPTION DURING A BILLING MONTH, SUCH EXCESS ELECTRICITY SHALL BE CARRIED

1 FORWARD AS A CREDIT TO THE FOLLOWING MONTH'S CONSUMPTION. TO THE EXTENT
2 THAT SOLAR ELECTRICITY GENERATION EXCEEDS THE CUSTOMER'S CONSUMPTION
3 DURING A CALENDAR YEAR, THE CUSTOMER SHALL BE REIMBURSED BY THE QUALIFYING
4 RETAIL UTILITY AT ITS AVERAGE HOURLY INCREMENTAL COST OF ELECTRICITY SUPPLY
5 OVER THE PRIOR TWELVE MONTH PERIOD. THE QUALIFYING RETAIL UTILITY SHALL NOT
6 APPLY UNREASONABLY BURDENSOME INTERCONNECTION REQUIREMENTS IN
7 CONNECTION WITH THIS STANDARD REBATE OFFER. ELECTRICITY GENERATED UNDER
8 THIS PROGRAM SHALL BE ELIGIBLE FOR THE QUALIFYING RETAIL UTILITY'S COMPLIANCE
9 WITH THIS ARTICLE.

10 (F) POLICIES FOR THE RECOVERY OF COSTS INCURRED WITH RESPECT TO THESE
11 STANDARDS FOR QUALIFYING RETAIL UTILITIES THAT ARE SUBJECT TO RATE REGULATION
12 BY THE COMMISSION. SUCH POLICIES SHALL INCLUDE:

13 (I) ALLOWING QUALIFYING RETAIL UTILITIES TO EARN AN EXTRA PROFIT ON THEIR
14 INVESTMENT IN RENEWABLE ENERGY TECHNOLOGIES IF THESE INVESTMENTS PROVIDE
15 NET ECONOMIC BENEFITS TO CUSTOMERS AS DETERMINED BY THE COMMISSION. THE
16 ALLOWABLE EXTRA PROFIT IN ANY YEAR SHALL BE THE QUALIFYING RETAIL UTILITY'S
17 MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN PLUS A BONUS LIMITED TO
18 50% OF THE NET ECONOMIC BENEFIT.

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

23 (III) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A RENEWABLE
24 ENERGY CONTRACT BETWEEN THE QUALIFYING RETAIL UTILITY AND ANOTHER PARTY,
25 THE RENEWABLE ENERGY CONTRACT AND ITS TERMS AND CONDITIONS SHALL BE DEEMED
26 TO BE A PRUDENT INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES
27 SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED WITH THE
28 CONTRACT. ALL CONTRACTS FOR ACQUISITION OF ELIGIBLE RENEWABLE ELECTRICITY
29 SHALL HAVE A MINIMUM TERM OF 20 YEARS. ALL CONTRACTS FOR THE ACQUISITION OF
30 RENEWABLE ENERGY CREDITS FROM SOLAR ELECTRIC TECHNOLOGIES LOCATED ON SITE
31 AT CUSTOMER FACILITIES SHALL ALSO HAVE A MINIMUM TERM OF TWENTY YEARS.

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

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

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

3 (H) ANNUAL REPORTS. EACH QUALIFYING RETAIL UTILITY SHALL SUBMIT TO THE
4 COMMISSION AN ANNUAL REPORT THAT PROVIDES INFORMATION RELATING TO THE
5 ACTIONS TAKEN TO COMPLY WITH THIS ARTICLE INCLUDING THE COSTS AND BENEFITS
6 OF EXPENDITURES FOR RENEWABLE ENERGY. THE REPORT SHALL BE WITHIN THE TIME
7 PRESCRIBED AND IN A FORMAT APPROVED BY THE COMMISSION.

8 (I) RULES NECESSARY FOR THE ADMINISTRATION OF THIS ARTICLE INCLUDING
9 ENFORCEMENT MECHANISMS NECESSARY TO ENSURE THAT EACH QUALIFYING RETAIL
10 UTILITY COMPLIES WITH THIS STANDARD; AND PROVISIONS GOVERNING THE IMPOSITION
11 OF ADMINISTRATIVE PENALTIES ASSESSED AFTER A HEARING HELD BY THE COMMISSION
12 PURSUANT TO SECTION 40-6-109. UNDER NO CIRCUMSTANCES SHALL THE COSTS OF
13 ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO RETAIL CUSTOMERS.

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

16 (3) IF A MUNICIPALLY OWNED ELECTRIC UTILITY OR A RURAL ELECTRIC COOPERATIVE
17 IMPLEMENTS A RENEWABLE ENERGY STANDARD SUBSTANTIALLY SIMILAR TO THIS
18 SECTION 40-2-124, THEN THE GOVERNING BODY OF THE MUNICIPALLY OWNED ELECTRIC
19 UTILITY OR RURAL ELECTRIC COOPERATIVE MAY SELF-CERTIFY ITS RENEWABLE ENERGY
20 STANDARD AND UPON SELF-CERTIFICATION WILL HAVE NO OBLIGATIONS UNDER THIS
21 ARTICLE. THE MUNICIPALLY OWNED UTILITY OR COOPERATIVE SHALL SUBMIT A
22 STATEMENT TO THE COMMISSION THAT DEMONSTRATES SUCH UTILITY OR COOPERATIVE
23 HAS A SUBSTANTIALLY SIMILAR RENEWABLE ENERGY STANDARD. IN ORDER FOR SUCH
24 UTILITY OR COOPERATIVE TO SELF-CERTIFY, SUCH RENEWABLE ENERGY STANDARD
25 SHALL, AT A MINIMUM, MEET THE FOLLOWING CRITERIA:

26 (A) THE ELIGIBLE RENEWABLE ENERGY RESOURCES MUST BE LIMITED TO THOSE
27 IDENTIFIED IN SUBSECTION 40-2-124(1)(A),

28 (B) THE PERCENTAGE REQUIREMENTS MUST BE EQUAL TO OR GREATER IN THE SAME
29 YEARS THAN THOSE IDENTIFIED IN SUBSECTION 40-2-124(1)(C)(I), AND

30 (C) THE UTILITY MUST HAVE AN OPTIONAL PRICING PROGRAM IN EFFECT THAT ALLOWS
31 RETAIL CUSTOMERS THE OPTION TO SUPPORT THROUGH UTILITY RATES EMERGING
32 RENEWABLE ENERGY TECHNOLOGIES.

33 (4) PROCEDURE FOR EXEMPTION AND INCLUSION - ELECTION.

34 (A) THE BOARD OF DIRECTORS OF EACH QUALIFYING RETAIL UTILITY SUBJECT TO
35 SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS EXEMPTION FROM
36 SECTION 40-2-124 CRS, TO ITS CONSUMERS ON A ONE METER EQUALS ONE VOTE BASIS.
37 APPROVAL BY A MAJORITY OF THOSE VOTING IN THE ELECTION SHALL BE REQUIRED FOR
38 SUCH EXEMPTION, PROVIDING THAT A MINIMUM OF 25% OF ELIGIBLE CONSUMERS
39 PARTICIPATES IN THE ELECTION.

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

7 **40-2-125 Eminent Domain Restrictions.** A QUALIFYING RETAIL UTILITY SHALL NOT
8 HAVE THE AUTHORITY TO CONDEMN OR EXERCISE THE POWER OF EMINENT DOMAIN OVER
9 ANY REAL ESTATE, RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION
10 38-2-101, C.R.S., TO SITE THE GENERATION FACILITIES OF A RENEWABLE ENERGY
11 SYSTEM USED IN WHOLE OR IN PART TO MEET THE ELECTRIC RESOURCE STANDARDS SET
12 FORTH IN SECTION 40-2-124.

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