

## CHAPTER 94

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**PUBLIC UTILITIES**

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**HOUSE BILL 20-1225**

BY REPRESENTATIVE(S) Weissman and Catlin, Arndt, Buckner, Buentello, Cutter, Esgar, Exum, Froelich, Gray, Hooton, Jaquez Lewis, Kennedy, Kipp, McLachlan, Michaelson Jenet, Roberts, Singer, Sirota, Sullivan, Titone, Valdez A., Valdez D., Woodrow, Young, Becker;  
also SENATOR(S) Fenberg and Coram, Bridges, Donovan, Foote, Ginal, Gonzales, Lee, Moreno, Priola, Story, Winter.

**AN ACT****CONCERNING CLARIFICATION OF THE REQUIREMENT OF REASONABLENESS IN CHARGES IMPOSED BY ONE COOPERATIVE ELECTRIC ASSOCIATION UPON ANOTHER.**

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

**SECTION 1. Legislative declaration.** (1) The General Assembly finds and determines that:

(a) Article XXV of the Colorado Constitution vests "all power to regulate the facilities, service and rates and charges" of public utilities in the public utilities commission;

(b) Since at least 1913, the laws of Colorado have directed the public utilities commission to "prevent unjust. . .rates, charges, and tariffs" of public utilities;

(c) The Colorado Supreme Court has held that "the Commission possesses not only the power and authority, but also the duty to prescribe the rates of all utilities subject to its jurisdiction";

(d) Since at least 1944, United States Supreme Court cases have emphasized that utility rates must be "just and reasonable", regardless of the specific methodology by which rates are established; and

(e) The public utilities commission has previously determined that it possesses jurisdiction to adjudicate a complaint concerning just and reasonable "exit" charges assessed by a wholesale electric cooperative against a retail electric cooperative.

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(2) Therefore, the general assembly declares that the purpose of this act is to further clarify and affirm the long-standing authority of the Colorado public utilities commission to adjudicate complaints concerning public utilities subject to its jurisdiction.

**SECTION 2.** In Colorado Revised Statutes, 40-1-102, **add** (1.3) as follows:

**40-1-102. Definitions.** As used in articles 1 to 7 of this title 40, unless the context otherwise requires:

(1.3) "CHARGE" INCLUDES ANY CONSIDERATION, HOWEVER DENOMINATED, PAID OR PROVIDED BY A RETAIL COOPERATIVE ELECTRIC ASSOCIATION TO A WHOLESALE ELECTRIC COOPERATIVE IN CONNECTION WITH AN AGREEMENT BY WHICH THE RETAIL COOPERATIVE ELECTRIC ASSOCIATION TERMINATES A WHOLESALE ELECTRIC SERVICE CONTRACT WITH THE WHOLESALE ELECTRIC COOPERATIVE.

**SECTION 3.** In Colorado Revised Statutes, **add** 40-2-136 as follows:

**40-2-136. Energy storage systems - terms and conditions for installation, interconnection, and use by cooperatives - legislative declaration - definitions.**

(1) (a) THE GENERAL ASSEMBLY FINDS AND DETERMINES THAT:

(I) CARDINAL PRINCIPLES OF COOPERATIVE ELECTRIC ASSOCIATIONS INCLUDE DEMOCRATIC MEMBER CONTROL, AUTONOMY, AND INDEPENDENCE; AND

(II) RAPIDLY EVOLVING TECHNOLOGIES IN GENERATION, ENERGY STORAGE, AND DEMAND MANAGEMENT OFFER COOPERATIVE ELECTRIC ASSOCIATIONS A VARIETY OF OPTIONS TO MEET THE NEEDS OF THEIR MEMBERS RELIABLY.

(b) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT:

(I) IT IS IN THE PUBLIC INTEREST TO LIMIT BARRIERS TO THE INSTALLATION, INTERCONNECTION, AND USE OF ENERGY STORAGE SYSTEMS BY COOPERATIVE ELECTRIC ASSOCIATIONS IN COLORADO; AND

(II) COOPERATIVE ELECTRIC ASSOCIATIONS IN COLORADO SHOULD BE ABLE TO INSTALL, INTERCONNECT, AND USE ENERGY STORAGE SYSTEMS THAT ARE CONNECTED TO THE COOPERATIVE ELECTRIC ASSOCIATION'S ELECTRICAL SYSTEM AND WILL NOT, AT ANY TIME, FLOW ONTO THE TRANSMISSION FACILITIES OF A WHOLESALE ELECTRIC COOPERATIVE OR OTHER THIRD PARTY WITHOUT PRIOR AGREEMENT AS PART OF MEETING THEIR MEMBERS' NEEDS FOR RELIABLE, AFFORDABLE ENERGY WITHOUT UNFAIR OR DISCRIMINATORY RATES OR FEES.

(2) A WHOLESALE ELECTRIC COOPERATIVE SHALL NOT SUBJECT THE INSTALLATION, INTERCONNECTION, OR USE OF AN ENERGY STORAGE SYSTEM BY A RETAIL COOPERATIVE ELECTRIC ASSOCIATION TO ANY UNJUST, UNREASONABLE, DISCRIMINATORY, OR PREFERENTIAL CHARGE, CLASSIFICATION, CONTRACT, FARE, FEE, PRACTICE, RATE, REGULATION, RULE, SCHEDULE, SERVICE, OR TOLL.

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COOPERATIVE ELECTRIC ASSOCIATION" MEANS A NONPROFIT ELECTRIC CORPORATION OR ASSOCIATION OTHER THAN A WHOLESALE ELECTRIC COOPERATIVE.

(b) "ENERGY STORAGE SYSTEM" HAS THE MEANING SET FORTH IN SECTION 40-2-202 (2).

(c) "WHOLESALE ELECTRIC COOPERATIVE" MEANS ANY GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION THAT PROVIDES WHOLESALE ELECTRIC SERVICE DIRECTLY TO COOPERATIVE ELECTRIC ASSOCIATIONS.

**SECTION 4.** In Colorado Revised Statutes, 40-3-101, **add** (3) as follows:

**40-3-101. Reasonable charges - adequate service.** (3) (a) IF A RETAIL COOPERATIVE ELECTRIC ASSOCIATION, IN CONJUNCTION WITH THE PAYMENT OF AN APPLICABLE CHARGE, WITHDRAWS FROM MEMBERSHIP IN A WHOLESALE ELECTRIC COOPERATIVE, AS DEFINED IN SECTION 40-2-136 (3)(c), THAT WITHDRAWAL IS DEEMED TO BE A MATTER OF STATEWIDE CONCERN, AND, IN RELATION TO SUCH WITHDRAWAL:

(I) THE WHOLESALE ELECTRIC COOPERATIVE WILL ACT IN ACCORDANCE WITH THE OBLIGATION OF GOOD FAITH AND FAIR DEALING IN IMPLEMENTING THE WITHDRAWAL AND SHALL NOT REQUIRE OR IMPOSE COMMERCIALY UNREASONABLE CONTRACTUAL TERMS ON THE RETAIL COOPERATIVE ELECTRIC ASSOCIATION IN RELATION TO THE WITHDRAWAL; AND

(II) THE WHOLESALE ELECTRIC COOPERATIVE SHALL, UPON REQUEST FROM THE WITHDRAWING RETAIL COOPERATIVE ELECTRIC ASSOCIATION, FACILITATE THE RETAIL COOPERATIVE ELECTRIC ASSOCIATION'S TRANSITION FROM NATIVE LOAD TO A FIRM SERVICE TRANSMISSION CUSTOMER WITHOUT DIMINISHING THE WITHDRAWING RETAIL COOPERATIVE ELECTRIC ASSOCIATION'S NATIVE ELECTRIC LOAD PRIORITY FOR ACCESSING FIRM TRANSMISSION CAPACITY.

(b) THE COMMISSION HAS THE AUTHORITY TO ADJUDICATE COMPLAINTS ABOUT THE TERMS ON WHICH A WHOLESALE ELECTRIC COOPERATIVE IMPLEMENTS WITHDRAWAL PURSUANT TO THIS SUBSECTION (3).

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: March 27, 2020