

HB19-1313

## HOUSE FLOOR AMENDMENT

Second Reading

BY REPRESENTATIVE Becker

1 Amend the Health and Insurance Committee Report, dated April 17,  
2 2019, page 2, strike line 5 and substitute "COMMISSION.

3 **SECTION 5.** In Colorado Revised Statutes, **add** article 41 to title  
4 40 as follows:

**ARTICLE 41****Colorado Energy Impact Bond Act**

7 **40-41-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 41 IS  
8 THE "COLORADO ENERGY IMPACT BOND ACT".

9 **40-41-102. Definitions.** AS USED IN THIS ARTICLE 41, UNLESS THE  
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "ADJUSTMENT MECHANISM" MEANS A FORMULA-BASED  
12 MECHANISM FOR MAKING AUTOMATIC ADJUSTMENTS TO CO-EI CHARGES  
13 AUTHORIZED IN A FINANCING ORDER AND FOR MAKING ANY ADJUSTMENTS  
14 THAT ARE NECESSARY TO CORRECT FOR OVERCOLLECTION OR  
15 UNDERCOLLECTION OF SUCH CHARGES OR OTHERWISE ENSURE THE TIMELY  
16 AND COMPLETE PAYMENT OF THE CO-EI BONDS AND ALL FINANCING  
17 COSTS.

18 (2) "ANCILLARY AGREEMENT" MEANS ANY BOND, INSURANCE  
19 POLICY, LETTER OF CREDIT, RESERVE ACCOUNT, SURETY BOND, INTEREST  
20 RATE LOCK OR SWAP ARRANGEMENT, HEDGING ARRANGEMENT, LIQUIDITY  
21 OR CREDIT SUPPORT ARRANGEMENT, OR OTHER FINANCIAL ARRANGEMENT  
22 ENTERED INTO IN CONNECTION WITH CO-EI BONDS THAT IS DESIGNED TO  
23 PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE CO-EI  
24 BONDS OR TO MITIGATE THE RISK OF AN INCREASE IN INTEREST RATES.

25 (3) "ASSIGNEE" MEANS ANY PERSON TO WHICH AN INTEREST IN  
26 CO-EI PROPERTY IS SOLD, ASSIGNED, TRANSFERRED, OR CONVEYED,  
27 OTHER THAN AS SECURITY, AND ANY SUCCESSOR TO OR SUBSEQUENT  
28 ASSIGNEE OF SUCH A PERSON.

29 (4) "BONDHOLDER" MEANS ANY HOLDER OR OWNER OF CO-EI  
30 BONDS.

31 (5) "CO-EI BONDS" MEANS COLORADO ENERGY IMPACT BONDS  
32 THAT ARE LOW-COST CORPORATE SECURITIES, SUCH AS SENIOR SECURED  
33 BONDS, DEBENTURES, NOTES, CERTIFICATES OF PARTICIPATION,  
34 CERTIFICATES OF BENEFICIAL INTEREST, CERTIFICATES OF OWNERSHIP, OR  
35 OTHER EVIDENCES OF INDEBTEDNESS OR OWNERSHIP THAT HAVE A  
36 SCHEDULED MATURITY DATE AS DETERMINED REASONABLE BY THE  
37 COMMISSION BUT NOT LATER THAN THIRTY-TWO YEARS FOLLOWING  
38 ISSUANCE, THAT ARE RATED AA OR AA2 OR BETTER BY AT LEAST ONE  
39 MAJOR INDEPENDENT CREDIT RATING AGENCY AT THE TIME OF ISSUANCE,  
40 AND THAT ARE ISSUED BY AN ELECTRIC UTILITY OR AN ASSIGNEE  
41 PURSUANT TO A FINANCING ORDER, THE PROCEEDS OF WHICH ARE USED,

1 DIRECTLY OR INDIRECTLY, TO RECOVER, FINANCE, OR REFINANCE  
2 COMMISSION-APPROVED CO-EI COSTS AND FINANCING COSTS.

3 (6) "CO-EI CHARGE" MEANS A CHARGE IN AN AMOUNT  
4 AUTHORIZED BY THE COMMISSION IN A FINANCING ORDER IN ORDER TO  
5 PROVIDE A SOURCE OF REVENUE SOLELY TO REPAY, FINANCE, OR  
6 REFINANCE CO-EI COSTS AND FINANCING COSTS THAT ARE IMPOSED ON  
7 AND ARE A PART OF ALL CUSTOMER BILLS AND ARE COLLECTED IN FULL BY  
8 THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES, ITS  
9 SUCCESSORS OR ASSIGNEES, OR A COLLECTION AGENT THROUGH A  
10 NONBYPASSABLE CHARGE THAT IS SEPARATE AND APART FROM THE  
11 ELECTRIC UTILITY'S BASE RATES.

12 (7) (a) "CO-EI COSTS" MEANS:

13 (I) (A) AT THE OPTION OF AND UPON PETITION BY AN ELECTRIC  
14 UTILITY, AND AS APPROVED BY THE COMMISSION, ANY OF THE PRETAX  
15 COSTS THAT THE ELECTRIC UTILITY HAS INCURRED OR WILL INCUR THAT  
16 ARE CAUSED BY, ASSOCIATED WITH, OR REMAIN AS A RESULT OF THE  
17 RETIREMENT OF AN ELECTRIC GENERATING FACILITY LOCATED IN THE  
18 STATE.

19 (B) AS USED IN THIS SUBSECTION (7), "PRETAX COSTS", IF  
20 APPROVED BY THE COMMISSION, INCLUDE, BUT ARE NOT LIMITED TO, THE  
21 UNRECOVERED CAPITALIZED COST OF A RETIRED ELECTRIC GENERATING  
22 FACILITY, COSTS OF DECOMMISSIONING AND RESTORING THE SITE OF THE  
23 ELECTRIC GENERATING FACILITY, AND OTHER APPLICABLE CAPITAL AND  
24 OPERATING COSTS, ACCRUED CARRYING CHARGES, DEFERRED EXPENSES,  
25 REDUCTIONS FOR APPLICABLE INSURANCE AND SALVAGE PROCEEDS AND  
26 THE COSTS OF RETIRING ANY EXISTING INDEBTEDNESS, FEES, COSTS, AND  
27 EXPENSES TO MODIFY EXISTING DEBT AGREEMENTS OR FOR WAIVERS OR  
28 CONSENTS RELATED TO EXISTING DEBT AGREEMENTS.

29 (II) AMOUNTS FOR ASSISTANCE TO AFFECTED WORKERS AND  
30 COMMUNITIES IF APPROVED BY THE COMMISSION.

31 (III) PRETAX COSTS THAT AN ELECTRIC UTILITY HAS PREVIOUSLY  
32 INCURRED RELATED TO THE COMMISSION-APPROVED CLOSURE OF AN  
33 ELECTRIC GENERATING FACILITY OCCURRING BEFORE THE EFFECTIVE DATE  
34 OF THIS SECTION.

35 (b) "CO-EI COSTS" DO NOT INCLUDE ANY MONETARY PENALTY,  
36 FINE, OR FORFEITURE ASSESSED AGAINST AN ELECTRIC UTILITY BY A  
37 GOVERNMENT AGENCY OR COURT UNDER A FEDERAL OR STATE  
38 ENVIRONMENTAL STATUTE, RULE, OR REGULATION.

39 (8) "CO-EI PROPERTY" MEANS:

40 (a) ALL RIGHTS AND INTERESTS OF AN ELECTRIC UTILITY OR  
41 SUCCESSOR OR ASSIGNEE OF AN ELECTRIC UTILITY UNDER A FINANCING  
42 ORDER FOR THE RIGHT TO IMPOSE, BILL, COLLECT, AND RECEIVE CO-EI  
43 CHARGES AS IT IS AUTHORIZED TO DO SOLELY UNDER THE FINANCING

1 ORDER AND TO OBTAIN PERIODIC ADJUSTMENTS TO SUCH CO-EI CHARGES  
2 AS PROVIDED IN THE FINANCING ORDER; AND

3 (b) ALL REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENTS,  
4 PAYMENTS, MONEY, OR PROCEEDS ARISING FROM THE RIGHTS AND  
5 INTERESTS SPECIFIED IN SUBSECTION (8)(a) OF THIS SECTION, REGARDLESS  
6 OF WHETHER SUCH REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENT,  
7 PAYMENTS, MONEY, OR PROCEEDS ARE IMPOSED, BILLED, RECEIVED,  
8 COLLECTED, OR MAINTAINED TOGETHER WITH OR COMMINGLED WITH  
9 OTHER REVENUE, COLLECTIONS, RIGHTS TO PAYMENT, PAYMENTS, MONEY,  
10 OR PROCEEDS.

11 (9) "CO-EI REVENUE" MEANS ALL REVENUE, RECEIPTS,  
12 COLLECTIONS, PAYMENTS, MONEY, CLAIMS, OR OTHER PROCEEDS ARISING  
13 FROM CO-EI PROPERTY.

14 (10) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF  
15 THE STATE OF COLORADO.

16 (11) "CUSTOMER" MEANS A PERSON THAT TAKES ELECTRIC  
17 DISTRIBUTION OR ELECTRIC TRANSMISSION SERVICE FROM AN ELECTRIC  
18 UTILITY FOR CONSUMPTION OF ELECTRICITY IN THE STATE. THE TERM  
19 INCLUDES A CUSTOMER'S SUCCESSORS AND ASSIGNEES.

20 (12) "ELECTRIC UTILITY" MEANS AN ENTITY OPERATING FOR THE  
21 PURPOSE OF SUPPLYING ELECTRICITY TO THE PUBLIC FOR DOMESTIC,  
22 MECHANICAL, OR PUBLIC USES AND INCLUDES AN INVESTOR-OWNED  
23 ELECTRIC UTILITY SUBJECT TO REGULATION UNDER ARTICLES 1 TO 7 OF  
24 THIS TITLE 40, A MUNICIPALLY OWNED UTILITY, AND A COOPERATIVE  
25 ELECTRIC ASSOCIATION.

26 (13) "FINANCING COSTS" MEANS, IF APPROVED BY THE  
27 COMMISSION IN A FINANCING ORDER, COSTS TO ISSUE, SERVICE, REPAY, OR  
28 REFINANCE CO-EI BONDS, WHETHER INCURRED OR PAID UPON ISSUANCE  
29 OF THE CO-EI BONDS OR OVER THE LIFE OF THE CO-EI BONDS, AND  
30 INCLUDES:

31 (a) PRINCIPAL, INTEREST, AND REDEMPTION PREMIUMS THAT ARE  
32 PAYABLE ON CO-EI BONDS;

33 (b) ANY PAYMENT REQUIRED UNDER AN ANCILLARY AGREEMENT  
34 AND ANY AMOUNT REQUIRED TO FUND OR REPLENISH A RESERVE ACCOUNT  
35 OR OTHER ACCOUNTS ESTABLISHED UNDER THE TERMS OF ANY INDENTURE,  
36 ANCILLARY AGREEMENT, OR OTHER FINANCING DOCUMENT PERTAINING TO  
37 CO-EI BONDS;

38 (c) ANY OTHER COSTS RELATED TO ISSUING, SUPPORTING,  
39 REPAYING, REFUNDING, AND SERVICING CO-EI BONDS, INCLUDING, BUT  
40 NOT LIMITED TO, SERVICING FEES, ACCOUNTING AND AUDITING FEES,  
41 TRUSTEE FEES, LEGAL FEES, CONSULTING FEES, FINANCIAL ADVISOR FEES,  
42 ADMINISTRATIVE FEES, PLACEMENT AND UNDERWRITING FEES,  
43 CAPITALIZED INTEREST, RATING AGENCY FEES, STOCK EXCHANGE LISTING

1 AND COMPLIANCE FEES, SECURITY REGISTRATION FEES, FILING FEES,  
2 INFORMATION TECHNOLOGY PROGRAMMING COSTS, AND ANY OTHER  
3 DEMONSTRABLE COSTS NECESSARY TO OTHERWISE ENSURE AND  
4 GUARANTEE THE TIMELY PAYMENT OF CO-EI BONDS OR OTHER AMOUNTS  
5 OR CHARGES PAYABLE IN CONNECTION WITH CO-EI BONDS;

6 (d) ANY TAXES AND LICENSE FEES IMPOSED ON THE REVENUE  
7 GENERATED FROM THE COLLECTION OF A CO-EI CHARGE;

8 (e) ANY STATE AND LOCAL TAXES, INCLUDING FRANCHISE, SALES  
9 AND USE, AND OTHER TAXES OR SIMILAR CHARGES, INCLUDING, BUT NOT  
10 LIMITED TO, REGULATORY ASSESSMENT FEES, WHETHER PAID, PAYABLE,  
11 OR ACCRUED; AND

12 (f) ANY COSTS INCURRED BY AN ELECTRIC UTILITY TO PAY THE  
13 COMMISSION'S COSTS OF ENGAGING SPECIALIZED COUNSEL AND EXPERT  
14 CONSULTANTS EXPERIENCED IN SECURITIZED ELECTRIC UTILITY  
15 RATEPAYER-BACKED BOND FINANCING SIMILAR TO CO-EI BONDS AS  
16 AUTHORIZED BY SECTION 40-41-107 (4).

17 (14) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION  
18 ISSUED PURSUANT TO SECTION 40-41-106 THAT GRANTS, IN WHOLE OR IN  
19 PART, AN APPLICATION FILED PURSUANT TO SECTION 40-41-103 AND THAT  
20 AUTHORIZES THE ISSUANCE OF CO-EI BONDS IN ONE OR MORE SERIES, THE  
21 IMPOSITION, CHARGING, AND COLLECTION OF CO-EI CHARGES, AND THE  
22 CREATION OF CO-EI PROPERTY.

23 (15) "FINANCING PARTY" MEANS A HOLDER OF CO-EI BONDS AND  
24 TRUSTEES, COLLATERAL AGENTS, ANY PARTY UNDER AN ANCILLARY  
25 AGREEMENT, OR ANY OTHER PERSON ACTING FOR THE BENEFIT OF A  
26 HOLDER OF CO-EI BONDS.

27 (16) "FINANCING STATEMENT" HAS THE SAME MEANING AS SET  
28 FORTH IN SECTION 4-9-102 (39).

29 (17) "NONBYPASSABLE" MEANS THAT THE PAYMENT OF A CO-EI  
30 CHARGE MAY NOT BE AVOIDED BY ANY FUTURE OR EXISTING CUSTOMER  
31 LOCATED WITHIN AN ELECTRIC UTILITY SERVICE AREA AS SUCH SERVICE  
32 AREA EXISTED AS OF THE DATE OF THE FINANCING ORDER OR, IF THE  
33 FINANCING ORDER SO PROVIDES, AS SUCH SERVICE AREA MAY BE  
34 EXPANDED, EVEN IF THE CUSTOMER ELECTS TO PURCHASE ELECTRICITY  
35 FROM A SUPPLIER OTHER THAN THE ELECTRIC UTILITY.

36 (18) "SUCCESSOR" MEANS, WITH RESPECT TO ANY LEGAL ENTITY,  
37 ANOTHER LEGAL ENTITY THAT SUCCEEDS BY OPERATION OF LAW TO THE  
38 RIGHTS AND OBLIGATIONS OF THE FIRST LEGAL ENTITY PURSUANT TO ANY  
39 BANKRUPTCY, REORGANIZATION, RESTRUCTURING, OTHER INSOLVENCY  
40 PROCEEDING, MERGER, ACQUISITION, CONSOLIDATION, OR SALE OR  
41 TRANSFER OF ASSETS, WHETHER ANY OF THESE OCCUR DUE TO A  
42 RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY OR OTHERWISE.  
43 SOLELY FOR THE PURPOSE OF IMPLEMENTING THIS ARTICLE 41,

1 "SUCCESSOR" DOES NOT INCLUDE ANY MUNICIPALLY OWNED ELECTRIC  
2 UTILITY ESTABLISHED AND PROVIDING RETAIL ELECTRIC SERVICE BEFORE  
3 THE DATE ON WHICH CO-EI BONDS ARE ISSUED PURSUANT TO A FINANCING  
4 ORDER RELATING TO ELECTRIC GENERATING FACILITIES THAT SERVE OR  
5 PREVIOUSLY SERVED THE SERVICE AREA OF THE MUNICIPALLY OWNED  
6 ELECTRIC UTILITY.

7 **40-41-103. Financing orders - application requirements.**

8 (1) AN ELECTRIC UTILITY, IN ITS SOLE DISCRETION, MAY APPLY TO THE  
9 COMMISSION FOR A FINANCING ORDER AS AUTHORIZED BY THIS SECTION.

10 (2) (a) AN INVESTOR-OWNED OR OTHER REGULATED ELECTRIC  
11 UTILITY MAY FILE AN APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS  
12 IN ONE OR MORE SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES,  
13 AND CREATE CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN  
14 ELECTRIC GENERATING FACILITY IN COLORADO THAT HAS PREVIOUSLY  
15 BEEN APPROVED BY THE COMMISSION.

16 (b) AN ELECTRIC UTILITY THAT IS NOT REGULATED MAY FILE AN  
17 APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS IN ONE OR MORE  
18 SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES, AND CREATE  
19 CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN ELECTRIC  
20 GENERATING FACILITY IN COLORADO.

21 (c) THE COMMISSION SHALL TAKE FINAL ACTION TO APPROVE,  
22 DENY, OR MODIFY ANY APPLICATION FOR A FINANCING ORDER AS  
23 DESCRIBED IN SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION IN A FINAL  
24 ORDER ISSUED IN ACCORDANCE WITH THE COMMISSION'S RULES FOR  
25 ADDRESSING APPLICATIONS.

26 (3) (a) AN APPLICATION FOR A FINANCING ORDER MUST INCLUDE  
27 THE FOLLOWING INFORMATION:

28 (I) A DESCRIPTION OF THE CO-EI COSTS THAT THE APPLICANT  
29 PROPOSES TO RECOVER WITH THE PROCEEDS OF THE CO-EI BONDS;

30 (II) AN ESTIMATE OF THE FINANCING COSTS RELATED TO THE  
31 CO-EI BONDS;

32 (III) AN ESTIMATE OF THE CO-EI CHARGES NECESSARY TO PAY  
33 THE CO-EI COSTS AND ALL FINANCING COSTS, AND THE PERIOD OVER  
34 WHICH SUCH COSTS WILL BE RECOVERED;

35 (IV) A PROPOSED METHODOLOGY FOR ALLOCATING THE REVENUE  
36 REQUIREMENT FOR THE CO-EI CHARGE AMONG CUSTOMER CLASSES,  
37 INCLUDING SPECIAL CONTRACT CUSTOMERS;

38 (V) A DESCRIPTION OF THE NONBYPASSABLE CO-EI CHARGE  
39 REQUIRED TO BE PAID BY CUSTOMERS WITHIN THE ELECTRIC UTILITY'S  
40 SERVICE AREA FOR RECOVERY OF CO-EI COSTS AND A PROPOSED  
41 ADJUSTMENT MECHANISM REFLECTING THE ALLOCATION METHODOLOGY  
42 REFERRED TO IN SUBSECTION (3)(a)(IV) OF THIS SECTION;

43 (VI) AN ESTIMATE OF THE TIMING OF THE ISSUANCE OF THE CO-EI

1 BONDS, OR SERIES OF BONDS; AND  
2 (VII) AN ESTIMATE OF THE NET PROJECTED COST SAVINGS OR A  
3 DEMONSTRATION OF HOW THE ISSUANCE OF CO-EI BONDS AND THE  
4 IMPOSITION OF CO-EI CHARGES WOULD AVOID OR SIGNIFICANTLY  
5 MITIGATE RATE IMPACTS TO CUSTOMERS AS COMPARED WITH TRADITIONAL  
6 METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM  
7 CUSTOMERS.  
8 (b) IN ADDITION TO FURNISHING THE INFORMATION SPECIFIED IN  
9 SUBSECTION (3)(a) OF THIS SECTION, AN APPLICANT SHALL:  
10 (I) SPECIFY A FUTURE RATEMAKING PROCESS TO RECONCILE ANY  
11 DIFFERENCE BETWEEN THE ACTUAL CO-EI COSTS FINANCED BY CO-EI  
12 BONDS AND THE FINAL CO-EI COSTS INCURRED BY THE UTILITY OR THE  
13 ASSIGNEE. THE RECONCILIATION MAY AFFECT THE ELECTRIC UTILITY'S  
14 BASE RATES OR ANY RIDER ADOPTED PURSUANT TO SECTION 40-41-104  
15 (4), BUT SHALL NOT AFFECT THE AMOUNT OF THE BONDS OR THE  
16 ASSOCIATED CO-EI CHARGES PAID BY CUSTOMERS.  
17 (II) PROVIDE DIRECT TESTIMONY SUPPORTING THE APPLICATION.  
18 **40-41-104. Issuance of financing orders.** (1) FOLLOWING  
19 NOTICE AND HEARING ON AN APPLICATION FOR A FINANCING ORDER AS  
20 REQUIRED BY THE COMMISSION'S RULES, PRACTICE, AND PROCEDURE, THE  
21 COMMISSION MAY ISSUE A FINANCING ORDER IF THE COMMISSION FINDS  
22 THAT:  
23 (a) THE CO-EI COSTS DESCRIBED IN THE APPLICATION RELATED TO  
24 THE RETIREMENT OF THE ELECTRIC GENERATING FACILITIES ARE  
25 REASONABLE;  
26 (b) THE PROPOSED ISSUANCE OF CO-EI BONDS AND THE  
27 IMPOSITION AND COLLECTION OF CO-EI CHARGES:  
28 (I) ARE JUST AND REASONABLE;  
29 (II) ARE CONSISTENT WITH THE PUBLIC INTEREST;  
30 (III) CONSTITUTE A PRUDENT AND REASONABLE MECHANISM FOR  
31 THE FINANCING OF THE CO-EI COSTS DESCRIBED IN THE APPLICATION; AND  
32 (IV) WILL PROVIDE SUBSTANTIAL, TANGIBLE, AND QUANTIFIABLE  
33 NET PRESENT VALUE SAVINGS OR OTHER BENEFITS TO CUSTOMERS THAT  
34 ARE GREATER THAN THE BENEFITS THAT WOULD HAVE BEEN ACHIEVED  
35 ABSENT THE ISSUANCE OF CO-EI BONDS; AND  
36 (c) THE PROVISIONS OF THE FINANCING ORDER WILL ENSURE THAT  
37 THE PROPOSED STRUCTURING, MARKETING, AND PRICING OF THE CO-EI  
38 BONDS WILL:  
39 (I) LOWER OVERALL COSTS TO CUSTOMERS OR AVOID OR MITIGATE  
40 RATE IMPACTS TO CUSTOMERS RELATIVE TO TRADITIONAL METHODS OF  
41 FINANCING; AND  
42 (II) ACHIEVE THE MAXIMUM NET PRESENT VALUE OF CUSTOMER  
43 SAVINGS, AS DETERMINED BY THE COMMISSION IN A FINANCING ORDER,

1 CONSISTENT WITH MARKET CONDITIONS AT THE TIME OF SALE AND THE  
2 TERMS OF THE FINANCING ORDER.

3 (2) THE FINANCING ORDER MUST:

4 (a) DETERMINE THE MAXIMUM AMOUNT OF CO-EI COSTS THAT  
5 MAY BE FINANCED FROM PROCEEDS OF CO-EI BONDS AUTHORIZED TO BE  
6 ISSUED BY THE FINANCING ORDER;

7 (b) APPROVE A METHODOLOGY FOR ALLOCATING THE REVENUE  
8 REQUIREMENT FOR THE CO-EI CHARGE AMONG CUSTOMER CLASSES;

9 (c) DESCRIBE THE PROPOSED CUSTOMER BILLING MECHANISM FOR  
10 CO-EI CHARGES AND INCLUDE A FINDING THAT THE MECHANISM IS JUST  
11 AND REASONABLE;

12 (d) DESCRIBE AND ESTIMATE THE FINANCING COSTS THAT MAY BE  
13 RECOVERED THROUGH CO-EI CHARGES AND THE PERIOD OVER WHICH  
14 THE COSTS MAY BE RECOVERED, SUBJECT TO SECTION 40-41-105;

15 (e) DETERMINE WHETHER THE PROPOSED STRUCTURING,  
16 EXPECTED PRICING, AND FINANCING COSTS OF CO-EI BONDS HAVE A  
17 SIGNIFICANT LIKELIHOOD OF LOWERING OVERALL COSTS TO CUSTOMERS  
18 OR AVOIDING OR SIGNIFICANTLY MITIGATING RATE IMPACTS TO  
19 CUSTOMERS AS COMPARED WITH TRADITIONAL METHODS OF FINANCING  
20 AND RECOVERING CO-EI COSTS FROM CUSTOMERS. A FINANCING ORDER  
21 MUST PROVIDE DETAILED FINDINGS OF FACT ADDRESSING  
22 COST-EFFECTIVENESS AND ASSOCIATED RATE IMPACTS UPON CUSTOMERS  
23 AND CUSTOMER CLASSES.

24 (f) REQUIRE THE IMPOSITION AND COLLECTION OF THE  
25 NON-BYPASSABLE CO-EI CHARGES AUTHORIZED UNDER A FINANCING  
26 ORDER FOR THE PERIOD SPECIFIED IN SUBSECTION (2)(d) OF THIS SECTION;

27 (g) DESCRIBE THE CO-EI PROPERTY THAT MAY BE CREATED IN  
28 FAVOR OF THE UTILITY AND ITS SUCCESSORS AND ASSIGNEES AND THAT  
29 WILL BE USED TO PAY, AND SECURE THE PAYMENT OF, THE CO-EI BONDS  
30 AND FINANCING COSTS AUTHORIZED IN THE FINANCING ORDER;

31 (h) AUTHORIZE AND APPROVE AN ADJUSTMENT MECHANISM  
32 REFLECTING THE ALLOCATION METHODOLOGY SPECIFIED IN SUBSECTION  
33 (2)(b) OF THIS SECTION;

34 (i) AUTHORIZE THE APPLICANT ELECTRIC UTILITY TO FINANCE  
35 CO-EI COSTS THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF CO-EI  
36 BONDS. AN ELECTRIC UTILITY IS NOT REQUIRED TO SECURE A SEPARATE  
37 FINANCING ORDER FOR EACH ISSUANCE OF CO-EI BONDS OR FOR EACH  
38 SCHEDULED PHASE OF THE PREVIOUSLY APPROVED RETIREMENT OF  
39 ELECTRIC GENERATING FACILITIES APPROVED IN THE FINANCING ORDER.

40 (j) INCLUDE ANY ADDITIONAL FINDINGS OR CONCLUSIONS DEEMED  
41 APPROPRIATE BY THE COMMISSION;

42 (k) SPECIFY THE DEGREE OF FLEXIBILITY AFFORDED TO THE  
43 ELECTRIC UTILITY IN ESTABLISHING THE TERMS AND CONDITIONS OF THE

1 CO-EI BONDS, INCLUDING, BUT NOT LIMITED TO, REPAYMENT SCHEDULES,  
2 EXPECTED INTEREST RATES, AND OTHER FINANCING COSTS;  
3 (l) SPECIFY THE TIMING OF ACTIONS REQUIRED BY THE ORDER,  
4 INCLUDING:  
5 (I) THE TIMING OF ISSUANCE OF THE CO-EI BONDS, INDEPENDENT  
6 OF THE SCHEDULE OF RETIREMENT OF THE ELECTRIC GENERATING  
7 FACILITY;  
8 (II) THE ENERGY ASSISTANCE FUNDS, IF INCLUDED IN THE BOND  
9 ISSUE, MAY BE TRANSFERRED TO A THIRD-PARTY ENTITY DESIGNATED BY  
10 THE COMMISSION TO ADMINISTER TRANSITION ASSISTANCE ON BEHALF OF  
11 DISPLACED WORKERS AND AFFECTED COMMUNITIES NO LATER THAN THE  
12 DATE ON WHICH THE ELECTRIC GENERATING FACILITY CEASES OPERATION;  
13 AND  
14 (III) THE APPLICANT ELECTRIC UTILITY FILES TO REDUCE ITS RATES  
15 AS REQUIRED IN SUBSECTION (4) OF THIS SECTION SIMULTANEOUSLY WITH  
16 THE INCEPTION OF THE CO-EI CHARGES AND INDEPENDENTLY OF THE  
17 SCHEDULE OF CLOSING AND DECOMMISSIONING OF THE ELECTRIC  
18 GENERATING FACILITY; AND  
19 (m) SPECIFY A FUTURE RATEMAKING PROCESS TO RECONCILE ANY  
20 DIFFERENCE BETWEEN THE ACTUAL CO-EI COSTS FINANCED BY CO-EI  
21 BONDS AND THE FINAL CO-EI COSTS INCURRED BY THE UTILITY OR THE  
22 ASSIGNEE. THE RECONCILIATION MAY AFFECT THE ELECTRIC UTILITY'S  
23 BASE RATES OR ANY RIDER ADOPTED PURSUANT TO SUBSECTION (4) OF  
24 THIS SECTION, BUT SHALL NOT AFFECT THE AMOUNT OF THE BONDS OR THE  
25 ASSOCIATED CO-EI CHARGES PAID BY CUSTOMERS.  
26 (3) A FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MUST  
27 PERMIT AND MAY REQUIRE THE CREATION OF AN ELECTRIC UTILITY'S  
28 CO-EI PROPERTY PURSUANT TO SUBSECTION (2)(g) OF THIS SECTION TO BE  
29 CONDITIONED UPON, AND SIMULTANEOUS WITH, THE SALE OR OTHER  
30 TRANSFER OF THE CO-EI PROPERTY TO AN ASSIGNEE AND THE PLEDGE OF  
31 THE CO-EI PROPERTY TO SECURE CO-EI BONDS.  
32 (4) A FINANCING ORDER MUST REQUIRE THE APPLICANT ELECTRIC  
33 UTILITY, SIMULTANEOUSLY WITH THE INCEPTION OF THE COLLECTION OF  
34 CO-EI CHARGES, TO REDUCE ITS RATES THROUGH A REDUCTION IN BASE  
35 RATES OR BY A NEGATIVE RIDER ON CUSTOMER BILLS IN AN AMOUNT  
36 EQUAL TO THE REVENUE REQUIREMENT ASSOCIATED WITH THE UTILITY  
37 ASSETS BEING FINANCED BY CO-EI BONDS.  
38 (5) IN A FINANCING ORDER, THE COMMISSION MAY INCLUDE ANY  
39 CONDITIONS THAT ARE NECESSARY TO PROMOTE THE PUBLIC INTEREST  
40 AND MAY GRANT RELIEF THAT IS DIFFERENT FROM THAT WHICH WAS  
41 REQUESTED IN THE APPLICATION SO LONG AS THE RELIEF IS WITHIN THE  
42 SCOPE OF THE MATTERS ADDRESSED IN THE COMMISSION'S NOTICE OF THE  
43 APPLICATION.

1           **40-41-105. Effect of financing order.** (1) A FINANCING ORDER  
2 REMAINS IN EFFECT UNTIL THE CO-EI BONDS ISSUED AS AUTHORIZED BY  
3 THE FINANCING ORDER HAVE BEEN PAID IN FULL AND ALL FINANCING  
4 COSTS RELATING TO THE CO-EI BONDS HAVE BEEN PAID IN FULL.

5           (2) A FINANCING ORDER REMAINS IN EFFECT AND UNABATED  
6 NOTWITHSTANDING THE BANKRUPTCY, REORGANIZATION, OR INSOLVENCY  
7 OF THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES OR  
8 ANY AFFILIATE OF THE ELECTRIC UTILITY OR SUCCESSOR ENTITY OR  
9 ASSIGNEE.

10          (3) SUBJECT TO JUDICIAL REVIEW AS PROVIDED FOR IN SECTION  
11 40-41-108, A FINANCING ORDER IS IRREVOCABLE. THEREFORE,  
12 NOTWITHSTANDING SECTION 40-6-112 (1), THE COMMISSION MAY NOT  
13 REDUCE, IMPAIR, POSTPONE, OR TERMINATE CO-EI CHARGES APPROVED  
14 IN A FINANCING ORDER OR IMPAIR CO-EI PROPERTY OR THE COLLECTION  
15 OR RECOVERY OF CO-EI REVENUE.

16          (4) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, UPON  
17 THE REQUEST OF AN ELECTRIC UTILITY OR AT THE REQUEST OF PARTIES IN  
18 THE COMMISSION PROCEEDING, THE COMMISSION MAY COMMENCE A  
19 PROCEEDING AND ISSUE A SUBSEQUENT FINANCING ORDER THAT PROVIDES  
20 FOR REFINANCING, RETIRING, OR REFUNDING CO-EI BONDS ISSUED  
21 PURSUANT TO THE ORIGINAL FINANCING ORDER IF:

22           (a) THE COMMISSION MAKES ALL OF THE FINDINGS SPECIFIED IN  
23 SECTION 40-41-104 (1) WITH RESPECT TO THE SUBSEQUENT FINANCING  
24 ORDER; AND

25           (b) THE SUBSEQUENT FINANCING ORDER DOES NOT IMPAIR IN ANY  
26 WAY THE COVENANTS AND TERMS OF THE CO-EI BONDS TO BE  
27 REFINANCED, RETIRED, OR REFUNDED.

28           **40-41-106. Effect on commission jurisdiction.** (1) EXCEPT AS  
29 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF THE  
30 COMMISSION ISSUES A FINANCING ORDER TO AN ELECTRIC UTILITY, THE  
31 COMMISSION SHALL NOT, IN EXERCISING ITS POWERS AND CARRYING OUT  
32 ITS DUTIES PURSUANT TO THIS ARTICLE 41:

33           (a) CONSIDER THE CO-EI BONDS ISSUED PURSUANT TO THE  
34 FINANCING ORDER TO BE DEBT OF THE ELECTRIC UTILITY OTHER THAN FOR  
35 INCOME TAX PURPOSES;

36           (b) CONSIDER THE CO-EI CHARGES PAID UNDER THE FINANCING  
37 ORDER TO BE REVENUE OF THE ELECTRIC UTILITY;

38           (c) CONSIDER THE CO-EI COSTS OR FINANCING COSTS SPECIFIED  
39 IN THE FINANCING ORDER TO BE THE REGULATED COSTS OR ASSETS OF THE  
40 ELECTRIC UTILITY; OR

41           (d) DETERMINE ANY PRUDENT ACTION TAKEN BY AN ELECTRIC  
42 UTILITY THAT IS CONSISTENT WITH THE FINANCING ORDER TO BE UNJUST  
43 OR UNREASONABLE.

1 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION:  
2 (a) PREVENTS OR PRECLUDES THE COMMISSION FROM  
3 INVESTIGATING THE COMPLIANCE OF AN ELECTRIC UTILITY WITH THE  
4 TERMS AND CONDITIONS OF A FINANCING ORDER AND REQUIRING  
5 COMPLIANCE WITH THE FINANCING ORDER; OR  
6 (b) PREVENTS OR PRECLUDES THE COMMISSION FROM IMPOSING  
7 REGULATORY SANCTIONS AGAINST A REGULATED ELECTRIC UTILITY FOR  
8 FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF A FINANCING  
9 ORDER OR THE REQUIREMENTS OF THIS ARTICLE 41.  
10 (3) THE COMMISSION MAY NOT REFUSE TO ALLOW THE RECOVERY  
11 OF ANY COSTS ASSOCIATED WITH THE RETIREMENT OF ELECTRIC  
12 GENERATING FACILITIES BY AN ELECTRIC UTILITY SOLELY BECAUSE THE  
13 ELECTRIC UTILITY HAS ELECTED TO FINANCE THOSE ACTIVITIES THROUGH  
14 A FINANCING MECHANISM OTHER THAN CO-EI BONDS, WHETHER OR NOT  
15 A FINANCING ORDER WITH RESPECT TO SUCH COSTS HAS BEEN APPLIED FOR  
16 BY THE UTILITY OR ISSUED BY THE COMMISSION.  
17 **40-41-107. Electric utility customer protection.** (1) IN  
18 ADDITION TO ANY OTHER AUTHORITY OF THE COMMISSION:  
19 (a) THE COMMISSION MAY ATTACH SUCH CONDITIONS TO THE  
20 APPROVAL OF A FINANCING ORDER AS THE COMMISSION DEEMS  
21 APPROPRIATE TO MAXIMIZE THE BENEFITS AND MINIMIZE THE RISKS OF THE  
22 TRANSACTION TO CUSTOMERS, DIRECTLY IMPACTED COLORADO WORKERS  
23 AND COMMUNITIES, AND THE ELECTRIC UTILITY;  
24 (b) THE COMMISSION MAY SPECIFY IN THE FINANCING ORDER A  
25 PROCESS TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS, INCLUDING  
26 THE SELECTION OF THE UNDERWRITER OR UNDERWRITERS, IN A MANNER  
27 CONSISTENT WITH THE PUBLIC INTEREST AND THE LEGAL OBLIGATIONS OF  
28 THE ELECTRIC UTILITY;  
29 (c) THE COMMISSION SHALL REVIEW AND DETERMINE THE  
30 REASONABLENESS OF ALL PROPOSED UP-FRONT AND ONGOING FINANCING  
31 COSTS;  
32 (d) THE COMMISSION SHALL DETERMINE HOW IT WILL ENGAGE TO  
33 ENSURE THAT THE ISSUANCE OF THE CO-EI BONDS MAXIMIZES NET  
34 PRESENT VALUE CUSTOMER SAVINGS, CONSISTENT WITH MARKET  
35 CONDITIONS AT THE TIME OF ISSUANCE AND THE TERMS OF THE FINANCING  
36 ORDER; AND  
37 (e) THE COMMISSION HAS THE AUTHORITY REQUIRED TO PERFORM  
38 COMPREHENSIVE DUE DILIGENCE IN ITS EVALUATION OF AN APPLICATION  
39 FOR A FINANCING ORDER AND HAS THE AUTHORITY TO OVERSEE THE  
40 PROCESS USED TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS.  
41 (2) ALTERNATIVE FINANCING MECHANISMS MAY RESULT IN LOWER  
42 COSTS TO ELECTRIC UTILITY CUSTOMERS. IT IS HELPFUL TO PROVIDE  
43 ALTERNATIVE FINANCING MECHANISMS TO BE UTILIZED BY UTILITIES AS

1 OPTIONS FOR REDUCING THE TOTAL AMOUNT OF COSTS BEING INCLUDED  
2 IN CUSTOMER RATES RESULTING FROM ACCELERATING THE RETIREMENT  
3 OF ELECTRIC GENERATING FACILITIES.

4 (3) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ISSUANCE OF  
5 CO-EI BONDS, THE APPLICANT SHALL FILE WITH THE COMMISSION  
6 INFORMATION REGARDING THE ACTUAL UP-FRONT ISSUANCE COSTS OF THE  
7 CO-EI BONDS. THE COMMISSION SHALL REVIEW, ON A REASONABLY  
8 COMPARABLE BASIS, SUCH INFORMATION TO DETERMINE IF THE ISSUANCE  
9 RESULTED IN THE LOWEST OVERALL COSTS THAT WERE REASONABLY  
10 CONSISTENT WITH BOTH MARKET CONDITIONS AT THE TIME OF THE  
11 ISSUANCE AND THE TERMS OF THE FINANCING ORDER. THE COMMISSION  
12 MAY DISALLOW INCREMENTAL UP-FRONT ISSUANCE COSTS IN EXCESS OF  
13 THE LOWEST OVERALL COSTS BY REQUIRING THE ELECTRIC UTILITY TO  
14 MAKE A CREDIT IN AN AMOUNT EQUAL TO THE EXCESS OF ACTUAL  
15 ISSUANCE COSTS INCURRED, AND PAID FOR OUT OF CO-EI BOND  
16 PROCEEDS, AND THE LOWEST OVERALL ISSUANCE COSTS AS DETERMINED  
17 BY THE COMMISSION. THE COMMISSION MAY NOT MAKE ADJUSTMENTS TO  
18 THE CO-EI CHARGES FOR ANY SUCH EXCESS UP-FRONT ISSUANCE COSTS.

19 (4) IN PERFORMING ITS RESPONSIBILITIES UNDER THIS ARTICLE  
20 41, THE COMMISSION MAY ENGAGE OUTSIDE CONSULTANTS AND COUNSEL,  
21 SELECTED BY THE COMMISSION, WHO ARE EXPERIENCED IN SECURITIZED  
22 ELECTRIC UTILITY RATEPAYER-BACKED BOND FINANCING SIMILAR TO  
23 CO-EI BONDS. THESE OUTSIDE CONSULTANTS AND COUNSEL HAVE A  
24 DUTY OF LOYALTY SOLELY TO THE COMMISSION, MUST NOT HAVE ANY  
25 FINANCIAL INTEREST IN THE CO-EI BONDS, AND SHALL NOT PARTICIPATE  
26 IN THE UNDERWRITING OR SECONDARY MARKET TRADING OF THE CO-EI  
27 BONDS. THE EXPENSES ASSOCIATED WITH ANY ENGAGEMENT SHALL BE  
28 PAID BY THE APPLICANT UTILITY AND SHALL BE INCLUDED AS FINANCING  
29 COSTS AND INCLUDED IN THE CO-EI CHARGE, ARE NOT AN OBLIGATION OF  
30 THE STATE, AND ARE ASSIGNED SOLELY TO THE TRANSACTION.

31 (5) IF AN ELECTRIC UTILITY'S APPLICATION FOR A FINANCING  
32 ORDER IS DENIED OR WITHDRAWN OR FOR ANY REASON NO CO-EI BONDS  
33 ARE ISSUED, ANY COSTS OF RETAINING EXPERT CONSULTANTS AND  
34 COUNSEL ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY  
35 SUBSECTION (4) OF THIS SECTION AND APPROVED BY THE COMMISSION,  
36 SHALL BE PAID BY THE APPLICANT ELECTRIC UTILITY AND SHALL BE  
37 ELIGIBLE FOR RECOVERY BY THE ELECTRIC UTILITY, INCLUDING CARRYING  
38 COSTS, IN THE ELECTRIC UTILITY'S FUTURE RATES.

39 **40-41-108. Judicial review of financing orders.** A FINANCING  
40 ORDER IS A FINAL ORDER OF THE COMMISSION. NOTWITHSTANDING  
41 SECTION 40-6-115 (5) SPECIFYING PROPER VENUE FOR PETITION FILINGS,  
42 A PARTY AGGRIEVED BY THE ISSUANCE OF A FINANCING ORDER MAY  
43 PETITION FOR SUSPENSION AND REVIEW OF THE FINANCING ORDER ONLY IN

1 THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER. IN THE CASE  
2 OF ANY PETITION FOR SUSPENSION AND REVIEW, THE COURT SHALL  
3 PROCEED TO HEAR AND DETERMINE THE ACTION AS EXPEDITIOUSLY AS  
4 PRACTICABLE AND SHALL GIVE THE ACTION PRECEDENCE OVER OTHER  
5 MATTERS NOT ACCORDED SIMILAR PRECEDENCE BY LAW.

6 **40-41-109. Electric utilities - duties.** (1) THE ELECTRIC BILLS OF  
7 AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER AND  
8 CAUSED CO-EI BONDS TO BE ISSUED:

9 (a) MUST EXPLICITLY REFLECT THAT A PORTION OF THE CHARGES  
10 ON THE BILL REPRESENTS CO-EI CHARGES APPROVED IN A FINANCING  
11 ORDER ISSUED TO THE ELECTRIC UTILITY AND, IF THE CO-EI PROPERTY  
12 HAS BEEN TRANSFERRED TO AN ASSIGNEE, MUST INCLUDE A STATEMENT  
13 THAT THE ASSIGNEE IS THE OWNER OF THE RIGHTS TO CO-EI CHARGES  
14 AND THAT THE ELECTRIC UTILITY OR OTHER ENTITY, IF APPLICABLE, IS  
15 ACTING AS A COLLECTION AGENT OR SERVICER FOR THE ASSIGNEE;

16 (b) MUST INCLUDE THE CO-EI CHARGE ON EACH CUSTOMER'S BILL  
17 AS A SEPARATE LINE ITEM TITLED "ENERGY IMPACT ASSISTANCE CHARGE"  
18 AND MAY INCLUDE BOTH THE RATE AND THE AMOUNT OF THE CHARGE ON  
19 EACH BILL. THE FAILURE OF AN ELECTRIC UTILITY TO COMPLY WITH THIS  
20 SUBSECTION (1) DOES NOT INVALIDATE, IMPAIR, OR AFFECT ANY  
21 FINANCING ORDER, CO-EI PROPERTY, CO-EI CHARGE, OR CO-EI BONDS,  
22 BUT MAY SUBJECT THE ELECTRIC UTILITY TO PENALTIES UNDER  
23 APPLICABLE COMMISSION RULES; AND

24 (c) MUST EXPLAIN TO CUSTOMERS IN AN ANNUAL FILING WITH THE  
25 COMMISSION THE RATE IMPACT THAT FINANCING THE RETIREMENT OF  
26 ELECTRIC GENERATING FACILITIES WILL HAVE ON CUSTOMER RATES.

27 (2) AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER  
28 AND CAUSED CO-EI BONDS TO BE ISSUED MUST DEMONSTRATE IN AN  
29 ANNUAL FILING WITH THE COMMISSION THAT CO-EI BOND PROCEEDS ARE  
30 APPLIED SOLELY TO THE REPAYMENT OF CO-EI COSTS AND THAT CO-EI  
31 REVENUES ARE APPLIED SOLELY TO THE REPAYMENT OF CO-EI BONDS AND  
32 OTHER FINANCING COSTS IN ACCORDANCE WITH THE FINANCING ORDER.  
33 THE COST OF SUCH ANNUAL FILING IS A FINANCING COST RECOVERABLE BY  
34 THE ELECTRIC UTILITY FROM THE CO-EI CHARGE.

35 **40-41-110. CO-EI property.** (1) CO-EI PROPERTY THAT IS  
36 DESCRIBED IN A FINANCING ORDER CONSTITUTES AN EXISTING PRESENT  
37 PROPERTY RIGHT OR INTEREST IN AN EXISTING PRESENT PROPERTY RIGHT  
38 EVEN THOUGH THE IMPOSITION AND COLLECTION OF CO-EI CHARGES  
39 DEPENDS ON THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER IS  
40 ISSUED PERFORMING ITS SERVICING FUNCTIONS RELATING TO THE  
41 COLLECTION OF CO-EI CHARGES AND ON FUTURE ELECTRICITY  
42 CONSUMPTION. THE PROPERTY RIGHT OR INTEREST EXISTS REGARDLESS OF  
43 WHETHER THE REVENUES OR PROCEEDS ARISING FROM THE CO-EI

1 PROPERTY HAVE BEEN BILLED, HAVE ACCRUED, OR HAVE BEEN COLLECTED  
2 AND NOTWITHSTANDING THE FACT THAT THE VALUE OR AMOUNT OF THE  
3 PROPERTY RIGHT OR INTEREST IS DEPENDENT ON THE FUTURE PROVISION  
4 OF SERVICE TO CUSTOMERS BY THE ELECTRIC UTILITY OR A SUCCESSOR OR  
5 ASSIGNEE OF THE ELECTRIC UTILITY.

6 (2) CO-EI PROPERTY DESCRIBED IN A FINANCING ORDER EXISTS  
7 UNTIL ALL CO-EI BONDS ISSUED PURSUANT TO THE FINANCING ORDER ARE  
8 PAID IN FULL AND ALL FINANCING COSTS AND OTHER COSTS OF THE CO-EI  
9 BONDS HAVE BEEN RECOVERED IN FULL.

10 (3) ALL OR ANY PORTION OF CO-EI PROPERTY DESCRIBED IN A  
11 FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MAY BE TRANSFERRED,  
12 SOLD, CONVEYED, OR ASSIGNED TO A SUCCESSOR OR ASSIGNEE THAT IS  
13 WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY THE ELECTRIC UTILITY  
14 AND IS CREATED FOR THE LIMITED PURPOSE OF ACQUIRING, OWNING, OR  
15 ADMINISTERING CO-EI PROPERTY OR ISSUING CO-EI BONDS AS  
16 AUTHORIZED BY THE FINANCING ORDER. ALL OR ANY PORTION OF CO-EI  
17 PROPERTY MAY BE PLEDGED TO SECURE CO-EI BONDS ISSUED PURSUANT  
18 TO A FINANCING ORDER, AMOUNTS PAYABLE TO FINANCING PARTIES AND  
19 TO COUNTERPARTIES UNDER ANY ANCILLARY AGREEMENTS, AND OTHER  
20 FINANCING COSTS. EACH TRANSFER, SALE, CONVEYANCE, ASSIGNMENT, OR  
21 PLEDGE BY AN ELECTRIC UTILITY OR AN AFFILIATE OF AN ELECTRIC  
22 UTILITY IS A TRANSACTION IN THE NORMAL COURSE OF BUSINESS FOR  
23 PURPOSES OF SECTION 40-5-105 (1)(a).

24 (4) IF AN ELECTRIC UTILITY DEFAULTS ON ANY REQUIRED PAYMENT  
25 OF CHARGES ARISING FROM CO-EI PROPERTY DESCRIBED IN A FINANCING  
26 ORDER, A COURT, UPON APPLICATION BY AN INTERESTED PARTY AND  
27 WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE APPLYING  
28 PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE  
29 REVENUE ARISING FROM THE CO-EI PROPERTY TO THE FINANCING  
30 PARTIES. ANY SUCH FINANCING ORDER REMAINS IN FULL FORCE AND  
31 EFFECT NOTWITHSTANDING ANY REORGANIZATION, BANKRUPTCY, OR  
32 OTHER INSOLVENCY PROCEEDINGS WITH RESPECT TO THE ELECTRIC  
33 UTILITY OR ITS SUCCESSORS OR ASSIGNEES.

34 (5) THE INTEREST OF A TRANSFEREE, PURCHASER, ACQUIRER,  
35 ASSIGNEE, OR PLEDGEE IN CO-EI PROPERTY SPECIFIED IN A FINANCING  
36 ORDER ISSUED TO AN ELECTRIC UTILITY, AND IN THE REVENUE AND  
37 COLLECTIONS ARISING FROM THAT PROPERTY, IS NOT SUBJECT TO SETOFF,  
38 COUNTERCLAIM, SURCHARGE, OR DEFENSE BY THE ELECTRIC UTILITY OR  
39 ANY OTHER PERSON OR IN CONNECTION WITH THE REORGANIZATION,  
40 BANKRUPTCY, OR OTHER INSOLVENCY OF THE ELECTRIC UTILITY OR ANY  
41 OTHER ENTITY.

42 (6) A SUCCESSOR TO AN ELECTRIC UTILITY, WHETHER PURSUANT  
43 TO ANY REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY

1 PROCEEDING OR WHETHER PURSUANT TO ANY MERGER OR ACQUISITION,  
2 SALE, OTHER BUSINESS COMBINATION, OR TRANSFER BY OPERATION OF  
3 LAW, AS A RESULT OF ELECTRIC UTILITY RESTRUCTURING OR OTHERWISE,  
4 SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF, AND HAS THE SAME  
5 DUTIES AND RIGHTS UNDER A FINANCING ORDER AS, THE ELECTRIC UTILITY  
6 TO WHICH THE FINANCING ORDER APPLIES AND SHALL PERFORM THE  
7 DUTIES AND EXERCISE THE RIGHTS IN THE SAME MANNER AND TO THE  
8 SAME EXTENT AS THE ELECTRIC UTILITY, INCLUDING COLLECTING AND  
9 PAYING TO ANY PERSON ENTITLED TO RECEIVE THEM THE REVENUES,  
10 COLLECTIONS, PAYMENTS, OR PROCEEDS OF CO-EI PROPERTY DESCRIBED  
11 IN THE FINANCING ORDER.

12 **40-41-111. CO-EI bonds - legal investments - not public debt**  
13 **- pledge of state.** (1) BANKS, TRUST COMPANIES, SAVINGS AND LOAN  
14 ASSOCIATIONS, INSURANCE COMPANIES, EXECUTORS, ADMINISTRATORS,  
15 GUARDIANS, TRUSTEES, AND OTHER FIDUCIARIES MAY LEGALLY INVEST  
16 ANY MONEY WITHIN THEIR CONTROL IN CO-EI BONDS. PUBLIC ENTITIES,  
17 AS DEFINED IN SECTION 24-75-601 (1), MAY INVEST PUBLIC FUNDS IN  
18 CO-EI BONDS ONLY IF THE CO-EI BONDS SATISFY THE INVESTMENT  
19 REQUIREMENTS ESTABLISHED IN PART 6 OF ARTICLE 75 OF TITLE 24.

20 (2) CO-EI BONDS ISSUED AS AUTHORIZED BY A FINANCING ORDER  
21 ARE NOT DEBT OF OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING  
22 POWER OF THE STATE, ANY AGENCY OF THE STATE, OR ANY COUNTY,  
23 MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE. HOLDERS  
24 OF CO-EI BONDS HAVE NO RIGHT TO HAVE TAXES LEVIED BY THE STATE  
25 OR BY ANY COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF  
26 THE STATE FOR THE PAYMENT OF THE PRINCIPAL OR INTEREST ON CO-EI  
27 BONDS. THE ISSUANCE OF CO-EI BONDS DOES NOT DIRECTLY, INDIRECTLY,  
28 OR CONTINGENTLY OBLIGATE THE STATE OR A POLITICAL SUBDIVISION OF  
29 THE STATE TO LEVY ANY TAX OR MAKE ANY APPROPRIATION FOR PAYMENT  
30 OF PRINCIPAL OR INTEREST ON THE CO-EI BONDS.

31 (3) (a) THE STATE PLEDGES TO AND AGREES WITH HOLDERS OF  
32 CO-EI BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES THAT THE  
33 STATE WILL NOT:

34 (I) TAKE OR PERMIT ANY ACTION THAT IMPAIRS THE VALUE OF  
35 CO-EI PROPERTY; OR

36 (II) REDUCE, ALTER, OR IMPAIR CO-EI CHARGES, EXCEPT  
37 THROUGH APPLICATION OF THE ADJUSTMENT MECHANISM, THAT ARE  
38 IMPOSED, COLLECTED, AND REMITTED FOR THE BENEFIT OF HOLDERS OF  
39 CO-EI BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES, UNTIL ANY  
40 PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM PAYABLE ON CO-EI  
41 BONDS, ALL FINANCING COSTS, AND ALL AMOUNTS TO BE PAID TO AN  
42 ASSIGNEE OR FINANCING PARTY UNDER AN ANCILLARY AGREEMENT ARE  
43 PAID IN FULL.

1 (b) A PERSON WHO ISSUES CO-EI BONDS MAY INCLUDE THE  
2 PLEDGE SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION IN THE CO-EI  
3 BONDS, ANCILLARY AGREEMENTS, AND DOCUMENTATION RELATED TO THE  
4 ISSUANCE AND MARKETING OF THE CO-EI BONDS.

5 **40-41-112. Assignee or financing party not automatically**  
6 **subject to commission regulation.** AN ELECTRIC UTILITY, ASSIGNEE, OR  
7 FINANCING PARTY THAT IS NOT ALREADY REGULATED BY THE COMMISSION  
8 DOES NOT BECOME SUBJECT TO COMMISSION REGULATION SOLELY AS A  
9 RESULT OF ENGAGING IN ANY TRANSACTION AUTHORIZED BY OR  
10 DESCRIBED IN THIS ARTICLE 41.

11 **40-41-113. Effect of other laws and judicial decisions.** (1) IF  
12 ANY PROVISION OF THIS ARTICLE 41 CONFLICTS WITH ANY OTHER LAW  
13 REGARDING THE ATTACHMENT, ASSIGNMENT, PERFECTION, EFFECT OF  
14 PERFECTION, OR PRIORITY OF ANY SECURITY INTEREST IN OR TRANSFER OF  
15 CO-EI PROPERTY, THE PROVISION OF THIS ARTICLE 41 GOVERNS TO THE  
16 EXTENT OF THE CONFLICT.

17 (2) EFFECTIVE ON THE DATE THAT CO-EI BONDS ARE FIRST ISSUED,  
18 IF ANY PROVISION OF THIS ARTICLE 41 IS HELD TO BE INVALID OR IS  
19 INVALIDATED, SUPERSEDED, REPLACED, REPEALED, OR EXPIRES, THAT  
20 OCCURRENCE DOES NOT AFFECT ANY ACTION ALLOWED UNDER THIS  
21 ARTICLE 41 THAT WAS LAWFULLY TAKEN BY THE COMMISSION, AN  
22 ELECTRIC UTILITY, AN ASSIGNEE, A COLLECTION AGENT, A FINANCING  
23 PARTY, A BONDHOLDER, OR A PARTY TO AN ANCILLARY AGREEMENT  
24 BEFORE THE OCCURRENCE, AND ANY SUCH ACTION REMAINS IN FULL FORCE  
25 AND EFFECT.

26 (3) NOTHING IN SUBSECTION (1) OR (2) OF THIS SECTION  
27 PRECLUDES AN ELECTRIC UTILITY FOR WHICH THE COMMISSION HAS  
28 INITIALLY ISSUED A FINANCING ORDER FROM APPLYING TO THE  
29 COMMISSION FOR:

30 (a) A SUBSEQUENT FINANCING ORDER AMENDING THE FINANCING  
31 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR

32 (b) APPROVAL OF THE ISSUANCE OF CO-EI BONDS TO REFUND ALL  
33 OR A PORTION OF AN OUTSTANDING SERIES OF CO-EI BONDS.

34 **40-41-114. Choice of law.** THE LAWS OF THIS STATE GOVERN THE  
35 VALIDITY, ENFORCEABILITY, ATTACHMENT, PERFECTION, PRIORITY, AND  
36 EXERCISE OF REMEDIES WITH RESPECT TO THE TRANSFER OF AN INTEREST  
37 OR RIGHT OR CREATION OF A SECURITY INTEREST IN ANY CO-EI PROPERTY,  
38 CO-EI CHARGE, OR FINANCING ORDER.

39 **40-41-115. Security interests in CO-EI property.** (1) THE  
40 CREATION, PERFECTION, AND ENFORCEMENT OF ANY SECURITY INTEREST  
41 IN CO-EI PROPERTY TO SECURE THE REPAYMENT OF THE PRINCIPAL OF  
42 AND INTEREST ON CO-EI BONDS, AMOUNTS PAYABLE UNDER ANY  
43 ANCILLARY AGREEMENT, AND OTHER FINANCING COSTS ARE GOVERNED BY

1 THIS SECTION AND NOT BY THE "UNIFORM COMMERCIAL CODE", TITLE 4,  
2 TO THE EXTENT OF ANY CONFLICT.

3 (2) THE DESCRIPTION OR INDICATION OF CO-EI PROPERTY IN A  
4 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS  
5 SUFFICIENT ONLY IF THE DESCRIPTION OR INDICATION REFERS TO THIS  
6 ARTICLE 41 AND THE FINANCING ORDER CREATING THE CO-EI PROPERTY.

7 (3) (a) A SECURITY INTEREST IN CO-EI PROPERTY IS CREATED,  
8 VALID, AND BINDING AS SOON AS ALL OF THE FOLLOWING EVENTS HAVE  
9 OCCURRED:

10 (I) THE FINANCING ORDER THAT DESCRIBES THE CO-EI PROPERTY  
11 IS ISSUED;

12 (II) A SECURITY AGREEMENT IS EXECUTED AND DELIVERED; AND

13 (III) VALUE IS RECEIVED FOR THE CO-EI BONDS.

14 (b) ONCE A SECURITY INTEREST IN CO-EI PROPERTY IS CREATED  
15 UNDER SUBSECTION (3)(a) OF THIS SECTION, THE SECURITY INTEREST  
16 ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF COLLATERAL OR ANY  
17 OTHER ACT. THE LIEN OF THE SECURITY INTEREST IS VALID, BINDING, AND  
18 PERFECTED AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT,  
19 CONTRACT, OR OTHERWISE AGAINST THE PERSON GRANTING THE SECURITY  
20 INTEREST, REGARDLESS OF WHETHER SUCH PARTIES HAVE NOTICE OF THE  
21 LIEN, UPON THE FILING OF A FINANCING STATEMENT WITH THE SECRETARY  
22 OF STATE. THE SECRETARY OF STATE SHALL MAINTAIN A FINANCING  
23 STATEMENT FILED PURSUANT TO THIS SUBSECTION (3)(b) IN THE SAME  
24 MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE SAME  
25 RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS  
26 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE  
27 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION  
28 (3)(b) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF  
29 FINANCING STATEMENTS.

30 (4) A SECURITY INTEREST IN CO-EI PROPERTY IS A CONTINUOUSLY  
31 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN,  
32 CREATED BY OPERATION OF LAW OR OTHERWISE, WHICH MAY  
33 SUBSEQUENTLY ATTACH TO THE CO-EI PROPERTY UNLESS THE HOLDER OF  
34 THE SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

35 (5) THE PRIORITY OF A SECURITY INTEREST IN CO-EI PROPERTY IS  
36 NOT AFFECTED BY THE COMMINGLING OF CO-EI PROPERTY OR CO-EI  
37 REVENUE WITH OTHER MONEY. AN ASSIGNEE, BONDHOLDER, OR  
38 FINANCING PARTY HAS A PERFECTED SECURITY INTEREST IN THE AMOUNT  
39 OF ALL CO-EI PROPERTY OR CO-EI REVENUE THAT IS PLEDGED FOR THE  
40 PAYMENT OF CO-EI BONDS EVEN IF THE CO-EI PROPERTY OR CO-EI  
41 REVENUE IS DEPOSITED IN A CASH OR DEPOSIT ACCOUNT OF THE ELECTRIC  
42 UTILITY IN WHICH THE CO-EI REVENUE IS COMMINGLED WITH OTHER  
43 MONEY, AND ANY OTHER SECURITY INTEREST THAT APPLIES TO THE OTHER

1 MONEY DOES NOT APPLY TO THE CO-EI REVENUE.

2 (6) NEITHER A SUBSEQUENT ORDER OF THE COMMISSION  
3 AMENDING A FINANCING ORDER AS AUTHORIZED BY SECTION 40-41-105  
4 (4), NOR APPLICATION OF AN ADJUSTMENT MECHANISM AS AUTHORIZED BY  
5 SECTION 40-41-104 (2)(h), AFFECTS THE VALIDITY, PERFECTION, OR  
6 PRIORITY OF A SECURITY INTEREST IN OR TRANSFER OF CO-EI PROPERTY.

7 **40-41-116. Sales of CO-EI property.** (1) (a) A SALE,  
8 ASSIGNMENT, OR TRANSFER OF CO-EI PROPERTY IS AN ABSOLUTE  
9 TRANSFER AND TRUE SALE OF, AND NOT A PLEDGE OF OR SECURED  
10 TRANSACTION RELATING TO, THE SELLER'S RIGHT, TITLE, AND INTEREST IN,  
11 TO, AND UNDER THE CO-EI PROPERTY IF THE DOCUMENTS GOVERNING THE  
12 TRANSACTION EXPRESSLY STATE THAT THE TRANSACTION IS A SALE OR  
13 OTHER ABSOLUTE TRANSFER. A TRANSFER OF AN INTEREST IN CO-EI  
14 PROPERTY MAY BE CREATED ONLY WHEN ALL OF THE FOLLOWING HAVE  
15 OCCURRED:

16 (I) THE FINANCING ORDER CREATING AND DESCRIBING THE CO-EI  
17 PROPERTY HAS BECOME EFFECTIVE;

18 (II) THE DOCUMENTS EVIDENCING THE TRANSFER OF THE CO-EI  
19 PROPERTY HAVE BEEN EXECUTED AND DELIVERED TO THE ASSIGNEE; AND

20 (III) VALUE IS RECEIVED.

21 (b) UPON THE FILING OF A FINANCING STATEMENT WITH THE  
22 SECRETARY OF STATE, A TRANSFER OF AN INTEREST IN CO-EI PROPERTY  
23 IS PERFECTED AGAINST ALL THIRD PERSONS, INCLUDING ANY JUDICIAL LIEN  
24 OR OTHER LIEN CREDITORS OR ANY CLAIMS OF THE SELLER OR CREDITORS  
25 OF THE SELLER, OTHER THAN CREDITORS HOLDING A PRIOR SECURITY  
26 INTEREST, OWNERSHIP INTEREST, OR ASSIGNMENT IN THE CO-EI PROPERTY  
27 PREVIOUSLY PERFECTED IN ACCORDANCE WITH THIS SUBSECTION (1) OR  
28 SECTION 40-41-115. THE SECRETARY OF STATE SHALL MAINTAIN A  
29 FINANCING STATEMENT FILED PURSUANT TO THIS SUBSECTION (1)(b) IN  
30 THE SAME MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE  
31 SAME RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS  
32 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE  
33 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION  
34 (1)(b) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF  
35 FINANCING STATEMENTS.

36 (2) THE CHARACTERIZATION OF A SALE, ASSIGNMENT, OR  
37 TRANSFER AS AN ABSOLUTE TRANSFER AND TRUE SALE AND THE  
38 CORRESPONDING CHARACTERIZATION OF THE PROPERTY INTEREST OF THE  
39 ASSIGNEE IS NOT AFFECTED OR IMPAIRED BY THE EXISTENCE OR  
40 OCCURRENCE OF ANY OF THE FOLLOWING:

41 (a) COMMINGLING OF CO-EI REVENUE WITH OTHER MONEY;

42 (b) THE RETENTION BY THE SELLER OF:

43 (I) A PARTIAL OR RESIDUAL INTEREST, INCLUDING AN EQUITY

- 1 INTEREST, IN THE CO-EI PROPERTY, WHETHER DIRECT OR INDIRECT, OR  
2 WHETHER SUBORDINATE OR OTHERWISE; OR  
3 (II) THE RIGHT TO RECOVER COSTS ASSOCIATED WITH TAXES,  
4 FRANCHISE FEES, OR LICENSE FEES IMPOSED ON THE COLLECTION OF CO-EI  
5 REVENUE;  
6 (c) ANY RECOURSE THAT THE PURCHASER MAY HAVE AGAINST THE  
7 SELLER;  
8 (d) ANY INDEMNIFICATION RIGHTS, OBLIGATIONS, OR REPURCHASE  
9 RIGHTS MADE OR PROVIDED BY THE SELLER;  
10 (e) AN OBLIGATION OF THE SELLER TO COLLECT CO-EI REVENUES  
11 ON BEHALF OF AN ASSIGNEE;  
12 (f) THE TREATMENT OF THE SALE, ASSIGNMENT, OR TRANSFER FOR  
13 TAX, FINANCIAL REPORTING, OR OTHER PURPOSES;  
14 (g) ANY SUBSEQUENT FINANCING ORDER AMENDING A FINANCING  
15 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR  
16 (h) ANY APPLICATION OF AN ADJUSTMENT MECHANISM AS  
17 AUTHORIZED BY SECTION 40-41-104 (2)(h).

18 **SECTION 6. Severability.** If any provision of this act or the  
19 application thereof to any person, circumstance, or transaction is held by  
20 a court of competent jurisdiction to be unconstitutional or invalid, the  
21 unconstitutionality or invalidity does not affect the constitutionality or  
22 validity of any other provision of this act or its application or validity to  
23 any person, circumstance, or transaction, including, without limitation,  
24 the irrevocability of a financing order issued pursuant to this act, the  
25 validity of the issuance of CO-EI bonds, the imposition of CO-EI charges,  
26 the transfer or assignment of CO-EI property, or the collection and  
27 recovery of CO-EI charges. To these ends, the general assembly hereby  
28 declares that the provisions of this act are intended to be severable and  
29 that the general assembly would have enacted this section even if any  
30 provision of this act held to be unconstitutional or invalid had not been  
31 included in the act."."

32 Renumber succeeding sections accordingly.

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