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Colorado Energy & Environmental Legislation 2023 Year in Review

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Introduction

In 2023, the Colorado General Assembly continued to focus on state-wide climate objectives, with particular focus on seeking deeper decarbonization in the electric sector while increasing the regulation and oversight of the state’s utilities. The General Assembly also increased the regulation on the State’s oil and gas production sector and with regard to hazardous pollutants.

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** Indicates that a bill is still awaiting the Governor’s signature as of May 25, 2023.*

CLIMATE CHANGE & CARBON MANAGEMENT

Greenhouse Gas Emission Reduction Measures

[SB23-016](#) | Sen. Hansen, Reps. McCormick & Sirota

SB23-016 contains numerous measures related to reducing greenhouse gas (GHG) emissions in Colorado. The bill:

- Adds interim economy-wide GHG reduction targets of 65% by 2035, 75% by 2040, 90% by 2045, and 100% by 2050, relative to 2005 GHG emission levels
- Permits the Colorado Oil and Gas Conservation Commission (COGCC, to be re-named the Energy and Carbon Management Commission as a result of SB23-285) to seek primacy for Class VI injection wells under the federal Safe Drinking Water Act, after the governor and the COGCC determine that the state has sufficient resources to ensure the safe and effective regulation of the sequestration of GHGs; and authorizes the COGCC to issue permits for Class VI injection wells, require financial assurance for injection wells, and adopt rules to establish a process to certify the quantity and demonstrated security of carbon dioxide stored in a Class VI injection well.
- Creates a tax credit for the sale of new electric-powered lawn mowers, leaf blowers, trimmers, and snowblowers for 2024-2027.
- Requires the Public Employees' Retirement Association (PERA) to include a description of climate-related investment risks, impacts, and strategies as part of its annual Investment Stewardship Report. It also requires insurers of a certain size to complete the National Association of Insurance Commissioners' (NAIC) annual "insurer climate risk disclosure survey".
- Provides penalties for retail electric utilities that fail to provide reasonable, good faith, and timely service to an interconnection customer.
- Permits a public utility to recover its prudently incurred costs to facilitate a timely electric vehicle charging service connection.
- Requires the Colorado Electric Transmission Authority (CETA) to study the need for expanded transmission capacity including the ability to expand capacity through new transmission lines, improvements to existing, and connections to organized wholesale markets.

Tax Policy That Advances Decarbonization

[HB23-1272](#) | Reps. Weissman & Joseph, Sens. Fenberg & Cutter

HB23-1272 reforms tax policy to advance decarbonization efforts in Colorado. In particular, the bill creates a decarbonization tax fund; creates a temporary specific ownership tax rate reduction on a portion of the sale of electric medium-and heavy-duty trucks; temporarily decreases the severance tax credit for oil and gas production; extends tax credits for the purchase or lease of electric vehicles, and creates new tax credits for:

- industrial facilities to implement GHG emissions reduction improvements;
- expenditures made in connection with geothermal energy projects;
- production of geothermal electricity generation;
- the deployment of heat pump technology;
- retail sales of electric bicycles; and
- construction of sustainable aviation fuel production facilities.

Carbon Management

[HB23-1210](#) | Rep. Dickson, Sen. Hansen, Sen. Priola

HB23-1210 requires the Colorado Energy Office (CEO), in collaboration with the Office of Economic Development and the Department of Public Health and Environment (CDPHE), to contract with a qualified organization to develop a Carbon Management Roadmap by September 1, 2024, and then revise it to reflect public comment. The Roadmap must identify: the carbon management, climate, and economic opportunities in Colorado; the necessary infrastructure to support carbon management, including the best reservoirs for carbon dioxide storage; policies and incentives to attract and encourage companies to develop or deploy carbon management in the State; the agency best positioned to carry out a potential regime of carbon management and accounting; public interest policy recommendations, including environmental justice standards; criteria for carbon management project selection; and legislative and administrative recommendations. In 2026 and 2027, the CEO must present to several legislative committees the progress made in implementing the Roadmap and provide administrative and legislative recommendations to better implement the identified goals.

ELECTRIC UTILITY REGULATION & PLANNING

Utility Regulation

[SB23-291](#) | Sens. Fenberg & Cutter, Reps. Kennedy & Martinez

SB23-291 includes several provisions meant to protect ratepayers from volatile energy bills, particularly those caused by fluctuating gas prices. The bill places restrictions on utilities, prohibiting: (1) recovery for certain political and promotional expenses; (2) providing customers with incentives for natural gas service; and (3) fees on customers that voluntarily terminate gas service. The bill also requires utilities to provide the Public Utilities Commission (PUC) with new information, including: (1) a 10-year rate trend report upon requesting a rate increase; (2) certain materials when filing a commodity adjustment; (3) an annual report on political and promotional expenditures; (4) a gas price risk management plan; and (5) an updated tariff that excludes incentives for gas service. The bill also requires the PUC to: (1) establish rules limiting utilities' recovery of expenses in rate cases; (2) establish rules to improve utility management of fuel costs; (3) open proceedings to investigate how residential development influences gas infrastructure costs; (4) consider whether to change any rules after evaluating a CEO report on underutilized gas assets; and (5) study beneficial electrification.

Clean Energy Plans*

[SB23-198](#) | Sens. Winter & Cutter, Reps. Weissman & Lindstedt

SB23-198 changes the Clean Energy Plan (CEP) process for utilities. The bill requires more entities to file CEPs, including utilities that sell more than 300,000 megawatt hours (MWh) of electricity, owners of GHG-emitting units of at least 50 megawatts (MW), cooperative retail electric utilities, and wholesale power marketers. The bill also creates a more stringent and public verification process. CDPHE must independently determine the emissions impact of a CEP, and it must hold stakeholder meetings, accept public comments, and make CEP materials publicly available. Finally, the bill sets new interim requirements. CEPs submitted after 2023 must achieve a 46% reduction in GHG emissions relative to 2005 levels by 2027. On the verification side, by June 1, 2028, CDPHE must confirm that entities are on pace to achieve their CEP's 2030 emissions reductions targets, and those not on pace are required to submit additional reports.

Electric Resources Adequacy Reporting

[HB23-1039](#) | (Rep. Bird, Sens. Rodriguez & Winter)

HB23-1039 requires electric load-serving entities to submit an annual report detailing the adequacy of its electrical resources to the regulatory entity responsible for approving resource plans and rates of the load-serving entity, which must then submit it to the CEO. The CEO must then aggregate the resource adequacy annual reports that it receives into a statewide annual report. If a load-serving entity participates in an active organized wholesale market, (i.e., a regional transmission organization or an independent system operator), or if it participates in a voluntary regional resource adequacy reporting program, the entity's obligation to submit an annual report terminates on the date the entity begins participating in an organized wholesale market or in the year following submission of a compliance report required by the program.

Labor Requirements for Energy Sector Construction*

[SB23-292](#) | (Sens. Hansen & Fenberg, Reps. Duran & Bird)

SB23-292 defines a category of "energy sector public works projects" and requires that such projects comply with standards for apprenticeship in various crafts and trades, use prevailing wages for the sector, and meet new record-keeping, audit, and labor certification requirements. The bill also specifies additional labor requirements for certain project types. Absent compliance with the new requirements, energy sector public works projects are subject to penalties and not eligible for state funding or to receive approvals from the Colorado Public Utilities Commission. Use of a project labor agreement provides exemptions to many of the law's other requirements. "Energy sector public works projects" is defined to include electricity generation projects (1 MW+), storage projects (1 MW+ or 4MWh+), or a variety of other electricity or natural gas sector projects with a total project cost of \$1M or more, and either is built by or for a public utility and is funded in whole or part by the State of Colorado or utility customers, or is funded by electric cooperative customer funding.

SOLAR, HYDRGOEN & ADVANCED ENERGY SOLUTIONS

Clean Hydrogen

[HB23-1281](#) | Reps. Titone & Vigil, Sens. Cutter & Priola

HB23-1281 defines clean hydrogen as hydrogen derived from water through clean energy or produced through a process that results in lifecycle GHG emissions rates that are less than 1.5 kilograms of carbon dioxide equivalent per kilogram of hydrogen. The bill requires the PUC to open a proceeding to investigate, among other things, the potential of utility clean hydrogen projects to reduce GHG emissions and air pollution, and to study the environmental and economic impacts of clean hydrogen investments. The bill also requires the PUC to establish rules for investor-owned utility adoption of clean hydrogen, including temporal matching and deliverability requirements, and to develop an application process for clean hydrogen projects. The bill also works to align Colorado with federal funding opportunities, and it establishes a state income tax credit in specified amounts per kilogram of clean hydrogen used for hard to decarbonize end uses, for operating heavy-duty vehicles, or for aviation.

Streamlined Solar Permitting and Inspection Grants

[HB23-1234](#) | Reps. Brown & Soper, Sens. Roberts & Will

HB23-1234 creates the streamlined solar permitting and inspection grant program, which will award grants to local governments to implement free automated permitting and inspection software. The CEO will develop a grant application process and administer the program, and will begin to approve applicants no later than June 30, 2024. Grantees are subject to certain reporting requirements.

Assess Advanced Energy Solutions In Rural Colorado

[HB23-1247](#) | Reps. Lukens & Winter, Sens. Roberts & Pelton

HB23-1247 directs the CEO to study electric transmission and advanced energy technologies in rural Colorado. The bill requires one study to focus on Northwestern Colorado and the west end of Montrose county, and another to focus on Southeastern Colorado. The bill lists considerations each study must address, which broadly center on: (1) exploring the economics of advanced firm energy resources in each region; (2) leveraging existing energy infrastructure; and (3) replacing jobs and revenues from retired fossil fuel facilities. The CEO must present the findings of these

studies, including recommendations of necessary legislative or administrative action, to the General Assembly on or before July 1, 2025.

Agricultural Producers Use of Agrivoltaics

[SB23-092](#) | Sens. Simpson & Hansen, Reps. McCormick & Soper

SB23-092 promotes climate mitigation and adaptation in the agricultural sector, including integration of solar energy generation facilities with agricultural activities, in the following ways:

- Authorizes the Agricultural Drought and Climate Resilience Office (ADCRO) to award grants for agrivoltaics projects to mitigate the impacts of climate change and also to provide direct adaptation support;
- Requires the Commissioner of Agriculture to convene a stakeholder group of the top agricultural commodities producers, solar energy developers, and members of the Colorado Water Conservation Board to advise the Commissioner on the agricultural industry's need to mitigate the impacts of climate change on production and offer feasible solutions for producing electricity on agricultural lands;
- Authorizes the Colorado Water Conservation Board to study the feasibility of using floatovoltaics, i.e., solar energy generation facilities placed over, or floating on, irrigation canals or reservoirs;
- Requires the Commissioner to examine GHG reduction and carbon sequestration opportunities in the agricultural sector and land management;
- Amends the statutory definition of "solar energy facility" to include agrivoltaics and floatovoltaics and exempts certain machinery and equipment used for Agrivoltaics and floatovoltaics from property taxes;
- Making appropriates to implement the bill.

Solar Garden Net Metering Credits Stabilization

[HB23-1137](#) | Reps. Lukens & Valdez, Sens. Hansen & Roberts

Colorado law requires electric utilities to offer a net metering credit for purchasing output from a community solar garden located within the utility's service territory. HB23-1137 preserves the existing calculation in instances where the solar garden informs the utility that the garden's subscribers' bill credits change annually. If, however, the solar garden informs the utility that the subscribers' bill credits remain fixed, then HB23-1137 provides an alternative calculation for the utility to conduct for determining the net metering credit.

ELECTRIC VEHICLES & BUILDINGS

Electric Vehicle Charging and Parking Requirements

[HB23-1233](#) | Reps. Mauro & Valdez, Sens. Priola & Sen. Winter

HB23-1233 includes a number of measures aimed at increasing the availability of electric vehicle charging options. The bill directs the state electrical board to adopt rules requiring compliance with building codes that mandate electric vehicle charging infrastructure in new multifamily buildings. The bill prevents rental properties and common interest communities from placing restrictions on electric vehicle charging systems and parking. It also contains provisions directed at local governments, including requiring local governments to count parking spaces with electric vehicle charging stations as standard parking spaces for purposes of minimum parking requirements, and preventing local governments from prohibiting electric vehicle charging stations or restricting parking based on a vehicle being an electric vehicle. The bill also updates the definition of “disproportionately impacted community” that must be used by all state agencies.

Thermal Energy

[HB23-1252](#) | Reps. Lieder & Kipp, Sens. Exum & Hansen

HB23-1252 bill promotes the use of geothermal energy in Colorado. The bill requires the PUC to initiate a proceeding to determine if additional steps are needed to facilitate thermal energy development, extends the state’s geothermal energy grant program to building retrofits, and adds thermal energy as an eligible clean heat resource for helping to meet clean heat targets. The bill also requires gas utilities serving more than 500,000 customers to propose pilot thermal energy network projects for the commission's review and approval, and it establishes a process for gas utilities to apply to offer thermal energy network services.

Require Electric Options in Home Warranties

[HB23-1134](#) | Reps. Joseph & Kipp, Sen. Cutter

HB23-1134 requires that, on or after January 1, 2024, every home warranty service contract that provides coverage for the replacement of certain gas-fueled appliances must include a term allowing the homeowner to replace the gas-fueled appliance with a similar electric-powered appliance of the homeowner’s choosing. However, the contract may require the homeowner to pay the additional cost to replace a gas-fueled appliance with an electric-powered appliance if the cost of the electric-powered appliance exceeds the cost that it would have been to replace the appliance with another gas-fueled appliance under the terms of the contract. In addition, HB23-1134 requires every home warranty service contract to provide that the home warranty service company must provide a replacement appliance that satisfies statutory efficiency requirements.

Environmental Standards for Appliances*

[HB23-1161](#) | Reps. Kipp & Willford, Sens. Cutter & Winter

HB23-1161 amends current state law establishing water and energy efficiency standards to add standards for numerous additional products, including air purifiers, commercial ovens, gas fireplaces, showerheads, and others. The bill allows CDPHE to adopt additional standards that would improve energy or water conservation if certain conditions are met. The bill also contains procedures for verifying that products meet the water and energy efficiency standards. Additionally, the bill contains the “Clean Lighting Act,” which will accelerate the phase-out of general purpose fluorescent light bulbs containing toxic mercury. Finally, the bill sets emission standards for new heating and water heating appliances in order to reduce air pollution, protect public health, and mitigate the effects of climate change.

OIL, GAS & GEOTHERMAL RESOURCES

Energy and Carbon Management Regulation in Colorado

[SB23-285](#) | Sens. Priola & Hansen, Reps. McCormick & Dickson

SB23-285 changes the name of the COGCC to the Energy and Carbon Management Commission and makes other changes related to that Commission's authority and obligations. For example, the bill expands the Commission's authority to include exclusive regulation of deep geothermal operations (the state engineer has exclusive authority to regulate shallow geothermal operations) and sets forth conditions for obtaining a permit for the use of geothermal resources. The bill also grants the Commission exclusive authority to regulate intrastate underground natural gas storage facilities. The Commission is also directed to conduct studies related to underground hydrogen operations and the administrative structure for intrastate pipeline siting and safety regulation.

Natural Gas Pipeline Safety*

[HB23-1216](#) | Reps. Story & Froelich, Sen. Danielson

HB23-1216 imposes various requirements related to the PUC's gas pipeline safety rules. Beginning March 1, 2024, new requirements apply to the installation of service regulators, and gas meters and service regulators must be inspected at least every five calendar years. The PUC must promulgate rules to establish a process for determining and providing notice whether an owner or operator, or the customer, of an existing natural gas distribution system is responsible for maintenance and repairs of a customer-owned service line. The owner or operator is responsible for all maintenance and repairs upstream of the gas meter.

Water Conservation in Oil and Gas Operations*

[HB23-1242](#) | Reps. Boesenecker & Joseph, Sens. Cutter & Priola

HB23-1242 requires oil and gas operators to report to the COGCC (to be re-named per SB23-285), for each oil and gas well, the volume of all water used downhole and the volume of all produced water produced from the well beginning in September 2023. In addition, operators must report for each oil and gas location the volume and source of fresh and recycled or reused water used in the location's oil and gas operations and the volume of all produced water from the location. The Commission may adopt rules to implement these

reporting requirements, but may not permit the data to be reported as confidential information. In addition, the Commission must adopt rules requiring a statewide reduction in fresh water usage and an increase in the usage of recycled or reused produced water, without increasing emissions associated with oil and gas operations; the rules must also include requirements for new oil and gas development plans to include a plan specifying the methods and locations for treatment of produced water and quantifying recycled or reused produced water used in place of fresh water. The bill also creates the Colorado Produced Water Consortium within the Department of Natural Resources. The primary goal of the Consortium is to help reduce consumption of fresh water within oil and gas operations; it also must make recommendations related to a path for recycling and reuse of produced water within (and potentially outside of) oil and gas operations and measures to address barriers associated with the utilization of produced water.

Study Biochar in Plugging of Oil and Gas Wells

[HB23-1069](#) | Reps. McCormick & Amabile, Sens. Cutter & Priola

HB23-1069 establishes the Biochar in Oil and Gas Well Plugging Working Advisory Group in the COGCC (to be re-named per SB23-285). The bill defines biochar as "solid carbon-rich product made when woody biomass undergoes pyrolysis in an oxygen-depleted atmosphere at approximately 800 degrees Celsius." It provides that the work group must consult and coordinate with Colorado State University (CSU) and imposes certain duties on CSU, including reviewing peer-reviewed articles on biochar's capacity and conducting laboratory research on the use of biochar, among others. CSU must report its findings by June 2024. If the work group then determines that a pilot program to study the use of biochar would be beneficial and consistent with the State's GHG reduction goals, it will direct CSU to make recommendations regarding a pilot program. CSU must include in its report recommendations for the pilot program to develop standards for using biochar in plugging certain oil and gas wells, monitoring emissions of such wells, and comparing emissions data at wells using biochar with those that do not.

Oil and Gas Commission Study Methane Seepage Raton Basin*

[SB23-186](#) | Sens. Pelton & Winter, Reps. Winter & Willford

SB23-186 requires the COGCC (to be re-named per SB23-285) and the Water Quality Control Division in CDPHE, in coordination with other agencies, to perform a study by June 30, 2025 that identifies best management practices for capturing methane seepage in the Raton basin of southern Colorado, evaluates the quality of water resulting from methane capture, and evaluates the potential to preserve and make beneficial use of such water.

POLLUTION CONTROL & HAZARDOUS MATERIALS

Pollution Protection Measures*

[HB23-1294](#) | Reps. Bacon & Willford, Sens. Winter & Gonzales

HB23-1294 promotes measures to protect communities from pollution by creating the Legislative Interim Committee on Ozone Air Quality—consisting of six members of the Senate and six members of the House—to study ozone air quality in Colorado. The Committee may meet up to six times during the 2023 interim. HB 23-1294 outlines an investigation process for the Division of Administration in CDPHE to follow in response to receiving a complaint alleging a violation of noncompliance. HB23-1294 removes from current law the exception for noncompliance during a period of start-up, shutdown, or malfunction (SSM). If a hearing is requested, the Air Quality Control Commission must provide the complainant with 45 days’ notice. HB23-1294 permits the Air Pollution Control Division, after notice and comment, to exempt the owner or operator of a stationary source from the duty to pay a penalty for noncompliance if the Division finds the violation was “inconsequential in nature and duration.” The Division must now also consider the severity of a violation in civil penalty assessments. HB23-1294 also excludes from the 5-year statute of limitations for air quality violations actions commenced to address a failure to obtain a permit. HB 23-1294 also requires the Commission to promulgate rules to evaluate and address the cumulative impacts of oil and gas operations. The rules must include a definition for “cumulative impacts.” Moreover, any person may submit a complaint to the COGCC (to be re-named per SB23-285) alleging violations of state laws, rules or orders relating to oil and gas, and upon

receipt of a complaint, COGCC must promptly commence and complete an investigation into the complaint.

Hazardous Site Response Fund Transfer

[SB23-239](#) | Sens. Zenzinger & Kirkmeyer, Reps. Bird & Bockenfeld

SB23-239 requires the state treasurer to transfer \$1.8 million from the hazardous substance site response fund to the hazardous substance response fund.

Hazardous Material Mitigation*

[SB23-280](#) | Sen. Mullica, Rep. Snyder

SB23-280 creates the Fuels Impact Enterprise, including a cash fund created in the State Treasury, and imposes a new fuels impact reduction fee on fuel product manufacturers to fund a grant program for critically-impacted communities, governments, and transportation corridors for the improvement of hazardous mitigation corridors and to support government projects related to emergency response, environmental mitigation, and fuel transportation. SB23-280 requires the Enterprise to distribute \$10 million from the cash fund on an annual basis to the following political subdivisions: Adams County (\$6.4 million); City of Aurora (\$2 million); El Paso County (\$1.3 million); Mesa County (\$240,000); and Otero County (\$60,000). The Enterprise must also distribute up to \$5 million annually to key commercial freight corridors, to support state government projects related to emergency responses, environmental mitigation, or to support projects related to fuel

transportation within the state necessary for the transportation of hazardous materials.

SB23-280 also modifies the distribution of funds from the petroleum storage tank fund. Specifically, SB23-280 allows the Director of the Division of Oil and Public Safety to annually transfer up to \$500,000 from the petroleum storage tank fund to the petroleum cleanup and redevelopment fund. The bill also provides for the distribution of \$2 million to the Department of Public Safety for use by the Colorado State Patrol for (i) regulating and responding to

hazardous materials on state highways, (ii) making contributions to the voluntary firefighter cancer benefits program, and (iii) enforcing commercial hazardous materials critical corridors. For the remaining funds, the bill requires that 70% be distributed to the per- and polyfluoroalkyl substances (PFAS) cash fund and 30% be distributed to the Department of Transportation. The bill also allows the Colorado state patrol to conform hazardous materials routing regulations to Transportation Commission rules. Finally, SB23-280 makes appropriations for its implementation.

WATER RESOURCES

Colorado River Drought Task Force*

[SB23-295](#) | Sens. Roberts & Will, Reps. McCluskie & Catlin

SB23-295 creates the Colorado River Drought Task Force. The membership of the Task Force must, to the extent practicable, reflect the racial and ethnic diversity of the state and have experience with a wide range of water issues. In addition, the Task Force must begin meeting no later than July 31, 2023, and may hold up to 12 meetings, open to the public, in the 2023 interim. The purpose of the Task Force is to develop recommendations for state legislation that provides additional tools for the Colorado Water Conservation Board to collaborate with the Colorado River Water

Conservation District, the Southwestern Water Conservation District, and other relevant stakeholders in the development of programs that address drought in the Colorado River Basin and interstate commitments related to the Colorado River and its tributaries through conservation of waters of the Colorado River and its tributaries. SB23-295 also requires the Task Force to establish a sub-task force to study tribal matters and provide additional recommendations for state legislation. The Task Force and sub-task force must submit a written report including recommendations and a summary of the task forces' work to the Water Resources and Agriculture Review Committee by December 15, 2023.

WILDFIRE RESILIENCE

Creation Of Wildfire Resilient Homes Grant Program

[HB23-1273](#) | Reps. Snyder & Joseph, Sen. Roberts

HB23-1273 creates the Wildlife Resilient Homes Grant Program, within the Division of Fire Prevention and Control, to provide grants to homeowners to retrofit or improve a house or other nonresidential structure on their property with the best techniques for

structure hardening to make them more resilient to wildfire risk. To receive a grant, a homeowner must apply in a form and manner prescribed by the Division; the bill establishes criteria the Division must consider in awarding grants, including the income or assets of the homeowner, the type of improvement proposed, and other criteria. The bill also appropriates \$100,000 to fund the program for the 2023-24 fiscal year.