

COGCC Suggested Underground Natural Gas Storage (“UNGS”) Legislation

UNGS involves the temporary storage of natural gas in a subsurface formation to allow for dispatchable gas to generate power when needed. UNGS is thus an important companion to variable renewables like wind and solar, and could involve emerging fuels like hydrogen in combination with hydrocarbon gasses. UNGS utilizes similar technologies (drilling, wellbore construction, production and injection of fluids, etc.) as other subsurface operations and may target similar formations as other activities like CCUS and oil and gas development. Natural gas storage provides the corollary opportunity for utilities to insulate rate-payers from spikes in gas prices during peak demand periods.

The federal Pipeline and Hazardous Materials Safety Administration (PHMSA) currently has regulatory authority for UNGS in Colorado. However, PHMSA is encouraging state agencies with safety authority over the downhole portion of intrastate underground gas storage facilities to participate in the underground storage safety program. Colorado can seek delegation of regulatory authority from PHMSA through an agreement governed by 49 U.S.C. § 60105 (a “60105 agreement”). With delegated authority, Colorado would have responsibility for inspections, enforcement, incident investigation, safety programs, and record-keeping for intrastate UNGS facilities and could enact more stringent regulations if desired.

Under current Colorado law, COGCC has statutorily-granted jurisdiction over gas storage wells, but in practice, COGCC faces obstacles to regulating these wells because they are part of a storage facility regulated by PHMSA. The Colorado Public Utilities Commission (“COPUC”) currently has jurisdiction over intrastate gas pipelines through a similar 60105 agreement with PHMSA. However, it is unclear whether COPUC has statutory authorization to pursue a 60105 agreement for UNGS. While C.R.S. § 40-2-115 could arguably be read to grant that authority, it is not clear whether that was the General Assembly’s intent. And in any event, COPUC has not elected to pursue a 60105 agreement for UNGS, and has expressed no objections to COGCC obtaining this authority. Therefore, clarification in jurisdiction from the General Assembly is needed for COGCC to pursue regulatory authority over intrastate UNGS facilities. Once the General Assembly clarifies state jurisdiction over UNGS, COGCC can instigate a rulemaking to develop UNGS regulations that satisfy PHMSA requirements for a 60105 agreement. Example language on how to approach jurisdiction with PHMSA can be found in the PUC pipeline statute, § 40-2-115, C.R.S.

Recommendations:

- Grant COGCC clear jurisdiction over all intrastate UNGS facilities.
- Grant COGCC authority to pursue a 60105 agreement, possibly in coordination with COPUC, with PHMSA for all intrastate UNGS facilities.
- Such jurisdiction and authority should include COGCC authority to permit and regulate all aspects of intrastate UNGS facilities, including associated stratigraphic, monitoring, injection, and production wells, and flowlines (but excluding gas pipelines).
- Define Underground Gas Storage Facilities broadly enough to cover mixtures of hydrocarbons and other gasses (e.g. hydrogen, helium).

- Add 1 FTE for initial work with PHMSA, rulemaking, and establishing the agreement.