Decision No. R24-0114-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22M-0171ALL

IN THE MATTER OF THE COMMISSION'S IMPLEMENTATION OF SENATE BILL 21-272 REQUIRING IT TO PROMULGATE RULES IN WHICH IT CONSIDERS HOW BEST TO PROVIDE EQUITY IN ALL OF ITS WORK.

INTERIM DECISION OF HEARING COMMISSIONER MEGAN M. GILMAN SEEKING WRITTEN COMMENTS ON EQUITY BUDGETS AND PROPORTIONATE ACCESS TO PROGRAM BENEFITS

Mailed Date: February 23, 2024

SUMMARY OF THE DECISION

Senate Bill (SB) 21-272 requires the Colorado Public Utilities Commission to consider how best to provide equity in all of its work. This decision invites comments from stakeholders on how to implement some of the requirements of SB 21-272, in particular, the direction that:

> [w]hen making decisions relating to retail customer programs, the Commission . . . shall ensure, to the extent reasonably possible, that such programs, including any associated incentives and other relevant investments, include floor expenditures, set aside as equity budgets, to ensure that low-income customers and disproportionately impacted communities will have at least proportionate access to the benefits of such programs, incentives, and investments.

This proceeding is a "pre-rulemaking" and will not result directly in creating any new rules, but it will inform one or more future rulemakings. Commissioner Megan M. Gilman is the Hearing Commissioner for this proceeding. Among other topics, the Hearing Commissioner would like to understand:

- Program Benefits—What kinds of benefits come from energy programs managed by electric and gas utilities, such as electric vehicle, building electrification, energy efficiency, or renewable energy programs?
- Equitable Program Access—How should utility program budgets be set to provide equitable access to program benefits?
- Program Data—What information is required to understand if program benefits are flowing equitably to customers and communities?

Information to help the Hearing Commissioner and the Commission understand these topics is welcome from all interested stakeholders during the entire course of this proceeding and in any future rulemaking(s). For scheduling purposes, initial comments addressing the above topics are invited by March 14, 2024. Response comments are invited by March 28, 2024.

Any stakeholder may submit public comments and an attorney is not required. Information about how to stay informed, subscribe to updates from agency staff, and submit comments can be found on the Commission's equity webpage, puc.colorado.gov/equity.

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement and Background

1. Senate Bill (SB) 21-272 calls upon the Colorado Public Utilities Commission (Commission) to adopt rules through which it will "consider how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted communities and address historical inequalities . . . in all of its work including its review of all filings and its determination of all adjudications . . . ." § 40-2-108(3)(b), C.R.S. This legislation is far-reaching across industries and procedural contexts and will necessitate changes to the Commission's existing administrative rules and

to outreach and engagement practices.[1] By Decision No. C22-0239,[2] the Commission opened this miscellaneous proceeding to gather information, host workshops, collect comments, and otherwise prepare to implement the legislation.

2. The Proceeding was referred to me as Hearing Commissioner.[3] I directed Staff to file a work plan that lays out workshops and other activities designed to gather information needed for the Commission to initiate one or more major rulemakings related to the implementation of SB 21-272.[4] Staff filed this work plan on October 16, 2023, laying out six tracks of work and a schedule for workshops.[5] One of the tracks of work relates to defining impacts that must be minimized and benefits that should be prioritized to disproportionately impacted communities, and considering how to make customer programs more equitable.[6] Three statutory provisions are particularly relevant here.

3. First, § 40-2-108(3)(b), C.R.S., states that:

> The Commission shall promulgate rules requiring that the Commission, in all of its work including its review of all filings and its determination of all adjudications, consider how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted communities and address historical inequalities.

4. Additionally, § 40-2-108(3)(c)(II) states that:

> When making decisions relating to retail customer programs, the Commission shall host informational meetings, workshops, and hearings that invite input from disproportionately impacted communities and shall ensure, to the extent reasonably possible, that such programs, including any associated incentives and other relevant investments, include floor expenditures, set aside as equity budgets, to ensure that low-income customers and disproportionately impacted communities will have at least proportionate access to the benefits of such programs, incentives, and investments.

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[1] For more information, visit puc.colorado.gov/equity.

[2] April 28, 2022.

[3] Decision No. C22-0584-I, issued September 29, 2022.

[4] Decision No. R23-0625-I, issued September 15, 2023.

[5] The Staff Work Plan for Proceeding No. 22M-0171ALL can be viewed at: https://drive.google.com/file/d/1f0BZAqZQO2df3BJeqmkWvDROO-vkICT3/view.

[6] While the topic of proportionate access to program benefits was originally planned to be the subject of a February 9, 2024 workshop, Staff determined that the challenging nature of the topic would be better addressed through written comments.

5. Finally, SB 21-272 states that when the Commission promulgates rules, it shall further identify disproportionately impacted communities.[7] On May 23, 2023, Governor Jared Polis signed House Bill (HB) 23-1233, which created a statutory definition of disproportionately impacted community for use by multiple state agencies, including the Commission.[8] While establishing the Commission's working definition of disproportionately impacted community is an ongoing project within this proceeding, for the purpose of this decision, the statute describes a disproportionately impacted community as one that is in a census block group that meets one or more of the following demographic criteria:

- The proportion of the population living in households that are below two hundred percent of the federal poverty level is greater than forty percent;
- The proportion of households that spend more than thirty percent of household income on housing is greater than fifty percent;
- The proportion of the population that identifies as people of color is greater than forty percent; or
- The proportion of the population that is linguistically isolated is greater than twenty percent.[9]

6. In addition to these demographic criteria, which were modified from those established by SB 21-272, the new statutory definition also makes clear that federally identified disadvantaged communities, census block groups scoring above the 80th percentile on Colorado EnviroScreen, statutorily defined mobile home parks, and communities located on the Southern Ute or Ute Mountain Ute reservations are disproportionately impacted communities. Furthermore, communities may present evidence of a history of environmental racism and current environmental health disparities and seek a determination that they are disproportionately impacted communities in state decision-making

[7] § 40-2-108(3)(c)(I), C.R.S.

[8] § 24-4-109(2), C.R.S. The prior agency-specific statutory definitions were provided as Attachment A to Recommended Decision No. R23-0009-I, issued January 6, 2023.

[9] § 24-4-109(2)(b)(II)(A)-(D), C.R.S.

processes. HB 23-1233 authorizes agencies to target or prioritize different criteria of the definition of disproportionately impacted community.[10]

B. How to Use This Decision

7. This decision includes two sets of questions for interested stakeholders on the topic of proportionate access to the benefits of retail customer programs.

8. The first set presents overarching questions about what kinds of outcomes reflect more equitable access to regulated utility programs or services, as understanding desired outcomes can help us develop thoughtful procedures. Stakeholders who are newer to Commission proceedings or are interested in answering broader questions may prefer to focus on this set of questions beginning on page 16, paragraph 27. The second set presents specific, technical questions about how to create a practical procedural framework in which "proportionate access" can be provided and assessed. Stakeholders who participate frequently in Commission proceedings can be most helpful by focusing on this set of questions. Section C provides additional background to inform answers to these questions, which begin on page 17, paragraph 28. Stakeholders are welcome to respond to one or both sets of questions, or to provide other information they believe is relevant to the Commission's consideration of equity and its implementation of SB 21-272.

9. Comments responding to these questions are invited by March 14, 2024. Participants are also invited to respond to the comments of other stakeholders by March 28, 2024. Comments can be provided in a Commission proceeding any time it is open, but are most effective when provided prior to any formal decision-making process. By a prior decision, I directed Staff to file a capstone report by the end of June 2024.[11] Accordingly, for scheduling purposes, providing comments prior to

[10] Specifically for the Commission, this "does not constitute any prejudice or disadvantage or any unreasonable difference as set forth in section 40-3-106(1)(a)." § 24-4-109(2)(a)(I)(B)-(C), C.R.S.

[11] Decision No. R23-0625-I, issued September 15, 2023.

the end of June and preferably no later than mid-May is beneficial so that Staff can consider them in drafting its report.

10. An attorney is not required to submit comments for this proceeding. To learn more about options to submit comments, including in languages other than English, please visit: puc.colorado.gov/equity.

C. Prior Comments on Proportionate Access and Equity Budgets

11. This section summarizes prior stakeholder comments on topics related to assessing the concept of proportionality for equitable access to utility programs. This is not intended to be a comprehensive recitation of stakeholder comments, or to endorse specific stakeholder perspectives, but to provide background for the questions that follow.

1. Retail Customer Programs

12. Section 40-2-108(3)(c)(II) sets forth obligations regarding "retail customer programs." Stakeholders have suggested that retail customer programs are products or services offered to a utility's retail customers,[12] including through incentives, rebates, or other options,[13] which are approved by the Commission[14] and funded by base rates, rate adjustments, or other monthly bill charges,[15] including

[12] City of Boulder (Boulder) Comments (June 13, 2022) at 12. Environmental Justice Coalition (EJC) Comments (June 13, 2022) at 36.

[13] Colorado Energy Office (CEO) Comments (June 13, 2022) at 25-26. EJC Comments (June 13, 2022) at 36.

[14] EJC Comments (June 13, 2022) at 36. Rocky Mountain Institute/Western Resource Advocates (RMI/WRA) Comments (June 13, 2022) at 17. However, Colorado Natural Gas (CNG) states that retail customer programs are "optional programs that have a cost to the customer in exchange for a good or service," such as home appliance repair. CNG Comments (June 13, 2022) at 9.

[15] Boulder Comments (June 13, 2022) at 12.

financing.[16] Stakeholders variously suggested that these programs may be directed to residential, commercial, industrial, and institutional customers,[17] focused only on residential customers,[18] or specifically targeted to serve income-qualified customers or disproportionately impacted communities.[19] Examples of retail customer programs suggested by stakeholders included renewable energy or distributed generation programs,[20] demand-side management programs,[21] transportation electrification programs,[22] beneficial electrification programs,[23] clean heat programs,[24] low-income energy assistance programs,[25] and medical discount programs.[26] Retail customer programs would therefore exclude general service programs such as pole replacements or programs directed to bulk power customers.[27]

13. In an October 17, 2023, workshop on tiering of cases, Staff proposed that proceedings involving retail customer programs should be considered "Tier 1" proceedings, *i.e.*, proceedings that include the most significant equity-related requirements in rules.[28] Drawing on previous comments, Staff's straw proposal included the following programs offered by regulated electric and gas utilities as

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[16] EJC Comments (June 13, 2022) at 36.

[17] CEO Comments (June 13, 2022) at 25-26. Small business programs have been raised at workshops, *see* Case Tiering Workshop Notes (October 26, 2023) at 55.

[18] CNG Comments (June 13, 2022) at 6-7 (CNG notes that commercial customers are better-equipped to participate in various programs).

[19] RMI/WRA Comments (June 13, 2022) at 17.

[20] Boulder Comments (June 13, 2022) at 12. CEO Comments (February 23, 2023) at 10. EJC Comments (June 13, 2022) at 36. RMI/WRA Comments (June 13, 2022) at 17.

[21] Boulder Comments (June 13, 2022) at 12. CEO Comments (February 23, 2023) at 10. EJC Comments (June 13, 2022) at 36. RMI/WRA Comments (June 13, 2022) at 17.

[22] Boulder Comments (June 13, 2022) at 12. CEO Comments (February 23, 2023) at 10 (including infrastructure and rebates). RMI/WRA Comments (June 13, 2022) at 17.

[23] CEO Comments (February 23, 2023) at 10.

[24] CEO Comments (February 23, 2023) at 10.

[25] Boulder Comments (June 13, 2022) at 12. EJC Comments (June 13, 2022) at 36.

[26] EJC Comments (June 13, 2022) at 36.

[27] CEO Comments (June 13, 2022) at 25-26.

[28] Materials for this session can be viewed in E-Filings for Proceeding No. 22M-0171ALL or on the agency's equity webpage at: https://drive.google.com/drive/folders/1rq49iS8JF18bh5nhFQi3iwm9Flc8wS18.

retail customer programs: demand-side management programs, clean heat programs, renewable energy programs, transportation electrification programs, and beneficial electrification programs. While stakeholders did not directly comment on the completeness of this definition of retail customer programs, they did at times raise whether all of these types of proceedings—for example, applications for approval of a Renewable Energy Standard Plan or a Demand-Side Management Plan—should be treated the same or if some proceedings may have more specific equity requirements than others despite both potentially concerning retail customer programs.[29]

2. Relationship with Income-Qualified Customers

14. For purposes of this discussion, I assume that a "low-income customer" under § 40-2-108(3)(c)(II), C.R.S., is the same as an "income-qualified utility customer" under § 40-3-106(1)(d)(II), C.R.S., although I welcome comments on this assumption.[30] Going forward, I use the term "income-qualified customer."

15. While stakeholders note that the terms income-qualified customer and disproportionately impacted community are generally stated separately in statutes, which supports that they have different connotations, stakeholders disagree as to whether they are completely distinct[31] or whether disproportionately impacted community customers should be considered a subset of income-qualified customers.[32] In this vein, stakeholders have raised concerns that not every individual or household within a census block group that is a disproportionately impacted community based on income or another criteria may also be income-qualified,[33] noting that this creates questions as to

[29] Case Tiering Workshop Notes (October 26, 2023) at 38-49.

[30] *See also* Attachment B to Recommended Decision No. R23-0009-I, issued January 6, 2023, listing statutory references to the terms "income-qualified utility customer," "low-income utility customers," "low-income customers," "low-income consumers," "income-qualified households," and "low-income households."

[31] EJC Comments (February 23, 2023) at 5.

[32] Energy Outreach Colorado (EOC) Comments (June 13, 2022) at 3.

[33] *See, e.g.*, EOC Comments (June 13, 2022) at 5, 9-11.

whether all residents in a disproportionately impacted community should qualify for a disproportionately impacted community program by virtue of their geography.[34] However, stakeholders have also suggested that programs for income-qualified customers and customers in disproportionately impacted communities should not be so different as to create duplicative or burdensome program requirements.[35]

16. As an example of how this question has been considered in recent proceedings, by Decision No. C23-0413, the Commission accepted a conceptual proposal by Energy Outreach Colorado that Public Service Company of Colorado (Public Service) offer tiered incentives for energy efficiency programs, with the highest tiers being provided to customers who were both income-verified and living within a disproportionately impacted community. The Commission directed Public Service to further work with stakeholders to refine this eligibility approach and to ensure that program budgets for residential customers who are not income-qualified within disproportionately impacted communities do not detract from funds for income-qualified customers.[36]

3. Customer Attribution

17. Utilities have raised challenges with attributing customers or customer premises to census block groups. For example, meter locator databases and/or billing information may only provide this information by zip code.[37] Utilities with less populated rural service areas have also questioned the merits of using census block groups to assess disproportionately impacted communities, as opposed to identifying population centers.[38] Additionally, utilities generally do not intentionally

[34] This is sometimes referred to as geographic eligibility, as opposed to income eligibility.
[35] EOC Comments (June 13, 2022) at 3.
[36] Proceeding No. 22A-0309EG, Decision No. C23-0413, issued June 22, 2023, ¶¶ 128-135.
[37] Black Hills Energy (Black Hills) Comments (January 19, 2023) at 1.
[38] CNG Comments (January 19, 2023) at 2.

collect and retain individual customers' income data.[39] Accordingly, it is unclear whether regulated electric and gas utilities currently have a complete picture of the number of customers who are potentially income-qualified, living within disproportionately impacted communities, or both, within their service areas.

18. Where utilities have been able to present customer numbers by census block group, prior comments suggest that a significant proportion of their customers could be within disproportionately impacted communities as defined by statute. For example, Public Service stated that out of approximately 2 million total electric and gas customers across customer classes (most of them residential customers), approximately 840,000 or 40 percent are within a disproportionately impacted community.[40] This greater context will likely be important as we consider the scale and any rebate tiering that might be associated with retail customer programs to ensure we strike the right balance of the costs and benefits of programs moving forward.

4. Identifying Benefits

19. Section 40-2-108(3)(c)(II), C.R.S., states that, to the extent reasonably possible, the Commission should ensure that "low-income customers and disproportionately impacted communities will have at least proportionate access to the benefits of such [retail customer] programs, incentives, and investments." Subsection (3)(b) also uses the term "benefits," stating that benefits should be prioritized, and impacts should be minimized to disproportionately impacted communities when the Commission promulgates rules.

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[39] *See*, *e.g.*, Proceeding No. 20R-0349EG, Decision No. R21-0537, issued September 10, 2021, at ¶ 159.
[40] Public Service Company of Colorado (Public Service) Comments (January 25, 2023) at 2 and Attachment A.

20. Consistent with the Staff Work Plan, Staff hosted a workshop on December 7, 2023, to discuss the concept of impacts and benefits with external stakeholders.[41] During the workshop, Staff presented on efforts to identify impacts and benefits at the federal and state level. For example, under the Justice40 Initiative, federal agencies must define benefits associated with certain programs and ensure at least forty percent are directed to disadvantaged communities. According to a recent report by Resources for the Future, some of the categories that are being considered for measuring benefits include tracing programmatic funding and where it is disbursed geographically; defining beneficial outcomes that result from the financial investment, such as environmental or health improvements; and identifying indirect benefits, which may accrue in areas that differ from where the funding is spent. However, RFF explains that federal agencies are experiencing challenges in implementing Justice40 because relevant data can be hard to identify and may not easily be mapped to census tracts.[42]

21. Most significantly for this decision, stakeholders contrasted "benefits" with "impacts," suggesting that impacts can be thought of as burdens or potentially neutral changes.[43] Benefits, however, should be offered without extracting anything from the community.[44] Stakeholders suggested a range of potential impacts and benefits. Bill impact, rate impact, and overall bill affordability have been commonly stated.[45] Other examples of benefits and impacts suggested by

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[41] Materials for this session can be viewed in E-Filings for Proceeding No. 22M-0171ALL or on the agency's equity webpage at:

https://drive.google.com/drive/folders/1AvMtbZ5an7XHmWZHGIAoWJOnimWfq5Np.

[42] Margaret Walls, Sofia Hines, and Logan Ruggles, Resources for the Future, Implementation of Justice40: Challenges, Opportunities, and a Status Update (January 2024) 17-18, *available at* https://media.rff.org/documents/Report_24-01.pdf.

[43] Impacts & Benefits Workshop Notes (January 4, 2024) at 24.

[44] Equity Framework Workshops Notes (September 20, 2023) at 21.

[45] Impacts & Benefits Workshop Notes (January 4, 2024) at 40; Work Planning Workshop Notes (November 14, 2022) at 5; Boulder Comments (June 13, 2022) at 13-14; CNG Comments (June 13, 2022) at 9.

stakeholders include: greenhouse gas emissions and climate change impacts; air quality impacts (*e.g.*, NOx); public health impacts from pollution; program participation by diverse demographic groups; safety and reliability or resilience, including access to grid infrastructure and uninterrupted power supply; access to renewable energy and/or decarbonizing technologies such as heat pumps; access to infrastructure, such as electric vehicle charging; and public awareness.[46] However, some stakeholders characterized customer education and job training as examples of activities that increase participation and awareness, rather than as impacts or benefits per se.[47]

22. In other words, initial discussions have provided a broad potential list of impacts and benefits that could be considered, both quantitative and qualitative, direct and indirect, and including areas that have not traditionally been directly regulated by the Commission, such as public health. While stakeholders identified some unique impacts or benefits based on certain programs (*e.g.*, electric vehicle charging infrastructure is uniquely attributable to electric vehicle programs), many of the examples shared could be considered potential impacts or benefits regardless of the utility activity or program (*e.g.*, bill impacts, reliability impacts, emissions and air quality impacts, rebate dollars or participation impacts). Stakeholders thus emphasized that it will be important to create clear categories of impacts and benefits but also to provide some opportunities for utility-specific customization.[48]

[46] Impacts & Benefits Workshop Notes (January 4, 2024) at 39-44; *see also* EJC Comments (June 13, 2022) at 31-37.

[47] Impacts & Benefits Workshop Notes (January 4, 2024) at 24. But *see* EJC Comments (June 13, 2022) at 36-37 (benefits should include customer education and job training).

[48] Impacts & Benefits Workshop Notes (January 4, 2024) at 50-52.

5. Measuring Proportionality

23. Stakeholders variously propose that proportionate access to benefits is achieved when program budgets are at least equal to revenue contributions[49]; when the proportion of utility investment dedicated to income-qualified and disproportionately impacted community customers is at least proportionate to them as a percentage of overall ratepayers[50]; or when a similar percentage of households among income-qualified customers and disproportionately impacted communities are participating in clean energy programs as compared to households that do not meet those characteristics.[51] These varying approaches may result in very different outcomes. To the extent that income-qualified customers or customers in disproportionately impacted communities have less capital, are renters, or are otherwise structurally disadvantaged from participating in retail customer programs, reaching higher levels of participation or attaining the same historic program goals (*e.g.*, energy savings) could potentially result in higher budgets than those previously allocated in existing electric and gas customer programs, as the per-participant cost may need to rise significantly to provide the necessary level of support.

24. Notably, the potential retail customer programs that are currently provided by electric and gas utilities have goals and budgets that are calculated based on different statutory and regulatory requirements. **Table 1** provides general program descriptions and information about existing budget set-asides and other requirements for income-qualified customers and/or disproportionately impacted communities.

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[49] RMI/WRA Comments (June 13, 2022) at 18. *See also* Proceeding No. 21A-0625EG, HE 1103, Answer Testimony of Claudine Y. Custodio (July 11, 2022), at 18-22 (suggesting an adder for historical inequity related to prior-year revenues collected).

[50] CEO Comments (June 13, 2022) at 25.

[51] EJC Comments (June 13, 2022) at 35.

Category	**Requirement(s) and Reference [emphasis added]**
Beneficial Electrification Plan	• § 40-3.2-109 states that beneficial electrification plans should include programs to advance beneficial electrification with budgets and numbers of installations; and that the Commission shall allow investor-owned electric utilities to implement cost-effective programs. Furthermore, such plans must include: o "programs targeted to low-income households or disproportionately impacted communities, with at least twenty percent of the total beneficial electrification program funding targeted to programs that service low-income households or disproportionately impacted communities" (§ 40-3.2-109(2)(b)(II)); and o "an outreach plan for engagement with customers in low-income households and disproportionately impacted communities to develop programs to support those customers in every phase of the utility's beneficial electrification programs, including through incentives offered to multifamily buildings occupied in full or in part by low-income households" (§ 40-3.2-109(2)(b)(VI)).
Clean Heat Plan	• § 40-3.2-108 states that clean heat plans should be designed to meet clean heat targets, including a 4% reduction in 2015 greenhouse gas levels in 2025, and a 22% reduction in 2030, within a cost cap of 2.5% of annual bills for gas customers. Furthermore, such plans must include: o Demonstration of how the utility "[p]rioritizes investments that ensure that disproportionately impacted communities or customers who meet requirements for income-qualified programs benefit from the investments made to implement the clean heat plan" (§ 40-3.2-108(4)(c)(V)).[52]
Demand-Side Management Plan (Electric)	• § 40-3.2-104 states that energy savings and peak demand reduction goals must be at least 5% of electric utility retail system demand and retail energy sales as of 2028, counting from a 2018 base year, and the programs must be cost-effective. Furthermore: o "[t]he commission shall ensure that utilities develop and implement DSM programs that give all classes of customers an opportunity to participate and shall give due consideration to the impact of DSM programs on nonparticipants and on low-income customers" (§ 40-3.2-104(4)).
Demand-Side Management Plan (Gas)	• § 40-3.2-103 states that gas demand-side management program targets should be set in strategic issues proceedings with consideration toward statutory greenhouse gas reduction targets, cost-effectiveness, and achievable potential. Furthermore, gas utility programs shall target to residential customers in income-qualified households[53]: o "one or more of the gas DSM programs or measures, representing an aggregate total of at least twenty-five percent of overall residential gas DSM program expenditures" (§ 40-3.2-103(3)(a)(II)); and o "In the case of a gas utility with fewer than fifty thousand full-service customers, . . . one or more of the gas DSM programs or measures, representing an aggregate total of at least fifteen percent of overall residential gas DSM program expenditures" (§ 40-3.2-103(3)(a)(III)).
Renewable Energy Standard Plan	• § 40-2-124 states that qualifying retail utilities to generate or cause to generate 30% of their retail electric sales in Colorado for 2020 and beyond, with distributed generation equaling at least 3% of retail electric sales, within a cost cap of 2% of total annual customer electric bills. Furthermore, because of "historical equity issues" the

[52] *See* also Rule 4732(b)(IV).

[53] *See* also Rule 4753.

	Commission is to require utilities to: o "plan their expenditures so that, before reaching the limits imposed by [the cost cap], they will prioritize renewable energy investment and programs for low-income customers and disproportionately impacted communities. Beginning on January 1, 2022, and continuing through at least December 31, 2028, not less than forty percent of such expenditures, not including any funds set aside to recover the cost of clean energy resources and directly related interconnection facilities pursuant to section 40-2-125.5 (4)(a)(VIII), shall be directed to programs, incentives, or other direct investments benefitting low-income customers and disproportionately impacted communities" (§ 40-2-124(1)(g)(I)(D)).
Transportation Electrification Plan	• § 40-5-107 states that electric utilities must file applications for programs to support widespread transportation electrification while minimizing overall costs and maximizing overall benefits. In its approval of such plans, the Commission must consider whether they are: o "[r]easonably expected to provide access for low-income customers, in the totality of the utility's transportation electrification programs, which may include community-based and multi-family charging infrastructure, car share programs, and electrification of public transit, while giving due consideration to the affect on low-income customers" (40-5-107(2)(g)).
Percentage of Income Payment Plan Program	• § 40-3-106 authorizes the Commission to approve rates, charges, services, classifications, or facilities that grant a reasonable preference or advantage to income-qualified utility customers. An example of such a program is the Percentage of Income Payment Plan (PIPP) or Electric or Gas Affordability Program (EAP or GAP). To be eligible to participate, pursuant to Rules 3412 and 4412, a customer must have income that is determined to be less than or equal to 200% federal poverty guidelines, 80% of area median income, or qualification under Department of Human Services income guidelines. Utility PIPP programs may provide bill discounts to more or fewer customers depending on energy costs, customers' energy burden, existence of other benefits such as LEAP, and whether the customers have arrearages, but the program budget is capped at a maximum monthly rate of $1.00 per month for residential customers.

Table 1: Basis for Current Budgets for Potential Retail Customer Programs

D. Questions for Stakeholders

25. I invite comments on a number of questions set forth below. Stakeholders who are newer to Commission proceedings may prefer to prioritize the first set of questions and stakeholders who have prior experience participating in Commission proceedings may want to prioritize the second set of questions, which are more procedurally focused. However, stakeholders may address any and all questions or provide additional information relevant to equity initiatives at the Commission.

1. Questions on Equitable Outcomes

26. This section focuses on stakeholders' preferred outcomes as the legislation is implemented. Helping the Commission to understand equitable outcomes can help the agency to craft appropriate procedural mechanisms that bring those outcomes closer. Providing examples of lived experience can be especially vital to helping the Commission understand how easily people can interact with their utilities, which can impact whether they are willing or able to receive a benefit from a customer program. While SB 21-272 did not explicitly define "retail customer programs," stakeholders have previously commented that they could include a range of programs offered by electric and gas utilities, including weatherization, solar plus storage incentives, electric vehicle charging infrastructure, heat pump replacements, or other activities.[54]

27. I invite comments on the following questions:

(1) Experience with Customer Programs

(a) Which energy programs that electric or gas utilities offer to residential energy customers do you think should be evaluated to make sure there are equitable benefits to disproportionately impacted communities?

(b) Think about a time you have participated in or tried to participate in a customer energy program. What was the program? How did you access information about the program and how to participate? Was communication about the program straightforward and easy to follow? What do you consider to be the most significant benefits of customer energy programs to you, your household, or your community? What challenges or barriers did you face, if any, as you enrolled in the program?

(c) In your experience, are there specific actions that electric or gas utilities could take to make energy programs be more accessible and equitable that would have improved your experience?

(d) Taking an example of a customer energy program, such as a solar plus storage program where an electric utility provides incentives to residential customers, how would the Commission know when that program has achieved more equitable outcomes? What specific metrics or data should be measured?

(e) Which utility or utilities do you receive electric and/or gas service from?

[54] More examples are provided in ¶¶ 12-13.

2. Questions on Regulatory Frameworks for Proportionate Access

28. This section focuses on technical questions regarding definitions, procedural rules and frameworks, integration with existing programs, and data collection and measurement. I invite comments on the following questions:

(2) Defining Retail Customer Programs

(a) Should any of the programs listed by Staff at the October 17, 2023, workshop as potential retail customer programs be removed, and if so, why (*see* ¶ 13)?

(b) Should fully dedicated income-qualified programs, such as the Percentage of Income Payment Plan program, be considered retail customer programs?

(c) Are there any non-energy programs that are provided by regulated entities other than regulated electric and gas utilities that should be considered retail customer programs?

(d) What actions constitute "decisions relating to retail customer programs"? Consider the full range of potential decisions the Commission could make, from application filing to compliance filing. Given that § 40-2-108(3)(c)(II) requires the Commission to host "informational meetings, workshops, and hearings" when making such decisions, should these decisions be construed to be final decisions in administrative proceedings (*e.g.*, rulemakings), given that those proceedings provide the Commission with more latitude to conduct outreach?

(3) Customer Attribution

(e) For Regulated Utilities: Please describe your current process of calculating the number of customer meters in a census block group.

(f) For Regulated Utilities: Please describe any progress made, or barriers encountered, in providing customer information—such as energy usage and program participation data like energy savings and rebate dollars awarded—at the census block group level.

(g) For Regulated Utilities: Please confirm whether information provided in response to Recommended Decision No. R23-0009-I, issued January 6, 2023, remains accurate, given modifications to the statutory definition of disproportionately impacted community under HB 23-1233. If the filed information is no longer accurate, please provide an update, to the extent reasonably possible.

(h) What data needs to be gathered by utilities, and what of that should be reported on to the Commission and stakeholders, to better understand populations of disproportionately impacted communities and income-qualified customers, and how they intersect?

(4) Defining Benefits and Measuring Proportionality

(i) As Table 1 shows, potential retail customer programs may produce different benefits. Please comment on which one or more of the following examples is the best basis for considering proportionate access to benefits, and why:

- Direct financial benefits (proportionate access to rebates or incentives, or to overall budgets including education, workforce training, etc.);
- Program participation (proportionate access in the form of equal participation as between disproportionately impacted and non-disproportionately impacted communities);
- Direct benefits based on the goals the retail customer program is designed to achieve (proportionate access to energy savings or solar program capacity);
- Indirect or non-energy benefits (proportionate access to air quality, water quality, or public health improvements);
- A targeted universalism approach in which utilities design programs based on consideration of demographic characteristics such as language, ability, income, housing status, and cultural sensitivity, rather than setting a particular budget or set-aside target; or
- Some other basis.

(j) For the basis selected in the prior question:

- What data would be needed to assess whether proportionate access is being provided?
- Should retail customer programs have to be cost-effective, or should cost-effectiveness only apply to the portion of a retail customer program budget that is not an equity budget?[55] If cost-effectiveness is not required, should it still be used to prioritize among programs?
- Should proportionate access be based on planning to provide benefits (prospective), or actual distribution of benefits (retrospective)?

[55] Stakeholders have generally suggested that cost-effectiveness be one, but not the only, factor considered in creating equity budgets, or that it not be considered because of the risk that it will exacerbate inequities. EJ Coalition Comments (June 13, 2022) at 37-38. CEO Comments (June 13, 2022) at 27; EOC Comments (June 13, 2022) at 20.

- To what extent should proportionate access consider activities by entities not regulated by the Commission but that are designed to benefit income-qualified customers and/or disproportionately impacted communities, such as weatherization efforts by assistance providers or local governments?[56]

- Where benefits include concepts that are not always perfectly tied to a census block group, such as improvements in water quality, how should "proportionate access" be measured?

(k) As Table 1 shows, some potential retail customer programs already have statutory budget set-asides for income-qualified and/or disproportionately impacted community customers. Should programs that include existing budgets or funding targets, such as renewable energy standard expenditures pursuant to § 40-2-124(1)(g), be considered to already meet the requirement of providing proportionate access? If not, how can existing requirements be clearly aligned with the requirement to provide proportionate access to benefits?

(l) Given that a customer may be income-qualified, within a disproportionately impacted community such as a census block group or a mobile home park, or all of the above, how can an equity budget be sized that provides proportionate access to all of those types of customers at once? Are different methodologies required if an equity budget only relates to residential customers, as opposed to all customer classes?

II. ORDER

A. It Is Ordered That:

1. I invite initial comments on the topics of overarching considerations and a framework for assessing proportionality by March 14, 2024, with responsive comments invited by March 28, 2024. Stakeholders are invited to address one or both sets of questions.

2. This Decision is effective upon its Mailed Date.

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[56] EOC has commented that the Commission should not take into account energy efficiency and weatherization services funded by a system benefit charge pursuant to HB 21-1105 when it approves equity budgets as this is outside the Commission's jurisdiction. EOC Comments (June 13, 2022) at 18. In contrast, however, the Commission raised questions in Proceeding No. 23M-0013EG regarding topics like how energy assistance and be better coordinated and enrollment made more streamlined. *See*, *e.g.*, Decision No. C23-0391-I, issued June 12, 2023, at ¶ 5 (setting an agenda for a Commissioners' Information Meeting discussing income-qualified residential energy programs, including goals and targets, budgets and funding sources, enrollment, referrals and coordination, outreach and education, etc.).

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MEGAN M. GILMAN

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Hearing Commissioner