

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 RECOMMENDED DECISION OF
HEARING COMMISSIONER
MEGAN M. GILMAN
CLOSING PROCEEDING AND DIRECTING
STAFF TO BRING FORWARD PROPOSED RULES
TO FURTHER ADVANCE SENATE BILL 21-272**

Issued Date: September 4, 2024

I. BY THE COMMISSION

A. Statement

1. Senate Bill (“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. By Decision No. C22-0239 (“Opening Decision”), issued in this proceeding on April 28, 2022, the Commission opened this Miscellaneous Proceeding to gather information, host workshops, collect public comments, and otherwise prepare to implement SB 21-272, including initiating the rulemaking contemplated under § 40-2-108(3)(a) through (d), C.R.S.

2. By this decision, I acknowledge and appreciate that the work Staff of the Colorado Public Utilities Commission (“Staff”) has done through this proceeding—including hosting

workshops, receiving written and oral comments, and drafting a final Capstone Report summarizing public input and Staff recommendations—is sufficient to move toward a rulemaking implementing SB 21-272. I therefore close this proceeding and direct Commission Staff to bring forward one or more proposed rulemakings for consideration at a future weekly meeting.

3. Advancing equity through regulation is a significant undertaking, and our work will continue to evolve. The Capstone Report provided by Staff captures those Staff members’ current thinking on this effort.

4. I also recognize the substantial impact that public input in this proceeding has had on advancing the Commission’s thinking on how to best consider equity in all of our work. I echo Staff’s gratitude expressed in the Capstone Report to all who have participated and who have shared their valuable time, expertise, and passion to aid us in this effort. It would not have been possible to move on to the actionable phase of memorializing efforts to improve equity within the Commission’s rules without this involvement. Members of the public and stakeholders are encouraged to continue to participate in future rulemaking processes to implement SB 21-272. We value the voices of those most impacted by our decisions and appreciate any continued involvement that stakeholders are willing and able to offer.

B. Background

5. A brief background of the proceeding is included here, and a full background can be found in the Capstone Report.¹ This proceeding was referred to Commissioner Megan M. Gilman as the hearing commissioner to conduct this proceeding. Decision R23-0625-I² directed Staff to file and execute a work plan to prepare for initiating the rulemaking contemplated

¹ The Capstone Report was filed in this proceeding on July 22, 2024. It can also be found on the Commission’s equity webpage at <https://drive.google.com/file/d/1AOiED3hBm4PctjrEptpVxP3fyaP3kJVN/view>.

² Issued September 15, 2023.

under § 40-2-108(3)(a)-(c), C.R.S, and to summarize all learnings relevant to implementation of SB 21-272 in a Capstone Report filed in this Proceeding at the conclusion of Staff’s work plan. Staff issued a work plan on October 16, 2023; gathered public input through the work plan through June 2024; and submitted a Capstone Report on July 22, 2024.

6. The Colorado General Assembly has adopted numerous statutory provisions that touch on concerns of equity and disproportionately impacted communities, including through SB 21-272, which became effective June 10, 2021. SB 21-272 compels the Commission, in all of its work, to consider equity, minimize impacts, and prioritize benefits to disproportionately impacted communities and address historic inequity. In addition to this legislation, the General Assembly has passed additionally significant legislation that heightens the Commission’s need to advance equity for disproportionately impacted communities throughout its work.³

7. The Commission recognizes the importance of these and other recent statutory updates alongside broader state and national conversations advancing racial and economic equity. Through this Proceeding, we aimed to underscore the imperative that the Commission consider its role related to equity and the engagement of disproportionately impacted communities in the context of state and agency activities as a whole. We note that these goals not only impact the

³ Among other statutory additions, SB 21-246 requires utility applications for beneficial electrification plans to include “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.” SB 21-264 requires clean heat plans filed by gas distribution utilities to “prioritize 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.” House Bill (HB) 21-1266 created a state-wide definition of “disproportionately impacted communities” and created an Environmental Justice Action Task Force with a Commission representative as one of the appointed members.

Commission's rules and roles, but also implicate change for other state agencies and regulated utilities.⁴

8. In guiding our path to improved rules and Commission processes, we sought to better understand existing or emerging equity issues, activities, definitions, and trends. To accomplish this, this proceeding had the following objectives:

- a. To gather information that will help define the Commission's approach to considering how to provide equity in its proceedings, which may address among other concepts, definitions of equity, procedural equity, distributional equity, and recognition of historic contributors to inequity;
- b. To understand how equity may appear differently for different industries or areas regulated by the Commission;
- c. To gather information that will help shape the Commission's approach to defining disproportionately impacted communities, including the interactions between disproportionately impacted communities and income-qualified or low-income utility customers;
- d. To understand the Commission's evolving role with regard to stakeholder engagement, generally and compared to other state agencies or to regulated industries, and to explore enhancements to engagement of parties, participants, the public, members of disproportionately impacted communities, and other potential stakeholders;
- e. To gather information that will enable the Commission to propose changes to rules through future proceeding(s), as well as how such future proceeding(s) could be staged;
- f. To gather information to determine what regulatory activities the Commission may need to undertake beyond rulemakings to implement legislative provisions related to equity, disproportionately impacted communities, and low income or income-qualified utility customers;
- g. To identify information that could lead to changes to Commission policies and practices; and
- h. To undertake any other actions needed to ensure compliance with SB 21-272 through a future rulemaking.⁵

⁴ For example, the Commission acknowledged that the Department of Regulatory Agencies is in the process of implementing a department-wide Equity, Diversity, and Inclusion ("EDI") Action Plan. The EDI Action Plan can be viewed at <https://drive.google.com/file/d/1gnhJ3DVgFw6vo3TOvFgWlMf6azLI4jtt/view> (last visited on September 3, 2024).

⁵ Decision No. C22-0239, issued April 28, 2024, at ¶ 38.

9. Staff's Capstone Report provides an overview of this Proceeding and of certain overarching agency activities, including those undertaken by the Director of the Commission in advancing equity in her duties. The Capstone Report provides recommendations related to key themes in the proceeding and identifies areas of concern and potential improvement with regard to enhancing procedural equity; identifying disproportionately impacted communities; addressing impacts, benefits, and proportionate access for those communities; and better defining equity in industries regulated by the Commission. The Capstone Report also includes attachments through which Staff assess their own progress and lessons learned from the stakeholder engagement work within this Proceeding.

10. Staff's overarching conclusion in its Capstone Report is that Staff is prepared to begin bringing forward for Commission consideration a Notice of Proposed Rulemaking ("NOPR"). The NOPR would draw upon the significant input presented in this Proceeding and coordinate, where possible, with the work on affordability and income-qualified programs that is currently happening or has been identified as an area of interest for future work in other venues.⁶

11. This recommendation is supported by an overview of potential proposed rules. There are two major recommendations include a proposed "equity impact proceeding" designation for certain proceedings, and a required "energy equity plan" that would be filed periodically by electric and gas utilities. Staff proposes that equity impact proceedings would require heightened procedural interventions and substantive equity-related analyses given potential equity impacts. For cases with this designation, utilities would be required to present information about affected disproportionately impacted communities, incorporate pre-filing outreach, provide notice to

⁶ See, e.g., Proceeding No. 23M-0013EG (in which an evaluation of income-qualified energy bill assistance programs was filed for further consideration).

impacted communities at the time of filing, identify impacts and benefits to those communities resulting from the utilities' requests in the case, and identify how utilities are prioritizing impacted communities' access to benefits. Parties would also need to address information about equity in their interventions and discuss whether public comment hearings should be held.

12. Staff's proposal for a periodic, multi-year energy equity plan would require utilities to collect and analyze demographic and socioeconomic information to better understand vulnerability, energy burden, and poverty within their service areas, so that customer assistance programs and energy programs can be more effectively coordinated and targeted to improve affordability.⁷

13. The Capstone Report further summarizes recommendations for improved communications and outreach practices as well as practice and procedure rule changes, among other areas of interest. While not all recommendations require rule changes, Staff's recommendations include a conceptual outline of those proposed rules that Staff believes should be considered in one or more rulemakings following the closure of this Proceeding.

14. As Staff notes, if the Commission agrees to close this proceeding and direct Staff to bring forward proposed rules, stakeholders will have the opportunity to participate in the rulemaking and recommend revisions to proposed rules. At the same time, the Director can continue to move forward in her efforts, including with the agency Equity Framework and ongoing updates of agency policies, procedures, training, and communications. Stakeholders can also continue to aid in these efforts through ongoing reflection and action on opportunities in their control to improve their outreach and engagement to disproportionately impacted communities

⁷ The concepts of an Energy Equity Proceeding and a Utility Energy Equity Plan are discussed throughout the Capstone Report and further detailed in Appendix C thereto.

and by bringing learnings from that outreach and engagement into the Commission's proceedings to help the Commission better consider equity in all of its work.

C. Conclusion

15. Through their comments, input, and participation, stakeholders have provided meaningful and significant information through the course of this proceeding. It is with the utmost gratitude to those dedicated stakeholders and the Commission's Staff that I agree with Staff's recommendation that this Proceeding should be closed, and that Staff should bring forward proposed rules that bring together the efforts here, further improve Commission rules, and fulfill the intent of SB 21-272 to the best of our ability.

16. I greatly appreciate Staff's leadership and organization that culminated in the Capstone Report. At this phase of proceedings, I do not adopt Staff's observations or recommendations on specific rule proposals – as Staff brings forward specific rule language, my fellow Commissioners and I will consider express rules language to move forward for further stakeholder input in the rulemaking process. Rather, I acknowledge this Proceeding and the Capstone Report as a body of work that allows us to move forward to the next step in which the Commission will analyze each of those specific proposals within an appropriate forum to make such changes. I do note a few key concepts that I find particularly intriguing in Staff's observations and recommendations:

- a. Connections between equity and more general affordability concerns,
- b. The potential for an overarching proceeding to understand each applicable utility's equity priorities and understand which proceedings will address those priorities,
- c. Continuing to expand access and understandability of the Commission's work to allow the impacted public the ability to provide input, and

17. As we move to rulemaking, I look forward to stakeholders' and my fellow Commissioners' input and improvements on these and other concepts.

18. I also recognize the important role of the Director to improve the agency's capabilities around education, communications, outreach, and engagement. These efforts complement our role in rulemaking but are neither guided nor directed by rules. It is with great gratitude that I recognize the important work of the Director and agency Staff to make our processes more publicly accessible. This work is being undertaken not only by agency Staff, but also by fellow state agencies, stakeholder groups, regulated entities, and community organizations.

19. I direct Staff to come forward with proposed rules in order to commence one or more rulemaking proceedings to implement SB 21-272 and related measures. Notably, and as recognized by Staff's robust Capstone Report, Commission process and equity improvements will likely be advanced through iterative rules changes. We will no doubt have lessons learned and further improvements to make in years to come. The workshops, information, comments, and processes here are but one step of many that we will need to take together to fully realize the ongoing pursuit of the equity considerations and related directives in Colorado law, including SB 21-272. Stakeholders' ongoing engagement, participation, and commitment to important state objectives regarding equity are both appreciated and imperative as we collectively move forward.

II. ORDER

A. It Is Ordered That:

1. This Proceeding is closed so that future rulemaking(s) may begin.
2. Staff of the Colorado Public Utilities Commission is directed to bring forward proposed rules for consideration at a future weekly meeting.

3. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission.

4. This Decision is effective immediately on its Issued Date.

(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