

CHAPTER 424

PUBLIC UTILITIES

SENATE BILL 19-107

BY SENATOR(S) Donovan, Bridges, Fenberg, Fields, Foote, Gardner, Ginal, Gonzales, Hisey, Holbert, Lee, Marble, Pettersen, Rankin, Rodriguez, Sonnenberg, Story, Todd, Williams A., Garcia;
 also REPRESENTATIVE(S) Roberts, Arndt, Bird, Buckner, Buentello, Carver, Catlin, Cutter, Esgar, Exum, Galindo, Gray, Hansen, Herod, Hooton, Kipp, Liston, Lontine, McCluskie, Melton, Michaelson Jenet, Sirota, Snyder, Soper, Tipper, Titone, Valdez A., Valdez D., Will, Wilson.

AN ACT

CONCERNING THE INSTALLATION OF BROADBAND INTERNET SERVICE INFRASTRUCTURE.

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

SECTION 1. In Colorado Revised Statutes, **add** part 6 to article 15 of title 40 as follows:

PART 6
ELECTRIC UTILITY EASEMENTS

40-15-601. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ATTACHED FACILITY" MEANS A BROADBAND FACILITY, AS DEFINED IN SECTION 38-5.5-102 (2), OR A BROADBAND NETWORK OR ANY PORTION OF A BROADBAND NETWORK, IN EACH CASE LOCATED SUBSTANTIALLY:

(a) ABOVEGROUND AND ATTACHED TO AN ELECTRIC UTILITY'S ELECTRIC SERVICE INFRASTRUCTURE; OR

(b) UNDERGROUND IN AN ELECTRIC EASEMENT AND EXISTING BEFORE THE DELIVERY OF NOTICE PURSUANT TO SECTION 40-15-602 (2).

(2) "BROADBAND AFFILIATE" MEANS A COMMERCIAL BROADBAND SUPPLIER THAT IS A SEPARATE LEGAL ENTITY FROM ANY ELECTRIC UTILITY BUT IS CONTROLLED BY, CONTROLS, OR IS UNDER COMMON CONTROL WITH AN ELECTRIC UTILITY.

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.

(3) "COMMERCIAL BROADBAND SERVICE" MEANS "BROADBAND SERVICE", AS THAT TERM IS DEFINED IN SECTION 38-5.5-102 (1), OR BROADBAND INTERNET SERVICE.

(4) (a) "COMMERCIAL BROADBAND SUPPLIER" MEANS:

(I) A PROVIDER OF BROADBAND INTERNET SERVICE OR AN EXISTING BROADBAND PROVIDER, AS THAT TERM IS DEFINED IN SECTION 38-5.5-102 (3), OR A PERSON THAT INTENDS TO PROVIDE BROADBAND INTERNET SERVICE OR BROADBAND SERVICE; OR

(II) A PERSON THAT DIRECTLY OR INDIRECTLY SELLS, LEASES, OR OTHERWISE TRANSFERS ATTACHED FACILITIES OR A RIGHT TO INSTALL, OPERATE, MAINTAIN, OR USE ATTACHED FACILITIES FOR ANOTHER PERSON'S PROVISION OF COMMERCIAL BROADBAND SERVICE OR A PERSON THAT INTENDS TO SELL, LEASE, OR OTHERWISE TRANSFER ATTACHED FACILITIES OR A RIGHT TO INSTALL, OPERATE, MAINTAIN, OR USE ATTACHED FACILITIES.

(b) "COMMERCIAL BROADBAND SUPPLIER" DOES NOT INCLUDE AN ELECTRIC UTILITY.

(5) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED EASEMENT, RIGHT-OF-WAY UNDER SECTION 38-4-103 OR OTHERWISE, OR SIMILAR RIGHT IN OR TO REAL PROPERTY, INCLUDING PRESCRIPTIVE RIGHTS, NO MATTER HOW ACQUIRED, HELD BY AN ELECTRIC UTILITY FOR THE SITING OF ELECTRIC SERVICE INFRASTRUCTURE OR FOR THE PURPOSE OF DELIVERING ELECTRIC SERVICE, REGARDLESS OF WHETHER:

(a) THE EASEMENT OR OTHER RIGHT IS EXCLUSIVELY FOR THE PROVISION OF ELECTRIC SERVICE OR FOR USE IN CONNECTION WITH COMMERCIAL BROADBAND SERVICE, TELECOMMUNICATION SERVICE, OR ANOTHER PURPOSE; OR

(b) THE ELECTRIC UTILITY OR A COMMERCIAL BROADBAND SUPPLIER USES THE EASEMENT OR OTHER RIGHT TO PROVIDE COMMERCIAL BROADBAND SERVICE.

(6) "ELECTRIC UTILITY" MEANS A COOPERATIVE ELECTRIC ASSOCIATION, AS DEFINED IN SECTION 40-9.5-102.

(7) "INTEREST HOLDER" MEANS A PROPERTY OWNER OR OTHER PERSON WITH AN INTEREST IN THE REAL PROPERTY UPON WHICH AN ELECTRIC EASEMENT IS LOCATED.

(8) "MEMORANDUM" MEANS A WRITTEN INSTRUMENT THAT INCLUDES, AT A MINIMUM, THE NAME AND ADDRESS OF THE ELECTRIC UTILITY, THE DATE ON WHICH THE NOTICE WAS MAILED, AND THE INFORMATION REQUIRED TO BE INCLUDED IN A NOTICE UNDER SECTION 40-15-602 (2)(b)(III) AND (2)(b)(IV).

(9) "NOTICE" MEANS A WRITTEN LETTER SUBSTANTIALLY COMPLYING WITH THE REQUIREMENTS SET FORTH IN SECTION 40-15-602 (2)(b), WHICH NOTICE SHALL BE DEEMED DELIVERED ON THE DATE POSTMARKED OR OTHERWISE TIME STAMPED.

(10) "PERSON" HAS THE MEANING SET FORTH IN SECTION 40-1-102 (10).

(11) "PROPERTY OWNER" MEANS A PERSON WITH A RECORDED FEE SIMPLE INTEREST IN REAL PROPERTY UPON WHICH AN ELECTRIC EASEMENT IS LOCATED.

(12) "REQUEST FOR NOTICE" MEANS A WRITTEN INSTRUMENT RECORDED BY AN INTEREST HOLDER IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 40-15-602 (2)(c).

40-15-602. Electric easements - commercial broadband service - broadband affiliates - notice required. (1) WITH REGARD TO REAL PROPERTY SUBJECT TO AN ELECTRIC EASEMENT, IF AN ELECTRIC UTILITY, OR ANY COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC UTILITY TO ACT ON ITS BEHALF, COMPLIES WITH THE NOTICE AND FILING REQUIREMENTS SET FORTH IN SUBSECTION (2) OF THIS SECTION, THE ELECTRIC UTILITY HOLDING THE ELECTRIC EASEMENT MAY, SUBJECT TO SUBSECTION (4) OF THIS SECTION AND WITHOUT THE CONSENT OF AN INTEREST HOLDER IN THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT, TAKE THE FOLLOWING ACTIONS TO THE EXTENT NOT ALREADY PERMITTED BY THE ELECTRIC EASEMENT:

(a) INSTALL, MAINTAIN, OR OWN, OR PERMIT ANY COMMERCIAL BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, TO INSTALL, MAINTAIN, OR OWN, AN ATTACHED FACILITY FOR OPERATION BY A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, IN PROVIDING COMMERCIAL BROADBAND SERVICE; AND

(b) LEASE OR OTHERWISE PROVIDE TO A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, ANY EXCESS CAPACITY OF ATTACHED FACILITIES FOR PURPOSES OF PROVIDING COMMERCIAL BROADBAND SERVICE.

(2)(a) AT LEAST THIRTY DAYS BEFORE FIRST EXERCISING ITS RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION WITH RESPECT TO AN ELECTRIC EASEMENT OR PORTION OF AN ELECTRIC EASEMENT, AN ELECTRIC UTILITY OR ITS DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST SEND NOTICE TO EACH PROPERTY OWNER THAT HOLDS AN INTEREST IN THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT AND ANY OTHER INTEREST HOLDER THAT HAS RECORDED A REQUEST FOR NOTICE AND MUST RECORD A MEMORANDUM IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN WHICH THE ELECTRIC UTILITY IS EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION. AN ELECTRIC UTILITY OR ITS DESIGNATED COMMERCIAL BROADBAND SUPPLIER MAY ONLY COMMENCE EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION UPON DELIVERY OF SUFFICIENT NOTICE.

(b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION (2) MUST:

(I) BE SENT BY CERTIFIED MAIL FROM OR ON BEHALF OF THE ELECTRIC UTILITY TO THE PROPERTY OWNER AND ANY INTEREST HOLDER THAT HAS RECORDED A REQUEST FOR NOTICE AT EACH OF THE FOLLOWING, AS APPLICABLE:

(A) THE LAST KNOWN ADDRESS FOR THE PROPERTY OWNER BASED ON THE ELECTRIC UTILITY'S RECORDS;

(B) THE ADDRESS LISTED FOR THE PROPERTY OWNER IN THE RECORDS OF THE

OFFICE OF THE COUNTY ASSESSOR; AND

(C) THE ADDRESS SET FORTH IN A REQUEST FOR NOTICE;

(II) INCLUDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF CONTACT FOR THE ELECTRIC UTILITY AND, IF DELIVERED BY A COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC UTILITY, THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF CONTACT FOR THE DESIGNATED COMMERCIAL BROADBAND SUPPLIER;

(III) INCLUDE THE PROPERTY ADDRESS; THE RECORDING NUMBER, IF ANY, OF THE ELECTRIC EASEMENT OR RECORDED MEMORANDUM OF THE ELECTRIC EASEMENT; A GENERAL DESCRIPTION OF ANY EXISTING ELECTRIC SERVICE INFRASTRUCTURE CURRENTLY LOCATED IN THE ELECTRIC EASEMENT; AND THE APPROXIMATE LOCATION OF THE ELECTRIC EASEMENT, WHICH NEED NOT INCLUDE A LEGAL DESCRIPTION, LAND TITLE SURVEY, PLAT, OR OTHER DESIGNATION OF THE EXACT BOUNDARIES OF THE ELECTRIC EASEMENT;

(IV) INCLUDE:

(A) A CITATION TO THIS PART 6; AND

(B) A COPY OF THE LANGUAGE OF SUBSECTION (1) OF THIS SECTION WITH AN INDICATION OF WHETHER THE ELECTRIC UTILITY IS EXERCISING RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION;

(V) GIVE AN ESTIMATED TIME FOR THE START OF INSTALLATION OR CONSTRUCTION WITH REGARD TO ANY NEW INSTALLATION OR CONSTRUCTION THAT WILL OCCUR IN CONNECTION WITH THE EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION;

(VI) INCLUDE A STATEMENT REGARDING THE RIGHT AND OBLIGATION OF THE ELECTRIC UTILITY, OR ITS DESIGNATED COMMERCIAL BROADBAND SUPPLIER, TO RECORD A MEMORANDUM; AND

(VII) INCLUDE A STATEMENT REGARDING THE STATUTE OF LIMITATIONS FOR THE INTEREST HOLDER TO FILE A CLAIM WITH RESPECT TO THE ELECTRIC UTILITY'S EXERCISE OF RIGHTS.

(c) AN INTEREST HOLDER THAT DESIRES TO OBTAIN NOTICE UNDER THIS PART 6 AT A SPECIFIC ADDRESS MAY FILE IN THE OFFICE OF THE COUNTY CLERK AND RECORDER FOR THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED A REQUEST FOR NOTICE THAT IDENTIFIES THE INTEREST HOLDER'S NAME AND ADDRESS, THE INSTRUMENT GRANTING THE INTEREST HOLDER'S INTEREST IN THE PROPERTY, AND THE RECORDING NUMBER OF THE INSTRUMENT OR A RECORDED MEMORANDUM OF THE INSTRUMENT.

(3) UPON EXERCISE OF THE RIGHTS SET FORTH IN SUBSECTION (1) OF THIS SECTION, THE RIGHTS RUN WITH THE LAND AND ARE ASSIGNABLE BY THE ELECTRIC UTILITY.

(4) THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC EASEMENT APPLY TO AN

ELECTRIC UTILITY'S USES OF THE ELECTRIC EASEMENT SET FORTH IN SUBSECTION (1) OF THIS SECTION, EXCEPT THOSE TERMS AND CONDITIONS THAT WOULD PROHIBIT THE ELECTRIC UTILITY'S EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION. A PROHIBITION ON ABOVEGROUND ELECTRIC SERVICE INFRASTRUCTURE CONTAINED WITHIN A WRITTEN ELECTRIC EASEMENT CONSTITUTES A PROHIBITION ON ABOVEGROUND ATTACHED FACILITIES. IN CONNECTION WITH THE EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION, AN ELECTRIC UTILITY OR ITS DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST COMPLY WITH ANY NOTICE REQUIREMENTS CONTAINED IN A WRITTEN ELECTRIC EASEMENT HELD BY THE ELECTRIC UTILITY RELATED TO ENTERING THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT OR COMMENCING ANY CONSTRUCTION OR INSTALLATION ON THE REAL PROPERTY.

(5) NOTHING IN THIS PART 6 REQUIRES AN ELECTRIC UTILITY TO COMPLY WITH SUBSECTION (2) OF THIS SECTION IN ORDER TO TAKE ANY ACTION OR EXERCISE ANY RIGHTS UNDER AN ELECTRIC EASEMENT THAT IS ALREADY PERMITTED WITHIN THE SCOPE OF THE ELECTRIC EASEMENT. UNLESS EXPRESSLY PROHIBITED BY THE TERMS OF AN ELECTRIC EASEMENT, AN ELECTRIC EASEMENT WILL BE DEEMED TO ALLOW AN ELECTRIC UTILITY TO INSTALL, MAINTAIN, OR OWN, OR PERMIT A THIRD PARTY TO INSTALL, MAINTAIN, OR OWN FOR BENEFICIAL USE BY THE ELECTRIC UTILITY, TELECOMMUNICATIONS FACILITIES AND EQUIPMENT FOR USE IN CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF ELECTRICITY.

40-15-603. Statute of limitations - damages - limitations on damages.

(1) (a) NO CLAIM OR CAUSE OF ACTION AGAINST AN ELECTRIC UTILITY OR A COMMERCIAL BROADBAND SUPPLIER CONCERNING THE ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF RIGHTS UNDER THIS PART 6 OR ANY ACTIONS THAT THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER TAKES BEFORE THE EFFECTIVE DATE OF THIS SECTION THAT, IF TAKEN AFTER THE EFFECTIVE DATE OF THIS SECTION, WOULD BE AUTHORIZED UNDER SECTION 40-15-602 (1) MAY BE BROUGHT BY OR ON BEHALF OF AN INTEREST HOLDER MORE THAN TWO YEARS AFTER THE LATEST OF:

(I) THE EFFECTIVE DATE OF THIS SECTION;

(II) THE DATE OF DELIVERY OF NOTICE PURSUANT TO SECTION 40-15-602 (2); OR

(III) THE DATE OF RECORDING OF A MEMORANDUM PURSUANT TO SECTION 40-15-602 (2).

(b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY TO A CLAIM OR CAUSE OF ACTION BASED ON:

(I) PHYSICAL DAMAGE TO PROPERTY;

(II) INJURY TO NATURAL PERSONS; OR

(III) BREACH OF THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC EASEMENT AS THE TERMS AND CONDITIONS APPLY IN ACCORDANCE WITH SECTION 40-15-602 (4).

(c) NOTHING IN THIS SECTION EXTENDS THE STATUTORY LIMITATION PERIOD APPLICABLE TO A CLAIM OR REVIVES AN EXPIRED CLAIM.

(2) A CLAIM OR CAUSE OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES SHALL NOT BE BROUGHT BY OR ON BEHALF OF AN INTEREST HOLDER AGAINST A COMMERCIAL BROADBAND SUPPLIER FOR ACTIONS THAT THE COMMERCIAL BROADBAND SUPPLIER HAS TAKEN UNDER SECTION 40-15-602 (2) ON BEHALF OF AN ELECTRIC UTILITY. NOTHING IN THIS SUBSECTION (2) PROHIBITS AN ELECTRIC UTILITY AND A COMMERCIAL BROADBAND SUPPLIER FROM CONTRACTING TO ALLOCATE LIABILITY FOR ACTIONS TAKEN UNDER SECTION 40-15-602 (2).

(3) IF AN INTEREST HOLDER BRINGS A TRESPASS CLAIM, INVERSE CONDEMNATION CLAIM, OR ANY OTHER CLAIM OR CAUSE OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES FOR AN ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF RIGHTS OR PERFORMANCE OF ACTIONS DESCRIBED IN SECTION 40-15-602 (1)(a) OR (1)(b), THE FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF ACTION:

(a) THE MEASURE OF DAMAGES FOR ALL CLAIMS OR CAUSES OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES, TAKEN TOGETHER, IS THE FAIR MARKET VALUE OF THE REDUCTION IN VALUE OF THE INTEREST HOLDER'S INTEREST IN THE REAL PROPERTY, AS CONTEMPLATED BY SECTION 38-1-121 (1). IN DETERMINING OR PROVIDING THE FAIR MARKET VALUE UNDER THIS SUBSECTION (3)(a):

(I) THE FOLLOWING SHALL NOT BE USED AND ARE NOT ADMISSIBLE AS EVIDENCE IN ANY PROCEEDING:

(A) PROFITS, FEES, OR REVENUE DERIVED FROM THE ATTACHED FACILITIES; OR

(B) THE RENTAL VALUE OF THE REAL PROPERTY INTEREST OR THE ELECTRIC EASEMENT, INCLUDING THE RENTAL VALUE OF ANY ATTACHED FACILITIES OR AN ASSEMBLED BROADBAND CORRIDOR; AND

(II) CONSIDERATION MUST BE GIVEN TO ANY INCREASE IN VALUE TO THE REAL PROPERTY INTEREST RESULTING FROM THE AVAILABILITY OF COMMERCIAL BROADBAND SERVICE TO THE REAL PROPERTY UNDERLYING THE REAL PROPERTY INTEREST THAT ARISES FROM THE INSTALLATION OF ATTACHED FACILITIES.

(b) THE INTERESTHOLDER MUST MAKE REASONABLE ACCOMMODATIONS FOR THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER TO PERFORM AN APPRAISAL OR INSPECTION OF THE REAL PROPERTY WITHIN NINETY DAYS FOLLOWING ANY WRITTEN REQUEST FOR AN APPRAISAL OR INSPECTION. IF AN INTEREST HOLDER FAILS TO MAKE SUCH ACCOMMODATIONS, THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER HAS NO FURTHER LIABILITY TO THE INTEREST HOLDER. THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER SHALL PROMPTLY PROVIDE TO THE INTEREST HOLDER A COPY OF ANY APPRAISAL PERFORMED PURSUANT TO THIS SUBSECTION (3)(b).

(c) ANY DAMAGES FOR ANY CLAIMS OR CAUSES OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES:

(I) ARE LIMITED TO THOSE DAMAGES THAT EXISTED AT THE TIME THAT THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FIRST EXERCISED THE RIGHTS OR PERFORMED THE ACTIONS; AND

(II) SHALL NOT BE DEEMED TO CONTINUE, ACCRUE, OR ACCUMULATE.

(d) WITH REGARD TO A CLAIM OR CAUSE OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES:

(I) EXCEPT FOR AN ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S FAILURE TO COMPLY WITH SECTION 40-15-602 (2), NEGLIGENCE, OR WILLFUL MISCONDUCT, OR IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC EASEMENT AS THE TERMS AND CONDITIONS APPLY IN ACCORDANCE WITH SECTION 40-15-602 (4), AN INTEREST HOLDER IS NOT ENTITLED TO REIMBURSEMENT FROM AN ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FOR THE COST OF ANY APPRAISAL, ATTORNEY FEES, OR AWARD FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES.

(II) FOR PURPOSES OF THIS SUBSECTION (3)(d), ANY ACTION OR FAILURE TO ACT BY AN ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER IN FURTHERANCE OF THE ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF RIGHTS SET FORTH IN SECTION 40-15-602 (1) SHALL NOT BE DEEMED NEGLIGENCE OR WILLFUL MISCONDUCT.

(4) BY ACCEPTING A DAMAGE AWARD FOR ANY CLAIM OR CAUSE OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES, AN INTEREST HOLDER SHALL BE DEEMED TO HAVE GRANTED AN INCREASE IN THE SCOPE OF THE ELECTRIC EASEMENT, EQUAL IN DURATION TO THE TERM OF THE ELECTRIC EASEMENT AND SUBJECT TO SECTION 40-15-602 (4), TO THE EXTENT OF THE INTEREST HOLDER'S RIGHTS IN THE REAL PROPERTY, FOR ALL OF THE USES OF THE REAL PROPERTY AND ACTIONS SET FORTH IN SECTION 40-15-602 (1).

40-15-604. Electric utility obligations. (1) AN ELECTRIC UTILITY THAT EXERCISES ANY RIGHTS UNDER SECTION 40-15-602 (1)(a) OR (1)(b) FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE SHALL:

(a) NOT DISCRIMINATE AMONG COMMERCIAL BROADBAND SUPPLIERS, INCLUDING BROADBAND AFFILIATES, IN OFFERING OR GRANTING RIGHTS TO INSTALL OR ATTACH ANY ATTACHED FACILITIES; OR

(b) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR CONTROLLED BY THE ELECTRIC UTILITY, BUT ONLY TO THE EXTENT AN ELECTRIC UTILITY CHOOSES, IN ITS SOLE DISCRETION, TO OFFER THE LEASE OR USE TO A PARTICULAR COMMERCIAL BROADBAND SUPPLIER.

(2) AN ELECTRIC UTILITY THAT HAS A BROADBAND AFFILIATE AND, IF APPLICABLE, THE BROADBAND AFFILIATE SHALL:

(a) CHARGE JUST AND REASONABLE ATTACHMENT FEES, INCLUDING RECURRING

FEES, THAT ARE RELATED TO THE COSTS ASSOCIATED WITH SUCH ATTACHMENTS, SUCH AS A JUST AND REASONABLE SHARE OF THE CARRYING COSTS OF THE PER POLE INVESTMENT, INCLUDING ONGOING MAINTENANCE OF THE POLE BASED ON THE PORTION OF THE USABLE SPACE ON THE POLE OCCUPIED BY THE ATTACHMENT;

(b) PROVIDE ALL COMMERCIAL BROADBAND SUPPLIERS ACCESS TO ALL POLES AND SIMILAR SUPPORT STRUCTURES OWNED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE FOR THE PURPOSE OF ATTACHING EQUIPMENT FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE. ACCESS PROVIDED IN ACCORDANCE WITH THIS SUBSECTION (2)(b) MUST BE PROVIDED:

(I) ON A JUST, REASONABLE, AND NONDISCRIMINATORY BASIS; AND

(II) UNDER TERMS AND CONDITIONS THAT ARE NO LESS FAVORABLE THAN THE TERMS AND CONDITIONS OFFERED TO BROADBAND AFFILIATES, INCLUDING TERMS AND CONDITIONS REGARDING APPLICATION REQUIREMENTS, TECHNICAL REQUIREMENTS, ELECTRIC LINEMAN HEALTH AND SAFETY REQUIREMENTS, ADMINISTRATIVE FEES, TIMELINES, AND MAKE-READY REQUIREMENTS; AND

(c) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR CONTROLLED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE AND THAT ARE EQUAL TO OR LESS THAN THE FEES THAT THE ELECTRIC UTILITY CHARGES TO ITS BROADBAND AFFILIATES, BUT ONLY TO THE EXTENT AN ELECTRIC UTILITY OR BROADBAND AFFILIATE CHOOSES, IN ITS SOLE DISCRETION, TO OFFER THE LEASE OR USE TO A PARTICULAR COMMERCIAL BROADBAND SUPPLIER.

(3) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, NOTHING IN THIS SECTION REQUIRES AN ELECTRIC UTILITY TO OFFER OR GRANT A RIGHT TO ACCESS OR USE AN ELECTRIC EASEMENT OR TO USE ATTACHED FACILITIES OR ELECTRIC SERVICE INFRASTRUCTURE OWNED OR CONTROLLED BY THE ELECTRIC UTILITY IN A MANNER THAT WOULD, IN THE ELECTRIC UTILITY'S REASONABLE DISCRETION, MATERIALLY INTERFERE WITH THE ELECTRIC UTILITY'S CONSTRUCTION, MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY INFRASTRUCTURE FOR THE PROVISION OF ELECTRIC SERVICE.

(4) (a) AN ELECTRIC UTILITY WITH A BROADBAND AFFILIATE SHALL NOT UNREASONABLY WITHHOLD AUTHORIZATION OR DELAY ITS DECISION WHETHER TO PROVIDE AUTHORIZATION TO A COMMERCIAL BROADBAND SUPPLIER TO INSTALL, MAINTAIN, OWN, OPERATE, OR USE THE COMMERCIAL BROADBAND SUPPLIER'S ATTACHED FACILITIES ON ELECTRIC SERVICE INFRASTRUCTURE OWNED OR CONTROLLED BY THE ELECTRIC UTILITY. AN ELECTRIC UTILITY MAY ONLY WITHHOLD AUTHORIZATION PURSUANT TO THIS SUBSECTION (4) IF THE REASON FOR WITHHOLDING AUTHORIZATION IS THAT:

(I) THERE IS INSUFFICIENT CAPACITY FOR THE ATTACHED FACILITIES; OR

(II) CONCERNS OF SAFETY OR RELIABILITY OR GENERALLY APPLICABLE ENGINEERING PURPOSES WEIGH AGAINST GRANTING THE AUTHORIZATION.

(b) AN ELECTRIC UTILITY THAT WITHHOLDS AUTHORIZATION PURSUANT TO THIS SUBSECTION (4) SHALL PROMPTLY NOTIFY THE COMMERCIAL BROADBAND SUPPLIER IN WRITING OF THE REASONS FOR WITHHOLDING AUTHORIZATION.

(5) AN ELECTRIC UTILITY SHALL NOT DIRECTLY PROVIDE RETAIL COMMERCIAL BROADBAND SERVICE BUT MAY CAUSE OR ALLOW A BROADBAND AFFILIATE TO OFFER RETAIL COMMERCIAL BROADBAND SERVICE. AS LONG AS AN ELECTRIC UTILITY MAINTAINS ITS EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICE TO CUSTOMERS WITHIN ITS EXCLUSIVE SERVICE TERRITORY, BOTH THE ELECTRIC UTILITY THAT HAS A BROADBAND AFFILIATE AND THE BROADBAND AFFILIATE SHALL:

(a) MAINTAIN OR CAUSE TO BE MAINTAINED AN ACCOUNTING SYSTEM FOR THE BROADBAND AFFILIATE SEPARATE FROM THE ELECTRIC UTILITY'S ACCOUNTING SYSTEM, USING GENERALLY ACCEPTED ACCOUNTING PRINCIPLES OR ANOTHER REASONABLE AND CUSTOMARY ALLOCATION METHOD;

(b) CAUSE A FINANCIAL AUDIT TO BE PERFORMED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN TWO YEARS AFTER COMMENCEMENT OF COMMERCIAL OPERATION OF RETAIL COMMERCIAL BROADBAND SERVICE AND AT LEAST ONCE EVERY TWO YEARS THEREAFTER, WITH RESPECT TO THE BROADBAND AFFILIATE'S PROVISION OF COMMERCIAL BROADBAND SERVICE, INCLUDING AN AUDIT OF THE ALLOCATION OF COSTS FOR PROPERTY AND SERVICES THAT ARE USED IN BOTH THE PROVISION OF COMMERCIAL BROADBAND SERVICE AND THE ELECTRIC UTILITY'S PROVISION OF ELECTRIC SERVICE; AND

(c) (I) NOT CAUSE OR ALLOW THE ELECTRIC UTILITY TO USE ITS EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICES WITHIN ITS EXCLUSIVE TERRITORY TO CROSS-SUBSIDIZE THE BROADBAND AFFILIATE OR ITS PROVISION OF COMMERCIAL BROADBAND SERVICE, WHETHER BY: BELOW FAIR MARKET VALUE PRICING; PAYMENT OF CAPITAL OR OPERATING COSTS PROPERLY CHARGED TO THE BROADBAND AFFILIATE UNDER APPLICABLE ACCOUNTING RULES; OR USE OF ANY REVENUE FROM OR SUBSIDY FOR THE PROVISION OF ELECTRIC SERVICE TO PROVIDE COMMERCIAL BROADBAND SERVICE BELOW MARKET VALUE, EXCEPT IN CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF ELECTRICITY.

(II) NOTHING IN THIS SUBSECTION (5)(c) PROHIBITS AN ELECTRIC UTILITY FROM:

(A) ENTERING INTO A TRANSACTION WITH A BROADBAND AFFILIATE ON TERMS AND CONDITIONS SUBSTANTIALLY SIMILAR TO THOSE THAT WOULD BE AGREED TO BETWEEN TWO SIMILARLY SITUATED PARTIES IN AN ARM'S LENGTH COMMERCIAL TRANSACTION;

(B) LOANING FUNDS TO A BROADBAND AFFILIATE IF THE INTEREST RATE ON THE LOAN IS NO LESS THAN THE ELECTRIC UTILITY'S LOWEST COST OF CAPITAL;

(C) EXCHANGING SERVICES OR MATERIALS FOR OTHER SERVICES OR MATERIALS OF EQUIVALENT VALUE;

(D) PROVIDING REDUCED-COST COMMERCIAL BROADBAND SERVICE TO LOW-INCOME RETAIL CUSTOMERS; OR

(E) CONDUCTING AND FUNDING DUE DILIGENCE, OPERATIONAL ANALYSIS, ENTITY SET-UP, AND ASSOCIATED NONCAPITAL EXPENDITURES RELATING TO AND PRIOR TO THE ESTABLISHMENT OF A BROADBAND AFFILIATE.

(6) UPON REQUEST OF A COMMERCIAL BROADBAND SUPPLIER, AN ELECTRIC UTILITY AND ANY BROADBAND AFFILIATE SUBJECT TO THIS SECTION SHALL CAUSE AN OFFICER OF THE ELECTRIC UTILITY AND AN OFFICER OF THE BROADBAND AFFILIATE TO CERTIFY THAT THE ELECTRIC UTILITY AND THE BROADBAND AFFILIATE, RESPECTIVELY, ARE IN COMPLIANCE WITH THIS SECTION. IF A DISPUTE ARISES BETWEEN AN ELECTRIC UTILITY OR ITS BROADBAND AFFILIATE AND AN UNAFFILIATED COMMERCIAL BROADBAND SUPPLIER:

(a) REGARDING MATTERS ADDRESSED IN THIS PART 6, THE PARTIES TO THE DISPUTE HAVE STANDING TO FILE A CLAIM OR CAUSE OF ACTION IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE; AND

(b) THE FOLLOWING ARE DISCOVERABLE AND ADMISSIBLE AS EVIDENCE IN COURT REGARDING THE ELECTRIC UTILITY'S AND ITS BROADBAND AFFILIATE'S COMPLIANCE WITH THIS SECTION:

(I) ANY CERTIFICATION REQUESTED AND PRODUCED PURSUANT TO THIS SUBSECTION (6);

(II) THE TERMS AND CONDITIONS APPLIED TO THE ELECTRIC UTILITY'S OR BROADBAND AFFILIATE'S OFFER TO OR GRANT OF A RIGHT TO THE UNAFFILIATED COMMERCIAL BROADBAND SUPPLIER TO INSTALL, MAINTAIN, OWN, OPERATE, OR USE ATTACHED FACILITIES; AND

(III) ANY AUDIT REQUIRED TO BE PERFORMED PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(7) NOTWITHSTANDING ANY PROVISION OF THIS PART 6 TO THE CONTRARY, AN ELECTRIC UTILITY THAT IS SUBJECT TO REGULATION UNDER 47 U.S.C. SEC. 224, AS AMENDED, AND THE FCC REGULATIONS PROMULGATED PURSUANT TO THAT FEDERAL LAW, IS NOT SUBJECT TO THIS SECTION.

(8) NOTHING IN THIS PART 6:

(a) SUBJECTS AN ELECTRIC UTILITY TO REGULATION BY THE FCC;

(b) CONSTITUTES AN EXERCISE OF, OR AN OBLIGATION OR INTENTION TO EXERCISE, THE RIGHT OF THE STATE UNDER 47 U.S.C. SEC. 224 (c) TO REGULATE THE RATES, TERMS, AND CONDITIONS FOR POLE ATTACHMENTS, AS DEFINED IN 47 U.S.C. SEC. 224 (a)(4); OR

(c) CONSTITUTES A CERTIFICATION, OR AN OBLIGATION OR INTENTION TO CERTIFY, TO THE FCC UNDER 47 U.S.C. SEC. 224.

SECTION 2. In Colorado Revised Statutes, **amend** 38-4-103 as follows:

38-4-103. Electric power companies. (1) Any foreign or domestic corporation

organized or chartered for the purpose, among other things, of conducting and maintaining electric power transmission lines for providing power or light by means of electricity for hire shall have a right-of-way for the construction, operation, and maintenance of such electric power transmission lines through any patented or unpatented mine or mining claim or other land without the consent of the owner thereof OF THE PATENTED OR UNPATENTED MINE OR MINING CLAIM OR OTHER LAND, if such THE right-of-way is necessary for the purposes proposed.

(2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6), EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40:

(a) INSTALL OR ALLOW THE INSTALLATION OF ANY ATTACHED FACILITY, AS THAT TERM IS DEFINED IN SECTION 40-15-601 (1); AND

(b) EXERCISE ANY RIGHTS AVAILABLE TO THE ELECTRIC UTILITY UNDER PART 6 OF ARTICLE 15 OF TITLE 40 IN CONNECTION WITH THE INSTALLATION.

SECTION 3. In Colorado Revised Statutes, **amend** 38-5-103 as follows:

38-5-103. Power of companies to contract. (1) Such electric light power, gas, or pipeline company, or such city, or town, OR OTHER LOCAL GOVERNMENT shall have power to contract with any person or corporation, the owner of any lands or any franchise, easement, or interest therein over or under which the line of electric light wire power or pipeline is proposed to be laid or created for the right-of-way for the construction, maintenance, and operation of its electric light wires, pipes, poles, regulator stations, substations, or other property and for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.

(2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6), EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW THE INSTALLATION OF ANY ATTACHED FACILITY FOR COMMERCIAL BROADBAND SERVICE, AS THOSE TERMS ARE DEFINED IN SECTION 40-15-601 (1) AND (3), RESPECTIVELY.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 3, 2019