

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
DIRECTING STAFF TO ADVANCE SENATE BILL 21-272
IMPLEMENTATION THROUGH THE FILING OF A
STAFF-LED WORK PLAN THAT INCLUDES A
WORKSHOP SERIES AND CAPSTONE REPORT**

Mailed Date: September 15, 2023

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I. BY THE COMMISSION

A. Statement

1. By Decision No. C22-0239, issued April 28, 2022 (Opening Decision), the Colorado Public Utilities Commission (Commission) initiated this miscellaneous Proceeding to gather information, host workshops, collect comments, and otherwise prepare to implement

Senate Bill (SB) 21-272, including initiating the rulemaking contemplated under § 40-2-108(3)(a)-(c), C.R.S.¹.

2. The Opening Decision not only set objectives for this pre-rulemaking Proceeding,² but also directed Staff of the Commission (Staff) to host initial informational meetings or workshops with stakeholders as appropriate and to bring forward a proposal for a work plan that is intentional and responsive to input received in comments and meetings, and with consideration to ways in which impacted communities may participate effectively.³

3. Decision No. C22-0584-I, issued September 29, 2022, referred this Proceeding to me as Hearing Commissioner for ongoing management. Stakeholders have continued to provide significant comments and information in this Proceeding, including providing feedback on potential work planning activities at Staff-led meetings in October and November 2022, and participating in workshop discussions on defining disproportionately impacted communities and using Colorado EnviroScreen (EnviroScreen)⁴ as scheduled by Decision No. R23-0009-I, issued January 6, 2023.

4. By this Decision, I direct Staff to file a work plan, host workshops, and collect comments to gather sufficient information to implement SB 21-272, including initiating the rulemaking contemplated under § 40-2-108(3)(a)-(c), C.R.S. This information shall be summarized in a capstone report filed in this Proceeding at the conclusion of Staff's work plan. As discussed below, Staff-led processes can effectively and efficiently continue to move this Proceeding forward in gathering input on important considerations. Next steps, including any

¹ § 40-2-108(3)(d), C.R.S., was repealed pursuant to House Bill 23-1233 (2023).

² Opening Decision, at ¶ 38.

³ *Id.*, at ¶¶ 39-42.

⁴ Colorado EnviroScreen (EnviroScreen) is available at <https://cdphe.colorado.gov/enviroscreen>.

future recommendations to the Commission to initiate a rulemaking,⁵ will be addressed by a future decision following Staff's capstone report.

B. Background

1. Legislative Background

5. SB 21-272 calls upon the Commission to promulgate rules in 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.

6. On May 23, 2023, Governor Jared Polis signed House Bill (HB) 23-1233. This legislation amends the definition of “disproportionately impacted community” and creates a single, standard definition for use by multiple state agencies, including the Commission.⁶ In addition to modifying and adding to demographic factors, the new statutory definition also makes clear that federally identified disadvantaged communities, census block groups scoring above the 80th percentile on 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

⁵ Written comments, including without limitation any proposed rule revisions, may be provided in this proceeding at any time.

⁶ § 24-4-109(2), C.R.S.

determination that they are disproportionately impacted communities in state decision-making processes.

7. HB 23-1233 also authorizes agencies to target or prioritize different criteria of the definition of disproportionately impacted community by rule or other public decision-making process, and specifically expresses that as applied to the Commission, this “does not constitute any prejudice or disadvantage or any unreasonable difference as set forth in section 40-3-106(1)(a).”⁷

2. Procedural Background

8. Following issuance of the Opening Decision, multiple rounds of comments have been filed by participants. Several public activities have also been held, including:

- Hosting two staff-led virtual proceeding information meetings on June 1 and June 6, 2022, with approximately 75 attendees total;
- Hosting two staff-led in-person and virtual work planning sessions with participants on October 18 and November 3, 2022, with approximately 45 attendees total; and
- Hosting a workshop on the Colorado EnviroScreen tool on January 31, 2023, which included speakers from the Colorado Department of Public Health and Environment (CDPHE) Environmental Justice Program, the CDPHE Hazardous Materials and Waste Management Division, and the Colorado Energy and Carbon Management Commission,⁸ to discuss how they apply the term disproportionately impacted community and use EnviroScreen.

⁷ § 24-4-109(2)(a)(I)(B)-(C), C.R.S.

⁸ Formerly the Colorado Oil and Gas Conservation Commission.

3. Equity Framework

9. In addition to preparing for rulemakings, Staff has been working closely with the Energy Equity Project (EEP) at the University of Michigan to develop an Equity Framework to guide SB 21-272 implementation. EEP led a nationwide effort to develop a framework including definitions, objectives, and metrics that can be adapted by regulators, utilities, and community organizations.⁹ The forthcoming Equity Framework will adapt EEP's work to the Commission's structure and regulated industries, and is anticipated to:

- Identify dimensions of equity that the agency will consider in implementing SB 21-272;
- Set forth guiding principles to which it will aspire as it implements SB 21-272;
- Articulate historical inequities related to the industries it regulates;
- Assess current practices to provide a baseline to measure impacts of considering equity in all of the Commission's work; and
- Recommend metrics for measuring and reporting on progress over time as the Commission aspires to better incorporate equity in its work and priorities.

10. The Equity Framework, which Staff has a goal to finalize by the end of 2023, is intended to be provided to Director Rebecca White in her role managing the Commission and as such is intended to be instrumental to assist the Director in considering, identifying, and prioritizing tasks; defining staffing and budgeting needs; and establishing a process in which the agency can advance and report on equity progress annually. Throughout August 2023, Staff hosted virtual workshops to discuss the Equity Framework and guiding principles.

⁹ EEP's framework can be accessed at:

https://energyequityproject.com/wp-content/uploads/2022/08/220174_EEP_Report_8302022.pdf.

4. Other Activities

11. SB 21-272 directs the Commission to promulgate rules in which it considers how best to provide equity “in all of its work.” In Decision No. C22-0239, the Commission laid out its initial conception that this direction is broad in scope and may cover all industries the agency regulates, as well as require the agency to take actions to promote accessibility and public engagement in ways that do not require rules.

12. Drawing from participants’ comments in this Proceeding and related workshops, and lessons learned from the Environmental Justice Action Task Force,¹⁰ Staff have been testing improvements to outreach and engagement practices and institutionalizing equity efforts, which include¹¹:

- Forming a steering committee on SB 21-272 implementation led by Director Rebecca White and including deputy directors and other key Staff who are involved in implementing the legislation;
- Coordinating with CDPHE teams to provide Staff with EnviroScreen trainings and advice on effective community engagement practices;
- Meeting with representatives of state and federal energy regulators, including other state public utility commissions and the Office of Public Participation at the Federal Energy Regulatory Commission, to understand their equity and engagement practices;
- Presenting to State of Colorado Boards and Commissions on recent SB 21-272 implementation activities, including the Colorado Office of the Utility Consumer Advocate Utility Consumers’ Board and the CDPHE Environmental Justice Advisory Board; and
- Piloting improvements to outreach and engagement practices, including actions like hosting in-person meetings in partnership

¹⁰ See ENVIRONMENTAL JUSTICE ACTION TASK FORCE, FINAL REPORT OF RECOMMENDATIONS (November 14, 2022), available at https://drive.google.com/file/d/114rN-o3h3OJg8TciUzh-qxytULvyD_NE/view. Staff were active participants in the Task Force process.

¹¹ These improvements are documented in more detail in Staff’s bimonthly progress updates, which are available at: puc.colorado.gov/equity.

with community representatives, offering simultaneous interpretation and bilingual materials, and improving the experience of signing up for and speaking at public comment hearings.

13. These undertakings have helped Staff understand various stakeholders' priorities related to rules changes and outreach and engagement practices, as well as to understand how Colorado can learn from other states and agencies. Further, the activities have surfaced the myriad of challenges and opportunities implicated by the equity mandate in SB 21-272 and underscore the significance of this undertaking.

C. Discussion and Conclusions

14. Staff have taken significant time to improve internal understanding on the numerous dimensions of equity and environmental justice, to interact with other agencies, and to participate in key activities like the Environmental Justice Action Task Force. I believe our eventual rulemakings will be all the stronger for taking this time to be deliberate and thoughtful. However, SB 21-272 became effective approximately two years ago. Since then, the number of proceedings involving equity and environmental justice considerations has been increasing at the Commission, while the Commission's schedule continues to be aggressive as other legislative requirements remain active or are newly coming into effect. Directing Staff to advance this Proceeding balances competing timelines and ensures that the implementation of SB 21-272 is carried out in a timely, efficient, and holistic manner, while at the same time yielding quality information to inform rule proposals, in addition to improved internal practices, including outreach and engagement practices.

15. Accordingly, I direct Staff to take at least the following actions to advance SB 21-272 implementation over the coming months, with a goal of preparing the Commission for

one or more notices of proposed rulemaking, and ultimately adoption of rules, in compliance with the legislation:

- 1.) **Establish a Work Plan.** Within thirty days of this decision, Staff should file in this Proceeding a work plan outlining the activities and timeline it intends to complete over the coming months. Staff shall review the work plan on an ongoing basis to ensure the activities and timelines are accurate and up-to-date and may file updates to the work plan based on stakeholder comments, new information, or as otherwise necessary, until it issues its capstone report as described below.
- 2.) **Host Workshops and Summarize Activities.** Staff should host workshops and other appropriate stakeholder activities, with a goal of identifying information needed to develop rules redlines to comply with SB 21-272. Staff, in its discretion, may form working groups, file straw proposals, issue surveys, request written comments, and otherwise take steps to gather information to implement SB 21-272. As part of this outreach, it is likely necessary to more completely understand the role that other state agencies expect to play in representing disproportionately impacted communities before the Commission, what their outreach and scope might look like, and how those plans relate to broader changes being contemplated in Commission rules and internal practices. Within the limits of available resources, I encourage Staff to offer simultaneous interpretation and translation services as needed, provide reasonable notice of upcoming events, and offer events at multiple times of day and days of the week in an effort to ensure as robust and diverse participation as possible. All workshops, straw proposals, surveys, and other relevant activities should also be included through the above work plan or otherwise in the Proceeding, to the best of Staff's ability. Staff should file agendas, slides, summary notes, and other relevant materials from all workshops, meetings, and other appropriate stakeholder activities in this Proceeding in a timely manner after each activity.
- 3.) **Update on Progress.** Staff should continue the process of issuing progress updates every other month, which should be filed in this Proceeding and provided on the equity webpage to improve ease of access. Staff are encouraged to continue activities that result in increased transparency and clarity, such as updating the equity webpage as a clear source of information and upcoming events for stakeholders who are newer to Commission activities. To the extent it is possible, Staff should provide public, informational

updates,¹² to allow the rest of the Commission, stakeholders, and the general public to understand the Commission's progress at a cadence similar to that used for the written progress updates.

- 4.) **Capstone Report.** At the conclusion of its work plan, Staff should develop and file in this Proceeding a capstone report that addresses potential direction for initiation of one or more rulemakings, as well as recommendations for internal policies and practices. In addition to other information Staff determines necessary to include in the capstone report, the report should include a summary of comments filed in this Proceeding and provided during other activities and it should describe, to the extent possible, any legal issues that stakeholders identify that may create challenges to implementing stakeholders' equity recommendations, as well as considering administrative issues related to agency operations, including policies, procedures, funding, staffing, and other constraints. The capstone report should also address to what extent representatives from disproportionately impacted communities were engaged in this process, attempts made to encourage robust and diverse participation, and any barriers identified by Staff in doing so.

16. While the Equity Framework is Staff-led, I also encourage Staff to file information about the Equity Framework's outputs and milestones in this Proceeding, in addition to on the Commission's webpage, for transparency. I further encourage Staff, in the development of the capstone report for this Proceeding, to promote consistency as between that report and the Equity Framework and any corresponding agencywide work plan that emerges from the Equity Framework. Additional actions, including the issuance of data requests or requests for comments on particular items, may be directed through future decisions.

17. Staff has discretion in moving its work plan forward and facilitating outreach towards preparation of a capstone report, unless and until the Hearing Commissioner issues a

¹² For example, Staff could provide periodic updates in public, including potentially at Commissioner's Weekly Meetings or Commissioner Information Meetings, as appropriate.

decision directing otherwise.¹³ Unless extended by a future decision, my expectation is that Staff-led processes and the ultimate capstone report will conclude no later than June 30, 2024.

D. Proceeding Participation

18. Stakeholders are encouraged to submit comments regarding the implementation of SB 21-272 at any time this Proceeding is open, even if they do not align with timelines set by recommended decisions. An attorney is not required to participate. Information about how to participate in this Proceeding can be found at:

<https://puc.colorado.gov/equity>

II. ORDER

A. The Commission Orders That:

1. By this Decision, I direct Staff of the Commission to file a work plan; schedule and host workshops; report on progress, including filing a capstone report; and otherwise take actions consistent with the discussion above.

2. This Decision is effective immediately.

¹³ Staff has no ability to issue decisions or otherwise speak on behalf of the Commission. The Hearing Commissioner may issue decisions during the pendency of Staff's concurrently led processes to provide additional direction in this Proceeding.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MEGAN M. GILMAN

Hearing Commissioner

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director