

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed
at the Second Regular and First Extraordinary Sessions
of the Sixty-Eighth General Assembly of the State of Colorado 2012
and Constitutional and Statutory amendments approved at the General Election on November 6, 2012

TITLE 40. UTILITIES PUBLIC UTILITIES ARTICLE 1.DEFINITIONS

C.R.S. 40-1-101 (2012)

40-1-101. Public utilities law

Articles 1 to 7 of this title shall be known and may be cited as the "Public Utilities Law" and shall apply to the public utilities and public services described in said articles 1 to 7 and to the commission referred to in article 2 of this title.

HISTORY: Source: L. 13: p. 464, § 1.C.L. § 2911.CSA: C. 137, § 1.CRS 53: § 115-1-1. C.R.S. 1963: § 115-1-1.

Cross references: For excavation requirements for underground utility facilities, see article 1.5 of title 9; for requests for criminal activity information from public utilities, see article 15.5 of title 16; for authority and procedure for the valuation and assessment of public utilities, see article 4 of title 39; for organization and operation of special districts, see title 32.

Editor's note: Pursuant to [§ § 40-1.1-101](#) and [40-1.1-104](#), people service transportation regulated by article 1.1 of this title is not subject to the laws and regulations of the public utilities commission.

ANNOTATION

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (1930). For article, "Utility Services in Subdivisions Outside Municipal Boundaries", see 28 Rocky Mt. L. Rev. 483 (1956). For article, "Impact of the Uniform Commercial Code on Colorado Law", see 42 Den. L. Ctr. J. 67 (1965). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979).

40-1-102. Definitions

As used in articles 1 to 7 of this title, unless the context otherwise requires:

(1) "Alternative fuel vehicle" means any automobile, truck, motor bus, boat, airplane, train, tractor, or other type of motorized off-highway equipment or other self-propelled device or vessel that is capable of moving itself or being moved from place to place utilizing, in whole or in part, liquefied petroleum gas, natural gas, electricity, or a combination of natural gas and electricity as transportation fuel, whether or not the vehicle is used in agricultural, commercial, domestic, or industrial operations.

(1.5) "Commission" means the public utilities commission of the state of Colorado.

(2) "Commissioner" means one of the members of the commission.

(3) (a) "Common carrier" means:

(I) Every person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within this state by motor vehicle or other vehicle whatever by indiscriminately accepting and carrying passengers for compensation; and

(II) Every person affording a means of transportation within this state by railroad by indiscriminately accepting and carrying for compensation passengers or property.

(b) "Common carrier" does not include a motor carrier that provides transportation not subject to regulation pursuant to section 40-10.1-105 or that is subject to part 3, 4, or 5 of article 10.1 of this title.

(4) "Compensation" means any money, property, service, or thing of value charged or received, or to be charged or received, whether directly or indirectly.

(5) (a) "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.

(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) "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.

HISTORY: Source: L. 13: p. 464, § 2.L. 15: p. 393, § 1.C.L. § 2912.CSA: C. 137, § 2.CRS 53: § 115-1-2. C.R.S. 1963: § 115-1-2.L. 69: p. 927, § 1.L. 79: (3) amended, p. 1561, § 28, effective June 20.L. 80: (3) amended, p. 742, § 1, effective June 30.L. 84: (3) amended, p. 1051, § 2, effective April 12.L. 85: (3) amended, p. 1307, § 2, effective May 29.L. 94: (6) added, p. 611, § 2, effective April 8.L. 95: (3) amended, p. 1209, § 21, effective May 31.L. 96: (3) amended, p. 143, § 1, effective April 8.L. 2004: (3)(b) amended, p. 905, § 31, effective May 21.L. 2007: (5) and (6) amended and (7) to (11) added, p. 982, § 1, effective May 22.L. 2011: (3)(a)(I) and (3)(b) amended, (HB 11-1198), ch. 127, p. 418, § 11, effective August 10.L. 2012: (1) amended and (1.5) added, (HB 12-1258), ch. 147, p. 529, § 1, effective August 8.

Cross references: (1) For further definition of common carriers, see § 40-9-102.

(2) For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 102, Session Laws of Colorado 1994.

ANNOTATION

Neither the general assembly nor the commission has precisely defined contract carriage. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974); *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

Distinction between common carriers and contract carriers. One of the fundamental distinctions between a contract carrier and a common carrier is that a contract carrier has an obligation only to its contract customers and has no obligation to others desiring its carriage; in contrast, the common carrier must convey for all desiring its transportation. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

Applied in *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926); *Jones v. Dressel*, 623 P.2d 370 (Colo. 1981); *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

40-1-103. Public utility defined

(1) (a) (I) The term "public utility", when used in articles 1 to 7 of this title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, water corporation, person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest, and each of the preceding is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

(II) As used in this paragraph (a), "water corporation" includes a combined water and sewer corporation, whether as a single entity or as different entities under common ownership.

(b) Nothing in articles 1 to 7 of this title shall be construed to apply to:

(I) Irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(II) Exemptions provided for in the constitution of the state of Colorado relating to municipal utilities;

(III) Hotels, motels, or other lodging-type entities that resell intrastate toll services to their lodging patrons and not to the general public;

(IV) Any consumer who owns pay telephone terminal equipment and who resells local exchange and toll service paid for by coin deposit, credit card, or otherwise by using the tariff services and facilities of regulated telephone utilities;

(V) The provision or resale to the general public of communications services over a cellular radio system. For purposes of this subparagraph (V), a "cellular radio" means a mobile communications system in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within that service area.

(VI) Providers of telephone or telecommunications service from inmates at penal institutions.

(2) (a) Every cooperative electric association, or nonprofit electric corporation or association, and every other supplier of electric energy, whether supplying electric energy for the use of the public or for the use of its own members, is hereby declared to be affected with a public interest and to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

(b) (I) Paragraph (a) of this subsection (2) requiring regulation by the commission shall not be applicable to a cooperative electric association which has voted to exempt itself from regulation pursuant to the

provisions of [section 40-9.5-103](#). Regulation of such cooperative electric associations shall be in the manner provided in part 1 of article 9.5 of this title.

(II) Repealed.

(c) The supply of electricity or heat to a consumer of the electricity or heat from solar generating equipment located on the site of the consumer's property, which equipment is owned or operated by an entity other than the consumer, shall not subject the owner or operator of the on-site solar generating equipment to regulation as a public utility by the commission 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 paragraph (c), 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.

(3) For the purposes of articles 1 to 7 of this title, a motor carrier that provides transportation not subject to regulation pursuant to [section 40-10.1-105](#) or that is subject to part 3, 4, or 5 of article 10.1 of this title is not a public utility.

(4) Repealed.

HISTORY: Source: L. 13: p. 465, § 3.C.L. § 2913.CSA: C. 137, § 3.CRS 53: § 115-1-3.L. 61: p. 627, § 1. C.R.S. 1963: § 115-1-3.L. 80: (3) added, p. 742, § 2, effective June 30.L. 83: (1) amended, p. 1547, § 1, effective May 25; (2) amended, p. 1572, § 2, effective July 1.L. 84: (1) amended, p. 1032, § 1, effective April 2; (3) amended, p. 1051, § 3, effective April 12.L. 85: (2)(b)(I) amended and (2)(b)(II) repealed, pp. 1301, 1303, § 1, 6, effective April 5; (1)(b)(IV) and (1)(b)(V) added, pp. 1293, 1294, § 1, 1, effective April 30; (3) amended, p. 1308, § 3, effective May 29.L. 86: (2)(b)(I) amended, p. 1161, § 2, effective May 27.L. 90: (4) added, p. 1811, § 2, effective June 7.L. 91: (3) amended, p. 1758, § 1, effective March 12.L. 95: (3) amended, p. 1209, § 22, effective May 31.L. 98: (1)(b)(III) amended, p. 845, § 4, effective May 26.L. 2003: (1)(b)(VI) added, p. 2592, § 3, effective June 5.L. 2008: (1)(a) amended, p. 1792, § 4, effective July 1.L. 2009: (2)(c) added, [\(SB 09-051\), ch. 157, p. 678, § 10](#), effective September 1.L. 2011: (3) amended, [\(HB 11-1198\), ch. 127, p. 418, § 12](#), effective August 10.L. 2012: (4) repealed, [\(HB 12-1258\), ch. 147, p. 529, § 2](#), effective August 8.

Cross references: For constitutional provisions relating to exemption of municipally owned utilities, see article XXV of the Colorado Constitution; for the regulation of rates and charges by municipal utilities, see article 3.5 of this title.

ANNOTATION

I. General Consideration.

II. Public Utility Defined.

III. Jurisdiction of Public Utilities Commission.

IV. Cooperative Electric Associations.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Coal Mining a Public Utility", see 12 Dicta 267 (1935). For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For article, "Oil and Gas Financing Under the Uniform Commercial Code as Enacted in Colorado", see 43 Den. L. J. 129 (1966). For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L. J. 269 (1966). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979). For article, "Utility Use of Renewable Resources: Legal and Economic Implications", see 59 Den. L.J. 663 (1982). For article, "Retail Competition in the Electric Utility Industry", see 60 Den. L.J. 1 (1982). For comment, "Municipal Utilities in Colorado -- Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

Fact that telephone company is a regulated utility is not sufficient state action on which a former employee may base a claim for relief under 42 U.S.C. § 1983. *Hughes v. Mountain States Tel. and Tel. Co.*, 686 P.2d 814 (Colo. App. 1984).

Applied in *City of Loveland v. Pub. Utils. Comm'n*, 195 Colo. 298, 580 P.2d 381 (1978); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 644 P.2d 933 (Colo. 1982).

II. PUBLIC UTILITY DEFINED.

To fall into class of public utility, business or enterprise must be impressed with public interest and those engaged in the conduct thereof must hold themselves out as serving or ready to serve all members of the public, who may require it, to the extent of their capacity: The nature of the service must be such that all members of the public have an enforceable right to demand it. *City of Englewood v. City County of Denver*, 123 Colo. 290, 229 P.2d 667 (1951); *Parrish v. Pub. Utils. Comm'n*, 134 Colo. 192, 301 P.2d 343 (1956); *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960); *Cady v. City of Arvada*, 31 Colo. App. 85, 499 P.2d 1203 (1972).

If operation is not impressed with public interest, that fact is readily determined by the fact that the public has no right to demand the service. *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Service to public is controlling factor. *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Intention and willingness to serve do not alone create utility status. One of the requirements for utility status is intention and willingness to serve: This qualification, standing alone, is not sufficient to endow a company with the protection of this title. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 142 Colo. 135, 350 P.2d

543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed.2d 50 (1960).

Dedication of operation to public service can never be presumed, but must be supported by evidence of an unequivocal intention to make such dedication. *Parrish v. Pub. Utils. Comm'n*, 134 Colo. 192, 301 P.2d 343 (1956); *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Appropriate test for determining public utility status is no longer common law "Englewood" test, but rather this section and other Colorado statutes and constitutional provisions. *Bd. of Cty. Comm'rs v. Denver Bd. of Water Comm'rs* 718 P.2d 235 (Colo. 1986).

Municipally owned public utility subject to regulation. A municipally owned public utility, as to service furnished consumers beyond its territorial jurisdiction, should be subject to the same regulation to which a privately owned public utility must conform in similar circumstances. *City County of Denver v. Pub. Utils. Comm'n*, 181 Colo. 38, 507 P.2d 871 (1973).

"Public utility" is not applicable to chattel or other property used for benefit of public, but applies to a system of works operated for public use. *Searle v. Haxtun*, 84 Colo. 494, 271 P. 629 (1928).

Question whether corporation is public utility depends upon acts not powers. While power possessed by a corporation under its charter or general statutes may be inquired into to determine whether it is authorized to perform a public service, the question of whether it is or is not a public utility depends not upon its powers, but upon its acts. *Colo. Utils. Corp. v. Pub. Utils. Comm'n*, 99 Colo. 189, 61 P.2d 849 (1936); *Colorado-Ute Elec. Ass'n v. W. Colo. Power Co.*, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

General assembly has declared that "common carrier" is "public utility". *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Contract carriage has not been declared a "public utility". *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Contract carrier and public utility distinguished. A party who installs a water distribution system and contracts with a city to furnish water to such line at the city limit upon certain conditions, and who has no contract with any water user on said system, and who does not hold himself out to serve the public indiscriminately, is a contract carrier and not a public utility and not subject to the jurisdiction of the public utilities commission. *Parrish v. Pub. Utils. Comm'n*, 134 Colo. 192, 301 P.2d 343 (1956); *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974); *Denver Cleanup Serv. Inc. v. Pub. Utils. Comm'n*, 195 Colo. 537, 561 P.2d 1252 (1977).

Smelting company may be public utility. A smelting company treating ores from various parts of the state is affected with a public interest. *Ohio Colo. Smelting Ref. Co. v. Pub. Utils. Comm'n*, 68 Colo. 137, 187 P. 1082 (1920).

Coal mining corporation held not public utility. A coal mining corporation not declared by law to be "affected with a public interest", which contracted with a municipality to sell to it surplus electrical energy generated by it for use in its mining operations, such being its only sale, is not to be a public utility within the meaning of the public utilities act. *Colo. Utils. Corp. v. Pub. Utils. Comm'n*, 99 Colo. 189, 61 P.2d 849 (1936).

Supplier of natural gas not public utility simply because it exercises eminent domain. An interstate supplier of natural gas, supplying a limited number of industrial customers with fuel gas under contract, which obtains, from the federal power commission, certificates of public convenience and necessity for the purpose of exercising the right of eminent domain does not thereby become a public utility as defined by this section. *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Sanitation district not public utility. A sanitation district organized pursuant to statute does not fall within the definition of a public utility. *Schlarb v. North Sub. San. Dist.*, 144 Colo. 590, 357 P.2d 647 (1960).

Water conservancy districts are not public utilities subject to the regulation of the public utilities commission. *Matthews v. Tri-County Water Conservancy Dist.*, 200 Colo. 202, 613 P.2d 889 (1980).

Motor carriers for hire, of whatever commodity, are public utilities. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

That common carriers do or do not compete with railroads is immaterial. *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926).

The department of corrections is not a telephone corporation pursuant to this section and therefore not subject to review or regulation by the public utilities commission with respect to inmate telephone system. *Powell v. Colo. Pub. Utils. Comm'n*, 956 P.2d 608 (Colo. 1998).

III. JURISDICTION OF PUBLIC UTILITIES COMMISSION.

This section vests jurisdiction exclusively in public utilities commission over the adequacy, installation, and extension of the power services and the facilities necessary to supply, extend, and connect the same; and the district court only has jurisdiction to review the decisions of the public utilities commission in appropriate proceedings. *Intermountain Rural Elec. Ass'n v. District Court*, 160 Colo. 128, 414 P.2d 911 (1966).

Theory upon which structure of public utility commission powers is based is that of regulated monopoly. *Denver R. G. W. R. R. v. Pub. Utils. Comm'n*, 142 Colo. 400, 351 P.2d 278 (1960); *Pub. Utils. Comm'n v. Verl Harvey, Inc.*, 150 Colo. 158, 371 P.2d 452 (1962); *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*,

151 Colo. 596, 380 P.2d 228 (1963); Colo. Transp. Co. v. Pub. Utils. Comm'n, 158 Colo. 136, 405 P.2d 682 (1965).

General assembly has granted to P.U.C. very extensive and broad regulatory powers including the power to designate location of facilities and also relocation or removal thereof; in exercising any power, the interest of the public should always be given first and paramount consideration. Pub. Serv. Co. v. Pub. Utils. Comm'n, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed.2d 50 (1960).

As function of police power of state. The power to regulate entities affected with a public interest is a function of the police power of the state, and any business or activity which is affected with a public interest may be so classified and so regulated. W. Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

IV.COOPERATIVE ELECTRIC ASSOCIATIONS.

Subsection (2) constitutional. Subsection (2), which generally confers jurisdiction over cooperatives in the public utilities commission, does not violate the constitution of Colorado or of the United States. W. Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

Subsection (2) makes no exceptions: "Every cooperative electric association" is public utility, as well as all other electric suppliers. W. Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966); Pub. Serv. Co. v. Pub. Utils. Comm'n, 174 Colo. 470, 485 P.2d 123 (1971).

Service may affect so considerable a fraction of the public that it is public in the same sense in which any other may be called so. The public does not mean everybody all the time. W. Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

Legislative act did not purport to affect the contractual rights between cooperatives and their members which were created at a time when the cooperatives did not enjoy the status of public utilities, and thus a rural electric association may continue to serve all members who were receiving service prior to the effective date of its becoming a public utility, regardless of any extensive certificates granted to others. W. Colo. Power Co. v. Pub. Utils. Comm'n, 163 Colo. 61, 428 P.2d 922 (1967).

Effect of subsection (2) is prospectively to establish electrical cooperatives as public utilities and to give them a regulated monopoly status as of that date in those areas in which they were rendering service on an exclusive basis. W. Colo. Power Co. v. Pub. Utils. Comm'n, 163 Colo. 61, 428 P.2d 922 (1967).

40-1-103.3. Alternative fuel vehicles - definition

(1) As used in this section, "property or premises", with respect to an electric, natural gas, or liquefied petroleum gas extension or connection of service, includes alternative fuel vehicle charging and fueling facilities in addition to buildings and other improvements.

(2) For the purposes of articles 1 to 7 of this title, persons generating electricity for use in alternative fuel vehicle charging or fueling facilities as authorized by subsection (4) of this section, persons reselling electricity supplied by a public utility, or persons reselling compressed or liquefied natural gas, liquefied petroleum gas, or any component parts or by-products to governmental entities or to the public for use as fuel in alternative fuel vehicles or buying electricity stored in such vehicles for resale are not subject to regulation as a public utility. Electric and natural gas public utilities may provide the services described in this subsection (2) as unregulated services, and these unregulated services may not be subsidized by the regulated services of the electric or natural gas public utility.

(3) Owners or operators of property or premises containing an alternative fuel vehicle charging or fueling facility, or the owners or operators of the facility, shall purchase the electricity required for the facility from a public utility with the right to sell electricity to the property, premises, or facility except when the owners or operators of the property, premises, or facility generate electricity on the property or premises for use in alternative fuel vehicles as authorized by subsection (4) of this section.

(4) The owner or operator of a facility that generates electricity for use in alternative fuel vehicle charging or fueling facilities is not subject to regulation as a public utility, if:

(a) The electricity is generated on the property or premises where the charging or fueling facilities are located; and

(b) The electricity is generated from a renewable resource that:

(I) Qualifies as "retail distributed generation" as defined in [section 40-2-124 \(1\) \(a\) \(V\)](#), if located on the system of an entity subject to the requirements of [section 40-2-124](#). The electric power requirements for the property pursuant to [section 40-2-124 \(1\)](#) include the demand for existing or proposed alternative fuel vehicle charging or fueling facilities in addition to buildings and other improvements.

(II) Complies with [section 40-9.5-118](#), if located on the system of a cooperative electric association; or

(III) Complies with [section 40-2-124 \(7\)](#), if located on the system of a municipally owned utility.

(5) Sale of electricity or natural gas by a public utility to the owner or operator of an alternative fuel vehicle charging or fueling facility is a retail transaction.

(6) The regulated expenditures and investments made by a public utility to accommodate alternative

fuel vehicle charging and fueling facilities are equal in priority to all other infrastructure necessary to serve any customer of the public utility in its service territory, but are subordinate to the safety and reliability obligations of the utility.

HISTORY: Source: L. 2012: Entire section added, [\(HB 12-1258\), ch. 147, p. 530, § 3](#), effective August 8.

40-1-103.5. Limited exemption of master meter operators - conditions - rules

(1) Upon its own motion or upon application by any person who purchases gas or electric service from a regulated public utility for the purpose of delivery of such service to end users whose aggregate usage is to be measured by a master meter or other composite measurement device, the commission may exempt such person from regulation of rates under the "Public Utilities Law", articles 1 to 7 of this title, as the commission deems appropriate, so long as all of the following conditions are met:

(a) Such person, referred to in this section as a "master meter operator" or "MMO", does not charge the end users, as part of its billing for utility service, for any costs in addition to the actual cost billed to the MMO by the serving utility, including without limitation costs of construction, maintenance, financing, administration, metering, or billing for the utility distribution system owned by the MMO;

(b) If the MMO bills the end users separately for service, the sum of such billings does not exceed the amount billed to the MMO by the serving utility;

(c) If the MMO bills the end users separately for service, the MMO passes on to the end users any refunds, rebates, rate reductions, or similar adjustments it receives from the serving utility;

(d) Any other conditions deemed necessary by the commission.

(2) In passing on refunds, rebates, rate reductions, or similar adjustments to end users, the MMO shall notify its current end users, either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication, of such adjustments and inform the end users that they may claim the adjustments within ninety days after receipt of the notice. The MMO may retain any portion of such adjustments which rightfully belongs to the MMO. Upon the expiration of the ninety-day claims period, the MMO shall identify any such adjustments which are unclaimed and, if the aggregate amount unclaimed exceeds one hundred dollars, the MMO shall contribute such unclaimed amount to the fund established by the commission on low-income energy assistance pursuant to [section 40-8.5-104](#).

(3) The commission shall adopt such rules as it deems necessary to implement this section.

HISTORY: Source: L. 93: Entire section added, p. 291, § 1, effective April 7.

40-1-104. Securities - issuance

(1) The term "securities", when used in articles 1 to 7 of this title, includes stocks, bonds, notes, and other evidences of indebtedness.

(2) The power of every gas corporation and of every electrical corporation operating as a public utility as defined in [section 40-1-103](#) that derives more than five percent of its consolidated gross revenues in the state of Colorado as a public utility, or derives a lesser percentage if said revenues are realized by supplying an amount of energy which equals five percent or more of this state's consumption, to issue or assume securities and to create liens on its property situated within this state is a special privilege, hereby subjected to the supervision and control of the commission. Such public utility, when authorized by order of the commission and not otherwise, may issue or assume securities with a maturity date of more than twelve months after the date of issuance for the following purposes: The acquisition of property; the construction, completion, extension, or improvement of its facilities; the improvement or maintenance of its service; the discharge or lawful refunding of its obligations; the reimbursement of moneys actually expended for said purposes from income or from any other moneys in the treasury not secured by or obtained from the issue of securities within five years next prior to the filing of an application with the commission for the required authorization; or any of such purposes or any other lawful purpose authorized by the commission.

(3) Such public utility, by written petition filed with the commission setting forth the pertinent facts involved, shall make application to the commission for an order authorizing the proposed issue or assumption of securities and the application of the proceeds therefrom to the purpose specified. The commission, with or without a hearing and upon such notice as the commission may prescribe, shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission finds that such transactions are inconsistent with the public interest or that the purpose thereof is not permitted or is inconsistent with the provisions of this section.

(4) Such public utility may issue or renew, extend, or assume liability on securities, other than stocks, with a maturity date of not more than twelve months after the date of issuance and secured or unsecured, without application to or order of the commission; but no such securities so issued shall in whole or in part be refunded by any issue of securities having a maturity of more than twelve months except on application to and approval of the commission.

(5) All applications for the issuance or assumption of securities shall be placed at the head of the commission's docket and shall be disposed of promptly, within thirty days after the petition is filed with the commission unless it is necessary for good cause to continue the same for a longer period. Whenever such application is continued beyond thirty days after the time it is filed, the commission shall enter an order making such continuance and stating fully the facts necessitating the continuance.

(6) No provision of this section nor any act or deed performed in connection therewith shall be construed to obligate the state of Colorado to pay or guarantee in any manner whatsoever any security

authorized, issued, or assumed under the provisions of this section.

(7) All securities issued or assumed without application to and approval of the commission, except the securities mentioned in subsection (4) of this section, shall be void.

(8) The commission shall provide for a serial number or other device to be placed on the face of any such securities for the proper and easy identification thereof.

(9) Notwithstanding any provision of law to the contrary, the commission may approve a petition from a public utility proposing an investment in any of the following if the commission determines that such investment is not otherwise inconsistent with the public interest or that such investment is not otherwise inconsistent with this section:

(a) Any public-private initiative with the department of transportation, as defined in [section 43-1-1201 \(3\)](#), C.R.S.;

(b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.; or

(c) Repealed.

(d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

HISTORY: Source: L. 13: p. 465, § 3.C.L. § 2913.CSA: C. 137, § 3.L. 47: p. 701, § 1.CRS 53: § 115-1-4. C.R.S. 1963: § 115-1-4.L. 81: (2) amended, p. 1905, § 1, effective March 27; (3) amended, p. 1922, § 1, effective July 1.L. 98: (9) added, p. 446, § 7, effective August 5.L. 2000: (2), (3), (5), (6), and (7) amended, p. 131, § 1, effective August 2.L. 2005: (9)(c) repealed, p. 289, § 40, effective August 8.

Cross references: For the legislative declaration contained in the 1998 act amending this section, see section 1 of chapter 154, Session Laws of Colorado 1998.

ANNOTATION

Law reviews. For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966).