



COLORADO
Air Quality Control Commission
Department of Public Health & Environment

**Colorado Air Quality Control Commission
Resolution and Statement of Policy regarding Comprehensive Safe Harbor Application**

1. Section 25-7-105(1)(e)(VIII)(C), C.R.S., states:

In designing, implementing, and enforcing programs and requirements under this subsection (1)(e), the commission and the division shall take into consideration any clean energy plan at the public utilities commission that, as filed, will achieve at least an eighty percent reduction in greenhouse gas emissions caused by the utility's Colorado retail electricity sales by 2030 relative to 2005 levels, as verified by the division. When including public utilities in its programs or requirements under this subsection (1)(e), the commission shall not mandate that a public utility reduce greenhouse gas emissions caused by the utility's Colorado retail electricity sales by 2030 more than is required under such an approved clean energy plan or impose any direct, non-administrative cost on the public utility directly associated with quantities of greenhouse gas emissions caused by the utility's Colorado retail electricity sales that remain after the reductions required by such a clean energy plan through 2030 if those reductions are achieved and the division has verified that the approved clean energy plan will achieve at least a seventy-five percent reduction in greenhouse gas emissions caused by the utility's Colorado retail electricity sales by 2030 relative to 2005 levels.

2. Section 25-7-105(1)(e)(VIII)(F), C.R.S., states:

A clean energy plan voluntarily filed by a cooperative electric association that has voted to exempt itself from regulation by the public utilities commission pursuant to article 9.5 of title 40 or by a municipal utility shall be deemed approved by the public utilities commission as filed if: The division, in consultation with the public utilities commission, publicly verifies that the plan demonstrates that, by 2030, the cooperative electric association or municipal utility will achieve at least an eighty percent reduction in greenhouse gas emissions caused by the entity's Colorado retail electricity sales relative to 2005 levels; and the clean energy plan has previously been approved by a vote of the entity's governing body. Voluntary submission of a clean energy plan by a cooperative electric association or municipal utility does not alter the entity's regulatory status with respect to the public utilities commission, including under article 9.5 of title 40.

3. The Air Quality Control Commission ("Commission") recognizes that wholesale and retail customers are served from a utility's pool of system electricity rather than individual resources in order to ensure reliability of service and that a utility must plan to serve their retail and wholesale contract customers when developing resource plans. System electricity serving both retail and wholesale customers may come from the utility's owned generation, supply contracts, market purchases, or any combination thereof. The sources of electricity supplying the pool of system electricity vary over time and are dependent on factors including, but not limited to, customer demand, weather, market prices, and availability.

4. The Commission recognizes that resource planning activities and decisions made by utilities related to the operation of owned assets, contract purchases, and market electricity procurements all influence the total greenhouse gas (“GHG”) emissions of the system electricity used to supply the utility’s wholesale and retail customers. While the Clean Energy Plan provisions in section 25-7-105(1)(e)(VIII), C.R.S., address emissions reductions on the basis of retail electricity sales, resource planning for utilities with both wholesale and retail customers is performed and evaluated on a system-wide basis as opposed to separating retail and wholesale customer resource needs.
5. The Commission recognizes that section 25-7-105(1)(e)(VIII)(C), C.R.S., includes provisions limiting certain regulatory treatment of utilities with approved Clean Energy Plans filed with the Colorado Public Utilities Commission (“PUC”).
6. The Commission acknowledges that the plain language of section 25-7-105(1)(e)(VIII)(C), C.R.S., limits this differing treatment, or “safe harbor,” to GHG emissions attributable to a utility’s Colorado retail sales and that the statute is silent with respect to GHG emissions attributable to a utility’s wholesale electric sales.
7. The Commission has received public briefing from the Air Pollution Control Division (“Division”) on the Clean Energy Plan Guidance document and associated emissions verification workbook (collectively the “Clean Energy Plan Guidance”) that was developed by the Division in collaboration with diverse stakeholders and intended to give effect to the statutory directives in sections 40-125-5(4)(VIII)(C), 25-7-105(1)(e)(VIII)(C), and -105(1)(e)(VIII)(F), C.R.S.
8. The Commission recognizes the significant effort and collaboration required to develop the Clean Energy Plan Guidance. A policy consideration developed as part of this collaborative process, and supported by multiple stakeholders including environmental organizations, local governments, and utilities, is the “comprehensive safe harbor” that would afford regulatory protections for GHG emissions attributable to both retail and wholesale sales of electricity. In the absence of a “comprehensive safe harbor,” a utility that files a Clean Energy Plan that satisfies the requirements of sections 25-7-105(1)(e)(VIII)(C), and -105(1)(e)(VIII)(F), C.R.S., could have its retail and wholesale emissions subject to two different sets of regulations. Accordingly, the “comprehensive safe harbor” was a critical element of the negotiations between certain utilities and environmental organizations and discussions of the workgroup during the collaborative process to develop the Clean Energy Plan Guidance.
9. The Commission acknowledges that the “comprehensive safe harbor” developed by the stakeholders and endorsed by the Division features two key components:
 - (A) The adjustment of the 2005 emissions baseline, with corresponding adjustments to the forecasted 2030 emission budget, to avoid double counting in emissions reductions projected to be achieved through Clean Energy Plans filed by utilities; and
 - (B) A “comprehensive safe harbor” provided to utilities to cover all emissions, i.e., emissions from both retail and wholesale sales, from the utility’s system, so long as:
 - (i) The utility files a plan at the PUC that, as filed, achieves at least an eighty percent reduction in GHG emissions associated with the utility’s retail

electricity sales by 2030 relative to 2005 levels (based upon a CO₂e calculation as provided for in the verification workbook); and,

- (ii) For utilities subject to regulation by the PUC, the PUC approves a plan that achieves a seventy-five percent reduction in GHG emissions caused by the utility's Colorado retail electricity sales by 2030 relative to 2005 levels, and achieves a seventy-five percent reduction in GHG emissions from combined retail plus wholesale sales by 2030 relative to 2005 levels (based upon a CO₂e calculation as provided for in the verification workbook).

These two fundamental concepts are interrelated in that the “comprehensive safe harbor” would apply based on a projected emissions reduction that starts from the adjusted 2005 emissions baseline.

10. The Commission understands the nature of the “comprehensive safe harbor” would extend the safe harbor afforded under section 25-7-105(1)(e)(VIII)(C), C.R.S., to include GHG emissions associated with wholesale electricity sales in addition to those from retail electricity sales where a utility has received PUC approval of a qualifying Clean Energy Plan.
11. The Commission recognizes the “comprehensive safe harbor” is intended to ensure consistent and equal treatment of all emissions associated with the electricity supplied by a utility given resource planning covers resource needs for both wholesale and retail customers. The “comprehensive safe harbor” is also consistent with the electric sector target contained in the GHG strategy resolution adopted by this Commission.
12. The Commission, having reviewed the public comments received through the Clean Energy Plan Guidance development process, acknowledges that multiple diverse entities requested that the Commission acknowledge certain policy considerations negotiated by the workgroup participants including the “comprehensive safe harbor.” The Commission further acknowledges, without reaching a determination, that the inclusion of wholesale sales in the safe harbor may advance additional GHG emissions reductions by encouraging utilities to reduce emissions from both retail and wholesale electricity sales.
13. The Commission also acknowledges the administrative efficiency benefits of a Clean Energy Plan addressing emissions from both wholesale and retail electricity sales, which simultaneously encourages system-wide emissions reductions for utilities with both retail and wholesale electricity sales and avoids separate emissions reduction requirements applicable to retail and wholesale electricity sales, respectively. By adjusting the 2005 baseline, the “comprehensive safe harbor” can maximize the number of Clean Energy Plans filed by utilities while enabling a comprehensive accounting of emissions reductions and avoiding double counting emissions reductions between Clean Energy Plans filed by different utilities.
14. For the above stated reasons, the Commission recognizes the rationale supporting the “comprehensive safe harbor,” including the adjusted baseline to avoid double-counting under Section 25-7-105(1)(e)(VIII)(C), C.R.S., and acknowledges the potential benefit of the “comprehensive safe harbor” in the Commission’s design, implementation, and enforcement of programs and requirements under section 25-7-105(1)(e), C.R.S.