An Act

HOUSE BILL 07-1037

BY REPRESENTATIVE(S) Levy, Borodkin, Buescher, Carroll M., Fischer, Frangas, Green, Hodge, Jahn, Kefalas, Kerr A., Labuda, McGihon, Merrifield, Peniston, Primavera, Rice, Solano, and Todd;
also SENATOR(S) Fitz-Gerald, Boyd, Gordon, Groff, Romer, Schwartz, Shaffer, Tochtrop, Tupa, Williams, and Windels.

CONCERNING MEASURES TO PROMOTE ENERGY EFFICIENCY, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 40-1-102 (5) and (6), Colorado Revised Statutes, are amended, and the said 40-1-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(5) (a) ~~"Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity.~~ "COST-EFFECTIVE", WITH REFERENCE TO A NATURAL GAS OR ELECTRIC DEMAND SIDE MANAGEMENT PROGRAM OR RELATED MEASURE, MEANS HAVING A BENEFIT-COST RATIO GREATER THAN ONE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) IN CALCULATING THE BENEFIT-COST RATIO, THE BENEFITS SHALL INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING, AS APPLICABLE:

(I) THE UTILITY'S AVOIDED GENERATION, TRANSMISSION, DISTRIBUTION, CAPACITY, AND ENERGY COSTS;

(II) THE VALUATION OF AVOIDED EMISSIONS; AND

(III) NONENERGY BENEFITS AS DETERMINED BY THE COMMISSION.

(c) IN CALCULATING THE BENEFIT-COST RATIO, THE COSTS SHALL INCLUDE, BUT ARE NOT LIMITED TO, UTILITY AND PARTICIPANT EXPENDITURES FOR THE FOLLOWING, AS APPLICABLE:

(I) PROGRAM DESIGN, ADMINISTRATION, EVALUATION, ADVERTISING, AND PROMOTION;

(II) CUSTOMER EDUCATION;

(III) INCENTIVES AND DISCOUNTS;

(IV) CAPITAL COSTS; AND

(V) OPERATION AND MAINTENANCE EXPENSES.

(6) ~~"Renewable energy" means useful electrical, thermal, or mechanical energy converted directly or indirectly from resources of continuous energy flow or that are perpetually replenished and whose utilization is sustainable indefinitely. The term includes, without limitation, sunlight, the wind, geothermal energy, hydrodynamic forces, and organic matter available on a renewable basis such as forest residues, agricultural crops and wastes, wood and wood wastes, animal wastes, livestock operation residue, aquatic plants, and municipal wastes.~~ "DEMAND-SIDE MANAGEMENT PROGRAMS" OR "DSM PROGRAMS" MEANS ENERGY EFFICIENCY, CONSERVATION, LOAD MANAGEMENT, AND DEMAND RESPONSE PROGRAMS OR ANY COMBINATION OF THESE PROGRAMS.

(7) "EDUCATION PROGRAM" MEANS A PROGRAM, INCLUDING BUT NOT LIMITED TO AN ENERGY AUDIT, THAT CONTRIBUTES INDIRECTLY TO A

COST-EFFECTIVE DEMAND-SIDE MANAGEMENT PROGRAM. EDUCATION PROGRAMS SHALL NOT BE SUBJECT TO INDEPENDENT COST-EFFECTIVENESS REQUIREMENTS.

(8) "FULL SERVICE CUSTOMER" MEANS A RESIDENTIAL OR COMMERCIAL CUSTOMER THAT PURCHASES NATURAL GAS OR ELECTRIC SUPPLY FROM AN INVESTOR-OWNED UTILITY.

(9) "NET PRESENT VALUE OF REVENUE REQUIREMENTS" MEANS THE CURRENT WORTH OF THE EXPECTED STREAM OF FUTURE REVENUE REQUIREMENTS ASSOCIATED WITH A PARTICULAR RESOURCE PORTFOLIO, EXPRESSED IN DOLLARS IN THE YEAR THE PLAN IS FILED. TO DETERMINE THE CURRENT WORTH OF THE EXPECTED STREAM OF FUTURE REVENUE REQUIREMENTS, A DISCOUNT RATE AT THE UTILITY'S WEIGHTED AVERAGE COST OF CAPITAL SHALL BE APPLIED TO THE EXPECTED STREAM OF FUTURE REVENUE REQUIREMENTS.

(10) "PERSON" MEANS ANY INDIVIDUAL, FIRM, PARTNERSHIP, CORPORATION, COMPANY, ASSOCIATION, JOINT STOCK ASSOCIATION, AND OTHER LEGAL ENTITY.

(11) "RENEWABLE ENERGY" MEANS USEFUL ELECTRICAL, THERMAL, OR MECHANICAL ENERGY CONVERTED DIRECTLY OR INDIRECTLY FROM RESOURCES OF CONTINUOUS ENERGY FLOW OR THAT ARE PERPETUALLY REPLENISHED AND WHOSE UTILIZATION IS SUSTAINABLE INDEFINITELY. THE TERM INCLUDES, WITHOUT LIMITATION, SUNLIGHT, THE WIND, GEOTHERMAL ENERGY, HYDRODYNAMIC FORCES, AND ORGANIC MATTER AVAILABLE ON A RENEWABLE BASIS SUCH AS FOREST RESIDUES, AGRICULTURAL CROPS AND WASTES, WOOD AND WOOD WASTES, ANIMAL WASTES, LIVESTOCK OPERATION RESIDUE, AQUATIC PLANTS, AND MUNICIPAL WASTES.

SECTION 2. 40-3.2-101, Colorado Revised Statutes, is amended to read:

40-3.2-101. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT COST-EFFECTIVE NATURAL GAS AND ELECTRICITY DEMAND-SIDE MANAGEMENT PROGRAMS WILL SAVE MONEY FOR CONSUMERS AND UTILITIES AND PROTECT COLORADO'S ENVIRONMENT. The general assembly ~~hereby~~ FURTHER finds, determines, and declares that providing ~~a~~ funding ~~mechanism~~ MECHANISMS to encourage Colorado's public utilities to reduce emissions or air pollutants ~~is a matter~~ AND TO INCREASE ENERGY EFFICIENCY ARE MATTERS of statewide concern, ~~The general assembly further finds~~ AND that the public interest is served by providing such funding ~~mechanism~~ MECHANISMS. Such ~~reduction~~ EFFORTS will result in an improvement in the quality of life and health of Colorado citizens and an increase in the attractiveness of Colorado as a place to live and conduct business.

SECTION 3. Article 3.2 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

40-3.2-103. Gas distribution utility demand-side management programs - rules - recovery of costs. (1) ON OR BEFORE SEPTEMBER 30, 2007, THE COMMISSION SHALL COMMENCE A RULE-MAKING PROCEEDING, AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, TO DEVELOP EXPENDITURE AND NATURAL GAS SAVINGS TARGETS, FUNDING AND COST-RECOVERY MECHANISMS, AND A FINANCIAL BONUS STRUCTURE FOR DEMAND-SIDE MANAGEMENT PROGRAMS IMPLEMENTED BY AN INVESTOR-OWNED GAS DISTRIBUTION UTILITY, ALSO REFERRED TO IN THIS SECTION AS A "GAS UTILITY".

(2) AS PART OF THE RULE-MAKING PROCEEDING REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE COMMISSION SHALL:

(a) ADOPT DSM PROGRAM EXPENDITURE TARGETS EQUAL TO AT LEAST ONE-HALF OF ONE PERCENT OF A NATURAL GAS UTILITY'S REVENUES FROM ITS FULL SERVICE CUSTOMERS IN THE YEAR PRIOR TO SETTING SUCH TARGETS;

(b) ESTABLISH DSM PROGRAM SAVINGS TARGETS THAT ARE COMMENSURATE WITH PROGRAM EXPENDITURES AND EXPRESSED IN TERMS OF AN AMOUNT OF GAS SAVED PER UNIT OF PROGRAM EXPENDITURES;

(c) (I) ADOPT PROCEDURES FOR ALLOWING GAS UTILITIES TO RECOVER THEIR PRUDENTLY INCURRED COSTS OF DSM PROGRAMS WITHOUT HAVING TO FILE A RATE CASE. SUCH COSTS SHALL INCLUDE, BUT ARE NOT LIMITED TO, FACILITY INVESTMENTS; REBATES; INTEREST RATE BUYDOWNS; INCREMENTAL LABOR COSTS, EMPLOYEE BENEFITS, CARRYING COSTS, AND EMPLOYEE-RELATED ADMINISTRATIVE COSTS; AND OTHER ADMINISTRATIVE

COSTS. ALL SUCH COSTS SHALL BE RECOVERED THROUGH A COST ADJUSTMENT MECHANISM THAT IS SET ON AN ANNUAL BASIS, OR MORE FREQUENTLY IF DEEMED APPROPRIATE.

(II) COST ADJUSTMENT PROCEDURES SHALL GIVE GAS UTILITIES THE OPTION OF OBTAINING COST RECOVERY EITHER THROUGH EXPENSING DSM PROGRAM EXPENDITURES OR ADDING THEM TO BASE RATES, WITH AN AMORTIZATION PERIOD TO BE DETERMINED BY THE COMMISSION. IN ADDITION, SUCH PROCEDURES SHALL PROVIDE THAT COST RECOVERY FOR PROGRAMS DIRECTED AT RESIDENTIAL CUSTOMERS ARE TO BE COLLECTED FROM RESIDENTIAL CUSTOMERS ONLY AND THAT COST RECOVERY FOR PROGRAMS DIRECTED AT NONRESIDENTIAL CUSTOMERS ARE TO BE COLLECTED FROM NONRESIDENTIAL CUSTOMERS ONLY.

(d) ADOPT A BONUS STRUCTURE TO REWARD GAS UTILITIES FOR INVESTMENTS IN COST-EFFECTIVE DSM PROGRAMS. FOR EACH YEAR OF OPERATION, THE BONUS SHALL BE CAPPED AT TWENTY-FIVE PERCENT OF THE EXPENDITURES OR TWENTY PERCENT OF THE NET ECONOMIC BENEFITS OF THE DSM PROGRAMS, WHICHEVER AMOUNT IS LOWER. THE AMOUNT OF THE BONUS AWARDED EACH YEAR SHALL BE DETERMINED BASED ON THE EXTENT TO WHICH THE GAS UTILITY HAS ACHIEVED THE TARGETS ESTABLISHED BY THE COMMISSION IN ACCORDANCE WITH PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2). THE BONUS SHALL NOT COUNT AGAINST A GAS UTILITY'S AUTHORIZED RATE OF RETURN OR BE CONSIDERED IN RATE PROCEEDINGS.

(e) CONSIDER THE FACT THAT IMPLEMENTING THE NEW DSM PROGRAMS MAY REQUIRE A PHASE-IN PERIOD BEFORE A GAS UTILITY IS ABLE TO ACHIEVE THE FUNDING LEVEL DETERMINED BY THE COMMISSION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2). A GAS UTILITY THAT IMPLEMENTS A NEW DSM PROGRAM IN PHASES SHALL BE ELIGIBLE TO RECEIVE A BONUS UNDER THE BONUS STRUCTURE ADOPTED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (2) DURING ITS PHASE-IN PERIOD.

(f) NOT ADOPT ANY MEASURE AUTHORIZING A FINANCIAL PENALTY AGAINST A GAS UTILITY THAT FAILS TO MEET THE TARGETS IN ANY PARTICULAR YEAR.

(3) WITHIN TWELVE MONTHS AFTER THE COMPLETION OF THE RULE-MAKING REQUIRED BY SUBSECTION (1) OF THIS SECTION, EACH GAS UTILITY SHALL:

(a) DEVELOP AND BEGIN IMPLEMENTING A SET OF COST-EFFECTIVE DSM PROGRAMS FOR ITS FULL SERVICE CUSTOMERS. SUCH PROGRAMS SHALL BE OF THE GAS UTILITY'S CHOOSING, TAKING INTO ACCOUNT THE CHARACTERISTICS OF THE GAS UTILITY AND ITS CUSTOMERS. ONE OR MORE PROGRAMS MAY BE TARGETED TO LOW-INCOME CUSTOMERS AND, IF SO, MAY BE PROVIDED DIRECTLY BY THE GAS UTILITY OR INDIRECTLY THROUGH FINANCIAL SUPPORT OF CONSERVATION PROGRAMS FOR LOW-INCOME HOUSEHOLDS ADMINISTERED BY THE STATE.

(b) IN IMPLEMENTING DSM PROGRAMS, USE REASONABLE EFFORTS TO MAXIMIZE ENERGY SAVINGS CONSISTENT WITH THE ANNUAL ENERGY EFFICIENCY BUDGET.

(4) IN IMPLEMENTING DSM PROGRAMS, GAS UTILITIES MAY SPEND A DISPROPORTIONATE SHARE OF TOTAL EXPENDITURES ON ONE OR MORE CLASSES OF CUSTOMERS.

(5) THE COMMISSION SHALL AUTHORIZE EACH GAS UTILITY TO RECOVER MONEYS SPENT FOR EDUCATION PROGRAMS, IMPACT AND PROCESS EVALUATIONS, AND PROGRAM PLANNING RELATED TO NATURAL GAS DSM PROGRAMS OFFERED BY THE GAS UTILITY WITHOUT HAVING TO SHOW THAT SUCH EXPENDITURES, ON AN INDEPENDENT BASIS, ARE COST-EFFECTIVE. THE COMMISSION MAY LIMIT THE AMOUNT SPENT FOR THESE ACTIVITIES.

(6) (a) GAS UTILITIES SHALL SUBMIT ANNUAL REPORTS TO THE COMMISSION, AS DETERMINED BY THE COMMISSION BY RULE. THE ANNUAL REPORT SHALL DESCRIBE THE GAS UTILITY'S DSM PROGRAMS AND SHALL DOCUMENT PROGRAM EXPENDITURES, ENERGY SAVINGS IMPACTS AND THE TECHNIQUES USED TO ESTIMATE THESE IMPACTS, THE ESTIMATED COST-EFFECTIVENESS OF PROGRAM EXPENDITURES, AND ANY OTHER INFORMATION THE COMMISSION MAY REQUIRE.

(b) THE COMMISSION SHALL REVIEW EACH REPORT SUBMITTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (6) AND SHALL DETERMINE THE LEVEL OF BONUS, IF ANY, THAT THE GAS UTILITY IS ELIGIBLE TO COLLECT ON THE BASIS OF THE INFORMATION INCLUDED IN THE REPORT. THE COMMISSION'S DETERMINATION SHALL BE MADE WITHIN THREE MONTHS AFTER RECEIVING THE REPORT. ANY SUCH BONUS SHALL BE AUTHORIZED AS A SUPPLEMENT TO THE COST ADJUSTMENT MECHANISM OR ALTERNATIVE MECHANISM APPROVED BY THE COMMISSION AND SHALL BE APPLIED OVER

A TWELVE-MONTH PERIOD AFTER APPROVAL OF THE BONUS.

(7) GAS UTILITIES MAY CONTINUE DSM PROGRAMS THAT WERE IN EXISTENCE ON OR BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (7), AND SHALL NOT BE REQUIRED TO OBTAIN APPROVAL FROM THE COMMISSION FOR SUCH PROGRAMS.

(8) THIS SECTION SHALL NOT BE CONSTRUED TO EXTEND THE COMMISSION'S AUTHORITY TO ANY NONREGULATED UTILITY BUSINESSES OR AFFILIATES OF A GAS UTILITY.

40-3.2-104. Electricity utility demand-side management programs - rules - annual report. (1) IT IS THE POLICY OF THE STATE OF COLORADO THAT A PRIMARY GOAL OF ELECTRIC UTILITY LEAST-COST RESOURCE PLANNING IS TO MINIMIZE THE NET PRESENT VALUE OF REVENUE REQUIREMENTS. THE COMMISSION MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS POLICY.

(2) THE COMMISSION SHALL ESTABLISH ENERGY SAVINGS AND PEAK DEMAND REDUCTION GOALS TO BE ACHIEVED BY AN INVESTOR-OWNED ELECTRIC UTILITY, TAKING INTO ACCOUNT THE UTILITY'S COST-EFFECTIVE DSM POTENTIAL, THE NEED FOR ELECTRICITY RESOURCES, THE BENEFITS OF DSM INVESTMENTS, AND OTHER FACTORS AS DETERMINED BY THE COMMISSION. THE ENERGY SAVINGS AND PEAK DEMAND REDUCTION GOALS SHALL BE AT LEAST FIVE PERCENT OF THE UTILITY'S RETAIL SYSTEM PEAK DEMAND MEASURED IN MEGAWATTS IN THE BASE YEAR AND AT LEAST FIVE PERCENT OF THE UTILITY'S RETAIL ENERGY SALES MEASURED IN MEGAWATT-HOURS IN THE BASE YEAR. THE BASE YEAR SHALL BE 2006. THE GOALS SHALL BE MET IN 2018, COUNTING SAVINGS IN 2018 FROM DSM MEASURES INSTALLED STARTING IN 2006. THE COMMISSION MAY ESTABLISH INTERIM GOALS AND MAY REVISE THE GOALS AS IT DEEMS APPROPRIATE.

(3) THE COMMISSION SHALL PERMIT ELECTRIC UTILITIES TO IMPLEMENT COST-EFFECTIVE ELECTRICITY DSM PROGRAMS TO REDUCE THE NEED FOR ADDITIONAL RESOURCES THAT WOULD OTHERWISE BE MET THROUGH A COMPETITIVE ACQUISITION PROCESS.

(4) THE COMMISSION SHALL ENSURE THAT UTILITIES DEVELOP AND IMPLEMENT DSM PROGRAMS THAT GIVE ALL CLASSES OF CUSTOMERS AN OPPORTUNITY TO PARTICIPATE AND SHALL GIVE DUE CONSIDERATION TO THE

IMPACT OF DSM PROGRAMS ON NONPARTICIPANTS AND ON LOW-INCOME CUSTOMERS.

(5) THE COMMISSION SHALL ALLOW AN OPPORTUNITY FOR A UTILITY'S INVESTMENTS IN COST-EFFECTIVE DSM PROGRAMS TO BE MORE PROFITABLE TO THE UTILITY THAN ANY OTHER UTILITY INVESTMENT THAT IS NOT ALREADY SUBJECT TO SPECIAL INCENTIVES. IN COMPLYING WITH THIS SUBSECTION (5), THE COMMISSION SHALL CONSIDER, WITHOUT LIMITATION, THE FOLLOWING INCENTIVE MECHANISMS, WHICH SHALL TAKE INTO CONSIDERATION THE PERFORMANCE OF THE DSM PROGRAM:

(a) AN INCENTIVE TO ALLOW A RATE OF RETURN ON DSM INVESTMENTS THAT IS HIGHER THAN THE UTILITY'S RATE OF RETURN ON OTHER INVESTMENTS;

(b) AN INCENTIVE TO ALLOW THE UTILITY TO ACCELERATE THE DEPRECIATION OR AMORTIZATION PERIOD FOR DSM INVESTMENTS;

(c) AN INCENTIVE TO ALLOW THE UTILITY TO RETAIN A PORTION OF THE NET ECONOMIC BENEFITS ASSOCIATED WITH A DSM PROGRAM FOR ITS SHAREHOLDERS;

(d) AN INCENTIVE TO ALLOW THE UTILITY TO COLLECT THE COSTS OF DSM PROGRAMS THROUGH A COST ADJUSTMENT CLAUSE;

(e) OTHER INCENTIVE MECHANISMS THAT THE COMMISSION DEEMS APPROPRIATE.

(6) EACH INVESTOR-OWNED ELECTRIC UTILITY SHALL SUBMIT AN ANNUAL REPORT TO THE COMMISSION DESCRIBING THE DSM PROGRAMS IMPLEMENTED BY THE ELECTRIC UTILITY IN THE PREVIOUS YEAR. THE REPORT SHALL DOCUMENT THE FOLLOWING:

(a) PROGRAM EXPENDITURES, INCLUDING INCENTIVE PAYMENTS;

(b) PEAK DEMAND AND ENERGY SAVINGS IMPACTS AND THE TECHNIQUES USED TO ESTIMATE THOSE IMPACTS;

(c) AVOIDED COSTS AND THE TECHNIQUES USED TO ESTIMATE THOSE COSTS;

(d) THE ESTIMATED COST-EFFECTIVENESS OF THE DSM PROGRAMS;

(e) THE NET ECONOMIC BENEFITS OF THE DSM PROGRAMS; AND

(f) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.

40-3.2-105. Reporting requirement. BY APRIL 30, 2009, AND BY EACH APRIL 30 THEREAFTER, THE COMMISSION SHALL SUBMIT A REPORT TO THE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE, OR ITS SUCCESSOR COMMITTEE, AND THE BUSINESS AFFAIRS AND LABOR OF THE HOUSE OF REPRESENTATIVES, OR ITS SUCCESSOR COMMITTEE, ON THE PROGRESS MADE BY INVESTOR-OWNED UTILITIES IN MEETING THEIR NATURAL GAS AND ELECTRICITY DEMAND-SIDE MANAGEMENT GOALS. THE REPORT SHALL INCLUDE ANY RECOMMENDED STATUTORY CHANGES THE COMMISSION DEEMS NECESSARY TO FURTHER THE INTENT OF SECTIONS 40-3.2-103 AND 40-3.2-104.

SECTION 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the public utilities commission fixed utilities fund created in section 40-2-114, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the executive director's office, for legal services, for the fiscal year beginning July 1, 2007, the sum of thirteen thousand five hundred fifty-four dollars ($13,554), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the public utilities commission fixed utilities fund created in section 40-2-114, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the public utilities commission, for the fiscal year beginning July 1, 2007, one hundred seventy-eight thousand two hundred twenty-two dollars ($178,222) and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2007, the sum of thirteen thousand five hundred fifty-four dollars ($13,554), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of

this act. Said sum shall be from cash funds exempt received from the executive director's office out of the appropriation made in subsection (1) of this section.

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, and safety.

Andrew Romanoff SPEAKER OF THE HOUSE OF REPRESENTATIVES	Joan Fitz-Gerald PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Karen Goldman SECRETARY OF THE SENATE

APPROVED____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO